

Serbia: Spending for Justice

A Judicial Public Expenditure and Institutional Review

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ABBREVIATIONS LIST

ABA	American Bar Association
ADB	Asian Development Bank
ADR	Alternative dispute resolution
BEEPS	Business Environment and Enterprise Performance Survey
CEPEJ	The European Commission for the Efficiency of Justice
CCJE	Consultative Council of European Judges
CCPE	Consultative Council of European Prosecutors
EU	European Union
EBRD	European Bank for Reconstruction and Development
ECA	Europe and Central Asia
FY	Fiscal Year
GDP	Gross Domestic Product
ICT	Information and Communication Technology
ICTY	International Criminal Tribunal for the former Yugoslavia
IMF	International Monetary Fund
ISM	Ipsos Strategic Marketing
IDF	Institutional Development Fund
IFMIS	Integrated Financial Management Information System
JAS	Judges Association of Serbia
LSA	Law and Society Association
MDTF-JSS	Multi Donor Trust Fund for Justice Sector Support
N	Number
NJRS	National Judicial Reform Strategy
OSCE	Organization for Security and Co-operation in Europe
PEFA	Public Expenditure and Financial Accountability
RCLS	Research Committee on Sociology of Law
RSD	Serbian Dinar
SAA	Stabilization and Association Agreement
UMIC	Upper Middle Income Countries
US\$	United States Dollars

Preface

This report presents a Public Expenditure and Institutional Review of the Serbian Judiciary. The analysis was funded by the Multi Donor Trust Fund for Justice Sector Support (MDTF-JSS) established with generous contributions from the Department for International Development, Swedish International Development Cooperation Agency, Norway, Denmark, the Netherlands, Slovenia, Spain, and Switzerland. Information about the Trust Fund is available at www.serbiamdftfjss.org.

Data for the report were collected on missions to Serbia and during written consultations throughout 2010. The report was finalized in May 2011. The analysis is current as of that date.

The report was drafted by a World Bank team composed of Jens Kromann Kristensen (Senior Public Sector Specialist and Task Team Leader), Svetislava Bulajic (Consultant), Sebastian Eckardt (Economist), Kate Harrison (Consultant), Dan Mullins (Consultant), Jovanka Manic (Consultant), Marina Matic (Consultant), Valerie Nussenblatt (Consultant), and Srdjan Svircev (Public Sector Specialist and Program Coordinator). The report was peer reviewed by Mr. William Dillinger (Lead Public Sector Management Specialist), Lewis Hawke (Senior Financial Management Specialist), and Barry Walsh (Senior Justice Reform Specialist). Dragana Lukic (Consultant), John Furnari (Senior Justice Sector Reform Specialist), and Amitabha Mukherjee (Lead Public Sector Specialist) provided valuable comments on various draft versions of the report.

The report was formatted by Dolly Teju (Program Assistant) and edited by Amanda Green and Molyneau DuBelle (Consultants).

The team worked in close consultation with Loup Brefort (Country Manager for Serbia), and under the general guidance of Jane Armitage (Regional Director for the Western Balkans Country Department), and William E. Dorotinsky (Sector Manager, Public Sector and Institutional Reform, Europe and Central Asia Region)..

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Executive Summary

Reform of the judiciary is a key element of Serbia's European Union (EU) accession process, and in ensuring sustainable economic growth and delivering justice to Serbian citizens and businesses. Reform of the judiciary has been ongoing since the regime change in 2000. However, efforts accelerated in the more stable and pro-European political environment after 2008.

The financial crisis hit Serbia hard in 2009, and further reform of the judiciary will have to be undertaken in a resource-constrained environment. Against this background the present review aims to contribute to strengthening the performance of the judiciary in Serbia through more efficient and effective use of financial and human resources. By so doing, the review aims to provide input into the design of the next phase of judiciary reform in Serbia and to facilitate Serbia's EU accession process.

The review presents an analysis of: (i) the political economy of reform and reform status; (ii) expenditure management; (iii) the institutional set-up for financial management; and (iv) the institutional set-up for human resource management of judges, prosecutors, civil servants and public employees in the judiciary.

Political economy of reforms and reform status

Significant reforms of the judiciary have been implemented in Serbia during the last ten years. Specialized courts have been established; the court network has been restructured; a package of laws governing the judiciary has been enacted; and the mandates of the High Judicial Council, State Prosecutorial Council, and the Judicial Academy have been strengthened and aligned with core principles of judicial independence. The principle of judicial independence has also been enshrined in the Serbian Constitution. These are significant achievements. Key challenges relate to the implementation of the legislative framework and to the effective working of the new institutions.

The EU accession process has been a key driver of judiciary reforms in recent years, while popular demand has been a less prominent driver. Reform momentum is anchored in the executive and the Ministry of Justice, whereas stakeholders in the judiciary have been more reluctant reformers. The incentives that the accession process is expected to provide in the years to come, including in regard to reform design and implementation approaches, will have a major influence on the success of further reform efforts.

In the re-election¹ implemented in 2009, a large number of judges and prosecutors were not re-elected, and most observers agree that the process was not conducted according to Council of Europe recommendations. Accordingly, relations between key stakeholders in Serbia's judicial reforms are currently adversarial, and solving this issue is distracting attention from other – and perhaps equally important – reform activities. The High Judicial Council was envisioned to play a key role in the implementation of the new court network, financial management, and human resource management in the judiciary. To date, however, the Council has been preoccupied with the re-election process. Further reform implementation is likely to proceed very slowly as long as this issue remains unresolved.

It would be desirable to design and implement the next phase of justice sector reform in a consultative and transparent manner, involving all key stakeholders. The current strategy, prepared in 2006, was developed through extensive consultation. Given the current adversarial relations and the

¹ "Election", "re-election," and "general election" are the terms used by different stakeholders in Serbia's judiciary to refer to the 2009 process of selecting judges and prosecutors. In this report, the process will be referred to as the "re-election" process.

executive's role in driving reforms, efforts need to be made to repeat the 2006 approach. An inclusive justice sector reform committee could be established to anchor consultations on the reform process.

Expenditure management and performance

Serbia spends significant resources on its judiciary; while international comparisons should be undertaken with caution, spending in Serbia was among the highest in Europe when compared to the country's gross domestic product. Up to 2008-2009 costs were driven by high court density; high numbers of judges, civil servants, and employees; and high wages for judges.

There are indications that 2008-2009 resource allocations to courts were not well-aligned with demand for services as expressed in caseloads; accordingly, there was an incentive to obtain more services by reallocating resources. Smaller courts seem to have been over-resourced, and larger courts seem to have been under-resourced. This review illustrates how accurate and consolidated/merged data on caseloads and resources can strengthen the management of human and financial resources.

There appears to be significant potential to improve the quality and management of case, financial and human resource data going forward. Furthermore, there is a strong case for investing in capacity to analyze and act on such data, first in the Ministry of Justice and later in the High Judicial Council. Similarly, the review strongly supports the ongoing and planned efforts to establish a system for providing case management data.

Financial management

There is substantial potential for improving financial management in the judiciary, before and after the envisioned transfer of related responsibilities from the Ministry of Justice to the High Judicial Council and the State Prosecutorial Council. Financial management for the judiciary is currently anchored in the Ministry of Justice, and plans to transfer this responsibility to the High Prosecutorial Council have been postponed in light of the Council's preoccupation with the re-election process. To improve the situation, the data situation could be addressed as mentioned above, followed by capacity strengthening for budget analysis, budgeting, and monitoring.

The key to advancing this reform agenda will therefore rest on the resolution of the re-election issue, enabling the Council to attend to its other core mandates, including financial management. In the short term, the focus could be on data and core capacity. Efforts to introduce performance budgeting and a program format to appropriations should be postponed to the longer term.

Considerable investments have been made recently in information and communication technology (ICT) in the judiciary, and substantial additional investments are envisioned. This puts financial management of ICT projects at center stage.

Correspondingly, in the medium term, the establishment of an asset register and enhanced investment project appraisal procedures, together with relevant capacity, would facilitate capital planning and budgeting.

Capital investments in the judiciary (for example, in information technology, buildings, and other larger assets) are planned to remain the responsibility of the Ministry of Justice; this set-up would not strengthen financial management and accountability. Though it is an appropriate approach in the medium term given other demands on the High Judicial Council, separation of budget responsibility for different input factors (such as staff, buildings, and ICT) does not facilitate optimal allocation of resources, including the substitution of capital investments with recurrent costs such as labor. In the

longer term, it would be desirable to move responsibility for capital budgets from the Ministry of Justice to the High Judicial Council in line with the responsibility for recurrent budgets, as this will better strengthen management and utilization of resources (including reallocation between these expenditure categories).

Budget execution, internal control, and internal audit would be greatly facilitated by the rollout of the Serbian integrated financial management system to Indirect Budget Beneficiaries (courts). This expansion would address current cash management practices and the corresponding buildup of arrears (that is, unfulfilled payment obligations) by individual courts.

Capacity for internal control and audit is very weak. Training and additional staff are needed in the longer term to fill the gap.

Human resource management

Human resource management of judges, prosecutors, civil servants, and staff (currently totaling around 20,000 people) in the Serbian judiciary is weak.

Part of the solution to the issues stemming from the 2009 re-election process for judges and prosecutors will be the establishment of transparent selection, promotion, and dismissal criteria for these personnel categories. Standardized criteria, application forms, interview forms, and evaluation rules for selection could be developed. In addition, the development of standards for determining whether a judge or prosecutor should be retained after the three-year probation period could be a priority.

While the responsibility for appointing judges and prosecutors has transferred to the High Judicial Council and State Prosecutorial Council, respectively, the responsibility for managing civil servants and employees will remain the responsibility of the Ministry of Justice. This is appropriate in the medium term given other demands on the High Judicial Council, but in the longer term, consideration could be given to moving the responsibility for civil servants and employees to the High Judicial Council to facilitate the integrated deployment of different staff types. In the meantime, the High Judicial Council should gradually build capacity to advise the Ministry of Justice on the number and deployment of civil servants and employees.

Recruitment and promotion of civil servants and employees are not transparent and not well regulated. Transparency and accountability in recruitment and promotion remain critical to the legitimacy of and trust in the judiciary, and should thus remain a priority. Recommendations in this regard relate to the development and posting of job descriptions, evaluation criteria, the composition of employment commissions, and appeals procedures.

In the longer term, management of human resources in the judiciary would be greatly facilitated by expanding the number of High Judicial Council, State Prosecutorial Council and Ministry of Justice staff members working on these matters and through better data support. To this effect, it will be important for the ICT strategy work mentioned above to consider the introduction of a human resource management information system for the judiciary.

Table of Contents

Chapter 1. Introduction.....	10
1.1. Background	10
1.2. Objective	13
1.3. Report Outline	13
Chapter 2. Political economy of reform, reform status and reform management	14
2.1. Key findings and recommendations.....	14
2.2. Political drivers	15
2.2.1 Overview	15
2.2.2 Political and economic transition – 2000 to 2005.....	16
2.2.3 New Constitution, a reform strategy and political change – 2006 to 2007.....	19
2.2.4 EU Accession, reform acceleration and roadblocks – 2008 to 2010	21
2.3. Public demand for justice sector reform	26
2.4. Reform status	30
2.5. Reform management.....	31
Chapter 3. Expenditure management	33
3.1. Key findings and recommendations.....	33
3.2. The Cost of Justice.....	34
3.3. Service demand in Serbia’s judiciary.....	39
3.4. Cost drivers in Serbia’s judiciary.....	43
3.5. Resource Allocation and Performance across the Court Network.....	45
3.5.1 The Impact of Caseload on Resource Consumption and Court Performance.....	48
3.5.2 The Impact of Case Composition on Resource Consumption and Performance in Serbian Municipal Courts	52
3.6. Policy Implications	57
Chapter 4. Financial management.....	61
4.1. Key findings and recommendations.....	61
4.2. The legal and regulatory framework.....	63
4.3. Budget Formulation – Strengthening strategic resource planning in the judiciary	67
4.4. Budget Execution – Improving cash management and internal controls	73
4.5. Internal and External Audit.....	76
Chapter 5. Human resource management.....	79
5.1. Key findings and recommendations.....	79
5.2. Analytical framework, international standards and national context.....	82

5.3. Human resource management of civil service staff and employees	84
5.3.1 Organizational structure.....	84
5.3.2 Position classification	89
5.3.3 Compensation	91
5.3.4 Selection of Employees (Other than Judge or Prosecutor Trainees).....	92
5.3.5 Selection of Judge and Prosecutor Trainees.....	94
5.3.6 Training	95
5.3.7 Performance management.....	96
5.3.8 Code of conduct	98
5.3.9 Automation support for the human resource management function	98
5.4 Human resource management of judges and deputy prosecutors	99
5.4.1 Organizational structure.....	99
5.4.2 Selection of president Judges and Public (Chief) Prosecutors.....	99
5.4.3 Compensation	100
5.4.4 Selection of judges and deputy prosecutors.....	101
5.4.5 Training	102
5.4.6 Performance management.....	104
5.4.7 Discipline and discharge	108
Annex 1. Key financial staffing and case load data	111
Annex 2 Partial list of persons interviewed.....	132
Annex 3. References	134
Annex 4. Status assessment of reform implementation	137
Annex 5. Case types in the Serbian Judiciary.....	142
Annex 6. Statistical method	143
Annex 7. Cost Drivers - Regression Analysis	145
Annex 8. The Serbia Budget Calendar.....	153

Chapter 1: Introduction

1.1. Background

1. Serbia has undergone profound economic and political changes in the last ten years, after emerging from armed conflicts followed by economic and political isolation. Economically, the period from 2000 to 2008 was characterized by further privatization and liberalization of the economy and steady growth of gross domestic product (GDP).² Serbia's economy recorded relatively high growth rates from 2004 to 2008, with an average annual GDP growth rate of 6.3 percent.³ This steady growth was followed by an 8 percent contraction in 2009 due to the global financial crisis, with prospects for a slow and measured recovery in 2010 and the years to come. Politically, the decade was characterized by frequent changes in governments, the 2003 assassination of Prime Minister Djindjic, the adoption of a new constitution in 2006, and a gradual shift from a nationalist and isolationist political agenda to a commitment to joining the European Union (EU) and the normalization of diplomatic relations. The reform agenda for the Serbian judiciary should be reviewed against this background of ten years of profound changes in politics, institutions, and the economy.

2. Serbia was declared a potential candidate for EU membership in December 2007, leading to the signing of the Stabilization and Association Agreement (SAA) in April 2008.⁴ The SAA envisages the reinforcement of institutions within the general administration as well as within the judiciary, strengthening of judicial independence, consolidation of the rule of law, and improvements in the efficiency of the justice system.

3. Serbia has focused on reforming the legislative and institutional framework for the judiciary to comply with EU membership criteria, including adjusting its overall institutional framework to strengthen the independence of courts and prosecutors. The National Judicial Reform Strategy (NJRS), prepared in 2006, has provided a basis for progress on issues critical to EU integration. Reform momentum has accelerated recently, as demonstrated by the National Assembly's adoption of fourteen key laws in 2008 and by the number of draft laws in the pipeline. The new Constitution of the Republic of Serbia, adopted on November 8, 2006, enshrined the principles of separation of powers and judicial independence. The new laws provided for structural and organizational changes as well as initiatives to strengthen judicial independence.⁵ The Constitution and new legislation also changed the structure of the court network (Box 1).

² World Bank. 2007. *Country Partnership Strategy for the Republic of Serbia for the Period FY08–FY11*, Report No. 41310–YF (November).

⁴ The European Council of December 14, 2007, stated that “it considered that a stable and prosperous Serbia fully integrated into the family of European nations is important for the stability of the region.”

⁵ For example, the Law on Organization of Courts, adopted in 2008, includes a provision in Article 6 prohibiting any political or undue influence on the courts.

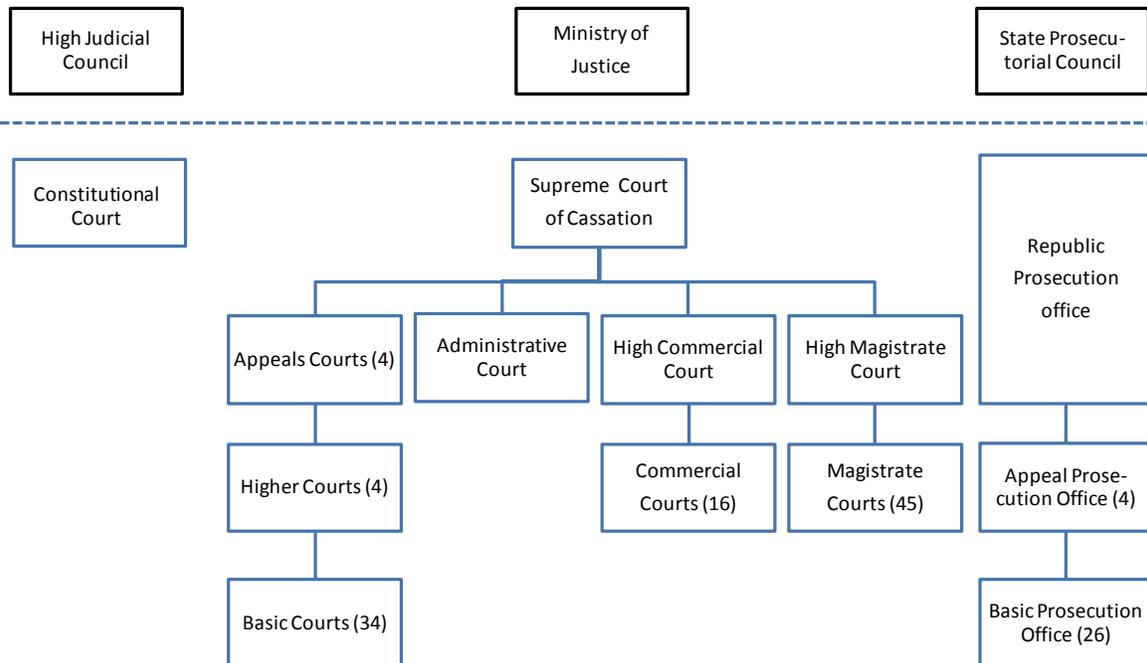
Box 1: The Serbian Court Network

The 2006 Constitution established the Supreme Court of Cassation as the supreme judicial instance in the country. The court reviews the application of law and other regulations and the work of the courts, decides on conflict of jurisdiction between courts, and appoints judges to the Constitutional Court. Serbia's Constitutional Court decides on the compliance of laws, other general acts, and ratified international treaties with Serbia's Constitution. The Constitutional Court also decides on jurisdictional conflicts.

The new Law on the Organization of Courts of 2008 established a new court network that was implemented in January 2010. Under this law, the new Serbian court network reorganized the 138 municipal courts into 34 basic courts, 30 District Courts into 26 Higher Courts, and created four Appeals Courts with general jurisdiction. In addition, the 173 misdemeanor courts that were previously agencies and/or offices administered by the Ministry of Justice, were reduced to 25 courts and brought into Serbia's judiciary under the responsibility of the High Court Council. As of August 2010, Serbia had 25 misdemeanor courts with 103 court units, and one High Misdemeanor Court with three chambers and 65 judges. The Basic Courts adjudicate in the first instance criminal offenses, civil litigation, and housing and employment disputes. The Higher Courts adjudicate more serious criminal offenses, juvenile criminal proceedings, cases regarding limitations on freedom of the press, civil disputes where the subject of the lawsuit allows for review, and lawsuits on labor strikes. The Higher Courts decide in the second instance on appeals against decisions of the Basic Courts.

The law also provides for specialized commercial courts and an administrative court. Among the commercial courts are the 16 commercial courts of first instance and one Commercial Appellate Court that decides on appeals against decisions of the commercial courts. The administrative court adjudicates administrative disputes and replaces the administrative division of the Supreme Court, which did not hold public trials. The prosecution service was divided into 34 basic, 26 higher, and four appellate prosecution offices, with special departments dealing with war crimes and organized crime.

Figure 1: The New Structure of the Judiciary



Notes: The numbers in brackets indicate the number of entities (such as courts, prosecution offices); where no number is included, there is only one entity. Selected financial, staffing, and caseload data are included in Annex 1.

Sources: Article 30–31, Law on Organization of Courts, 2008; Article 167, Constitution of the Republic of Serbia, 2006; Article 22, Law on Organization of Courts, 2008; Article 23, Law on Organization of Courts, 2008; Articles 25–26, Law on Organization of Courts, 2008; Article 29, Law on Organization of Courts, 2008.

4. As the government implements key elements of the strategy, key stakeholders in Serbia are increasingly seeking to define and launch a second phase of judicial reform, guided by a new NJRS, to deepen reforms and address institutional capacity constraints and challenges. The objective is three pronged: (i) to maintain judiciary reform momentum within a resource envelope that is likely to remain constant at best in the medium term; (ii) to improve provision of justice services available to Serbian citizens; and (iii) to better position Serbia for EU membership in a context where the bar for entry is likely to be raised due to political, institutional, and economic constraints among existing member countries.

5. External observers of the Serbian judiciary point to significant potential for improvement. Serbia's efforts to implement many of the short- and medium-term reforms laid out in the 2006 NJRS are acknowledged in the Council of Europe's regular monitoring reports. However, these reports note that more work is needed to fully align the Serbian justice system with European standards and call for a more balanced reform approach. The European Commission has recognized the adoption of a new legislative framework as a positive development, but regularly expresses serious concerns regarding the progress of recent reforms and the hasty manner in which they are being implemented.⁶

Box 2: The High Councils and the Judicial Academy

In an effort to help guarantee judicial independence and autonomy, the role of the High Judicial Council and the State Prosecutorial Council was strengthened in 2009. These bodies assumed responsibility for the court and prosecutorial systems, including, among other duties, responsibility for the election and promotion of judges and prosecutors. These two new bodies are intended to define the criteria for and implement a general appointment procedure for judges and prosecution, and have been entrusted with the preparation of budgets for courts and prosecutors' offices, collection of statistics, and participation in the creation of training programs for judges and prosecutors.

According to the Constitution, the High Judicial Council should have 11 members, including the President of the Supreme Court of Cassation, the Minister of Justice, and the President of the Parliamentary (National Assembly) Committee for Judicial Affairs, in addition to eight members elected by the National Assembly for five-year terms. Out of the eight elected members, six must be judges (but not court presidents) and two must be jurists (one university law professor and one attorney). According to the laws that regulate the status, organization, and authority of the Public Prosecutor, the State Prosecutorial Council is to be comprised of 11 members: seven elected public prosecutors and deputy public prosecutors, the Minister of Justice, the President of the Parliamentary Committee for Judicial Affairs, one law professor, and one representative of the Bar Association.

The Law on Judicial Academy of 2009 established the National Judicial Academy. This replaced the Judicial Training Centre, which had been providing training programs for judges and prosecutors since 2002.⁷ The law provides for the Academy to be the sole provider of initial and continuous training for judges and prosecutors in Serbia. Judge and prosecutor trainees who pursue the initial training program at the Academy are given preference for appointment. Continuous training is also provided. The Judicial Academy began operating in 2010.

Sources: See sources for Box 1.

⁶ Commission of the European Communities. 2010. *Serbia 2010 Progress Report*, SEC (2010) 1330, Brussels (November), 11; and Commission of the European Communities. 2009. *Serbia 2009 Progress Report*, SEC (2009) 1339, Brussels (November), 12.

⁷ As of 2009, the Centre had trained judges (all with under three years of experience), as well as all state prosecutors and their deputies, some support staff, and all newly appointed judges. Joanna Brooks. 2009. *The Judicial Training Centre in Serbia: A Case Study – An Example of Best Practice?* United Nations Development Programme, 35–36.

1.2. Objective

6. Against this background, the objective of this public expenditure and institutional review is to contribute to strengthening the performance of the judiciary in Serbia through more efficient and effective use of financial and human resources. Accordingly, the review aims to provide input to relevant Serbian policy-makers for the design of the next phase of reform of the Serbian judiciary and to facilitate Serbia's EU accession process. The intended audience for the review is the group of key actors driving judicial reforms, including elected decision makers and officials in the Ministry of Justice, judges, prosecutors, court employees, the High Judicial Council, the State Prosecutorial Council, civil society representatives, and international partners.

1.3. Report Outline

- 7. The conclusions of this report are based on a number of sources.** Interviews were conducted with a wide array of stakeholders in the Serbian judiciary, Ministry of Finance, and Ministry of Justice (Annex 2). In addition, the analysis builds on a literature review (Annex 3) and financial and caseload data collected from the Ministry of Justice for individual courts and for the judiciary as a whole. The review thus combines quantitative and qualitative analyses.
- 8. Chapter 2 provides an assessment of current reform efforts.** The chapter: (i) analyzes the political economy of judiciary reform by identifying key stakeholders and reform dynamics; (ii) reviews reforms completed to date and identifies gaps; and (iii) suggests future approaches given the identified gaps and the political economy of reform.
- 9. Chapter 3 presents an analysis of expenditure management in the judiciary.** It uses cross-country and inter-regional comparisons to analyze the links between resources and performance. Trends within the judiciary are examined across branches of the judiciary (courts and prosecutors' offices) and by economic article of expenditure. The chapter also considers resource flows, resource adequacy, and the link between resources and organizational performance.
- 10. Chapter 4 analyzes financial management and planning systems and practices in the judiciary, looking at the budget cycle from budget formulation through execution to reporting and audit.** The chapter takes the national budget process as a starting point and analyzes the roles and responsibilities of different actors and institutions. The chapter provides a review of budget system components, of the existing institutional framework supporting the budget cycle, and of its various stages as it relates to the judiciary.
- 11. Chapter 5 focuses on understanding how efficiently and effectively human resources are managed within the judiciary.** It considers the extent and sufficiency of training, career management, position classification, and remuneration and performance appraisal. The role of merit-based judicial appointments is examined (in the context of current appointment processes) as a mechanism for improving judicial sector effectiveness, and the adequacy of existing remuneration levels is assessed for its potential contribution to judicial performance and independence. This chapter also assesses the role and use of mechanisms for judicial personnel performance evaluation and the existence and effectiveness of disciplinary actions and sanctions as vehicles for promoting enhanced judicial outcomes.
- 12. Key findings and recommendations are summarized at the beginning of each chapter.** Where appropriate, recommendations are grouped according to whether they are suggested for implementation in the short term (one to two years), medium term (three to four years), or long term (five years and beyond). The recommended time frame is based on qualitative assessments of importance and implementation capacity, and the trade-offs among them.

Chapter 2: Reform - political economy, status and management

2.1. Key findings and recommendations

13. This chapter provides an assessment of current reform efforts. The chapter: (i) analyzes the political economy of judiciary reform by identifying key stakeholders and reform dynamics; (ii) reviews reforms completed to date and identifies gaps; and (iii) suggests future approaches given the identified gaps and the political economy of reform. Key findings and recommendations are presented in Box 3.

Box 3: Key Findings and Recommendations

Key findings

- **Significant changes to the legislative framework of the Serbian judiciary have been enacted for over the last ten years.** Changes to the Constitution and the laws governing the judiciary have enshrined the principles of judicial independence, accountability, and transparency in the legislative framework.
- **Numerous major institutional changes were also implemented:** these include the successful establishment of specialized courts for organized crime and war crimes at the beginning of the decade and the later establishment of the Judicial Academy. More recent changes, such as strengthening the mandates of the High Judicial Council and State Prosecutorial Council, have yet to be successfully implemented.
- **Key constraints to reform design and implementation** have included the lack of political consensus on the direction of reforms and conflicts over the division of labor between the parliament, executive, and judiciary on the appointment—and recently the reappointment—of judges and prosecutors. The process required by the law on lustration, which was adopted by the National Assembly in 2003 and applied to all public civil servants implicated in criminal activity, including judges, was not implemented.
- **In 2009, all judges and prosecutors were required to reapply for their positions, and many incumbents were not selected.** The change in the composition of the judiciary went beyond purging judges and prosecutors implicated in criminal activity, created significant controversy and has disrupted judiciary operations. If not resolved, this conflict is likely to impede reforms for years to come.
- **Serbia has faced political discontinuity and profound changes to its political, institutional, and territorial structure over the last ten years.** Reform of the judiciary, while on the agenda, has not been a top priority for key decision makers or for the population. Reform initiatives have generally emanated from the executive, while the judiciary and parliament have been mostly reactive.
- **A more stable political environment from around 2008 has been conducive to reforms,** and since 2007, the EU accession process has been a major reform driver.

Key short-term recommendations

- **Top priority should be given to implementing credible transparent processes for appointment, promotion, and demotion** of judges and prosecutors and to resolving conflicts over the 2009 re-election process. Reforms and the daily functioning of the judiciary are likely to be impeded if this issue remains unresolved.
- **It will be desirable for Serbia and its partners to include agreed key reform priorities in Serbia's core justice-related EU accession agenda** because, as experience from Serbia indicates, incentives and benchmarks relating to EU accession have been – and will be – critical in moving judicial reform forward.
- **A consultative approach should be adopted to review reform lessons and achievements and to design and implement further reforms.** A multi-stakeholder judicial reform committee could be established with representatives from the Prime Minister's or Vice Prime Minister's cabinet, Ministry of Justice, High Judicial and State Prosecutorial Councils, international partners, non-governmental organizations, and independent judicial reform experts. This is because international experience suggests that judicial reform is more likely to succeed if designed and implemented in consultation with key stakeholders and where there is strong political commitment to reform, adequate capacity, and a realistic strategy in place.

2.2. Political drivers

2.2.1 Overview

14. While Serbia's judiciary and underlying legal system stem from a continental European legal tradition, the legacy of socialist rule in Yugoslavia has had an enduring influence on Serbian courts and judicial institutional culture.⁸ Under socialist rule, the executive would exert political pressure on individual judges or use the judiciary as a political tool when the government deemed this a necessity.⁹ During the Socialist period (1963-1991), the Yugoslav Constitution endorsed the principle of the unity of power and appointed and promoted judges who supported the single party system and the values it espoused.¹⁰ The 1992 Constitution recognized the principle of separation of powers, but the judiciary did not in reality maintain a sufficient level of structural or functional independence.¹¹ Under the 1992 Constitution, the National Assembly appointed judges on the recommendation of the Minister of Justice. However, the legal framework did not guarantee a transparent appointment process based on objective criteria. This allowed for an often highly political and opaque appointment process that afforded discretionary power to the executive.¹²

15. The fall of Slobodan Milosevic in October 2000 launched a period of significant economic and political transition in Serbia, with the aim of greater democratization. Milosevic's rise as president of the Republic of Serbia in 1989 led to the violent breakup of the Socialist Federal Republic of Yugoslavia. Croatia, Slovenia, and Macedonia declared independence in 1991, and Bosnia followed suit in 1992. In April 1992, Serbia and Montenegro declared a new Federal Republic of Yugoslavia under Milosevic's leadership. Violence erupted between Serbia and its neighboring republics and continued until the signing of the Dayton Peace Accords in 1995. Milosevic became President of the union of the Federal Republic of Yugoslavia from 1997 to 2000. The September 2000 elections, which took place just over a year after the cessation of the conflict in Kosovo, led to the creation of a broad coalition of democratic reformist parties known as the Democratic Opposition of Serbia, which formed the majority in parliament. In March 2001, Milosevic was arrested and sent to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague to face charges of crimes against humanity.

16. Serbia took significant strides on judicial reform in the next ten years, but progress has encountered many obstacles and constraints. The reforms can be divided into three distinct periods:

- From 2000 to 2005, efforts to advance judicial reforms were heavily influenced by political instability and marked by a lack of political consensus on what the problems were and how to address them, disagreement over appointment and dismissal processes, and capacity constraints. The absence of a national strategy providing a clear vision for reform, together with the lack of effective external or internal demands for reform, dampened incentives for change.
- In 2006 and 2007, the adoption of a new Constitution and a reform strategy, as well as the introduction of a new government that confirmed Serbia's commitment to EU accession and the required reforms, brought renewed direction to reform efforts.
- In 2008, the Serbian government adopted essential judicial reform legislation and embraced new momentum for transforming the judiciary. Despite strong political commitment to reform, these efforts remain plagued by insufficient resources and capacity for implementation and by political dissension that has resulted in delays.

⁸ Overview of the Serbian Legal System, ABA Rule of Law Initiative, 2007, available at <http://apps.americanbar.org/rol/publications/serbia-legal-system-eng.pdf>.

⁹ *Ibid.*

¹⁰ World Bank Legal Department. 2002. Federal Republic of Yugoslavia Legal and Judicial Diagnostic.

¹¹ *Ibid.*, 40.

¹² *Ibid.*

17. The following sections describe in more detail the interplay between political developments and judicial reforms during these three periods. The sections identify the key drivers of and impediments to reform of the Serbian judiciary during the last ten years, and point to possible lessons for reform design and management.

2.2.2 Political and economic transition: 2000 to 2005

18. The political climate was tense in the years following Milosevic's administration, and while there was strong political will to undertake democratic changes, establish rule of law, and introduce legal certainty, there was no clear plan or political consensus regarding judicial reform. In 2003, the year in which the Federal Republic of Yugoslavia became the Republic of Serbia and Montenegro, Serbia's Prime Minister Zoran Djindjic was assassinated, and Serbia declared a state of emergency during which institutional reforms were put on hold.¹³ In these initial years after the fall of Milosevic, democratic parties were fragmented and the unresolved issues of war crimes, cooperation with the ICTY, and the future status of Kosovo dominated national debate. A split soon emerged within the Democratic Opposition of Serbia, between those who could be characterized as pro-European reformers and those with a more nationalistic orientation.¹⁴

19. With the political transition, a purge of the judiciary appeared to have become part of the agenda, as it included judges deemed by some to be politically associated with the former regime. Instead of a purge, however, political leaders decided to reform the system without fundamentally changing the composition of the judicial body.¹⁵ A law on lustration, adopted by the National Assembly in 2003, was to apply to all public civil servants previously implicated in criminal activity, including judges. Yet it was not implemented due to insufficient political will. Under the Constitution at the time, judges and deputy prosecutors enjoyed lifelong tenure, which posed a constraint to reform. Another reason for the decision not to go ahead with a purge may have been that a drastic purge could have cut the Serbian judiciary in half and left an insufficient number of suitable replacement candidates.¹⁶

20. Despite the unfavorable circumstances, notable judiciary reforms were initiated, particularly during the first two years after the 2000 election when there was still political will and momentum for change.

- In 2001, the Judges Association of Serbia (JAS), originally established in 1997, was registered as a professional association,¹⁷ and both the Association of Public Prosecutors¹⁸ and the Judicial

¹³ A notable exception is the creation of the special war crimes and organized crimes court division created just after Djindjic's assassination.

¹⁴ International Crisis Group. 2002. *Serbia: Military Intervention Threatens Democratic Reform*. Europe Briefing No. 25 (March 28).

¹⁵ Cristina Dallara. 2007. *Judicial reforms in transition: Legacy of the past and judicial institutionalization in post-communist countries*. Manuscript. An earlier version of this paper was presented at the Joint Annual Meeting of the Law and Society Association (LSA) and the Research Committee on Sociology of Law (RCSL), Berlin, Humboldt University, July 25–28, 2007, 18.

¹⁶ Reason given by a Serbian jurist, Political Advisor at the Stability Pact for Southern Europe, from an interview in Brussels in June 2006. See Dallara, 2007, 18.

¹⁷ The JAS currently has 25 branches and approximately 1,800 members, more than 75 percent of the total number of judges in Serbia. The JAS promotes the interests of the profession, sets standards for judicial ethics, participates in legislative drafting projects, and conducts continuing education training. Since 2000, the JAS has played a relatively active role in promoting judicial reform and judges' interests by participating in legislative reform, developing a code of ethics, and advocating higher salaries for judges.

¹⁸ The Association of Prosecutors, established in 2001 with the assistance from the Organization for Security and Co-operation in Europe (OSCE), has a membership of 480 public prosecutors and deputy public prosecutors (out of

Center for Professional Education and Advanced Training (JTC) were established to help support judicial independence.

- In 2001, the government established a High Judicial Council to promote judicial independence and reform. In the same year, a High Personnel Council composed of nine judges of the Supreme Court was established and given responsibility for disciplinary actions against judges.
- In November 2001, Serbia adopted a package of laws that regulated the judiciary until 2008. These laws aligned more with international standards for the administration of justice, judicial autonomy, and independence.¹⁹
- In January 2002, the government established the Council for the Reform of the Judiciary, which was comprised of judges, prosecutors, and representatives from the Ministry of Justice, National Assembly, non-governmental organizations, and international community. The Council tried to produce a Strategy for Judicial Reform, but this initiative did not yield concrete results, owing in part to political infighting and an unresolved electoral process.²⁰
- In 2003, special courts and prosecutors' offices were established to handle war crimes and organized crime.²¹

21. The new laws grant the judiciary greater autonomy to manage its own affairs, but implementation of many of the laws pertaining to the organization of the judiciary has either been inconsistent or greatly delayed.²² Political instability, frequent changes in government, and a lack of political consensus²³ on what the problems were and how to resolve them impeded efforts to adopt a national strategy for justice reform. No single political party had a majority in the Serbian parliament, and the first government coalition formed included 17 political parties. Under such circumstances, the ruling parties needed to compromise and pursued interests that were not always supportive of European integration and transition processes.²⁴

a total of 600 prosecutors and deputy prosecutors, including those who were not (re-)elected), and an additional 100 public prosecutor's assistants and interns. It is a voluntary professional organization that supports the interests of public prosecutors and aims to promote legal security and autonomy for the public prosecution. Its objectives include taking a proactive role in judicial reform projects, supporting permanent training for public prosecutors, and harmonizing the Serbian legal system with EU law. The Association of Prosecutors has been involved in drafting the Law on Prosecutors and assessment criteria for prosecutor performance reviews. In addition, the association engages in professional training for public prosecutorial staff.

¹⁹ The package consisted of five laws: (i) Law on Judges; (ii) Law on Public Prosecution; (iii) Law on High Judicial Council/ (iv) Law on Organization of Courts; and (v) Law on Seats and Districts of Courts and Public Prosecutor's Offices. Published in the Official Gazette of Serbia, n 63/2001.

²⁰ American Bar Association. 2005. Judicial Reform Index for Serbia, Volume II, Central European and Eurasian Law Initiative (September).

²¹ These courts had jurisdiction over violations of the Basic Criminal Code, crimes against humanity, violations of international law, and criminal acts defined by Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia.

²² For example, the new organizational scheme for Serbia's the courts was not established, and the deadline for its implementation was extended several times. The establishment of the High Judicial Council was delayed because the Supreme Court's proposal for council members to be elected by parliament was delayed. Dragor Hiber. 2005. "The reform of the judiciary and judicial legislation." In Boris Begović and Boško Mijatović, eds., *Four Years of Transition in Serbia*, Center for Liberal Democratic Studies: 270–271.

²³ Hiber, 2005.

²⁴ Bajec et al., 2004.

Differences over appointment and dismissal processes

22. Clashes between the interests of the judiciary and those of the legislative and executive branches led the National Assembly to reject a series of proposals for judicial appointments from the High Judicial Council. As a result, in 2002, the National Assembly adopted an amendment to the 2001 law that provided the parliament with the power, after rejecting the Council’s proposals, to appoint a candidate who fulfilled the qualifications and had applied for the position but had not been proposed by the Council. Although this amendment was later declared unconstitutional, it effectively transferred authority for the appointment of judges to the legislative branch.²⁵ The laws on the election of public prosecutors were amended in 2003 during a three-month state of emergency under which the Ministry of Justice participated in a re-election of prosecutors, and in March 2004, in which lifetime tenure was denied to deputy public prosecutors. These amendments shifted responsibilities to the executive and legislative branches, further contributing to instability and undermining judicial independence.

Leadership and strategy

23. Absence of reform leadership and a vision/strategy contributed to low reform momentum. The government created several expert advisory groups to facilitate judicial reform, including the Council for Reform of the Judiciary in 2002, and the Commission on Judicial Reform in April 2004. These bodies were intended to contribute to legislative reform, help initiate judicial education programs, and cooperate with donor efforts to improve judicial independence.

Institutional and capacity constraints

24. Capacity constraints also impeded reform during this period. Upon its establishment in 2001, the High Judicial Council did not have many of the resources and competences it required, such as an administrative support office. Judges themselves did not emphasize or promote change. The reforms did not resolve elementary financial issues and needs for the modern functioning of courts or prosecutors’ offices.

Political instability and lack of strategy or significant external or internal pressures

25. From 2000 to 2005, the judicial reform process was anchored in the executive, and changes in the judiciary were not a high political priority. The Prime Minister, Vojislav Kostunica, pursued a nationalist conservative agenda, denouncing the ICTY as an anti-Serbian “American” court. Identification with the EU was “a matter of perceived necessity rather than political belonging.”²⁶ In addition, the domestic political costs of compliance with EU requirements were high for Kostunica’s government. Instead of establishing a more Western-oriented coalition with the Democratic Party after the 2004 elections, Kostunica’s Democratic Party of Serbia formed a minority government dependent on the backing of the Socialist Party in parliament.²⁷ The SAA negotiations officially opened in October 2005, but were suspended by the European Commission in May 2006 due to Serbia’s failure of to meet its commitments on cooperation with the ICTY. Incentives for judiciary reform stemming from Serbia-EU relations were therefore weak.

Table 1: Timeline of Key Political Developments and Judicial Reform Events, 2000-2005

Year	Political Developments	Judicial Reform Events
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²⁵ Hiber, 2005.

²⁶ Frank Schimmelfennig. 2008. “EU political accession conditionality after the 2004 enlargement: consistency and effectiveness,” *Journal of European Public Policy*, 15:6 (September): 930.

²⁷ *Ibid.*

Year	Political Developments	Judicial Reform Events
2000	<ul style="list-style-type: none"> September elections ousted Slobodan Milosevic from power; Milosevic conceded defeat to new Federal Republic of Yugoslavia President Vojislav Kostunica (Democratic Opposition of Serbia) on October 5 Zoran Djindjic elected Prime Minister in December A broad coalition, the Democratic Opposition of Serbia, formed 	
2001		<ul style="list-style-type: none"> Legislative package on judicial reforms adopted (First High Judicial Council established, High Personnel Council established) Association of Public Prosecutors established Judges Association of Serbia, established in 1997, registered as a professional organization Judicial Training Centre established
2002	<ul style="list-style-type: none"> Belgrade Agreement signed in March, setting out parameters of the relationship between Montenegro and Serbia in a new state union Government established a commission to coordinate cooperation with the ICTY 	<ul style="list-style-type: none"> Amendments to judicial reform legislative package shifted some important responsibilities to executive and legislative branches Council for Reform of the Judiciary established
2003	<ul style="list-style-type: none"> Prime Minister Djindjic assassinated Federal Republic of Yugoslavia parliament ratified the Constitutional Charter and established the new state union named the Republic of Serbia and Montenegro 	<ul style="list-style-type: none"> National Assembly elected High Judicial Council members Courts for war crimes and organized crime established
2004		<ul style="list-style-type: none"> Commission on Judicial Reform created
2005	<ul style="list-style-type: none"> SAA negotiations opened 	<ul style="list-style-type: none"> National Judicial Reform Strategy drafted

2.2.3 New Constitution, a reform strategy and political change: 2006 to 2007

26. **Political developments in 2006 and 2007 gave new life to reforms of the judiciary.** The adoption of a reform strategy, the election of a coalition government that was more supportive of EU accession and judicial reform, and external influence from the EU all contributed to renewed government commitment to reforms.

The adoption of a National Judicial Reform Strategy and implementation structure

27. **The Serbian parliament adopted the NJRS in May 2006, launching a program of sweeping judicial reforms consistent with European good practice on independence, transparency, accessibility, and efficiency.** The government's decision to push for a reform strategy in 2005 and 2006 was due in part to enthusiasm about EU integration. Negotiations for the SAA began in 2005, and a revised European Partnership for Serbia was adopted. The decision was also the culmination of collaborative support to the government from many international actors, including the Council of Europe, the OSCE, the World Bank,²⁸ the United States Agency for International Development (USAID), and the EU. The Judges' Association of Serbia was not involved in drafting the strategy, but did prepare

²⁸ An Institutional Development Fund (IDF) Grant on "Strengthening of the Court Administration System in Serbia" from the World Bank financed NJRS development.

documents and papers with proposals to be integrated into it.²⁹ In addition to these contributions, the NJRS included input from the Supreme Court, Prosecutorial Offices, and other representatives of the judicial community and international organizations.

Table 2: Serbia’s National Judicial Reform Strategy Goals

Independence	Transparency	Accountability	Efficiency
Self-governing structure	Open judicial selection, promotion, discipline, and removal from office	Clear judicial productivity and performance standards	Improved access to justice
Independent budget authority	Appropriate access to court records and proceedings	Effective case management	Standardized system for education and training
Independent policy- and rule-making authority	Enhanced public outreach and participation	Effective use of judicial and prosecutorial resources	Modern court network

Source: National Judicial Reform Strategy, 2006.

28. In November 2006, six months after adopting the NJRS, Serbia adopted its new constitution. The principles of separation of powers and judicial independence were enshrined in the new constitution.³⁰

29. The government established two bodies to facilitate dialogue among stakeholders and to help implement the Strategy. A Strategy Implementation Commission was set up in 2006 to take the lead in implementing the goals and activities envisaged by the NJRS and the Action Plan. The Commission was to monitor policy and oversee the reforms set out in the strategy. Members of the Strategy Implementation Commission were appointed by the government in June 2006, and included representatives from the Ministries of Justice and Finance, Supreme Court, National Assembly Judiciary Committee, Public Prosecutor’s Office, Judges Association, Prosecutors’ Association, Bar Association, Judicial Training Centre, and Belgrade University Law Faculty. The Secretariat for Implementation of the Strategy was also formed in 2006 to monitor day-to-day implementation of the strategy. These two bodies helped strengthen the judicial reform effort by bringing true dialogue and a participatory approach to the development of reform policy and legislation proposals.

A new political landscape and renewed commitment to EU accession

30. In addition to the adoption of a clear strategy, stronger political commitment within the executive drove the process forward. Renewed official commitment to the EU accession process increased external incentives for judicial reform and brought politically legitimate reasons for backing important but difficult institutional changes. In January 2007, not long after the adoption of the NJRS and the new constitution, Serbia held elections. The resulting coalition government strengthened the government’s identification with the EU, renewed cooperation with the ICTY, and supported the reform effort. Boris Tadić from the Democratic Party was elected President, and Kostunica remained as Prime Minister. The new government introduced Minister of Justice Dušan Petrović, who was a driving force behind judicial reforms over the next two years.

31. Following parliamentary elections in 2007 and the formation of a coalition government, Serbia’s renewed commitment to cooperate with the ICTY opened the door for resumption of SAA

²⁹ Dallara, 2007.

³⁰ Constitution of the Republic of Serbia, Article 142.

negotiations.³¹ The new government set out the acceleration of the European integration process as a key priority for its term in office.³² The SAA was signed in 2007, and the European Partnership that had been adopted in January 2006 was replaced with a new European Partnership, adopted by the Council of the European Union decision in February 2008. The new Partnership calls for Serbia to promote judiciary reforms and ensure the independence and professional formation of judges and prosecutors.

Table 3: Timeline of Key Political Developments and Judicial Reform Events, 2006–2007

Year	Political Developments	Judicial Reform Event
2006	<ul style="list-style-type: none"> Revised European Partnership adopted in January Montenegro seceded from the Republic and declared independence in June SAA negotiations stalled 	<ul style="list-style-type: none"> NJRS adopted by the National Assembly in May Strategy Implementation Commission and Secretariat for Implementation of Strategy established New constitution adopted in November Action Plan for Strategy implementation adopted by the government in December
2007	<ul style="list-style-type: none"> Parliamentary elections held in February; coalition government formed in May Dusan Petrovic appointed Minister of Justice, strongly supporting rapid reform 	

2.2.4 EU Accession, reform acceleration, and roadblocks: 2008 to 2010

32. The new political landscape in 2008 brought a more active visible government focus on judiciary reforms – an important element of Serbia’s renewed commitment to EU accession. From 2000 to 2007, Serbia was plagued by political instability. Economic progress was not matched by political progress, particularly with respect to reforms of the judiciary and home affairs. Under the coalition government of 2008, Serbia adopted laws that provided a new legislative framework for implementing the judicial reforms outlined in the NJRS. However, implementation of these laws has met obstacles such as political dissension and institutional and resource capacity constraints.

A new legislative framework

33. In December 2008, the National Assembly adopted a sweeping judicial reform package and a series of anticorruption laws³³ in an effort to meet EU and Council of Europe norms and expectations. The judicial reform legislation package included structural and organizational changes and key provisions to reinforce and ensure judicial independence and transparency:

- The Law on the High Judicial Council strengthened the Council as a primary management and oversight body for the court system. The law entrusted the High Judicial Council with a decisive role in the judicial selection process, and in regard to the promotion, material status, discipline, and dismissal of judges.

³¹ The Council of Europe concluded in June 2007 that the Serbian government was sincerely committed to cooperation with the ICTY.

³² Commission of the European Communities. 2007. *Serbia 2007 Progress Report, Commission Staff Working Document*, SEC (2007)1435, Brussels (November).

³³ The package of anticorruption laws adopted in October 2008 comprise the Law on the Anti-Corruption Agency, Law on Amendments to the Law on Financing of Political Parties, Law on Seizure and Confiscation of the Proceeds from Crime, Law on the Liability of Legal Entities for Criminal Offences, Law on Personal Data Protection, and Law on Confirmation of the Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

- The court structure that existed until January 1, 2010, dated back to the period immediately after World War II. The law on the Organization of Courts streamlined the court network by creating 34 Basic Courts, 26 Higher Courts, and four Appeals Courts with general jurisdiction. The law also provided for specialized commercial courts, for an administrative court, and for the Supreme Court of Cassation as the supreme judicial instance in the country. The law moved Misdemeanor Courts from the Ministry of Justice into the judiciary.
- The Law on Judges reduced the number of judges to align with the new court structure and provided for a general election process for judges.
- The Law on the State Prosecutorial Council established the Council to guarantee the independence and autonomy of the public prosecution. It entrusted the State Prosecutorial Council with, among other duties, the responsibility for electing and promoting prosecutors.
- The Law on the Public Prosecution established the scope of the public prosecutors' authority and jurisdiction, and the organization of the Public Prosecutors' Office.
- The Law on the Seats and Territorial Jurisdiction of Courts and the Offices of Public Prosecutors Offices established Misdemeanor, Basic, Higher, and Appeals Courts and defined court locations and jurisdictions. In addition, this law established departments of the Higher Misdemeanor Courts and Administrative Court as well as their jurisdiction. This law also established Basic, Higher, and Appeals Prosecutors Offices and defined their seats and jurisdiction.
- The Law on Amendments and Additions to the Law on Misdemeanors brings the Law on Misdemeanors in conformity with the incorporation of Misdemeanor Courts into the court system. This law also introduced the Higher Misdemeanor Court, which did not exist under the previous court structure.

34. Overall, the new legislative framework represents a solid step toward implementation of the 2006 NJRS and has moved the Serbian judiciary toward Council of Europe standards of judicial independence, accountability, and transparency.

Implementation arrangements

35. The two bodies created by the previous government to facilitate NJRS implementation were allowed to lapse. After the new government took office in April 2007, new members of the Commission were not reappointed and the commission was quietly dissolved. The Secretariat formally ceased to exist in 2008, when its funding was discontinued. The Ministry of Justice assumed their responsibilities.

36. Neither the Ministry of Justice nor the High Judicial and State Prosecutorial Councils have the institutional capacity needed to implement reform. Though the Ministry is budgeted for about 80 staff members in 2010, it has only around 70 employees.³⁴ As of March 2011, the Administrative Offices of the High Judicial Council and the State Prosecutorial Council had not yet been appropriately staffed or provided with sufficient resources to provide effective support to the two Councils.

³⁴ These numbers were provided by the Ministry of Justice. They do not include additional staff hired on a temporary or contractual basis. There are also only ten staff members working in the Ministry's Office of Normative Affairs. In September 2010, the Government of Serbia announced its plan to create 30 additional positions in the Ministry of Justice.

Controversy over appointment and dismissal processes

37. The new court network established by the 2008 Law on the Organization of Courts reduced the number of courts in Serbia. The law also brought in the Misdemeanor Courts into the judicial branch from the Ministry of Justice. The government then adopted a plan to considerably reduce the number of judges and prosecutors in the country. In 2009, the High Judicial Council and State Prosecutorial Council conducted a general (re-)election of judges and public prosecutors, basing this process on the fact that the jurisdiction of the courts and prosecutors' offices had been redefined and claiming that former appointments were no longer considered valid. The number of judgeships was reduced by 20 to 25 percent, and more than 800 of approximately 3,000 judges were not reappointed, including misdemeanor judges.³⁵ The number of prosecutors was reduced from 600 to 400.³⁶

38. According to the European Commission, the Council of Europe, and Associations of Judges and Prosecutors, the general (re-)election procedure did not meet standards for transparency.³⁷ The election was conducted over a short time frame and lacked clear and objective criteria for assessing the qualifications of candidate judges and prosecutors. First-time candidates were appointed without a transparent interview process or application of merit-based criteria.³⁸ No individualized written reasons were provided to those judges and prosecutors who were not elected, and they were denied access to their individual files and did not have any opportunity to discuss the content of their file during the election process. The High Judicial Council did not share this view of the re-election process. According to the Council, the re-election was carried out properly in compliance with the Constitution and statutory laws of Serbia.³⁹

39. During 2010, the Constitutional Court received about 1,500 appeals and constitutional complaints filed by nearly 800 judges and prosecutors who were not selected. In March 2010, the Constitutional Court sided with the judges and prosecutors and stated that the nonelection of judges was a case of "termination of office," and not simply an election for appointment to a new position. According to the Court, therefore, the nonelected judges and prosecutors should have been provided with individual and reasoned decisions.

40. In December 2010, the National Assembly adopted amendments to both the Law on the High Judicial Council and the Law on Judges to resolve the stalemate. The amendments to the Law on the High Judicial Council allowed for the direct election of new members to the High Judicial Council by all sitting judges.⁴⁰ (The High Judicial Council that had conducted the re-election had been elected by the previous High Judicial Council.) Amendments to the Law on Judges now require any appeals regarding the general election of judges to go first to the High Judicial Council for review and then to the Constitutional Court instead of directly to the Constitutional Court. The review of the files for all judges who were not selected during the 2009 general (re-)election is now first on the agenda of the new High

³⁵ Commission of the European Communities. 2010. *Serbia 2010 Progress Report*, SEC (2010) 1330, Brussels (November), 10.

³⁶ An estimated 200 were not re-elected, according to consultations with the Association of Prosecutors.

³⁷ Letter from Mr. Jose Manuel Barroso, President of the European Commission, to the presidents of the Judges' Association of Serbia, Prosecutors' Association of Serbia, MEDEL, and the European Judges' Association, dated April 27, 2010. See also Commission of the European Communities. 2010. *Serbia 2010 Progress Report*, SEC (2010) 1330, Brussels (November), 10.

³⁸ Commission of the European Communities. 2010. *Serbia 2010 Progress Report*, SEC (2010) 1330, Brussels (November).

³⁹ See Council of Europe. 2007. "Support to the Reform of the Judiciary in Serbia in the Light of Council of Europe Standards," Draft Final Report (June).

⁴⁰ This excludes judges that were not "re-elected" in 2009.

Judicial Council. The Council is expected to use a revised set of clear criteria when reviewing the judges' applications. The review process is ongoing at the time of writing (May 2011).

Box 4: Perceptions of the Justice System in Serbia

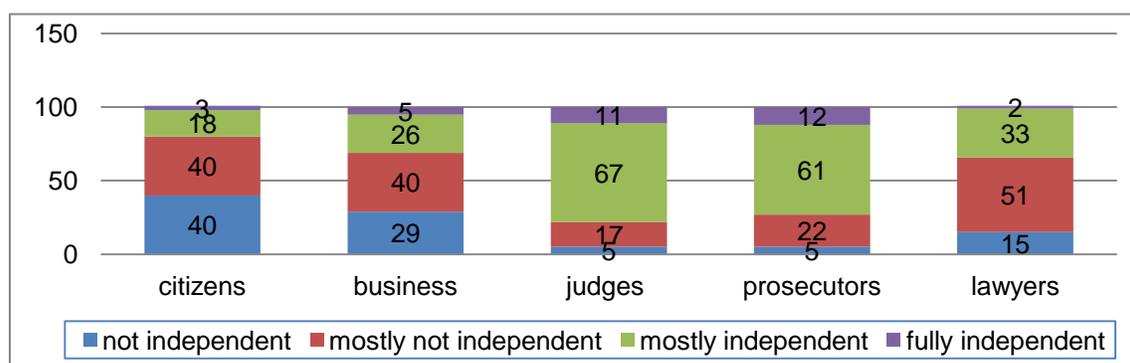
Results of a survey of court users and non-users conducted in 2010 by the survey company, Ipsos, indicate that a **lack of efficiency and integrity are perceived to be the main challenges to the Serbian judiciary**. The survey aimed to measure experiences with, perceptions of, and reform expectations for the justice system in Serbia. The survey targeted four populations within Serbia: court users and non-users among the general public (citizens above the age of 18) and among business sector representatives, members of the legal profession working in private practice, and justice sector employees (judges and prosecutors).

Court users reported long court proceedings, with long time intervals between scheduled hearings and a significant number of cancelled hearings. A large majority of citizens (97 percent), business sector representatives (95 percent), prosecutors (88 percent), and lawyers (98 percent) felt that the judicial system was not fully independent (Figure 2). Politicians, political parties, and the media were perceived by legal professionals to be the institutions that most jeopardized the independence of the judiciary. Corruption and political influence on judges and prosecutors were mentioned most frequently by the general public, and business sector representatives most often cited the length of proceedings.

A majority of prosecutors surveyed found the quality of court proceedings to be high, but the general population and lawyers characterized the quality of services to be average or low. According to citizens and business representatives, this was due in large part to the poor work of judges and poor organization in courts. In addition, a majority of court users and professionals who had participated in court proceedings found that the judicial system was not fully fair. Parties to civil cases were the most dissatisfied, while users of court services for business cases were the most satisfied, with almost half considering they had completely fair trials. The majority of citizen court users found trial costs to be too high, though perceptions on whether costs were appropriate, too high, or too low were linked to respondents' assessments of the quality of court performance. Although the cost of proceedings was considered to be a problem to some extent, a majority of court users and legal professionals found that court buildings and case information were easily accessible.

Although lawyers were pessimistic about the outcome of judicial reforms, most members of the general public were optimistic and expected the judicial system to improve. This optimism existed despite indications that justice sector stakeholders felt they were insufficiently informed about ongoing justice sector reforms.

Figure 2: Perceived Independence of Serbia's Judicial System from Political Influence, % of Survey Respondents



Notes: (1) Responses to the question: "To what extent was the judicial system in Serbia in 2009 truly independent from executive authority (politics)?"; (2) N=407 (90%) for business, N=1,058 (92%) for judges, N=772 (97%) for lawyers, and N=322 (92%) for prosecutors.

Source: Perceptions of Justice in Serbia, World Bank, forthcoming.

41. The (re-)election process continues to preoccupy the High Judicial Council's time and resources and has significantly stalled the general reform agenda. The sweeping judicial reform

legislation adopted by the government still needs to be fully implemented and other steps need to be taken by the government to move reform forward.

Table 4: Timeline of Key Political Developments and Judicial Reform Events, 2008–2010

Year	Political Developments	Judicial Reform Event
2008	<ul style="list-style-type: none"> • Kosovo declared independence in February • SAA and Interim Agreement on Trade and Trade Related Issues signed by EU and Serbia in April • Serbian parliament ratified SAA in September • Council of Europe adopted the new European Partnership for Serbia • Serbian President, Boris Tadić, from the Democratic Party re-elected in February by a slim margin, beating Radical Party candidate Tomislav Nikolic • Coalition government “For a European Serbia” formed in July led by the Democratic Party, following the collapse of the 2007 coalition • Mirko Cvetković confirmed as Prime Minister • Snežana Malović succeeds Dušan Petrović as Minister of Justice 	<ul style="list-style-type: none"> • Key anticorruption and judicial reform legislation adopted by parliament
2009	<ul style="list-style-type: none"> • Government named ambassador and military representative to NATO 	<ul style="list-style-type: none"> • The new High Judicial Council and State Prosecutorial Council established in April • Results of general (re-)election of Judges and prosecutors announced in December • Establishment of new court network in progress • Case management system introduced in general jurisdiction courts
2010		<ul style="list-style-type: none"> • 1,500 appeals from judges and prosecutors regarding the general election submitted to the Constitutional Court • Agreement reached in March between the Association of Public Prosecutors and State Prosecutorial Council to resolve differences over December 2009 general election of prosecutors, which only resulted in an increase in the number of deputy prosecutor positions • Amendments to the judicial legislation package adopted in December to enable finalization of judicial reform and revision of the general election process

42. Though Serbia has taken several important steps in its judicial reform efforts over the last ten years, important forces have caused delays and put up obstacles to reaching strategic goals:

- The purging, appointment, and promotion of judges and prosecutors have served as a recurrent impediment to judiciary reform over the last ten years, culminating in the 2009 re-election process. Unless this issue is resolved in a manner acceptable and respected by all key stakeholders (including government and opposition parties), this issue is likely to continue to hamper the modernization of the Serbian Judiciary in the coming years.

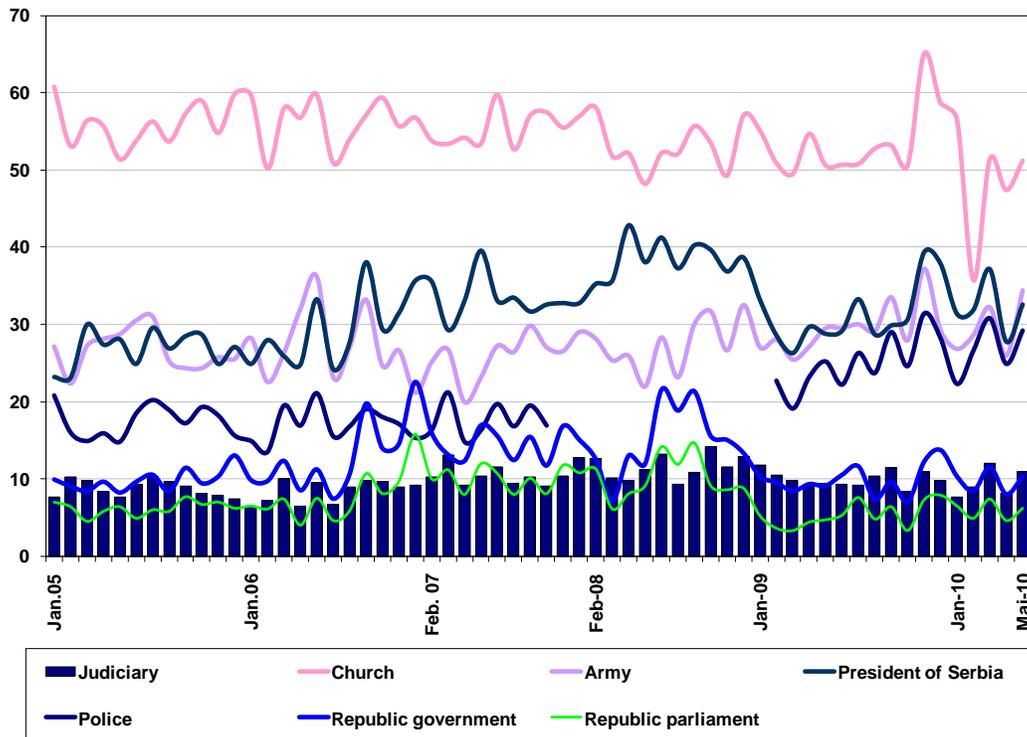
- Capacity constraints are severe as regards reform design and management. While the judiciary has been generously staffed, oversight and policy functions in the Ministry of Justice have been limited, with a staff contingency at or below 100. The staffing plans and budget for the High Judicial Council now provide a more realistic set-up, but there is still a need to hire staff and build capacity.
- There has been little political consensus among governments and political parties regarding judicial reform. Also, before 2008, there was no clear consensus on Serbia's accession to the EU. This lack of consensus is probably behind the decommissioning of several justice sector reform commissions during the last decade.
- The clearer commitment to EU membership beginning around 2008 has forged a much stronger focus on judiciary reforms, bolstered by the incentives provided by the accession process.

2.3. Public demand for justice sector reform

43. In addition to the reform dynamics among key organized stakeholders and the interplay between judiciary reform processes and wider political dynamics, as discussed above, public demand and pressure for reform can be a powerful driver of change. An analysis of popular demand for reform is hampered by the limited availability of time series data over the entire period from 2000 to 2010; what follows is therefore a review of available data from the last four to five years. The focus in this section is not on demand for judiciary services, but on demand for reforms. The demand for services is discussed in Chapter 3.

44. Despite consistently negative public perceptions of the judiciary in Serbia (Figure 2), and popular support for ongoing reform efforts (Figure 3), judiciary reform does not appear to be a priority among the Serbian public when compared to other policy issues (Figure 4). The survey company, Ipsos, has conducted public opinion surveys in Serbia since 2007, asking respondents to list the most important problems facing the country. Only a small percentage of respondents spontaneously mentioned “the absence of legal state and bad legislation” as one of most important problems, and the need for judiciary reform has not been mentioned specifically by any respondents in any of the years.

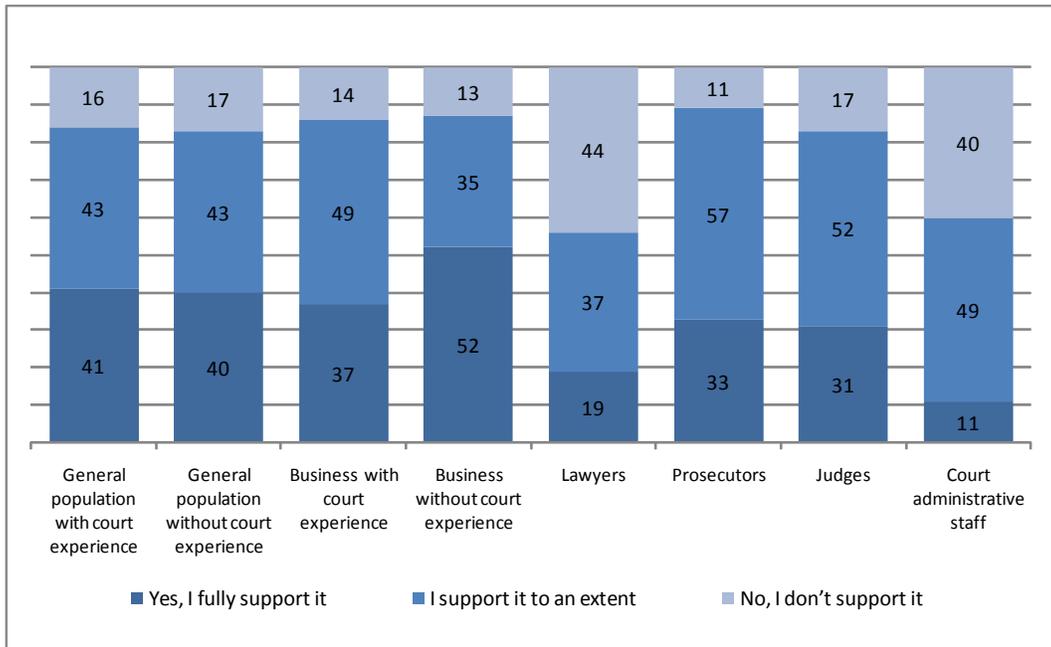
Figure 3: Citizens' Views on Serbian Institutions, % Favorable or Very Favorable



Notes: (1) Response to the following question: "How favorable or unfavorable is your opinion about the following institutions? Rate your impression on the scale from 1 to 5, where 1 means very unfavorable and 5 means very favorable;" (2) % of somewhat favorable and very favorable opinions.

Source: Ipsos Strategic Marketing (ISM), Monthly ISM surveys.

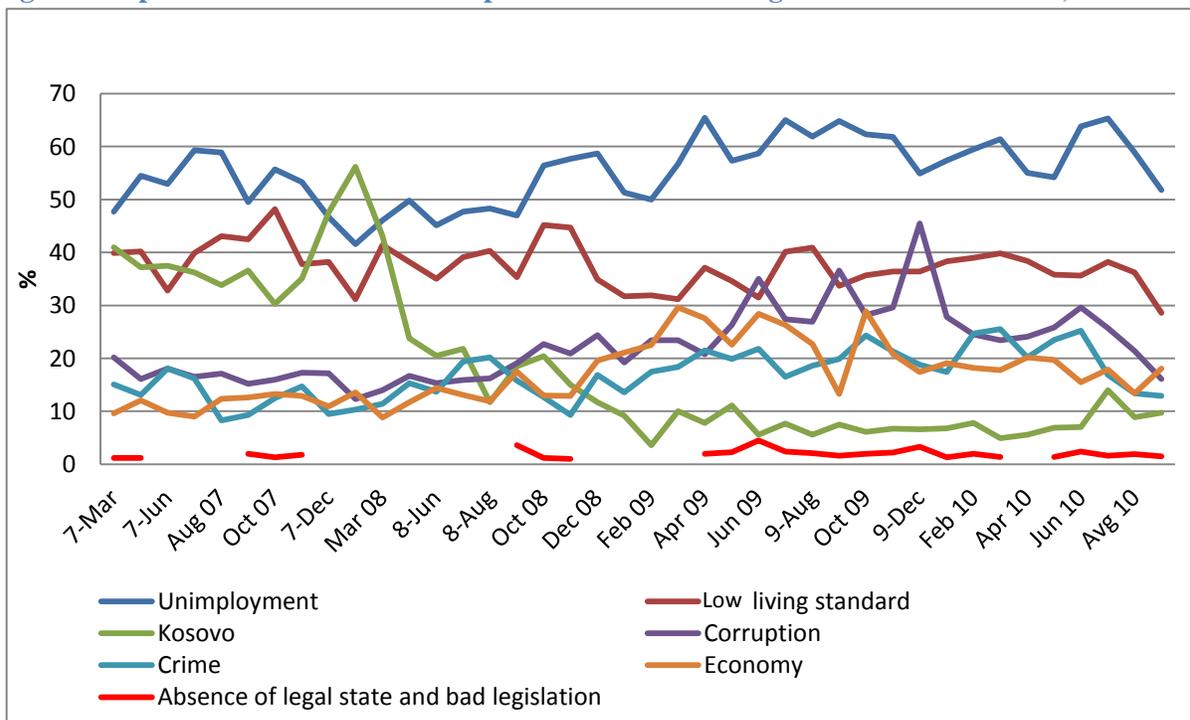
Figure 4: Extent to Which Citizens Support the Current Judicial Reform in General



Notes: N=541 (85%) for general public with experience, N=683 (82%) for general public without experience, N=418 (84%) for business sector with court experience, N=536 (76%) for business sector without court experience, N=792 (99%) for lawyers, N=319 (92%) for prosecutors, N=1,056 (92%) for judges, and N=551 (96%) for court administrative staff.

Source: Perceptions of Justice in Serbia, World Bank, forthcoming.

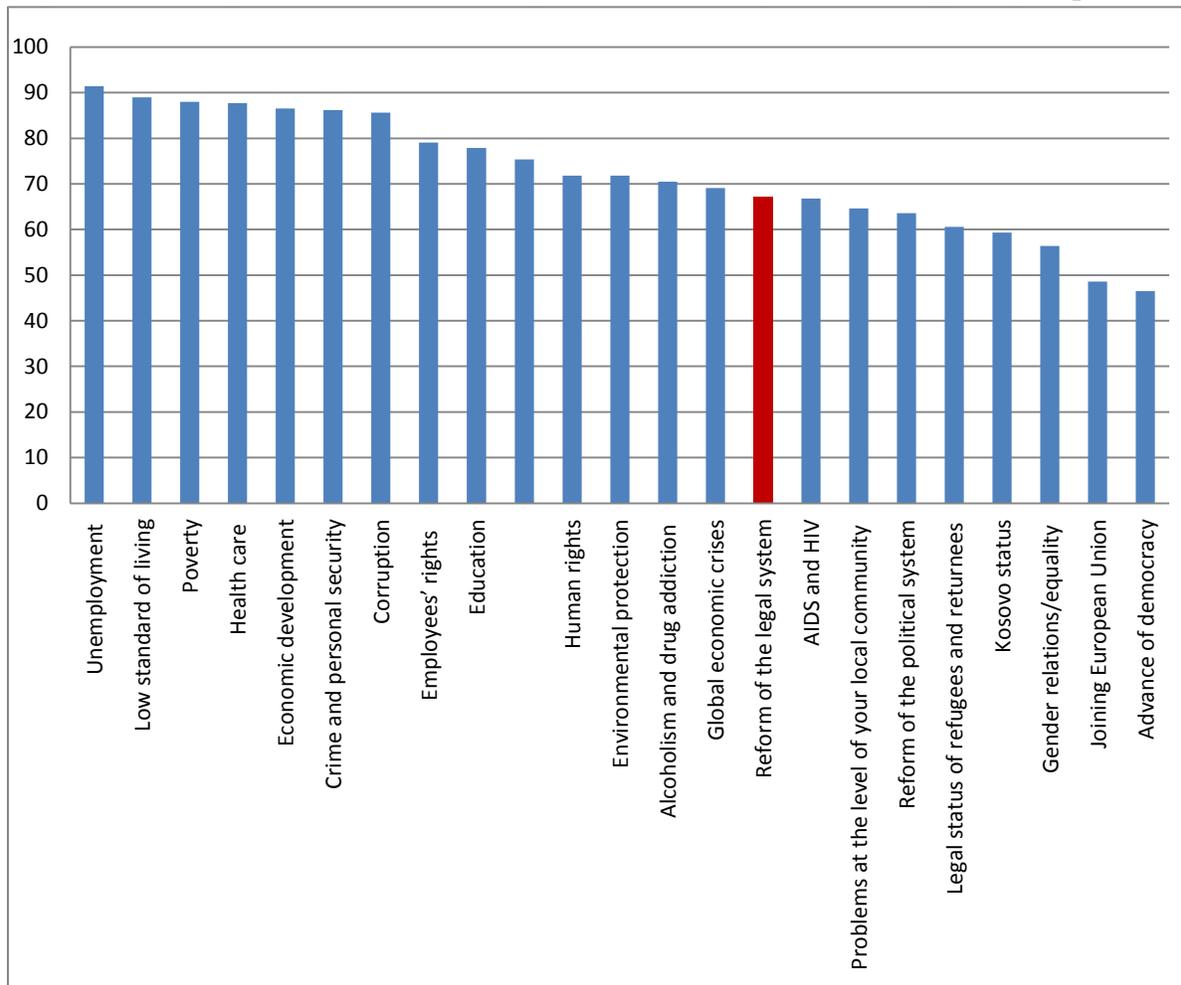
Figure 5: Opinion Polls on the Most Important Problem Facing Serbia at the Moment, 2007–2010



Source: Ipsos. 2010. Public Opinion Survey, special data request.

45. This result is confirmed by an ad hoc opinion survey from 2009, which indicated that “reform of the legal system” ranked as issue number 15 out of 23 topics.⁴¹ Unemployment, a low standard of living, crime, and corruption were among the issues considered by respondents to be of a high priority (Figure 6).

Figure 6: The Importance of the Following Issues for Serbia, % Answering “Very Important”

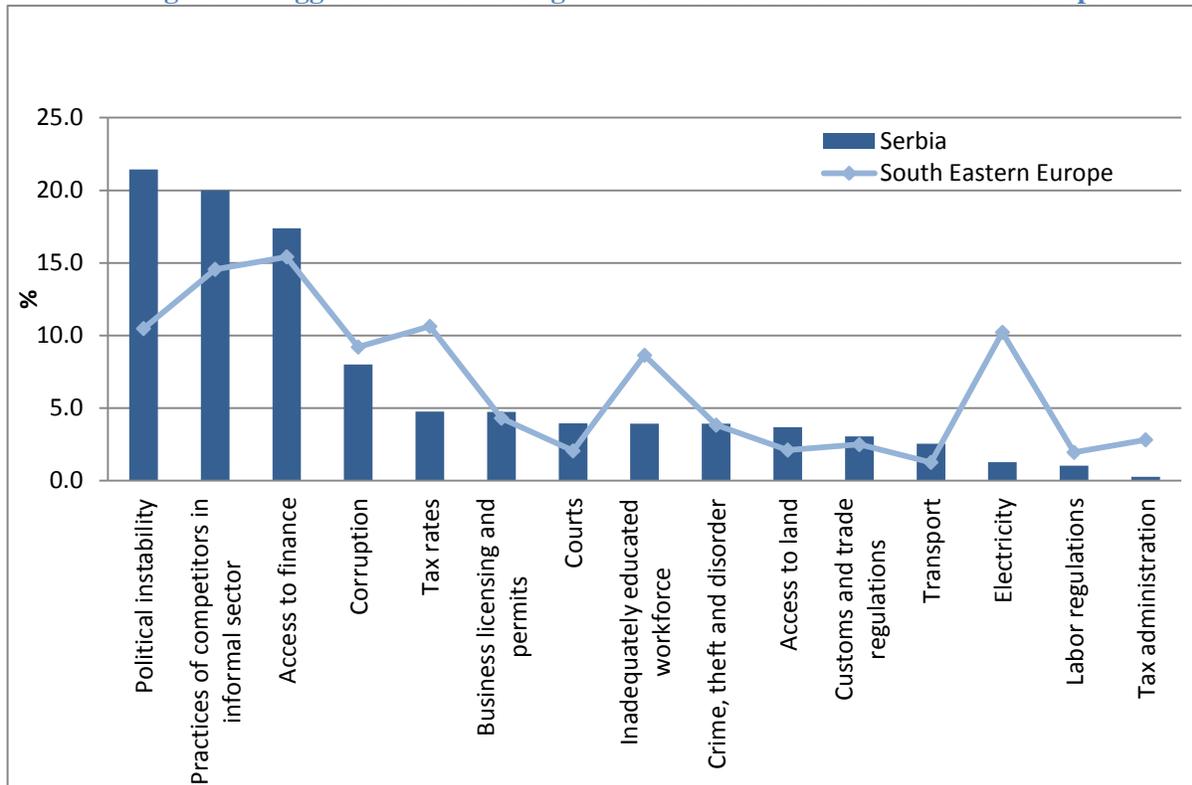


Source: Ipsos. 2010. Serbia Public Opinion.

46. Surveys of the business sector similarly indicate that, while the judiciary is not held in high regard, other issues are of higher concern. Results of the 2008 Business Environment and Enterprise Performance Survey (BEEPS) in Serbia, conducted jointly by the European Bank for Reconstruction and Development (EBRD) and World Bank, indicate that political instability, competition from the informal economic sector, and constrained access to finance are the main obstacles to doing business in Serbia. Serbian survey respondents cited political instability as a concern twice as often as did other South Eastern European countries.

⁴¹ IPSOS, Public Opinion Survey, 2010, Special Data request.

Figure 7: Biggest Obstacle Facing Firms in Serbia and South Eastern Europe.



Source: BEEPS, 2008 survey.

2.4. Reform status

47. As documented above, many judiciary reform activities have been initiated and some have been implemented. In 2010, at the request of the Serbian Ministry of Justice and through the MDTF-JSS, the World Bank commissioned the Council of Europe to undertake a review of the implementation of the 2006 NJRS. A detailed summary of the review's findings is included in Annex 4. In general, the Council of Europe concluded that most of the strategy had yet to be implemented at the time of the review.⁴²

- Concerning *independence*, the strategy called for the establishment of a self-governing structure, independent budget authority for the judiciary, and independent policy and rule-making authority. While the High Judicial Council and the State Prosecutorial Council have been established, they are not operational, and the re-election process has redirected attention to most other roles envisioned for the Councils in the NJRS.
- The strategy envisioned *transparency* to be promoted through: (i) open selection, promotion, discipline, and removal from office; (ii) appropriate access to court records and proceedings; and (iii) enhanced public outreach and participation. The main step toward implementing these activities, according to the Council of Europe, would be the creation of a coherent regulatory framework for selection, promotion, discipline, and dismissal. However, the re-election process casts doubts on any progress made in this regard.
- *Accountability* was expected to be improved through clear judicial productivity and performance standards, effective case management, and "effective use of judicial and prosecutorial resources."

⁴² The review report is available at <http://serbiamdtf.org>.

The latter referred to a move away from investigative judges toward an enhanced role for prosecutors. The Council of Europe identifies the new case management system (AVP) as the major achievement under this heading.

- As regards *efficiency*, improved access to justice, improved training, and a modern court network were intended to be the main components of reform. It is the assessment of the Council of Europe that this is the reform area in which most progress has been made, including in regard to training and the introduction of a new court network. However, the Council of Europe is critical of the way the new network was designed and introduced.

48. All in all, the judiciary reform agenda remains ambitious and unfulfilled. A strategy has been adopted, the legislative framework has been modernized and harmonized, and the institutional set-up has been transformed. Still, implementation is largely outstanding. This directs attention to reform design and implementation arrangements.

2.5. Reform management

49. International experience suggests that judiciary reforms, not unlike reform efforts in other sectors, have a higher probability of succeeding when the following conditions are in place or created:⁴³

- High-level political commitment to change
- Broad stakeholder support for change
- A shared vision of what changes are intended
- A shared understanding of what these changes mean for all affected stakeholders.
- Local champions for change are committed and have sufficient support among key stakeholder groups
- A comprehensive and inclusive strategy for change is developed, involving all key stakeholders
- Realistic short-term, medium-term, and long-term implementation plans are developed based on a review of international standards; local conditions; and political, human, and financial capacity for change
- Local capacities for managing the envisioned changes are created
- Change processes are continuously monitored and key stakeholder groups consulted
- Human and financial resources are available to create the changes envisioned
- Successes are regularly and publicly celebrated

50. Comparing these lessons to Serbia's approach to judiciary reform over the last ten years points to some initiatives that could improve the likelihood of successful implementation in the next phase of reform. Broad multistakeholder consensus needs to be established on the independence of the judiciary in regard to appointment and promotion. Disputes between the judiciary, executive, and legislative powers about the purging and ongoing appointment of judges have derailed Serbia's judiciary reforms over the last ten years, and it is questionable whether other reforms can proceed successfully before this issue is resolved. A sustainable solution would not only include solving the immediate crisis through a compromise, but would also be likely to include the establishment of transparent criteria and processes for appointment, promotion, discipline, and dismissal, as well a broad consensus building among parliament, the media, and organized interests. There is movement in this direction. The executive

⁴³ See, for example, Eveline N. Fischer (Deputy General Counsel, Asian Development Bank). 2006. "Lessons Learned from Judicial Reform: The ADB Experience." Presentation at the Global Forum on Liberty and Prosperity, Manila, October 18-20; Jack Diamond. 2003. "Performance Budgeting: Managing the Reform Process." IMF Working Paper.

is clearly interested in EU integration and in moving reforms forward. The High Judicial Council has demonstrated commitment to resolving this issue by engaging in talks with the EU and OSCE to formulate and adopt clear selection criteria to apply in the future. The State Prosecutorial Council has committed to making the reasons for its selection of prosecutors transparent and to holding individual interviews with prosecutors explaining the rationale for its selections. The real challenge will be sustaining the interest of these bodies in the reform agenda beyond the immediate debate about appointments.

51. In order to maintain political will, the reform pace will need to be adapted to available resources and capacity, and building implementation capacity should be included in any reform design. In addition, development of a results framework for regular monitoring and learning could help ensure that the process does not become stalled once successfully launched.

52. Cooperation among all stakeholders is important and should be encouraged, including in particular the Ministry of Justice, judiciary (High Judicial Council and State Prosecutorial Council), judges, and prosecutors' associations. Resolution of disagreements over the general election process may help to fix the damage that has been done to the relationships among the different parties, and to the justice system's public image. The High Judicial and State Prosecutorial Councils should address their other important responsibilities, and the government should provide them with the institutional and human capacity resources they need to fulfill their new roles.

53. While political consensus is difficult to obtain, the re-establishment of a consultative body similar to the Strategy Implementation Commission may foster renewed dialogue and inclusion of those stakeholders who were sidelined, and in doing so, renew trust in the reform process. This consultative body or a new Strategy Development Advisory Committee would include representatives from international partners and from the Prime Minister's or Vice Prime Minister's cabinet who would meet quarterly to discuss reform progress and challenges and plan for future reforms. To foster this public discussion, the body would also include non-governmental organizations and independent experts on judicial reform.

54. The new judicial laws lay out a good framework for judicial independence and judiciary reforms, in line with European standards, but achieving tangible returns will require that these laws be followed up with a clear implementation strategy and stronger capacity in the judiciary. The implementation strategy should include realistic short-term, medium-term, and long-term deadlines. Continued hasty implementation of reforms, as in the reorganization of the judicial network and the (re-) election process, could pose risks for the independence, accountability, and efficiency of the judiciary.⁴⁴ The justice system should instead taking a more phased approach, allotting appropriate time to adjust to the new organizational systems and working methods introduced by these legal reforms.

⁴⁴ Commission of the European Communities. 2009. *Serbia 2009 Progress Report*, SEC (2009) 1339, Brussels (November): 12.

Chapter 3: Expenditure management

3.1. Key findings and recommendations

55. This chapter presents a review of expenditures, staffing, caseloads, and backlogs in order to analyze the effectiveness and efficiency of resource use and service delivery in Serbia's judiciary. Due to data limitations with regard to prosecutors' offices, the analysis is focused on municipal and district courts, which also represent the largest share of expenditures in the judiciary.⁴⁵ The analysis is aimed at informing ongoing restructuring efforts, particularly in view of significant fiscal consolidation pressures resulting from the recent economic crisis. It uses data from the pre-reformed court system to inform the ongoing restructuring.⁴⁶ Key findings and recommendations are presented in Box 5.

Box 5: Key Findings and Recommendations

Key findings

- **Serbia commits significant resources to its judiciary.** Most importantly, a high number of judges for its population size, a dense court network, and higher wage premiums paid to judicial professionals contribute to higher-than-average spending in Serbia compared to other European countries.
- With already significant spending commitments to the sector, the government's current **focus on raising spending quality and efficiency while concentrating on cost containment over the medium term is appropriate.**
- **There are economies of scale in court operation.** Per-case operating costs, weighted by case type to reflect different case costs for different cases, show significant variation across the court network. Larger locations, such as the district court of Kraljevo and the municipal court of the city of Nis, have significantly lower per-case costs than smaller courts (less than half the average per-case operating expenditures). Similarly, there are significant variations in the number of staff per case, including judges and other employees, with the largest courts typically having fewer staff per case (again about half the average for both judges and other employees).
- **Resource consumption does not fully reflect differences in service demand and workload.** Both caseload and case composition vary significantly across courts, but the current resource allocation process does not adequately respond to these differences. The analysis identifies a number of courts that appear relatively more and relatively less effective given their financial resources and staff contingencies, compared to their caseload.
- **The composition of resources at the court level affects the performance of courts.** Specifically, spending on specialized services, including expert witnesses, appears to significantly enhance the productivity of judges. This is most likely related to the effect of the deployment of contracted specialized services and expert assessments in expanding the workload capacity of judges. Increases in spending on specialized services and training as a portion of total spending increases is related to a sizable increase in average cases resolved per judge.

⁴⁵ Detailed data were collected on spending and staffing in prosecutors' offices. However, meaningful analysis would require that this information be linked to caseloads, and caseload data were only available for courts. While an assumed linkage could have been made between prosecutor and court caseloads, this link is attenuated in that the caseload of prosecutors includes actions not filed with the courts due to lack of evidence. Therefore, this analysis focuses on the direct link between caseloads and courts.

⁴⁶ The analysis does not reflect the judicial restructuring implemented during 2009. Structures, expenditures, staffing, and workloads are in flux. Further, data for the 2009 period are fragmented and limited due to the emphasis on this restructuring and the resulting gaps in reporting. The focus of the analysis has been on assessing the Serbian judicial system within the context of pre-reform patterns that can then be used to assess the effects of reform when it becomes clear how resource utilization has been altered after the 2010 restructuring.

Key recommendations

- **Significant efficiency gains could be realized by consolidating smaller courts without impeding access.** Specifically, the analysis suggests that increasing the size of the smallest courts to caseloads of around 35,000 cases per year could reduce per-case operating costs. However, additional analysis would be needed to corroborate this recommendation and assess implications for court proximity.
- **Realigning resource allocations to better reflect differences in service demand could further improve efficiency.** The analysis identifies a number of courts that receive higher allocations than their workload would suggest, adjusted for size and case composition. Operations in courts with high per-case operating costs could be further assessed to identify reasons for these cost differences and potential measures to increase efficiency and generate savings. This realignment may require relocation of judges and other professional personnel to court locations with high demand pressures. Alternatively, it could rely on attrition, with new positions being allocated to priority courts. The latter approach, while perhaps more feasible in a civil service environment, will take more time and place limitations on the strategic allocation of judicial staff. This is particularly relevant, as the system is in the process of absorbing a 25-percent reduction in the number of judges.
- **Attention could be paid to ensuring efficient composition of complementary inputs at the court level.** Providing adequate resources to courts for contractual staff is key to improving the productivity of judges.
- **Information management systems and analytical capacity could be strengthened to improve decision making and resource planning.** This recommendation, echoed in Chapter 4, encompasses investments in information gathering, storage, and analysis. Reliable and timely data on workload and cost structures are critically needed to develop a case-weighting methodology. Use of an effective methodology would improve workload and resource planning between court locations and judges and allow a transition from the financing of existing input structures (number of judges and other employees) to allocations that reflect workloads.

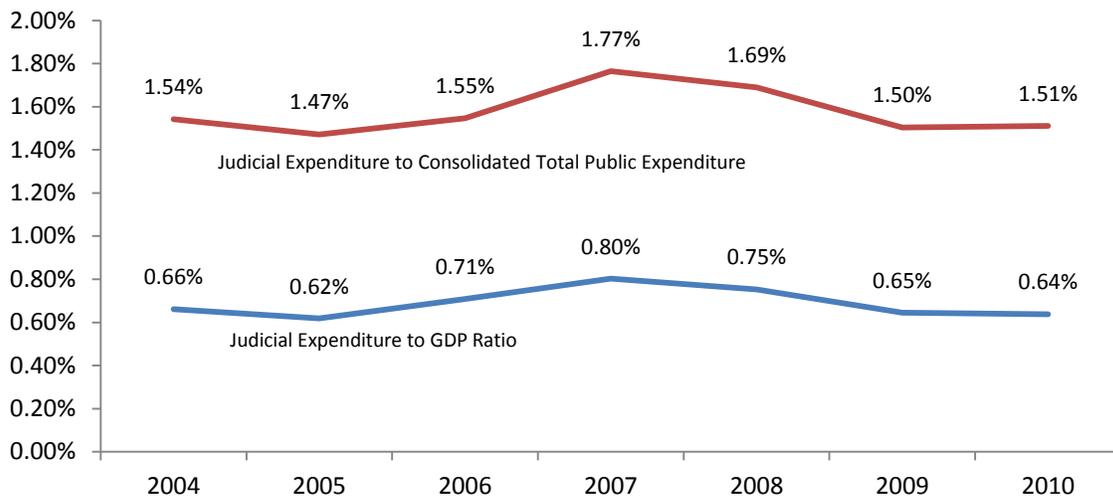
3.2. The cost of justice

56. Serbia commits significant resources to the judiciary. Overall public expenditures in Serbia's judiciary are high compared to other countries.⁴⁷ Based on actual expenditure data, Serbia allocated 0.8 percent of GDP to the justice sector in 2007 and 0.75 percent in 2008. International comparisons using 2008 data from the European Commission for the Efficiency of Justice (CEPEJ) show Serbia to have the second largest judicial expenditure-to-GDP ratio among European countries, devoting almost twice as much spending to the judiciary as the EU10⁴⁸ average (measured against GDP). As a share of total public expenditures, judicial spending in Serbia has remained stable throughout the crisis at about 1.5 percent. Consistent with the relatively high ratio of judicial spending to GDP, the judicial share of total public expenditures in Serbia is greater than all of the comparison countries except Bosnia and Herzegovina, and is more than twice the EU10 average. This relatively high expenditure pattern has been consistent over time (Figure 8).

⁴⁷ The European Commission for the Efficiency of Justice (CEPEJ) project has compiled detailed expenditure, caseload, staffing and budget process data for 2002, 2004, 2006 and 2008 fiscal years for as many as 46 countries. These data provide a comparative profile of Judicial Sector attributes and detailed data on a country by country basis. Our international comparisons rely primarily on data compiled from the most recent 2010 survey release, presenting data for fiscal year 2008. (see http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp)

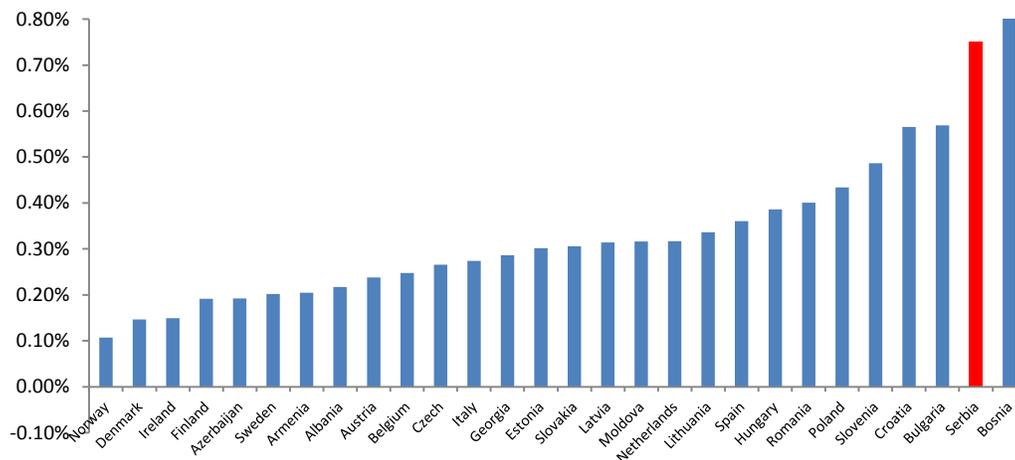
⁴⁸ Eight Central European countries joined the EU in 2004: [the Czech Republic](#), [Estonia](#), [Hungary](#), [Latvia](#), [Lithuania](#), [Poland](#), [the Slovak Republic](#) and [Slovenia](#). [Bulgaria](#) and [Romania](#) joined the EU in 2007.

Figure 8: Judicial Spending in Serbia



Source: Ministry of Justice.

Figure 9: Judicial Spending in Serbia and Other European Countries, Expenditure-to-GDP Ratio



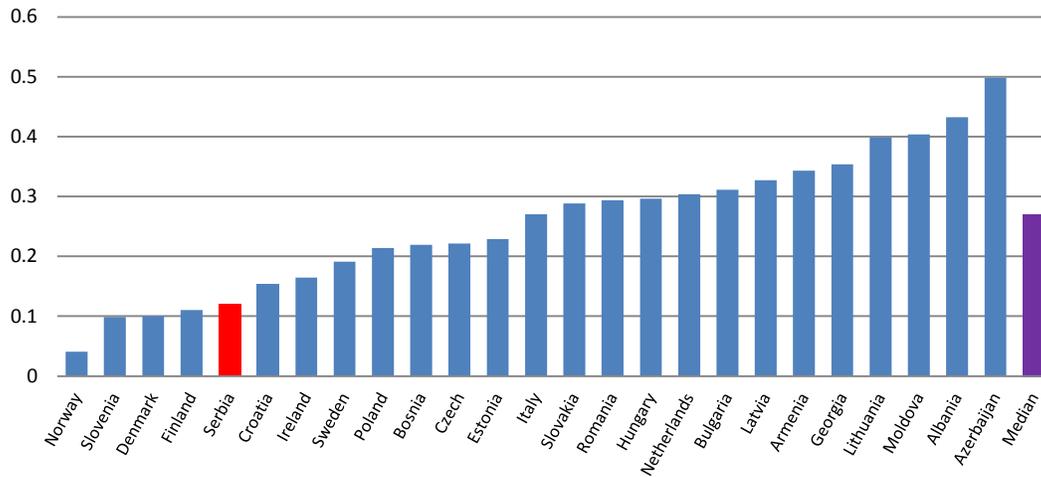
Source: CEPEJ 2010 (2008 data). Data for Serbia refer to budget data received from Ministry of Justice.

57. Expenditure levels reached a high of 0.8 percent of GDP in 2007, but contracted over the past two years as the government undertook a significant fiscal retrenchment in the wake of the economic crisis. Real spending for the judicial sector increased by 42 percent between 2004 and 2007, then declined in 2009 and 2010. Despite the downward adjustment, the overall change between 2004 and 2010 was a 22 percent increase. With the Serbian population declining, real per-capita spending has seen a slightly greater increase of 25 percent over the same period.

58. Most judiciary sector resources are devoted to the court system, while funding for prosecution activities appears to be low by international comparison—a reflection of the different distribution of functions between courts and prosecution services in Serbia. Courts comprise, by far,

the greatest share of judicial spending, at 90 percent in 2004 and dropping progressively to 84 percent in 2010. By contrast, the share of spending on prosecution activities was less than half the average of comparison countries. This reflects the fact that investigative judges in Serbia perform services that in other countries are assigned to prosecutors.

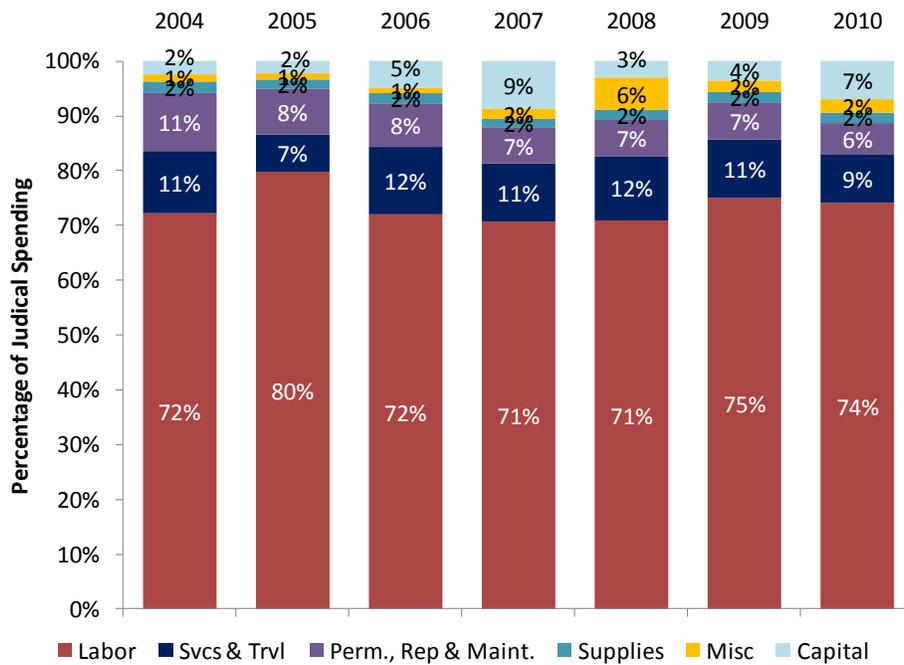
Figure 10: Prosecution Spending as a Share of Total Judicial Spending in Serbia and Other European Countries



Source: CEPEJ 2010 (2008 data).

59. As Serbia moves toward a continental European system, resources allocated to prosecution will need to be stepped up. This trend has already begun. Judiciary budget allocations to the prosecutors' offices have seen modest increases over the past decade, rising from 9 percent in 2004 to nearly 13 percent in 2010. This shift moves Serbia somewhat closer to the prevailing international distribution, though the relative scale of funding for prosecution activities remains significantly below the international average. On the other hand, support and supervisory spending at the ministerial level has been less than 4 percent of the total, except in 2007 and 2008, when capital projects funded through the national investment program pushed this spending to approximately 6 percent. Under the restructured system, it will likely be necessary to shift additional resources from the courts to the High Judicial Council and State Prosecutorial Council to ensure effective management of judicial operations.

Figure 11: Composition of Judicial Spending by Expenditure Category

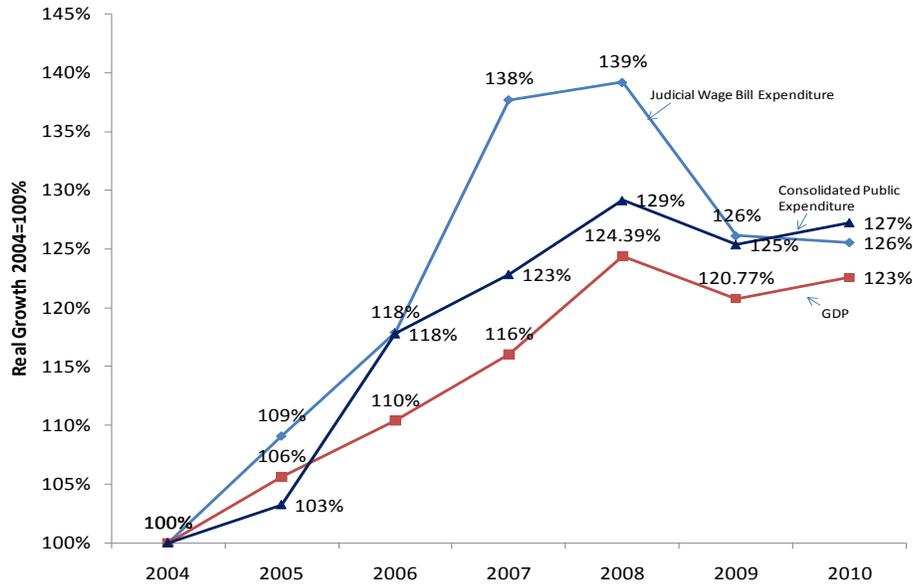


Source: Ministry of Justice.

60. Judicial services are labor intensive. The wage bill, which saw significant growth prior to the crisis, is the most significant expenditure item, accounting for more than 70 percent of total judiciary sector spending. The personal services category consists primarily of employee remuneration and employer social contributions, but also includes supplements, employee social services, expenses, and bonuses. Personal services expenditures averaged 73.6 percent of judicial spending between 2004 and 2010, reaching as high as 80 percent in 2005 and as low as 71 percent in 2007 and 2008. The only other economic category to reach 10 percent of the total for any year was services and travel. This category is comprised of travel expenses, contractual services, and specialized services. Contractual (specialized) services, including most importantly expert witnesses, dominates this category, accounting for approximately 97 percent (or more) of the total across all years in the period. The services and travel category reached a high of 12.4 percent of judicial spending in 2006 and a low of 6.7 percent in 2005. It averaged 10.3 percent over the 2004–2010 period.

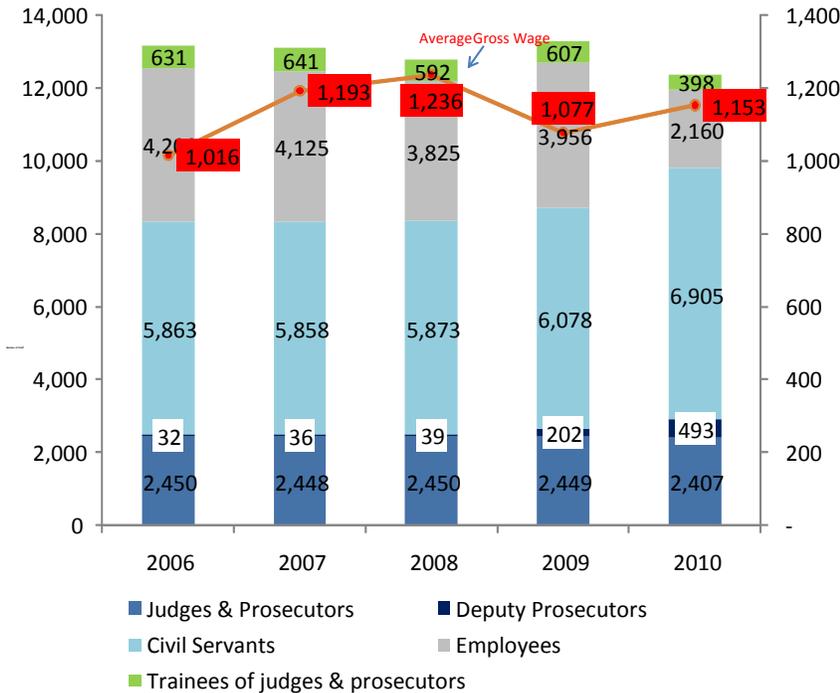
61. The bulk of judicial sector staffing resides in the courts and comprises court civil servants and public employees. Over the 2004–2010 period, court staffing averaged 90 percent of total judicial sector staffing. Court civil servants and employees make up two-thirds of the entire judicial sector workforce, while judges and judge trainees range from 21 to 25 percent of the total. The analysis presented below suggests that the current staffing mix may not be the most effective for judicial performance and highlights adjustments that might improve outputs. Certainly, as the role of prosecutors is expanded, a greater share of total judicial resources will need to be directed toward this function; however, a comprehensive assessment will be needed. Prosecutors, deputy prosecutors, and trainees make up, on average, only 4 percent of total judicial sector staffing, with average numbers at less than one-fifth of judges and judge trainees. Prosecutorial civil servants and employees average approximately 6 percent of total judicial sector staffing, approximately 8 percent of the court staffing level.

Figure 12: Judicial Wage Bill Development



Source: World Bank staff estimates, Ministry of Justice.

Figure 13: Staff and Average Wage Development



Source: World Bank staff estimates, Ministry of Justice.

62. Expenditure growth prior to the crisis was driven primarily by a steep increase in wage bill expenditures. Personal services expenditures have increased significantly, primarily due to a wage bill hike prior to 2008. Staffing levels in the judicial sector have also increased, but only at about one-third the

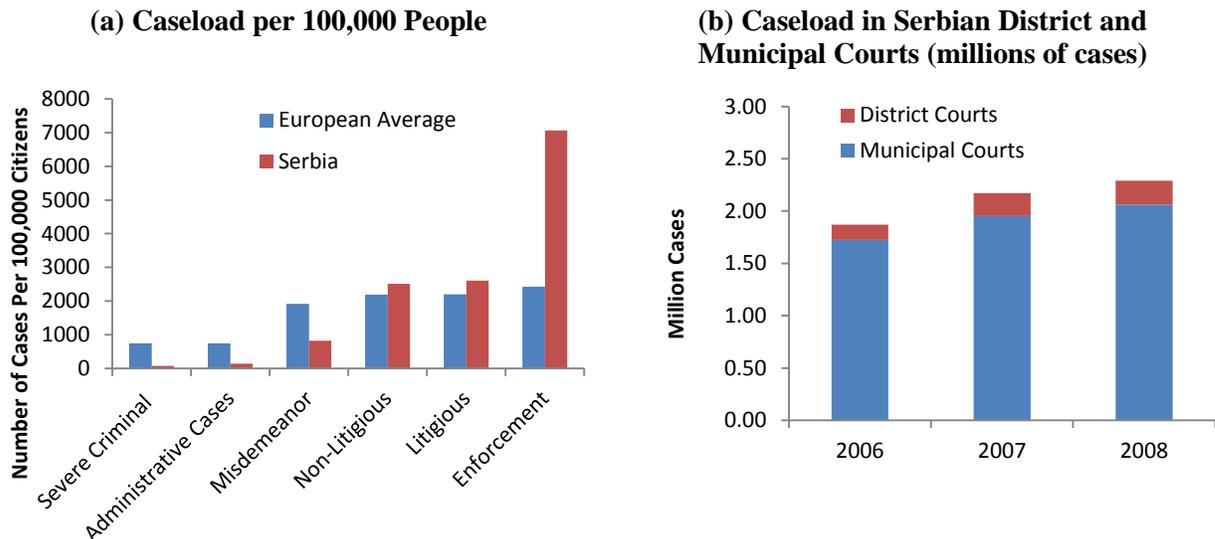
rate of the increase in expenditures. In 2004, there was a total of 11,428 judicial staff. By 2010, the estimated staffing contingent had increased by just over 8 percent, even though the numbers of judges and prosecutors had declined by 4.5 percent over the same period. Between 2005 and 2007, civil servant ranks decreased sharply, and employees increased correspondingly. The 2010 levels reflect an 8-percent reduction from 2009, which was the year of the highest staffing levels—at 13,292, or 16 percent above 2004 levels. The number of court employees dropped sharply in 2010 as a result of the government’s public sector retrenchment.

63. An assessment of whether high spending on the judiciary or high staffing levels indicate “overspending” or “overstaffing” compared to other countries should take into account the differences in the tasks of courts, legal framework, and inflow of cases, among other factors. Such an analysis is beyond the scope of this review. Rather, the data indicate the importance of effective use of resources in the sector and provides a background for the following analyses.

3.3. Service demand in Serbia’s judiciary

64. Case inflows and caseloads in Serbia are above those of other European countries for some case types and below for others. Serbia has higher inflows of non-litigious and litigious civil cases per 100,000 people, about 14 percent and 18 percent, respectively, above the average comparator group. At 7,064, the number of enforcement cases per 100,000 citizens is about three times the European average, reflecting differences in legislation. However, many of these cases are simple debt collection cases, which are significantly less resource intensive than other categories. On the other hand, the intake of first-instance criminal cases, which are more resource intensive, and misdemeanor cases was substantially below the European average, approximately 90 percent and 60 percent lower, respectively, than in comparison groups.⁴⁹ Serbia’s inflow of administrative cases is also significantly lower than the European average at only about one-third of the comparator group.

Figure 14: Demand for Judicial Services in Serbia and Other European Countries



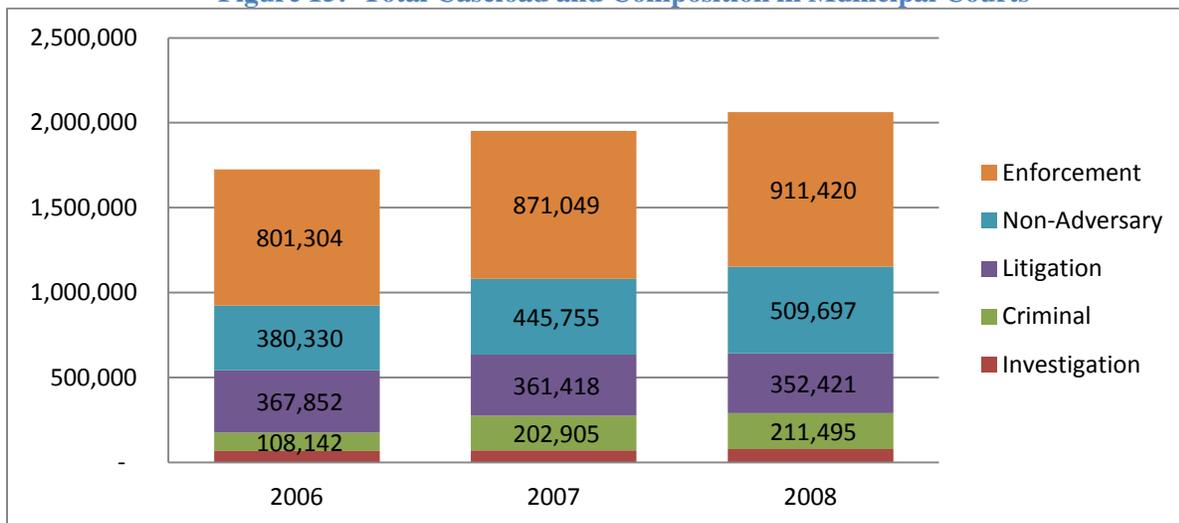
Note: Chart b includes both first- and second-instance cases.

Source: World Bank staff estimates, Ministry of Justice and CEPEJ 2010 (2008 data).

⁴⁹ It is not clear whether the CEPEJ data fully consider the role of magistrate courts in Serbia. This may be a reason for the relatively low incidence of misdemeanor cases.

65. The number of pending cases in Serbia has increased over the past years, despite a decline in new cases being filed. As classified by the Ministry of Justice, the total caseload grew from 1.9 million cases in 2006 to 2.3 million in 2008—a 22 percent increase.⁵⁰ The caseload in district courts increased by 56 percent, from 146,000 cases to 228,000, while the caseload in municipal courts increased by 20 percent, from 1.724 million cases to 2.062 million. While the number of new cases declined by 18.7 percent between 2006 and 2008, a growing backlog has resulted in an overall increase of pending cases in the system. About 34 percent of the total caseload in municipal courts consists of backlogged cases, as compared to about 24 percent of all cases in district courts.⁵¹ Figures 15 and 16 show the composition of municipal and district court caseloads. Definitions of the case types used in the Serbian judiciary are included in Annex 5.

Figure 15: Total Caseload and Composition in Municipal Courts

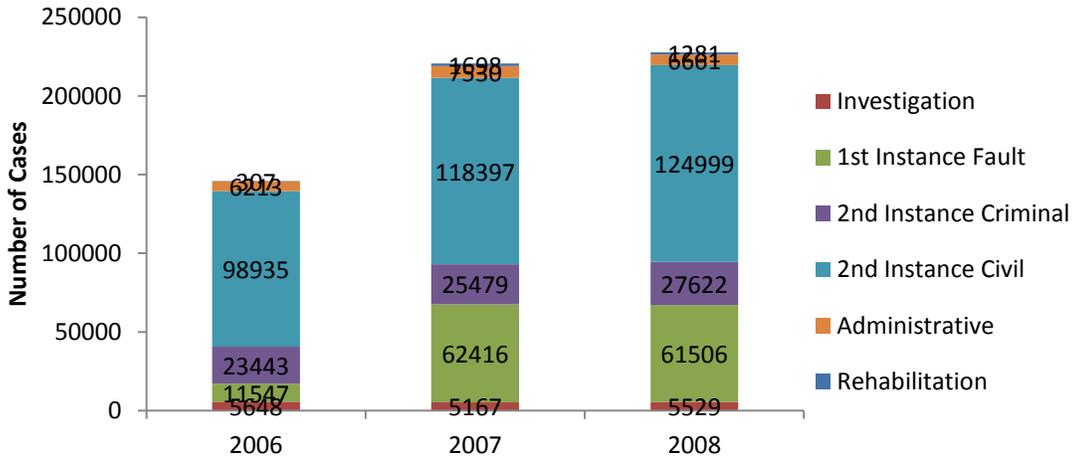


Source: World Bank staff estimates, Ministry of Justice.

⁵⁰ The caseload for each year is defined as the number of cases pending (“draw”) at the beginning of the year, plus new case intake during that year. Total caseload is the sum of the caseloads across all types of cases for a court. For municipal courts, this is the sum of investigation, criminal (fault), civil litigation, non-adversary, and enforcement cases. For district courts, this is the sum of investigation, fault (serious criminal and specialized civil), second-instance criminal, second-instance civil, administrative, and rehabilitation cases. See Annex 5 for an explanation of case types. While investigation is an element of criminal case proceedings and enforcement is a process dimension of civil case actions, the Ministry of Justice tracks these case-related activities as individual case types/elements due to their separate workload implications for courts. We have adopted this classification. While a more detailed classification including types of criminal and civil proceedings might have been desirable, the classification used was the only one for which individual court data were available.

⁵¹ The USAID Separation of Powers Project completed a backlog strategy reduction for the Ministry of Justice and the High Judicial Council, and it defines backlog generally as cases pending for over two years. There are certain specific cases that, due to exigent subject matter, have a shorter time frame (for example, labor cases are deemed backlogged if older than six months).

Figure 16: Total Caseload and Composition in District Courts



Source: World Bank staff estimates, Ministry of Justice.

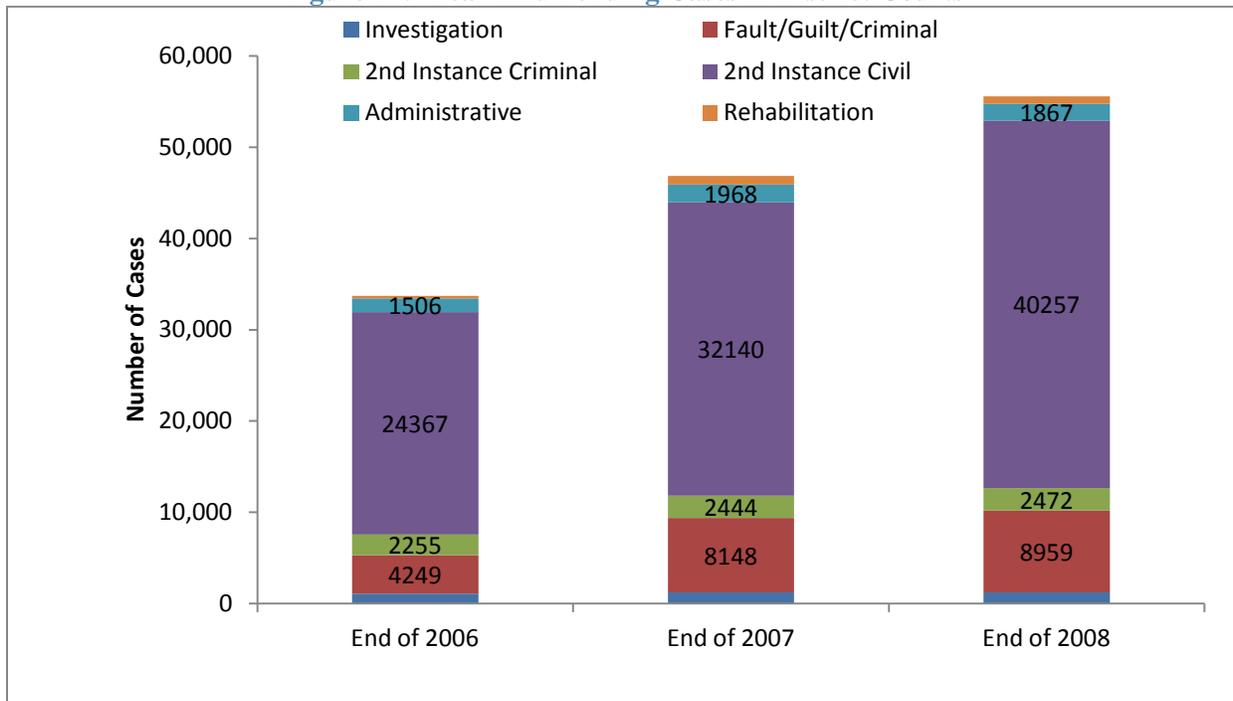
66. The case mix has remained relatively stable, although some changes have occurred, most importantly a significant increase in the relative share of contested cases in district courts. The majority of cases filed in district courts are second-instance (appeals of) civil cases, accounting for over 55 percent of the total caseload.

67. The most notable change in case composition is the increase in first-instance fault cases, which account for 27 percent of all cases in 2008, up from only 7 percent in 2006, according to Ministry of Justice data.⁵² In absolute terms, the number of fault cases (first-instance civil and criminal) more than doubled during those years, and non-criminal proceedings formed the bulk of this increase. In municipal courts, the composition of cases has remained stable. Here, enforcement cases account for 45 percent of all cases, followed by non-contentious proceedings and litigation cases, accounting for 24 percent and 17 percent, respectively, of all cases (three-year average).

68. The increased service demand has not slowed down case turnover rates. Turnover rates (defined here as the ratio of annual cases resolved to annual total caseload) have remained relatively stable. On average, municipal courts turn over two-thirds of the total caseload, while district courts turn over three-quarters of the total caseload each year. Turnover rates vary across case types. In municipal courts, turnover rates vary between 70 percent for non-contentious cases and 57 percent for enforcement cases. In district courts, the turnover rate for rehabilitation cases is the lowest at 38 percent, while turnover rates for second-instance criminal cases is the highest at just over 90 percent.

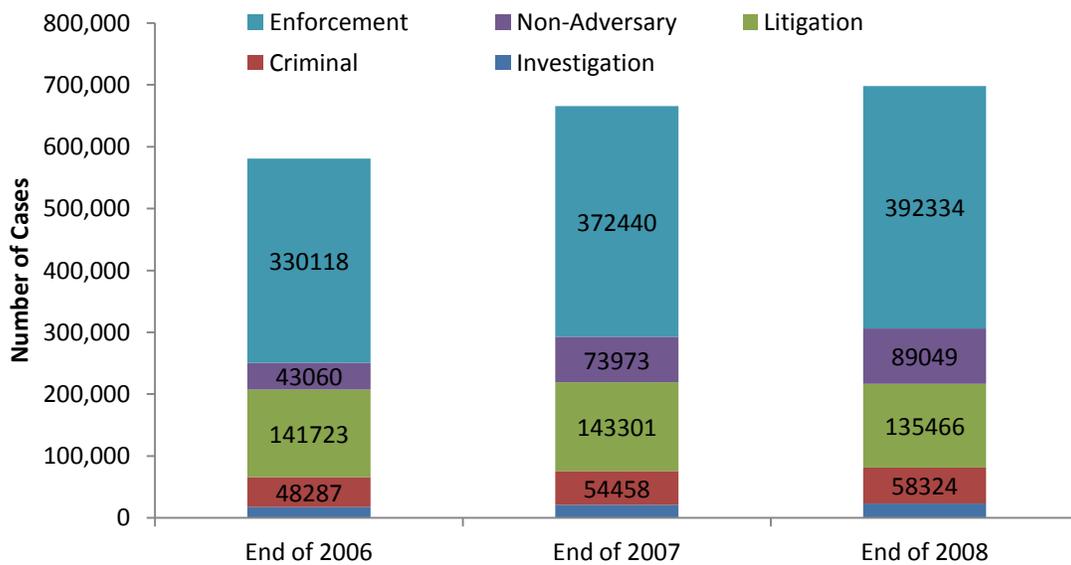
⁵² Fault cases for which district courts have first instance jurisdiction include criminal cases involving potential sentences of more than ten years and limited civil cases involving such things as copyright, intellectual property, labor agreements and strikes.

Figure 17: Year-End Pending Cases in District Courts



Source: World Bank staff estimates, Ministry of Justice.

Figure 18: Year-End Pending Cases in Municipal Courts



Source: World Bank staff estimates, Ministry of Justice.

69. However, the number of pending cases has grown substantially in absolute terms. As a result of the increased inflow of new cases—and given steady turnover rates—the number of pending cases has grown for both district and municipal courts. The number of year-end unresolved cases in municipal courts increased from about 590,000 cases in the beginning of 2006 to 700,000 cases at the end of 2008, an 18 percent increase. In district courts, the number of unresolved cases grew even more steeply from 27,000 cases at the beginning of 2006 to 56,000 cases at the end of 2008, a 109 percent increase.

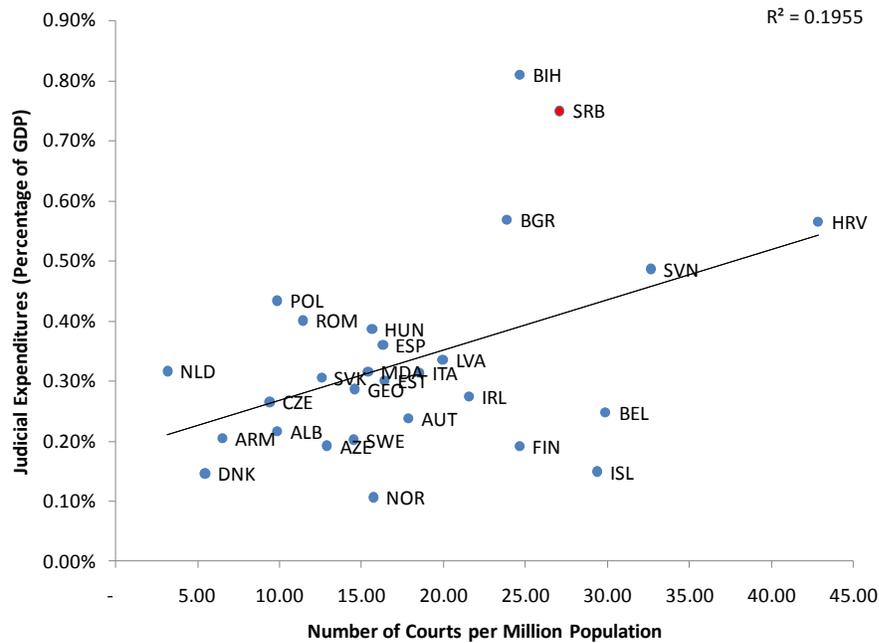
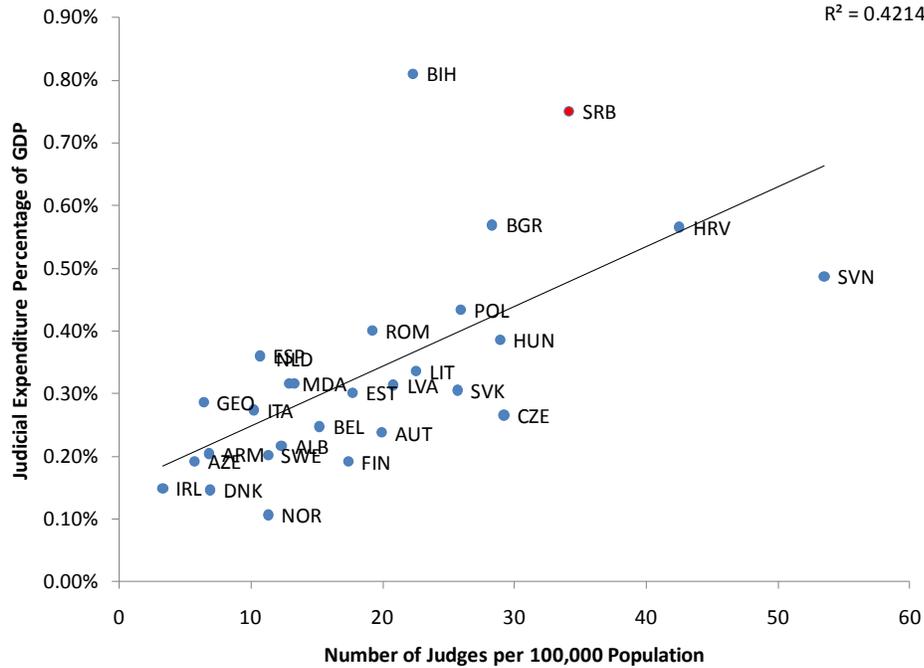
3.4. Cost drivers in Serbia’s judiciary

70. A number of supply-side factors—including higher court density, a larger number of judges per citizen, and high wage premiums—have contributed to high judiciary expenditures, underscoring the government’s efforts to consolidate the sector. Prior to the recent reorganization, Serbia had about 34 judges per 100,000 citizens, as compared to 27 for EU10 countries. Serbian courts had nearly double the general staff of the EU10 comparison group, higher than any of the comparator countries, except Croatia.

71. According to CEPEJ 2010 (2008 data), Serbia had 199 first-instance courts; this amounted to 27 courts per million citizens, as compared to the EU10 average of 17. While this dispersion of court locations ensures broad venue access, it contributes to higher-than-average operating expenses. Figure 19 shows how court density and the number of judges affect spending across a number of European countries. From a fiscal perspective, this demonstrates the appropriateness of Serbia’s 2009 court reorganization, which has decreased the number of court locations and thereby led to possible efficiency gains.⁵³

⁵³ The implications of this reorganization for access to justice are not assessed here; however, prior to reorganization, Serbia was well above the EU10 average in court venues per 100,000 people.

Figure 19: Cost Drivers in the Judicial Sector, Serbia and European Countries

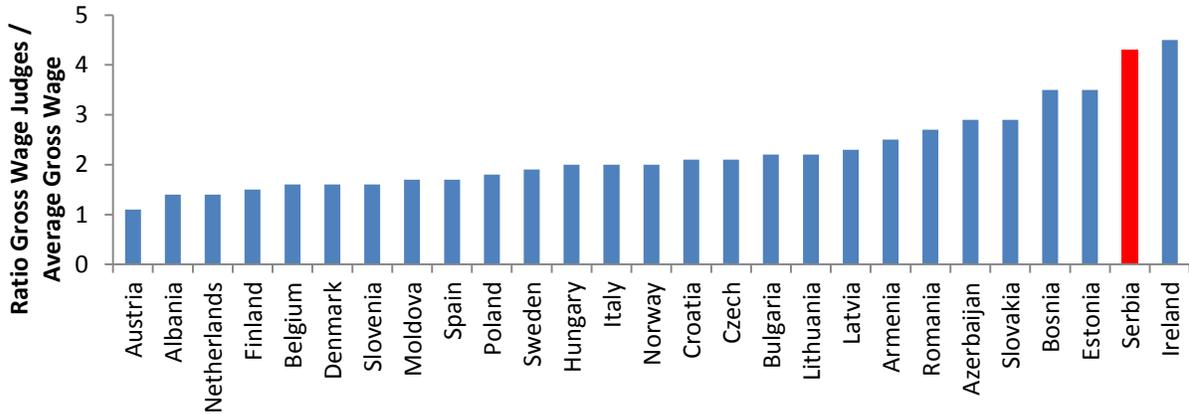


Source: CEPEJ 2010 (2008 data).

72. Wage premiums paid to judicial professionals seem to be higher in Serbia than elsewhere in Europe. For example, gross cash wages of judges in Serbia are almost four times higher than per-capita

GDP.⁵⁴ By comparison, this ratio is 1.9, on average, for EU10 countries. Prior to the recent consolidation, Serbia maintained a relatively dense court network.

Figure 20: Wage Premiums in the Judicial Sector, Serbia and European Countries.



Source: CEPEJ 2010 (2008 data).

73. High per-case labor force and resource deployment have contributed to court performance. Clearance rates are close to or higher than 100 percent for litigious and non-litigious civil cases, and for enforcement cases.⁵⁵ For these case types, clearance rates are also significantly above the European averages. Clearance rates for criminal and misdemeanor cases are also above 100 percent in Serbia. However, Serbia’s 48 percent clearance rate for administrative cases, as defined by CEPEJ, is the lowest among the comparator group.

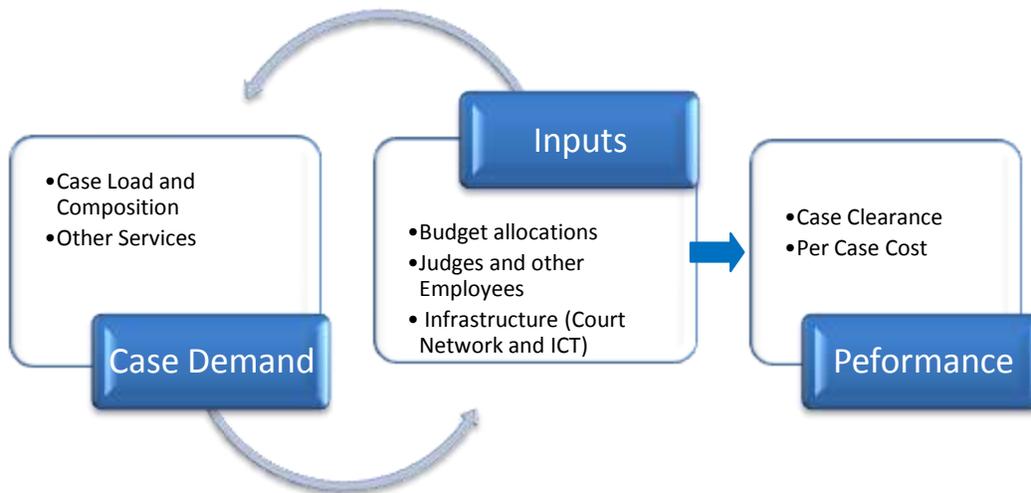
3.5. Resource allocation and performance across the court network

74. Understanding the efficiency of resource deployment within the judiciary requires an analysis of the alignment between inputs and service demand, workload, and output needs. Service demand is driven by both the number of incoming and pending cases (caseload) and case composition. The latter is important because different case types imply different levels of complexity and hence differences in time and resources needed for case processing. Ideally, these differences in case complexity and related resource requirements would be reflected in case weights such as those being prepared by a working group under the High Judicial Council, with support from USAID. Inputs refer to the budget allocations provided to courts to finance labor and other inputs needed to process cases. The connection between inputs (financial and real) and outputs (resolved cases) is determined by a production function that describes the efficiency with which inputs are utilized by courts to provide services to citizens (Figure 21). The circular arrows in the framework signify that there should be relationship between case demand and resource allocations, and that the two interact to bring about performance.

⁵⁴ This measure does not, however, consider in-kind forms of compensation that might be provided in comparison countries.

⁵⁵ Clearance rates above 100 percent signify a reduction in case backlogs.

Figure 21: A Framework for Understanding Resource Use and Service Delivery in the Judiciary



75. The following analysis employs court-level data for municipal and district courts, covering the years 2006–2009. Significant effort was put into collecting and merging data for the purpose of this review, and the resulting dataset forms a sufficient basis for the analyses presented. All in all, data were merged over three years for 282 out of 414 municipal court observations, equal to 68 percent of the total population in the analysis. Specific data coverage and limitations are described in Box 6.⁵⁶ Broadly, data on service demand comprise caseloads divided by case type (such as litigation, investigation, and enforcement). Data on service output comprise court-level data on the number of resolved cases, again broken down by case type. Data on input comprise court-level budget operating allocations and composition as well as real resources (number of judges and other employees).

76. A wealth of possibilities exist for using the data available in the Serbian system. These possibilities are constrained severely, however, by the haphazard nature of the archive and retrieval systems. Without data, it is difficult to embark on informed restructuring or to improve the functioning of operations. A review and restructuring of data collection, archival, and retrieval systems could greatly improve the information base for decision making and performance management in Serbia's judiciary.

⁵⁶ Municipal and district courts account for half of all justice sector spending and are the courts of original jurisdiction for all criminal and civil proceedings. The next section of this chapter focuses on district and municipal courts, followed by a more detailed analysis of municipal courts. Municipal courts accounted for 91 percent of the combined caseload of district and municipal courts between 2006 and 2008, and three-quarters of combined spending between 2004 and 2009. Municipal courts alone represent approximately 40 percent of justice sector spending.

Box 6: Serbian Judicial Data and Limitations

Individual court and prosecutor's office data, such as those used in this analysis, have substantial value in assessing the relative efficiency and effectiveness of courts and prosecutors' offices across the nation. This has substantial relevance for issues of court scale, organization, staffing, budgeting, workload distribution, and planning. However, reaping the benefits of this information requires that data on basic workloads (that is, caseloads and backlogs), resources, and staffing be available, consistent, and accurate for a series of years. Previously, these data were only available in Serbia in a sporadic format, and the data that had been collected were often difficult to access.

Fiscal Data. The most comprehensive data available were individual budget execution reports for each court and prosecutor's office. These data were quite detailed, including revenue and year-end execution by detailed economic classification for each spending entity from 2004–2009. The data exist in individual spreadsheet template files, one for each court, office, or spending unit per year. There was little indication, however, that this collected information had been used effectively. To build a viable cross-section and to match these cross-sections over time was a laborious task, requiring the extraction of specific cells of data from each spreadsheet file for each court/office for each year. Matching court observations across years was complicated by the absence of a consistent identification field for each court/office for each year, meaning that some observations could not be matched with workload and staffing.

Workload Data. To describe and analyze a court's workload effectively, it is important to have data on the stock of pending cases, the size of the backlog, the inflow of new cases (current docket inflow), and the number of resolved cases on an annual basis. Generally, the Serbian system has collected these data. However, their purpose has been to provide broad general overviews and national summaries of the court system. Parallel data are collected by the Ministry of Justice, Supreme Court, and High Judicial Council, but there is no centralized repository from which this data could be drawn. Individual caseload and backlog data could only be collected for a period of three years. While reports are required as frequently as biweekly and in appropriate detail, these reports are not systematically tabulated or archived, such that extracting existing data is highly labor intensive. Such a process was undertaken for the purpose of this review. Moreover, while the count of resolved cases seemed accurate, there was some concern about the accuracy of pending case figures, which were available for 2005–2008. Therefore, the most significant elements of our analysis focus on resolved cases.

Staffing. Staffing data were available in reasonable detail, identifying employees, civil servants, prosecutors, prosecutors' assistants, judge trainees, and judges for individual courts/offices from 2004–2009, with the exception of 2006. The absence of 2006 data was problematic, however. The available data were for authorized positions, and there was no information available on the divergence between authorized staff and actual staff, thus reducing the precision of estimates made on the basis of staffing data.

Merging Data. For a comprehensive assessment of the determinants of spending, workload and staffing data must be linked to individual spending units. Available fiscal and caseload data overlapped for 2006, 2007, and 2008; and fiscal and staffing data overlapped for 2004, 2005, and 2007–2009; as a result, the three data categories only overlapped for 2007 and 2008. The expenditure and staffing data reflect inputs, while caseload and backlog data provide information on workload demand and court outputs. In the years for which these data overlapped, there was an opportunity to assess how effectively the Serbian courts were functioning and using inputs. Data merging difficulties were compounded by the absence of a consistent identifier for courts and prosecutors' offices. Identification numbers were frequently absent or inconsistent and changed from year to year, so that observations often needed to be matched by hand for the purpose of this analysis. The absence of location identifiers for some records led to a loss of approximately 30 percent of observations in each merge year. Financial and caseload data were merged for a three-year period for 282 out of 414 court observations, or 68 percent of the total population in the analysis. The two-year merge of financial, caseload, and staffing data yielded 183 out of 276 observations, or 66 percent of the population. Still, a sample equal to 70 percent of the units in the panel years provides a relatively robust foundation for this analysis.

77. The analysis utilizes descriptive, bivariate, and multivariate statistics to understand resource use and service performance across Serbia’s court network. A brief introduction to the method used is included in Annex 6. Specifically, the analysis examines the following issues:

- The distribution of service demand across the court network, with regard to total caseloads and case composition;
- The allocation of budgets and real resources across the court network;
- The effects of court size on per-case costs and case clearance rates;
- The effects of case type on per-case costs; and
- The effects of case and input composition across courts on the productivity of judges.

78. By examining these issues, the analysis intends to provide specific recommendations to better deploy resources across courts and across inputs to improve service performance in the judiciary.

3.5.1 The impact of caseload on resource consumption and court performance

79. As noted earlier, prior to the recent consolidation of courts, Serbia had one of the most dense court networks in Europe. While this ensured broad service access across Serbia’s territory, it contributed to higher-than-average operating expenses compared to other European systems. The ongoing consolidation and restructuring of the court network could help realize important efficiency gains in the sector. Prior to the consolidation, Serbia had 30 district courts, 138 municipal courts, 13 commercial courts, and 126 misdemeanor courts (Chapter 2). The court network was distributed spatially across the territory, and the size of the geographic service area varied little across districts and municipalities. This implies that the distance citizens had to travel to the nearest court location was relatively equal across the territory, including in sparsely populated rural areas. However, the size of the population served by the courts varied greatly between urban and rural areas. For example, the jurisdiction of the district court of Belgrade covered a client base of over one million, whereas the district court of Nis covered a population of only 63,000. The client base of municipal courts varied even more, ranging from 2,500 in the municipality of Crna Trava to 250,000 in the City of Nis.

80. Demand for court services differs significantly across locations – for example, the five largest municipal courts account for about one-third of the total caseload for such courts. Demand for court services is a direct function of the client base served by different court locations. Not surprisingly, demand for court services varies depending on population size and other demand drivers such as the concentration of commercial activity in the service area. The differences are stark for both district and municipal courts. In urban areas, such as Belgrade, courts account for the vast majority of cases. In 2008, the caseload of the largest district court of Belgrade was 32 times larger than that of the smallest district court of Pirot. The district court of Belgrade alone accounted for one-quarter of all cases in the court system. The largest-volume municipal court, Belgrade IV, resolved 210 times the number of cases as the smallest, Bosilegrad. Among the courts for which available data were complete, the largest, Nis, resolved 79 times the number of cases (99,754) as the smallest-volume municipal court of Osecina (1,256). Taken together, the five largest municipal courts accounted for about one-third of the total caseload processed by the municipal court system. The analysis identified 12 courts that processed fewer than 2,500 cases in 2008.

Table 5: Caseloads and Resource Use across Municipal and District Courts, 2008

	Max		Min		Average	Standard Deviation	Coefficient of Variation
District Courts							
Total Caseload	61,892	Belgrade	1,891	Pirot	9,930	12,714	1.28
Cases Resolved	39,585	Belgrade	1,855	Pirot	7,475	8,415	1.132
Judge Per 1,000 Resolved Cases	3.23	Pirot	0.99	Nis	2.29	0.74	0.32
Professional Staff Per Resolved Case	10.78	Pirot	3.13	Kraljevo	7.51	2.1	.27
Operating Expenses Per Case Resolved	49,261	Krusevac	6,691	Kraljevo	17,853	8,701	0.49
Municipal Courts							
Total Caseload	154,404	Nis	1,602	Osecina	17,172	24,277	1.4
Cases Resolved	99,754	Nis	1,256	Osecina	10,845	15,520	1.43
Judge Per 1000 Resolved Case	3.37	IJIG	0.25	Kanjiza	1.61	0.72	0.45
Employee Per Resolved Case	10.3	Ljuboiija	0.79	Kanjiza	5.76	1.96	0.34
Operating Expense Per Case Resolved	15,341	Osecina	1,627	Kanjiza	8,883	2893	0.32

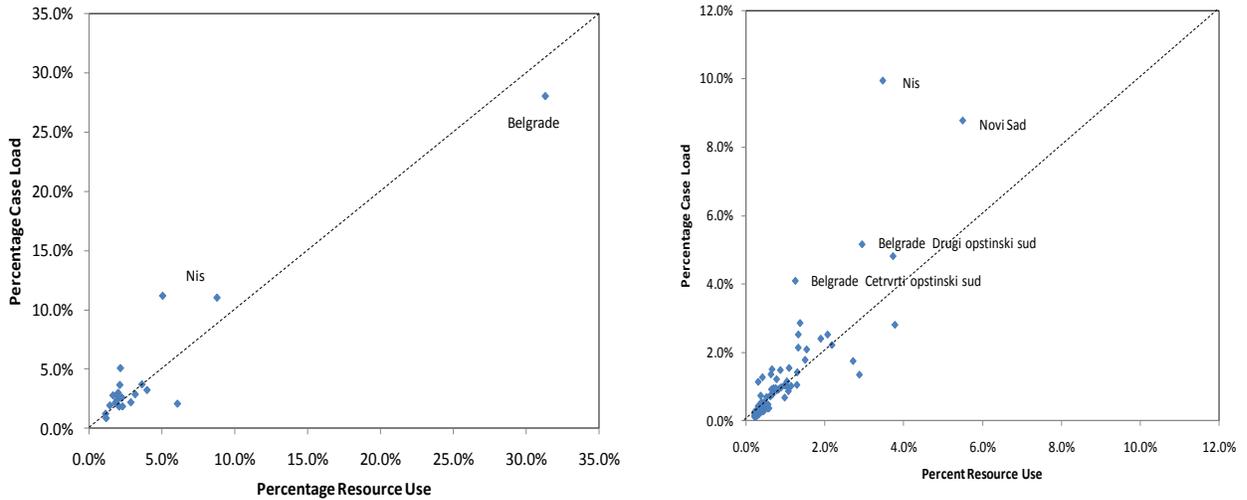
Note: Estimated from sample of 23 district courts and 96 municipal courts for which complete caseload, staffing, and financial data were available for 2008.

Source: Ministry of Justice; World Bank staff estimates.

81. Larger, high-demand locations tend to consume fewer resources per case, suggesting that there are economies of scale in court operations. Of course, in absolute terms, larger courts consume a higher proportion of the total court operating budget. In 2008, the largest district court of Belgrade received 32 percent of the total operating budget in the district court system while accounting for 26 percent of the caseload. Yet the second largest court in terms of pending caseload, the district court of Nis, received only about 5 percent of total operating budget while accounting for more than 10 percent of the caseload. For municipal courts, the correlation between resource use and service demand is even more variable. The five largest municipal courts account for only 16 percent of the operating expenditures but a full one-third of the caseload. Generally, resource allocation for municipal and district courts is much less dispersed than caseload, as evidenced by the smaller coefficients of variation on resource indicators such as per-case operating costs and staff per case. It is likely that case type, analyzed below, is an important factor in this variation.

82. A few large courts receive disproportionately small resource allocations measured against their aggregate caseload. Figure 22 depicts the correlation between resource consumption and caseloads in district and municipal courts. Courts below the dotted line consume a higher proportion of total resources than their caseload share would imply, and courts above the dotted line consume less. The figure shows that, with the exception of the Belgrade district court, a few large courts receive resource allocations that are disproportionately small when measured against their aggregate caseload. The effect is more pronounced for municipal courts. However, the analysis below shows that the distribution of cases is a critical factor in resource allocation.

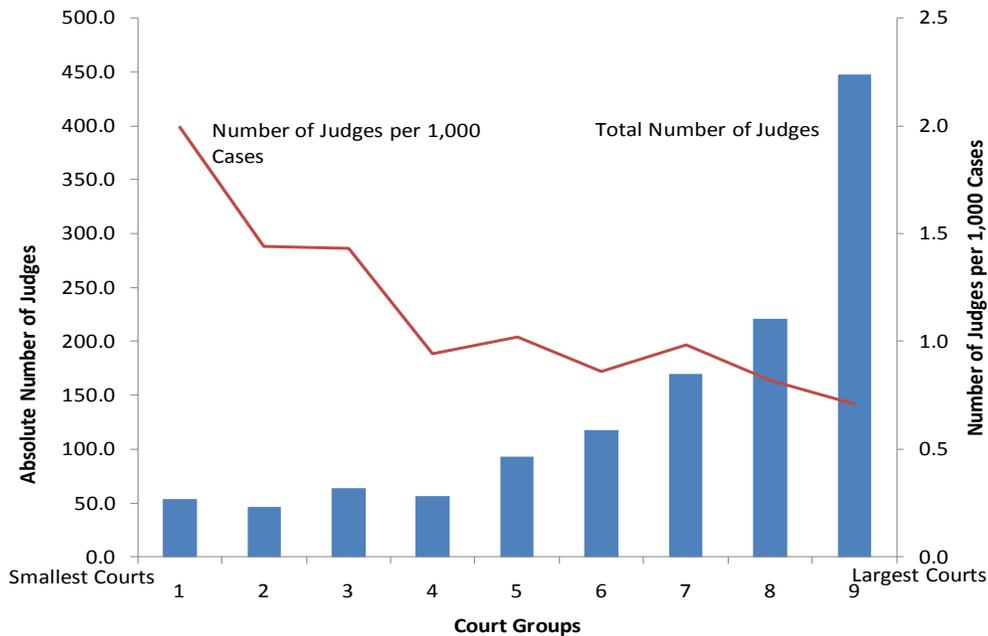
Figure 22: Resource Use and Caseloads in District and Municipal Courts
 (a) District Courts (b) Municipal Courts



Source: World Bank staff estimates; Ministry of Justice.

83. Per-case resource allocation data confirm this intuition. Per-case operating costs in larger locations, such as the district court of Kraljevo or the municipal court of Nis, are significantly lower than in smaller courts (fewer than half the average per-case operating expenditures). Explanations for these variations may lie in economies of scale for case processing or may be due different resource costs for different case types.

Figure 23: Allocation of Judges across Municipal Courts



Note: Courts are clustered in nine groups of ten courts each according to their share in total caseload.

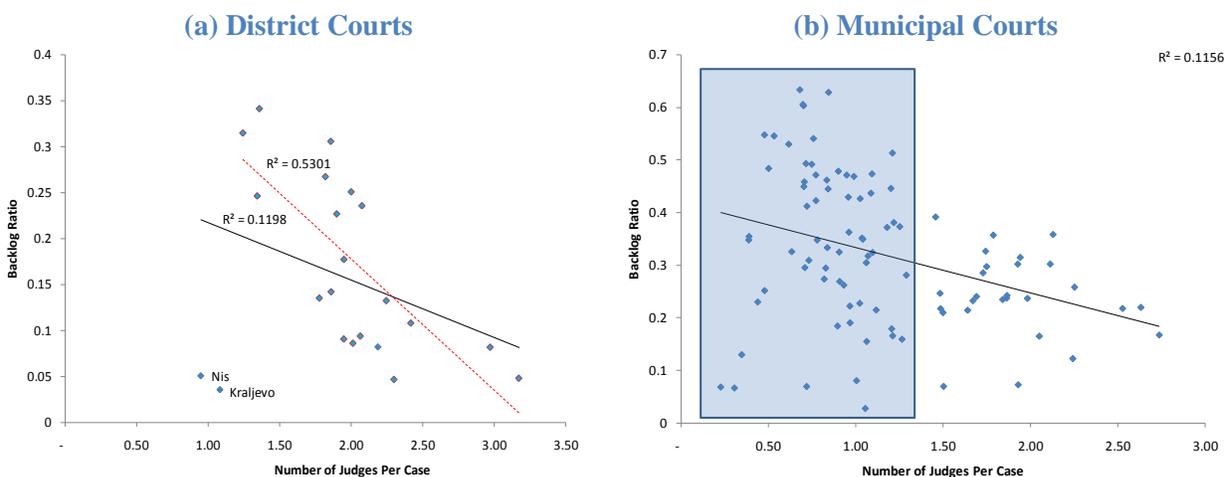
Source: World Bank staff estimates; Ministry of Justice.

84. The imbalance in resource distribution is mirrored in the allocation of judges. The municipal courts for which complete data were available in 2008 employed 1,270 judges altogether, ranging from

one judge in the municipal court of Ada to 86 judges in the municipal court of Novi Sad. The 10 largest courts employed 449 judges in total, while the 13 smallest courts employed 54 judges. As discussed above, judges are unequally distributed on a per-case basis, with smaller locations typically having a larger number of judges per case. On average, municipal courts have 1.1 judges per 1,000 cases. The 13 smallest courts average 2 judges per 1,000 cases, while the ten largest average 0.7 judges per 1,000 cases. As will be shown below, these findings are somewhat softened when caseloads are adjusted for differences in case composition, providing a more precise estimate of the average workload per judge.

85. These differences in per-case resource allocations affect court productivity. As expected, the number of judges available per case affects court performance, as defined by the timeliness of case completion. Figure 24 shows the correlation between the number of judges per case and court performance for both municipal and district courts, as measured by pending case/backlog ratios (pending cases divided by total caseload); as expected, these correlations are negative in both cases.⁵⁷ If the two exceptionally high performing courts of Kraljevo and Nis are dropped from the sample of district courts, the correlation becomes even stronger and more significant. While municipal courts with a large number of judges per case consistently perform better in clearing cases, the figure shows significant performance variations among courts with a relatively low number of judges per case (as depicted by the blue shaded area in Figure 24b). For example, the municipal court of Kragujevac has the highest reported pending case/backlog ratio at 62 percent, and one of the lowest numbers of judges per case at 0.5. In comparison, the municipal court of Kosjeric has a much lower pending case/backlog ratio at only 17 percent, with a similar ratio of judges per case at 0.47. This suggests that other factors affect the courts' ability to clear cases, most importantly the composition of cases, which will be analyzed later in this chapter.

Figure 24: Number of Judges per 1000 Cases and Pending Cases in District and Municipal Courts.



Source: World Bank staff estimates; Ministry of Justice.

86. Differences in court productivity have contributed to differences in clearance times. Figure 25 illustrates the relationships between court size, as measured by total caseload, pending cases, and the productivity of judges. Courts are clustered in nine groups of ten courts, each according to their share in total caseload.

⁵⁷ Backlog is usually defined as the number of cases that are unresolved after a specified number of years have passed since initial filing. In Serbia, this time period is two years. However, backlogs are not calculated consistently across all courts or across years, and backlog designations are often missing for individual case types. Therefore, this analysis uses the pending case ratio (total pending cases at the beginning of the year / total cases for the year) as our measure of the backlog.

87. Three conclusions can be drawn from this analysis.

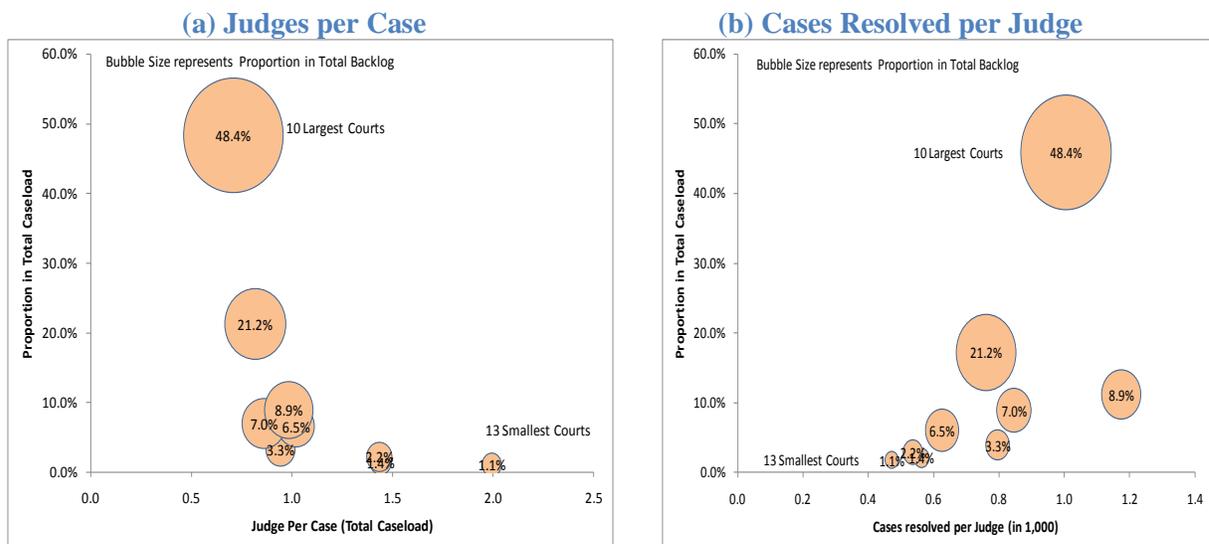
88. First, demand pressures in large courts align quite closely with capacity. The ten largest courts account for 45 percent of the total caseload and 48 percent of the pending cases. While close to parity, this implies slightly lower clearance ratios (resolved cases divided by total caseload) in these courts in 2008. The ten largest courts managed to clear, on average, 62 percent of their caseload. The picture reverses for the smallest courts, suggesting the existence of possible economies of scale. The 13 smallest courts account for 1.8 percent of the caseload, but only 1.1 percent of the pending cases. The average clearance rate in the group of the smallest courts is 69 percent.

89. Second, the largest courts have fewer judges per case, on average, than smaller court locations (Figure 25a). While reflecting economies of scale, this could - if not calibrated effectively - contribute to slower processing and lower clearance rates in the largest courts. This reinforces the finding depicted in Figure 24. There may be a variety of explanations for this, including case composition and scale efficiencies. Still, marginal manpower capacity constraints may be more prevalent in those court locations that face the highest demand pressure.

Figure 25

90. Third, while larger courts have fewer judges per case, these judges are on average more productive in terms of the number resolved cases per judge (Figure 25b). This finding underscores the performance gains that could be realized by realigning resource allocations, and particularly by moving cases and judges to locations that further concentrate workload and resources. These initial results need to be interpreted with caution, however, as resource requirements are not only driven by total caseload, but also by case composition, which is discussed in more detail below.

Figure 25: Court Size and Pending Cases in Municipal Courts



Source: World Bank staff estimates; Ministry of Justice.

3.5.2 The impact of case composition on resource consumption and performance in Serbian municipal courts⁵⁸

⁵⁸ The analysis of case composition pools data for three years (2006–2008).

91. Demand is also diverse in terms of the types of cases filed in different court locations. The average cost of resolving a case varies depending on the case type. As a result, the case mix affects the cost structures of courts. In Serbia, the composition of cases differs across district and municipal courts (Table 6). District courts also show high variation, near 50 percent or greater for all but appellate cases. This shows substantial differences in case composition and, if case type is an important cost driver, this suggests that there should be significant differences in the per-case resources that are deployed across courts.

Table 6: Diverse Case/Process Demands across Court Locations
(case/action type as % of total cases)

	Min	Max	Average	Standard Deviation	Coefficient of Variation
District Courts					
Investigative Cases	0.8%	5.7%	2.4%	1.2%	0.46
1 st Instance (Criminal/Civil)	4.7%	59.7%	22.6%	13.2%	0.58
Criminal Cases (2nd Instance)	6.7%	24.0%	15.9%	4.9%	0.31
Civil Cases (2nd Instance)	26.7%	74.5%	56.1%	11.0%	0.20
Administrative Cases	0.4%	6.2%	2.3%	1.2%	0.52
Rehabilitation Cases	0.0%	2.4%	0.5%	0.5%	0.96
Municipal Courts					
Investigative Cases	0.7%	10.1%	4.4%	2.2%	0.50
Criminal Cases	4.7%	32.1%	8.4%	5.8%	0.43
Litigation Cases	3.9%	58.3%	17.6%	9.2%	0.47
Non-Adversarial Cases	7.7%	85.4%	24.2%	15.0%	0.55
Enforcement Cases	0.0%	75.9%	45.5%	15.7%	0.44

Source: World Bank Staff Estimates, Ministry of Justice.

92. These differences in case/process composition drive resource requirements of courts. Given the different complexity of different case types, case composition is an important cost driver for courts and requires correspondingly appropriate adjustments in resources. Annex 7 provides estimates of the implicit case weight (for resource costs across cases) derived through empirical estimates based on actual resource deployment across years within each municipal court in Serbia, and on the number of each type of case actually resolved annually in each court. Estimates of gross per-case costs based on total operating spending variations across municipal courts suggest that, at average caseloads, each case resolved requiring investigative processes⁵⁹ requires spending RSD 36,919 (US\$ 508). Civil cases requiring litigation are second most expensive to process at RSD 5,601 (US\$ 77). Costs for cases involving a court determination of fault are RSD 3,242 (US\$ 45), cases requiring an execution/enforcement order average RSD 1,115 (US\$ 15), and uncontested cases average RSD 447 (US\$ 6).

93. Costs for fault (criminal), litigated (civil), and uncontested cases show economies of scale, with costs declining as the number of cases resolved increases. This supports the finding that case type is an important determinant of resource usage and must be specifically considered. A similar analysis is applied to estimate the effects of case mix on a court's average per-case operating resource cost.⁶⁰ Using the cost for each case requiring an enforcement process as a point of departure, each ten-percent increase in investigative cases processed as a portion of total cases resolved increases the average cost per-case by RSD 2,732 (US\$ 37). A 10-percent increase in the portion of total cases that require litigation increases per-case costs by RSD 507 (US\$ 7). And a 10-percent increase in fault cases increases a court's per-case

⁵⁹ It is planned that judicial investigation functions will be transferred to the prosecutor's offices.

⁶⁰ Case mix refers to each type of case resolved as a portion of total cases resolved.

costs by RSD 434 (US\$ 6). An increase in cases requiring enforcement as a share of resolved cases would reduce average per-case costs by an amount determined by the degree to which the other four case types/processes are correspondingly reduced. The exact cost decline would be equal to the change in the other case types. If, for example, a 10-percent increase in execution cases came with a reduction in equal shares of investigative, fault, litigated, and uncontested cases, the average per-case cost decline would be RSD 918 (US\$ 13) (Table 7).

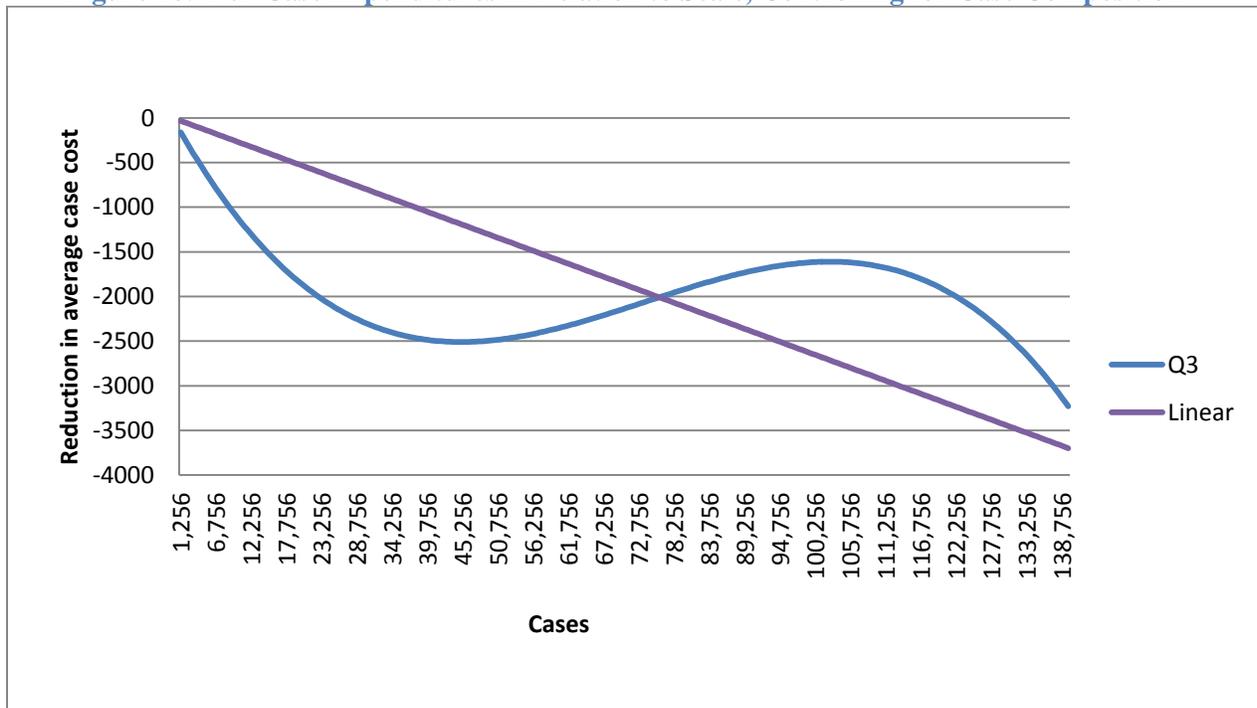
Table 7: Estimates of Relative Costs to Resolve Cases by Case Type/Process

Case Type	Per-Case Contribution to Municipal Court Operating Costs, Estimated for Court with Average Caseload (RSD)	Effects of Case Composition on the Average Per Case Processing Cost of Municipal Courts (Expressed as the effect on per case costs of a 10 percent increase in a case type as a portion of total cases processed)
Investigative cases resolved	36,919	+2,732
Fault cases resolved	3,242	+434
Litigated cases resolved	5,601	+507
Uncontested cases resolved	447	5*
Execution cases resolved	1,115	Intercept, conditional effect** -918

Notes: (1) The cost effects in the above two columns are not directly mathematically comparable due to required differences in model specification necessary to create the estimates; (2) *The variation in the effects of uncontested cases was too great to generate a consistent estimate. The effect is effectively estimated at 0; (3) **Execution cases are the point of deviation and are included in the model intercept (Appendix 2). The per-case cost is significantly negative and is the base of departure for the other case estimates. The effect is equal to the proportionate reduction in other cases created by proportionate change in execution cases. If an increase in execution cases came equally at the expense of investigative, fault, litigated, and uncontested cases, a 10-percent increase would result in a RSD 918 decline in per case costs $((2,732+434+507+0)/4)$. If it were just at the expense of investigative cases, the decline would be RSD 2,732, or -434 or -507 if the increase in execution cases were through an equal-share reduction in fault or litigated cases.

94. The scale economy effects described above are robust once differences in case composition are controlled for, suggesting that consolidation of the smallest courts would improve efficiency. Figure 26 depicts the relationship between court size and per-case operating costs, controlling for differences in the composition of cases and processes. The graph shows that per-case operating costs decrease with court size, but the relationship is not monotonic. The graph shows that per-case costs decline steadily until court size reaches about 35,000 cases. Per-case costs then increase slightly until a court size of 100,000 cases is reached, after which they again drop sharply. During the study period, 75 percent of courts resolved less than 12,000 cases annually. Increasing court size to about 35,000 cases would reduce average per-case operating costs by RSD 2,500 (US\$ 34).

Figure 26: Per-Case Expenditures in Relation to Scale, Controlling for Case Composition



Source: World Bank Staff Estimates. Ministry of Justice.

95. Taking into consideration variations in case/process composition, together with caseload, allows for a more nuanced analysis of the misalignment of resources and case demands in individual courts. This analysis allows us to identify courts that appear to be over- or under-resourced given their caseload.⁶¹ This is done by estimating expected costs after considering each court’s actual caseload across case types and adjusting estimated total court costs for the differences in per-case unit costs for the types of cases the court resolves each year. Using the estimated impact of caseload and composition on average per-case costs, the expected per-case cost for each court can be estimated given its actual composition of cases and the scale of its operations. If we compare these predicted values to the actual values for each court,⁶² we can identify the degree to which a particular court’s spending is higher or lower than the expected (average) spending for its scale and case distribution. Table 8 identifies the ten courts for which actual per-case spending exceeds expected per-case spending, along with the ten courts for which case spending is lowest as compared to the model estimate.

⁶¹ In this context, caseload refers to cases resolved by case/process type annually.

⁶² Specifically, we calculated the residuals of the model for each court.

Table 8: Cost Per Case Outliers – Difference between Actual Per-Case/Process Costs and Costs Predicted by Model Estimates (amount above or below expected)

Municipal Courts with Lowest Cost Per Case		Municipal Courts with Highest Cost Per Case	
Court Name	Deviation from Expected	Court Name	Deviation from Expected
Municipal Court in Odzaci	-2,409	Municipal Court in Ljig	3,026
Municipal Court in Novi Pazar	-2,129	Municipal Court in Osecina	2,230
Municipal Court in Svrljig	-1,873	Municipal Court in Kosjeric	1,819
Municipal Court in Aleksinac	-1,425	Municipal Court (5) in Belgrade	1,760
Municipal Court in Indjija	-1,286	Municipal Court in Subotica	1,670
Municipal Court in Pirot	-1,278	Municipal Court in Vlasotince	1,542
Municipal Court in Nis	-1,277	Municipal Court in Titel	1,442
Municipal Court in Kikinda	-1,255	Municipal Court in Dimitrovgrad	1,334
Municipal Court in Raska	-1,205	Municipal Court in Boljevac	1,265
Municipal Court in Veliko Gradiste	-1,201	Municipal Court in Krupanj	1,248

Source: World Bank staff estimates; Ministry of Justice.

96. A realignment of resources to workloads could rely on efficiency savings in courts with above average resource consumption. The results (Table 8) can be quite useful in directing further investigation into the reasons why particular courts are functioning above or below estimated spending levels. This can aid in identifying substantial savings. These savings could free up resources to be reallocated to high-demand courts and would thus be likely to achieve efficiency gains, in terms of improved clearance rates in courts with high demand pressure, and hence lower overall case backlogs. The same principle could apply in the context of targeting cuts in both financial and real resources across the system, while minimizing the effect on performance levels.

97. Case composition also affects the productivity of judges. Consistent with the findings above regarding the impact of case composition on per-case costs, the number of cases that a judge can process is heavily affected by differences in the composition of cases, reflecting underlying differences in case complexity. Across all courts, the average number of cases processed per judge in 2007 and 2008 was 735 each year. Using execution cases as the point of departure, our analysis suggests that a 1-percent increase in the proportion of investigative cases within a court reduces the number of cases processed per judge by 73 cases. A 1-percent increase in litigated civil cases results in a 17-case decline, and a 1-percent increase in the portion of cases that require a determination of fault results in a 12-case decline. As would be expected, the existence of uncontested cases allows judges to process more cases—nine cases more for each percentage-point increase in non-contested cases as a share of caseload.

98. However, the productivity of judges is also driven by the deployment of complementary resources, such as support staff and expert witnesses. The production function in court proceedings revolves largely around the efficiency with which the resources of judges are combined with other court resources to process and adjudicate cases. Spending on specialized services, including expert witnesses, enhances the productivity of judges. This is most likely related to the effect the deployment of contracted specialized legal services has in reducing the workload of judges. A 1-percent increase in specialized services and training as a portion of total spending increases the average number of cases resolved per judge by 31 cases. Similarly, having additional support staff improves the productivity of judges. An increase in the number of judge trainees has a substantial impact on case output per judge. A 1-percent increase in the number of judge trainees is associated with the resolution 49 more cases per judge. These findings emphasize the critical need to provide operating budgets that are calibrated to maximize the effectiveness of court operations (Annex 7).

99. As for per-case spending, analysis at the individual court level provides a window into differences in the performance of judges (and courts) within the municipal court system. We use court case/process composition to estimate the magnitude of cases that are expected to be resolved on an annual basis within each court. This estimate can then be compared to each court’s actual case resolution output. The results represent the expected resolved caseload for judges in each court, given the court’s actual case distribution and the scale of its operations. Comparing these estimates to the actual values for each court provides an estimate of the degree to which judges in a particular court are clearing cases more slowly or quickly than expected given the court’s scale and case distribution. Table 9 identifies the ten courts for which the actual case processing rate per judge most exceeds expected levels and the ten courts for which the number of per-judge resolved cases is lowest compared to the model estimate. These results suggest the need for further investigation into the specific local reasons why judges in a particular court setting are functioning above or below estimated case resolution rates. The results of these assessments may yield insights into the mix of resources and staff that can most effectively support judicial processes. Such analysis could assist in identifying the relative effectiveness of differences in court or personnel operations in promoting the effective usage of scarce personnel resources in the form of judges themselves. The insight provide by this directed inquiry may provide benchmarks for best practices to be considered for duplication across different settings, with an intended outcome of enhanced judicial effectiveness.

Table 9: Cases Resolved Per Judge Outliers – Difference between Actual Cases Resolved Per Judge and Resolution Rate Predicted by Model Estimates (amount above or below expected)

Municipal Courts with Highest Cases Resolved Per Judge		Municipal Courts with Lowest Cases Resolved Per Judge	
Court Name	Deviation from Expected	Court Name	Deviation from Expected
Municipal Court in Vrbas	1,055	Municipal Court Senta	-442
Municipal Court in Kanjiza	932	Municipal Court in Vladicin Han	-313
Municipal Court in Nis	697	Municipal court (2) in Belgrade	-298
Municipal Court in Odzaci	621	Municipal Court in Jagodina	-293
Municipal Court in Ada	454	Municipal Court in Kragujevac	-281
Municipal Court in Kikinda	392	Municipal Court in Titel	-279
Municipal Court) in Velika Plana	353	Municipal Court in Nova Varos	-273
Municipal Court in Pirot	318	Municipal Court in Krupanj	-270
Municipal Court in Veliko Gradiste	283	Municipal Court in Subotica	-270
Municipal Court in Valevo	267	Municipal Court in Kovaca	-258

3.6. Policy Implications

100. Serbia’s resource commitment to its judiciary remains substantial, even after the recent crisis. With the overall resource commitment already adequate (and even quite large by international standards), the focus should be on improving spending efficiency and quality for better service results. The court network, with a large number of judges (per population and per case) and higher wage premiums, contributes to high spending in the sector, but the ongoing consolidation, which resulted in a 25-percent reduction in the number of judges, needs to be well targeted to avoid a deterioration of service performance.

101. Reforms have gained momentum in view of both continuing public finance pressures and efforts to improve judicial performance and service delivery. Serbia’s judiciary is in flux. The government has begun to consolidate the court structure and right size the judicial workforce as part of a

larger public sector retrenchment. These are difficult undertakings that affect virtually all aspects of the organization.

102. The analysis presented here reinforces the government’s current reform priorities. Given the fact that resource commitments to the judiciary are already comparatively high, together with the expectation of a fiscally constrained environment over the medium term, a focus on spending efficiency is critical. The analysis of court-level expenditures, staffing, caseload, and performance data illustrates several areas where resource use efficiency could be improved:

- **A consolidation of the court network, as currently being implemented, can improve efficiency.** The analysis shows significant economies of scale in court operations, implying that smaller courts tend to be less efficient and thus require higher per-case costs. A consolidation of small courts could therefore improve the efficiency of resource use in the judiciary. Specifically, the analysis suggests that courts with caseloads below 35,000 cases (with an average case distribution) incur significantly higher per-case operating expenses and that consolidating these courts would improve performance. Consolidation based on cost factors must, however, be informed by the possible implications for other judicial goals.
- **A realignment of resource allocations across the court network could potentially achieve significant efficiency gains and improve overall performance in the sector, especially in view of the substantial reduction in the number of judges.** Absorbing the 25-percent reduction in the number of judges without jeopardizing service performance will require careful targeting. Resource allocation across the court network is not fully aligned to case demand (both caseload and composition), leading to significant imbalances in per-case resources (both financial and human). Consequently, demand pressures in some courts exceed their processing capacity, leading to higher pending case/backlog ratios despite (in some cases) more cases being resolved per judge. Linking resource allocation to service demand and ensuring resource adequacy in these courts with substantial demand pressures could achieve reductions in case backlogs. At the same time, some courts with high per-case operating costs could become areas of focus for efforts to increase efficiency and implement resource savings. In practice, such realignment may require relocation of judges and other professional personnel to court locations with high demand pressures. Alternatively, it could rely on attrition, with new positions being allocated to priority courts. The latter approach, while perhaps more feasible in a civil service environment, will take more time and have limitations in terms of the strategic allocation of judicial staff.
- **Improved information management systems and enhanced analytical capacity would improve decision making and resource planning.** This recommendation, echoed in Chapter 4, encompasses investments in information gathering, storing, and analysis. Reliable and timely data on workload and cost structures are critically needed to develop a case weight methodology to improve workload and resource planning between court locations and judges. The resource allocation system needs to move away from financing existing input structures (such as the number of judges and other employees) to allocating resources on the basis of differing caseloads in court locations.

Box 7: Improving Court Efficiency

Increasing the efficiency of court operations means not only reducing case processing costs but also reducing case processing delays and backlogs that go beyond reasonable time limits, without sacrificing effectiveness. The relative pace of case processing may depend on local legal culture, but also depends on factors such as the adoption of effective operational management systems and court organizational and business processes.

The improvement or updating of procedural codes or rules can have an effect on efforts to reduce backlogs and delays and improve court performance.⁶³ For example, some European countries have introduced limitations on rights of appeal in civil cases that involve small money claims.⁶⁴ They may also mandate the mediation of claims before a civil trial, or as has been done in Italy, increase the categories of cases that may be heard by a single judge instead of a panel of two or more judges.⁶⁵

Methods for increasing court efficiency also include the introduction of modern management approaches in court operations. Case management of a docket of cases, sometimes referred to as case flow management, is a set of techniques that promote early court control of cases and active and continuous court management of case processing to avoid or reduce delays.⁶⁶ The central requirement is that the court—not lawyers or litigants—control the progress of cases.⁶⁷ A new legislative framework is often required to support these changes, as is support and commitment from key stakeholders (judges, lawyers, staff, and others) whose interests would be affected by these procedural changes.⁶⁸

Some examples of case management techniques that are often introduced to manage cases efficiently include:⁶⁹

- The establishment of a clear schedule for case processing steps, firm appearance dates and limits to the number of hearing adjournments that may be used as a delay tactic.
- Pre-trial and scheduling conferences to reduce contentious issues and discourage unnecessary pre-trial motions.
- Early disclosure requirements for the submission of evidence to ensure that evidence is not held back to cause delays or force trial continuations.
- Alternative dispute resolution (ADR) processes and early settlement options that may reduce court caseloads.
- Efficient division of labor between judges and court staff that limits the non-judicial functions of judges.

⁶³ Heike Gramckow. 2005. "Can US-Type Court Management Approaches Work in Civil Law Systems? Experiences from the Balkans and Beyond," *European Journal on Criminal Policy and Research*, 11 (1): 97-120.

⁶⁴ Gramckow, 2005, 99.

⁶⁵ Compendium of "best practices" on time management of judicial proceedings, CEPEJ, 2006, 13.

⁶⁶ Many of these management techniques have been developed in the United States and have been adjusted to individual court environments in other countries to the extent that they meet their needs. See Barry Walsh. 2008. "Fourteen Questions for Court Case Management Evaluators," *Australiasian Institution of Judicial Administration*, Session on Court Evaluation and Research, Court Quality Forum, September 23, 2008. Germany, the Netherlands, and Spain for example, have been assessing the management information to enhance their courts operations. See Gramckow, 2005.

⁶⁷ See Thomas Church, et al. 1978. *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. Williamsburg, VA: National Center for State Courts; Maureen Solomon. 1993. "Fundamental Issues in Caseflow Management," in *Handbook of Court Administration and Management*. ed. Steven W. Hays and Cole Blease Graham, Jr., Public Administration and Public Policy 49, New York: Marcel Dekker, Inc.; David C. Steelman, James E. McMillan, and John C. Goerd. 2004. *Caseflow Management: The Heart of Court Management in the New Millennium*. National Center for State Courts (Revised Edition).

⁶⁸ Heike Gramckow. 2011. "The challenge of making courts more efficient – recent experiences of the Western Balkans states." *Law in Transition: Towards Better Courts*, European Bank for Reconstruction and Development.

⁶⁹ See Heike Gramckow and Valerie Nussenblatt. 2011. *Planning for and Implementing Automated Case Management Systems in Court Reform Programs: A Practical Guide for World Bank Staff*, World Bank. See also the International Framework for Court Excellence, 2008, which states that fair, effective, and efficient court proceedings are indicators of court excellence; CEPEJ. 2006. *Compendium of 'best practices' on time management of judicial proceedings*, 13; and Steelman et al., 2004.

- A *differentiated case management* process provides multiple tracks for case disposition, with differing procedural requirements and timeframes depending on case complexity. This can potentially reduce case processing times and increase court productivity by allowing courts to process more cases in less time.⁷⁰

The introduction of information technology can also greatly increase the efficiency and speed of court processes.⁷¹ Case management and data collection efforts do not necessarily require automation, especially in courts that do not have large caseloads. Automated systems can, however, greatly improve the speed, reliability, monitoring and tracking of case processes, which can result in better reporting and analytical capacities to guide case management.⁷² The ability to develop caseload statistics and management reports, together with case flow monitoring, contribute to effective performance monitoring. Courts need not only to identify delays, but also to determine at what point in the process they are most likely to occur. Regularly gathered statistical information can identify bottlenecks and case delays, and inform judges about needed resource and process modifications.⁷³

⁷⁰ See Jacoby, Joan E., Heike P. Gramckow, and Edward C. Ratledge. 1992. *An Evaluation of the Expedited Drug Case Management Program*. Report Grant No.89-DD-CX-0057. Washington, DC: National Institute of Justice.

⁷¹ Lawrence Webster. 1996. *Automating Court Systems*. National Center for State Courts, Williamsburg, VA.

⁷² Gramckow and Nussenblatt, 2011.

⁷³ *Ibid.*

Chapter 4: Financial management

4.1. Key findings and recommendations

103. This chapter presents a review of financial management capabilities in the judiciary. The purpose of the analysis is to identify opportunities to strengthen the systems and procedures used to plan and utilize budgetary resources for effective and efficient service delivery in the judiciary, while ensuring that financial decisions are made in response to judicial managerial needs and priorities. Despite recent initiatives, public financial management in Serbia has room for improvement at both whole-of-government and systems levels. This chapter and its key recommendations (Box 8) focus on actions that can be undertaken at the level of the judiciary and Ministry of Justice.

Box 8: Key Findings and Recommendations

Legal and Regulatory Framework

Key finding

The legal and regulatory framework for public financial management is in flux. The changes in the budget code, together with the envisaged transfer of financial management responsibilities for most courts and prosecutors' offices to the High Judicial and State Prosecutorial Councils will put significant pressure on public financial management capacity in the judiciary. The focus should be on ensuring that these transitions are planned and executed adequately.

Key short term recommendation

Develop a transition plan for the transfer of financial management responsibilities to the High Judicial and State Prosecutorial Councils, including a detailed assessment of staffing needs

Budget Formulation

Key finding

As with other sectors, judiciary budget planning is largely incremental, undermining the strategic alignment of resources to current needs. Traditionally, the finance department of the Ministry of Justice resorted largely to incremental budgeting techniques to identify future resource needs, using historical budget data as a basis and adding incremental amounts for the new budget period. As a result, budget allocations reflect (at least to some extent) organizational history rather than current needs. A realignment of resource allocation processes is desirable to increase efficiency, to allocate resources to areas of greatest demand pressure, and to respond more systematically to current needs and service demands, as discussed in Chapter 3.

Key short term recommendations

- Align new systematization of finance departments in the High Judicial and State Prosecutorial Councils to the requirements of a more strategic finance function that links budget planning to the justice sector strategy with a medium-term perspective and integrates capital and recurrent budgets
- Adjust job descriptions and qualification requirements for administrative personnel to include the attributes of budget analysts
- Provide training in budget analysis and financial management to help ensure that the judiciary has the capacity to manage the finance function when it is devolved to them for budget planning and budget execution and control
- Improve information and data management, including the development of a database on caseloads, staffing, and costs across the court network (Chapter 3)
- Periodically review workload and resource consumption in the court network to identify efficiency gains

- Strengthen project preparation, selection, and management, particularly in view of poor capital budget utilization
- Develop an ICT investment strategy to ensure that the broader information and communications requirements of the courts and prosecutors' offices are understood and realized
- Require that capital requests specifically identify implications for operating resource increases or decreases

Key medium term recommendations

- Apply more advanced resource planning tools, including case weights
- Build a registry of physical assets to provide a basis for assessing investment needs; the database could classify different asset classes (such as buildings, furniture, computers, and vehicles), asset age, purchasing cost (if available), and status (good/poor condition)
- Request that each budget user establish a capital asset inventory and submit a five-year capital asset plan with a pipeline of projects
- Institute a project appraisal process for good-quality project design and implementation readiness

Key long term recommendation

- Move to programmatic budget planning, including regular performance monitoring

Budget Execution

Key finding

Notwithstanding improvements in budget execution, major weaknesses remain. From the perspective of budget users, the most important shortcomings relate to cash management and internal controls. Cash management—especially in the current highly volatile and uncertain fiscal environment—has been guided largely by cash availability rather than cash needs. This is reflected in growing arrears on operating expenses. Internal controls have been weakened by the intended devolution of control functions to spending units in the absence of clearly defined control processes at the level of indirect budget beneficiaries. There are significant differences in cash management and internal controls for direct and indirect budget users.

Key short term recommendation

- Roll out the financial management information system to indirect budget beneficiaries (supported by the USAID Separation of Powers Project)
- Reconsider the current arrangement for the management of revenue from court fees to move to unified appropriations for all judicial expenditures
- Develop internal control regulations and procedures for indirect budget beneficiaries
- Train indirect budget beneficiaries in internal controls
- Work with the Ministry of Finance to settle existing arrears on a one-time basis.
- Improve financial and cash planning through a targeted training program for indirect budget beneficiaries to enable compliance with revised budget execution procedures; use the Ministry of Justice's internal audit service (and those of the High Judicial and State Prosecutorial Councils after the transition) to audit and advise on the application of internal controls for indirect budget beneficiaries

Internal and External Audit

Key finding

The audit function is being restructured, and there is no credible internal or external audit. There have been no audits of some direct budget beneficiaries by the State Audit Institution. Indications are that when irregularities are found explanations of necessity are accepted. Basic court audits by the Ministry of Justice's internal auditor are infrequent. Audit function weaknesses cut across government. Many of these weaknesses require actions at the system level, including a refined regulatory and institutional framework with clearly defined internal audit standards and establishment of modern internal audit entities across government.

Key medium term recommendations

- Increase staff capacity in the Ministry of Justice’s internal audit group (and those of the High Judicial and State Prosecutorial Councils after the transition) to expand the coverage of both systems and compliance audits of all budget beneficiaries at least biannually; establish standardized audit selection procedures and audit plans consistent with the capacity and fiscal significance of the spending unit
- Train and certify internal auditors in compliance with the government-wide training and certification program operated by the Ministry of Finance’s Central Harmonization Unit for Internal Audit

4.2. The legal and regulatory framework

Current status

104. Striking the right balance between judicial independence and financial accountability for the use of public resources is a key challenge in designing an appropriate legal framework for public financial management in the judiciary. Financial accountability requires that judicial independence is exercised prudently and that justification is provided for the manner in which the judiciary’s authorized budget appropriations are executed. Reflecting the balance between these two principles, the legal and regulatory framework for public financial management in the judiciary should be guided by general public financial management legislation as well as provisions underpinning the separation of powers.

105. There is no single best practice in this regard, and countries have adopted different approaches to reflect this trade-off (Box 9). Serbia’s Strategy for Judicial Reform states that, “effort should be directed at introducing a court budget, which would have a relative autonomy within the state budget and stable sources of financing (court fees etc).”⁷⁴ In the same vein, Article 41 of the Budget System Law stipulates that, “appropriations may not be transferred between judicial, executive and legislative authorities.” While these specific legal requirements apply, overall financial management within the judiciary is affected by the overall legal and operational framework for public financial management.

Box 9: Budgeting in the Judiciary - International Practices

Russia: The executive develops the court budget as part of the draft law on federal budget in cooperation with the chairmen of the Constitutional Court, Supreme Court, Supreme Court of Arbitration, head of the Judicial Department attached to the Supreme Court, and Council of Judges. If any disagreement exists, the government attaches the proposals of the appropriate courts, as well as those of the Judicial Department attached to the Supreme Court and the Council of Judges, to the draft law on the federal budget along with its resolution. Representatives of the Constitutional Court, Supreme Court, Supreme Court of Arbitration, Council of Judges, and head of the Judicial Department can participate in discussions on the federal budget at the Federal Assembly. Any reductions in court financing for the current year or next fiscal year can be done only with the consent of All-Russian Congress of Judges or the Council of Judges.

Bulgaria: The Supreme Judicial Council draws up a draft annual budget, which is submitted to the Council of Ministers for incorporation into the draft State Budget Act. The Council of Ministers submits to the parliament, together with the report on the execution of the republican budget, the report on the execution of the judiciary’s budget proposed by the Supreme Judicial Council along with detailed explanatory notes. The Council of Ministers is not entitled to amend the budget, but only to express an opinion on it when it comes before the parliament.

State of California (USA): The Judicial Council sets budget policy for the courts, in line with state requirements and workload and performance standards. The Administrative Office of the Courts analyzes requests by the courts, collates them into program requests, and recommends amounts to the Council. The trial court budget is submitted

⁷⁴ Project: Strategy for Judicial Reform in Serbia, 2003.

as an integrated budget; requests are made to the governor and state legislature on the basis of programs (for example, interpreters) rather than individual courts. Representation of the judiciary to the government and legislature is performed by the Council and Administrative Office of the Courts. The Judicial Council has the authority to allocate and reallocate funds.

Estonia: The Council of Court Administration provides a preliminary opinion on the principles of formation and amendment of annual budgets of courts. The Ministry of Justice approves the budgets for first- and second-instance courts within two weeks of the state budget being passed, considering the opinion. During the year, the Ministry of Justice may amend a court's budget after considering the opinion of the court chairman and according to the principles formulated by the Council of Court Administration. For the first- and second-instance courts, the District Attorney prepares and submits the draft budget to the Ministry of Justice with prior approval from the relevant court chairman. A full court makes recommendations to the court chairman on preparation of the draft budget and use of budget funds. During the year, the Ministry of Justice may amend the budget of a court after considering the opinion of the court chairman and according to the principles formulated by the Council of Court Administration.

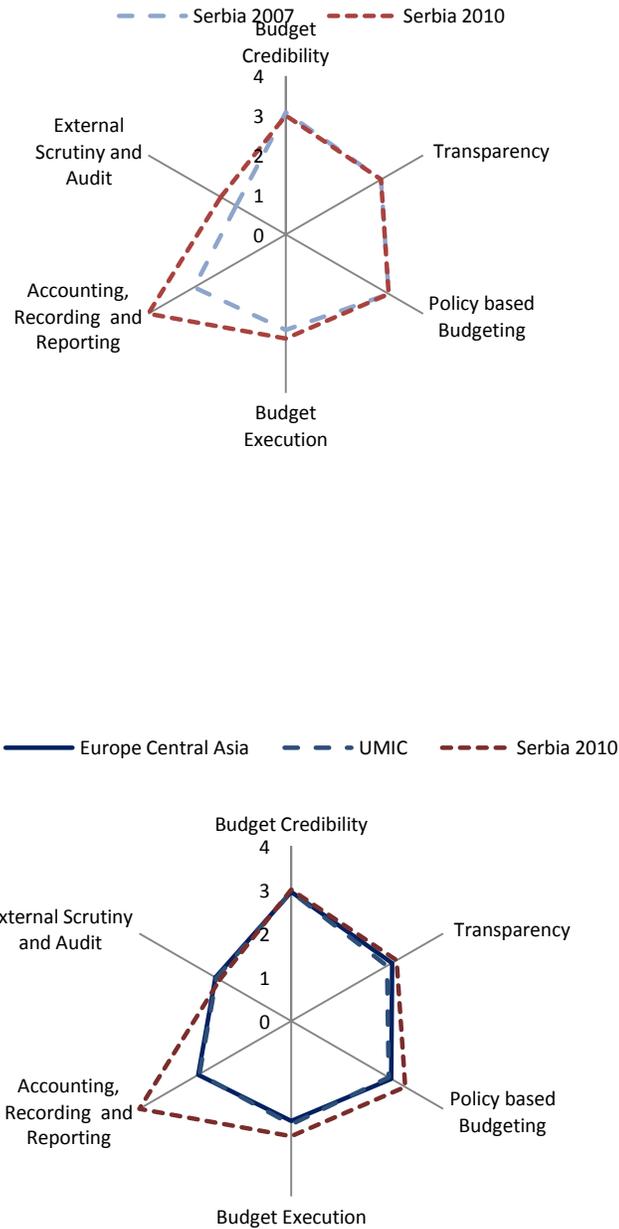
106. The backbone legislation for public financial management in Serbia was put in place in 2002. Significant public finance reform was initiated in 2002 with the passage of the Budget System Law, related bylaws and regulations,⁷⁵ and the Public Procurement Law. The Budget System Law stipulates the roles and responsibilities of the Ministry of Finance, direct budget beneficiaries, parliament, and State Audit Institution⁷⁶ in the budget process. It establishes basic account classifications and procedures for budget planning, execution, cash management, internal control, and audit. The framework was amended in 2006 and again in 2009. The 2009 amendments include the requirements of a medium-term framework for expenditures and public investment, a three-year budget perspective, and disclosure of key fiscal risks. Additional specialized legislation covering debt, procurement, and external audits supplemented the budget law. Separate legislation also set ethical standards for the conduct of civil servants, and an anticorruption agency was established.

107. Overall public financial management performance in Serbia has seen marked improvements and compares well to countries in the region and at a similar income level. In addition to the amendments to the legal framework, operational public financial management performance has improved with the implementation of the Integrated Financial Management Information System (IFMIS), which is reflected in Serbia's greatly improved accounting and reporting scores in the 2010 Public Expenditure and Financial Accountability (PEFA) assessment. Serbia's PEFA scores compare well to countries in the region and at a similar income level (Figure 27).

⁷⁵ For financial management and internal control, see "Rulebook on Common Criteria and Standards for Establishing and Functioning of the Financial Management and Control Systems in the Public Sector" (August 2007) and "Rulebook on Common Criteria and Standards for Establishing and Functioning of the Financial Management and Control Systems in the Public Sector" (September 2007). Procedures covering appropriations, budget execution, apportionments (quotas), and transfers are contained in "User Manual on the Public Finance Management System" (January 2008).

⁷⁶ The State Audit Institution was established in November 2005, and was intended to begin work six months after the adoption of authorizing legislation. In practice, substantive work started in 2009 and the First Report on State Budget Audit was presented to the National Assembly late in 2010 for the 2008 budget.

Figure 27: Serbia's PEFA Scores in International Comparison



Notes: (1) The PEFA assessment framework is a comprehensive, indicator-led rating tool to assess public financial management performance. It comprises 33 indicators across 6 performance dimensions. (2) The ECA average includes 14 countries of the Europe and Central Asia region for which data were available. (3) UMIC countries include 17 countries across the world with per-capita incomes between US\$ 3,706 and US\$ 11,455.

Source: Republic of Serbia. 2010. Public Expenditure and Financial Accountability Assessment Report (November). Available at <http://www.mfin.gov.rs/>

108. Within the judiciary, financial management is embedded in the overall institutional structure of the sector. The basic institutional framework for the judiciary is established in Serbia's constitution. The Law on Organization of Courts, enacted in 2008, established the High Judicial Council and the State Prosecutorial Council. The institutional complexity of the sector is reflected in the large number of direct and indirect budget beneficiaries, including seven direct budget beneficiaries, 125 courts, and 64 prosecutors' offices (Box 10).

Box 10: Budget Beneficiaries in the Judiciary

Direct budget beneficiaries receive appropriations by line item directly in the budget approved by the National Assembly. In the judiciary, these include:

- Ministry of Justice
- Supreme Court of Cassation
- Commercial Appellate Court
- Republican Public Prosecutor's Office
- Public Prosecutor's Office for Organized Crime
- Public Prosecutor's Office for War Crimes
- High Judicial Council and State Prosecutorial Council

Indirect budget beneficiaries currently receive their budget distributions from the Ministry of Justice. This responsibility was scheduled for transfer to the High Judicial and State Prosecutorial Councils by September 2011.

In the judiciary, these include:

- Appellate Courts/Appellate Public Prosecutor's Office
- Higher Courts/Higher Public Prosecutor's Office
- Basic Courts/Basic Public Prosecutor's Office
- Commercial Courts
- Higher Misdemeanor Courts
- Misdemeanor Courts

109. Strengthening the institutional independence of the judiciary—the overarching driver of institutional reform in the sector—manifests itself in the delineation of roles and responsibilities with regard to financial management. The 2006 National Judicial Reform Strategy underscores the importance of judicial independence in budgetary matters needed to assure independent judicial decision making (Box 11). While courts and prosecutors' offices are indirect budget beneficiaries financed through the budget appropriation to the Ministry of Justice, the reform strategy requires that budget development authority for courts and prosecutors' offices be transferred from the Ministry of Justice to the High Judicial Council and State Prosecutorial Council in 2011. Initially, the transfer will exclude responsibility for capital budgeting. The transfer of these responsibilities will require a prior development of financial management capacities in the High Judicial Council and State Prosecutorial Council, including the transfer of some financial management staff currently employed in the Ministry of Justice.

Box 11: The 2006 National Judicial Reform Strategy on Budgetary Independence

“Vision for the New Judiciary: Achieving independence of the judiciary requires the introduction of an independent court budget, but only after the creation of the infrastructure and capacities for adequate planning and effective financial management within the judiciary. Until the full capacity for independent financial management is achieved, a transitional budget model under which the High Court Council will present the integrated court budget to the Ministry of Justice, and under which the process of consultations with the representatives of the judiciary will improve, will be an interim solution and preparation for future challenges. Under the transitional model, the Ministry of Justice will continue to represent the judiciary in negotiations with the Ministry of Finance until budgetary authority is completely transferred to the judiciary in 2011, and until the High Court Council has the capacity and authority to develop, approve and apportion the budget for the judicial system, in conjunction with the Republic’s Treasury and the Ministry of Finance. The Administrative Office will have an important role in supporting the High Court Council in taking over this huge task, and, by means of the Budget Law, the National Assembly of the Republic of Serbia will approve an independent court budget on the basis of needs and capabilities. The state will strive to provide for judges all the funds necessary for the proper performance of their duties, and salaries and material position of judges will in the shortest time possible be defined in such a manner as to provide the protection of judges from any pressure with regard to their decisions.”

Source: Republic of Serbia, Ministry of Justice. 2006. *National Judicial Reform Strategy*.

Recommendations

110. Serbia’s legal and regulatory framework for public financial management is well established, but progress in implementing it has slowed. The changes in the budget code will put significant pressure on public financial capacity in the judiciary with the envisaged transfer of financial management responsibilities for most of the courts and prosecutors’ offices to the High Judicial Council and State Prosecutorial Council. The focus could therefore be on ensuring that these transitions are adequately planned for and executed.

111. In the short term, it would be desirable to develop a transition plan for the transfer of financial management responsibilities to the High Judicial Council and State Prosecutorial Council, including a detailed assessment of staffing needs.

4.3. Budget formulation – strengthening strategic resource planning in the judiciary

Current status

112. Serbia’s budget preparation process is well defined. An adjusted budget calendar and new procedures were adopted in the revised Budget Systems Law during 2009 and further amended in 2010 to incorporate provisions to reinforce fiscal responsibility. Budget development is an iterative process between the Ministry of Finance, primary budget holders, and the parliament, combining top-down and bottom-up elements. A table with the Serbian budget calendar is included in Annex 4.

113. Reflecting recent regulatory changes, the 2012 budget preparation process will start with the preparation of financing priorities by direct budget beneficiaries, formally required to cover a three-year period and submitted to Ministry of Finance by March 15, 2011.⁷⁷ The proposals are required to identify baseline funding needs to continue existing activities and new initiatives in medium-

⁷⁷ Indirect budget beneficiaries also submit three-year estimates of revenues and expenditures in their budget proposals, but these are not a part of the priority-setting process.

term budget plans. The budget negotiation process is required to involve bilateral discussion of what are acceptable new initiatives within the allotted ceiling for total funding.

114. The Ministry of Finance prepares a Fiscal Strategy Report based on these submissions. This report identifies the government's broader priorities and places them in the context of a Macro-Fiscal Framework establishing the resource envelope for the coming fiscal year.

115. After the newly established fiscal council and the parliament scrutinize the fiscal strategy and the government adopts it, the Ministry of Finance issues budget instructions to direct beneficiaries on August 1. The budget instructions establish ceilings for each of the primary budget holders within which they prepare detailed budget submissions by September 15. The Ministry of Finance scrutinizes these submissions and prepares an updated fiscal strategy that is again submitted to the parliament for review. Similarly, the draft budget law is prepared and submitted to the parliament on November 1. The parliament subsequently deliberates the draft budget and enacts it on December 15 of the preceding fiscal year.

116. Within the judiciary, the Ministry of Justice is currently responsible for consolidating the budget requests of individual courts and prosecutors' offices, while direct budget beneficiaries submit separate budget requests. The sector ministries' primary involvement in the budget preparation process takes place between February 15 and March 15, when sectoral priorities are established, and between August 1 and September 15, when detailed budget requests are formulated. For the preparation of the detailed budget requests, the Ministry of Justice solicits budget requests from all indirect budget beneficiaries; basic, high, and commercial courts; and prosecutors' offices.⁷⁸ The Ministry of Finance does not exercise direct budget formulation review or control over individual indirect budget beneficiaries but establishes ceilings for the aggregate expenditures of all indirect judicial bodies of a particular type and by each economic article. For example, a ceiling is established by the Ministry of Finance for travel expenses to be allocated across all basic courts. The Ministry of Justice in turn allocates amounts to individual courts and prosecutors' offices. Within these parameters, budget proposals are prepared by the head of the accounting department in the Ministry of Justice and by the court president or chief prosecutor. Requests are subdivided into recurrent spending (within the ceiling totals) and those that reflect requests for increased spending (incremental requests). Capital expenditures are included in a separate request. The Ministry of Justice reserves the right to adjust spending requests based on the cost structure and historical allocations to fit them into the overall expenditure ceiling as negotiated with the Ministry of Finance.

117. The personnel complement—the primary cost driver of judicial spending—is determined outside the budget process, based largely on historical staffing levels. The wholesale reappointment of judges in 2010 has significantly reduced the number of judges and amplifies the need to adapt staffing to local needs to improve the efficiency with which personnel resources are deployed. Staffing is the most critical element in effective service delivery and the wage bill accounts for three-quarters of the budget for the Ministry of Justice, courts, and prosecutors' offices. Courts and prosecutors' offices can propose changes in staffing plans as an incremental change to alter existing staffing assignments. Establishment control is exercised by the Ministry of Justice and the Ministry of Finance through "systematizations" (approved positions) for each court or office in a process separate from the budget process. These systematizations form the basis for planning the wage bill for the budget request. However, in the absence of adequate data on weighted caseloads, rational workforce planning is difficult and—at least in the past—staffing norms largely reflected historical patterns.

⁷⁸ The flow for transmitting budget requests follows the hierarchy of the court system; higher courts receive the budget submission of basic courts within their geographic territory. However, higher courts and offices do not review or modify these submissions, simply forwarding them *en masse* to the Ministry of Justice.

118. Programming of capital expenditures follows separate procedures, undermining coordination between recurrent and capital expenditures. Capital spending accounts for about 7 percent of judicial spending, primarily for buildings and construction and for machinery and equipment, including motor vehicles, security equipment (such as scanners and cameras), guard uniforms, and information technology equipment.⁷⁹ Planning for capital spending is inherently more complex than for recurrent spending. Capital spending is discretionary and often involves multiyear implementation, and complex and lumpy procurements. There is a separate unit with a staff of six, the Department for Capital Investment, dedicated to investment spending in the Ministry of Justice. This has made coordination between capital expenditures and recurrent spending difficult and consideration of the recurrent cost implications of new investments (for example, maintenance and service expenditure costs for new IT systems) is increasingly impractical. The problems associated with this bifurcation of the budget process are likely to intensify with the transfer of recurrent budgeting functions to the High Judicial Council and State Prosecutorial Council.

119. A strategic framework has been developed for investments in facilities. Given the scarcity of capital funding available and the pressing investment needs in the judiciary, prioritization of capital projects is of great importance. Inadequate facilities have been pointed out as a serious constraint in the court system.⁸⁰ The Serbian National Investment Plan and the National Judicial Reform Strategy provide a framework for strategic prioritization in developing and selecting judiciary capital projects. A multiyear capital improvement plan for buildings was developed for the first time in 2010, covering the period 2010–2013.

120. There has not been a systematic review of capital needs, however, and a comprehensive inventory of judiciary property does not exist; there is also no comprehensive strategy to align ICT investments with organization objectives. IT planning for the judiciary falls under the purview of an Assistant Minister of Justice. However, the Information Technology unit is currently largely devoted to the rollout of a urgently needed nationwide Case/Document Management System, including retrofitting the electrical systems in court structures to accommodate IT hardware.⁸¹ Other than for the Case/Document Management System, comprehensive technology planning appears to be absent. Additional technology needs include financial information management and workforce planning. A comprehensive assessment of information and communications requirements is critical. The first step in this regard would be to undertake a comprehensive technology assessment within each budget beneficiary and across the system as a whole. This could include an inventory of all technology-related processes and equipment, identification of the status of all hardware and software, and creation of a rolling needs assessment and multiyear technology plan. The results of this assessment and the technology plan could be incorporated into the annual and medium-term budget planning process in the Ministry of Justice, High Judicial Council, and State Prosecutorial Council.

121. Furthermore, the capital planning function is weakly developed in the administration of courts and prosecutors' offices. A team from the Capital Investment Department has conducted site visits to all courts in Serbia. These visits suggest that, in general, individual courts have a reasonably

⁷⁹ Funding for judiciary building enhancements and IT comes primarily from the European Investment Bank, International Management Group administered funds from Norway and Spain, and previously from National Investment Plan Funds. Attempts to secure National Investment Plan funding were suspended in 2009 due to lags in the availability of approved funds and onerous daily reporting requirements.

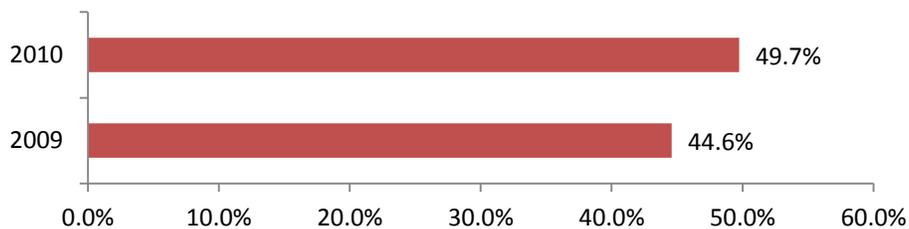
⁸⁰ United States Agency for International Development, Separation of Powers Project, Belgrade.

⁸¹ Resources for this system were provided partially through a US\$ 3.6 million grant from Norway and Spain, which included funds for equipment; funding and technical assistance to Commercial Courts through USAID; and capacity building resources via the Multi Donor Trust Fund for Justice Sector Support.

good grasp of their large-scale capital needs. However, these capital improvement and maintenance needs are often omitted from budget requests and the Capital Investment Plan. Individual courts and prosecutors' offices—even those making significant capital investments—do not have organizational units specifically responsible for capital improvement planning or capital asset stewardship, and the capital planning that does occur is mostly ad hoc. The specifics in any individual court are dependent on the court president; some have formed a team to consider capital improvement issues.

122. Only 40 to 50 percent of budgeted capital expenditures are disbursed. Inconsistent and highly inadequate disbursement of budgeted capital expenditures, which is not unique to the judiciary, indicates weaknesses in the capital budgeting process. The procurement law's requirement that the full project costs be provided in the first year, even for multiyear projects, leads to an overstated original capital budget. In addition, regular procurement and other implementation delays lead to underutilization of the capital budget.

Figure 28: Disbursement Rate of Capital Expenditures (Titles 311 & 312)



Recommendations

123. As in other sectors, budget planning in the judiciary is largely incremental, undermining the strategic alignment of resources with current needs. Traditionally, the Ministry of Justice's finance department has resorted largely to incremental budgeting techniques to identify future resource needs, using historical budget data as a basis and adding incremental amounts for the new budget period. Budget requests are generally based on line items, and allocations reflect the existing cost structures in courts and prosecutors' offices (for example, the number of judges, prosecutors, and other employees, and historical allocations for goods and services).

124. As a result, budget allocations reflect—at least to some extent—organizational history rather than current needs. Equally important, in the past few years, the Ministry of Justice's finance department has applied line-item changes across all indirect budget beneficiaries to absorb reductions in the sectoral resource envelope, driven by the government's fiscal consolidation efforts regardless of differences in resource needs across the territorial network. A realignment of resource allocation processes to respond more systematically to current needs and service demand in the sector, as discussed in Chapter 3, is necessary to achieve efficiency gains and bring resources where demand pressures are greatest. The following reform options could be considered.

125. In order to use the budget process as a strategic planning tool, there is a need to improve budget analysis capacity and information management within the judiciary. Under the provisions of the revised budget code, financial departments across the government will need to change their functional focus from administering state finances and reviewing specific line items to actively managing available resources to achieve sector objectives. The judiciary is no exception. Financial management officers dedicate much of their time and resources to transaction-related control and compliance functions,

limiting opportunities to provide wider policy analysis and improve performance and efficiency in resource allocation. Rebalancing the finance function toward a more policy- and performance-oriented role will require sufficient information to allow for more strategic resource planning, including reliable and timely data on caseloads, case weights (to account for differences in case complexity and hence case costs), and court performance (clearance time and backlog). Once service demand is more systematically understood, changes in systematization and shifts of resources (including staffing of judges, deputy prosecutors, and civil service) could be encouraged to accommodate changes in workload and to improve the efficiency and effectiveness of resource use across the court network. The transfer of the finance function to the High Judicial and State Prosecutorial Councils provides a unique opportunity to rethink staffing needs as well as the skill base needed to transform the finance function.

126. In addition, special attention could be directed toward improving the public investment management process, ensuring better value from limited capital expenditures. The focus here could shift from the current ad hoc preparation and approval of projects to a more strategic approach, in which individual investment projects respond to priority investment needs and policy objectives. This will require a better understanding of the current state of fixed assets in the sector as well as a more rigorous project appraisal process, including robust cost-benefit analysis, to ensure prioritization of investments. Aside from investment planning for physical infrastructure, special attention could be given to ICT investment planning. Further, it is important to embed investment management closely in overall resource planning to ensure that the recurrent cost implications, for example for maintenance, are provided for. Specific actions in this regard are summarized below.

127. Short term recommendations/actions comprise:

- Developing a budget planning framework that links spending priorities identified in sector strategies and capital investment plans to recurrent budgets for the medium term, and aligning new systematization of finance departments in High Judicial Council and the State Prosecutorial Council to the requirement of a more strategic finance function;
- Adjusting the job descriptions and qualification requirements of budget analysts;
- Providing training in budget analysis;
- Improving information and data management, including the creation of a database on caseloads, staffing, and costs across the court network;
- The possible development of an ICT investment strategy to ensure that the broader information and communications requirements of the courts and prosecutors' offices are understood and realized; and
- Requiring that capital requests specifically identify the implications for operating resource increases or decreases;

128. Medium term recommendations comprise:

- Periodically reviewing workload and resource consumption in the court network to identify efficiency gains;
- Applying more advanced resource planning tools, including case weights;
- Building a registry of physical assets to provide a better basis for assessing investment needs, so as to inform capital budgeting (including prioritization of projects based on investment needs). An asset registry with inventory numbers could be developed with a central database held at the department for investment planning. The database could classify different asset classes (such as buildings, furniture, computers, and vehicles), asset age, purchasing cost (if available), and status (good/poor condition). Each budget user could be requested to establish capital asset inventory and submit a five-year capital asset plan with a pipeline of projects; and
- Possibly instituting a project appraisal process to ensure quality project design and enhance implementation readiness.

4.4. Budget execution – improving cash management and internal controls

Current status

129. Effective budget execution systems ought to provide for adequate controls, ensure that budget implementation is consistent with legislative authorizations, and allow flexibility to adapt resource use to changes in the environment. Cash management should facilitate effective implementation of the budget. Payment transactions of expenditures and revenues should be processed efficiently and reported in a reliable and timely manner. Many aspects of budget execution have improved greatly in Serbia with the establishment of the treasury department and the rollout of the Integrated Financial Management Information System (IFMIS).

130. Within the judiciary, budget execution functions are devolved. Indirect budget beneficiaries execute their entire budgets, including salaries, operating expenses, and capital, except for large-scale investment projects (above RSD 30 million, or around US\$ 4 million) that are executed by the Ministry of Justice's Department for Investment Management.

131. Expenditure control during budget execution is exercised based on stringent control of economic line items, with little flexibility for in-year adjustments. After the passage of the annual budget law, the Ministry of Justice prepares a financial plan that apportions the appropriation to individual indirect budget beneficiaries, subdivided into quarterly and monthly allotments. The financial plans are based on economic line items (at the fourth digit in the chart of accounts). This sets the limits for the use of budget resources for courts and prosecutors' offices. Salary obligations are fixed (based on existing staffing structures), but for the discretionary part of the budget, budget beneficiaries may propose changes in non-wage allocations across economic articles, within the spending envelope, with the approval of the Ministry of Justice and the Ministry of Finance (Treasury Department).⁸² As a general provision of the budget system law, reallocation across economic articles is limited to 5 percent.

132. While they are intended to provide a discretionary source of financing, the administration of user fees may not be the best way to achieve this objective, especially if financial management responsibilities are transferred to the High Councils. In accordance with the amendments of the Court Tax Act Amendments Act, 50 percent of the money that comes from court taxes (fees) flows into judiciary budget. Revenues from fees do not increase the budget, but incoming fees influence a spending unit's degree of flexibility. The portion of a line item that is funded by fees can be reallocated without limit across line items at the discretion of the Ministry of Justice. This provides, in effect, a discretionary pool of resources that can be reallocated during budget execution as resource requirements change. Since courts are responsible for a larger share of fee collection, the question of whether the Ministry of Justice or the High Judicial Council will control the allocation of court fees after the transfer of public financial management responsibilities in 2010 is a significant one. As currently deployed, these fees are distributed to both courts and prosecutors' offices. If the High Judicial Council is the controlling entity, the ability to use fees in the prosecutor's office may be lost, possibly impairing the efficiency of prosecutorial operations.

133. Cash is released through replenishments of separate accounts held by indirect budget beneficiaries. Each month, the Ministry of Justice presents requests for cash releases from the Ministry of

⁸² For ministries piloting a program budget structure, the format of the budget request is less driven by line items. The Budget Systems Law provides for greater reprogramming flexibility in these circumstances. Ten percent of resources allocated to program categories are reprogrammable at the discretion of the spending unit, providing an incentive for budget formulation on a program basis. This aids flexibility in budget formulation and execution; however, the judiciary has yet to develop a program framework.

Finance (Treasury Department) in line with the quarterly spending limit established in the financial plan. While the Ministry of Justice and other direct budget beneficiaries have direct access to the IFMIS and receive cash allotments in the treasury single account, indirect budget beneficiaries have separate accounts in local treasury branches. The Ministry of Justice replenishes these accounts based on requests by indirect budget beneficiaries. These requests are accompanied by a note presenting the operations that will be financed. After reviewing these requests, the Ministry of Justice authorizes the cash transfers, which release cash and record a payment in the Treasury payment system against the Ministry of Justice appropriation.

134. The Treasury Department in the Ministry of Finance exercises tight controls over cash releases through a combination of quarterly and monthly cash limits, undermining rational cash management. Before the financial crisis monthly cash releases were routinely set at 1/12 of the appropriation limit, but with uncertainties and unexpected revenue shortfalls, the Treasury Department has resorted to tighter cash rationing over the past years, with cash releases below actual requests (with only cash against wage authorizations being consistently available, albeit on a biweekly basis). Such controls may help keep cash under control when the budget is not based on realistic revenue estimates. However, they negatively affect expenditure management in courts and prosecutors' offices. They risk generating arrears if the cash releases do not take into account the payment schedule related to existing commitments. In 2009, for example, monthly operating allocations were severely reduced to as little as 20 percent of expected allocations for all budget units.⁸³ The result has been the creation of new arrears, as courts and prosecutors' offices have insufficient resources to pay for their obligations. The situation was compounded by the accumulation of more than RSD 600 million (about US\$ 8 million) in judiciary operating arrears from 2009 that were to be cleared using funds from 2010. While the amounts are too small to pose a macro-fiscal risk, they can impair service performance at the court level.

135. Recent changes in budget execution procedures are intended to shift the driving force of cash management from cash availability to cash needs. The recently adopted new rulebook on budget execution requires budget beneficiaries to provide monthly and quarterly cash plans. While this promises to improve cash management, it will not address the commitment control problem that has been responsible for allowing arrears to accumulate—especially if available cash is less than cash needs. Currently, the treasury system does not record commitments, thereby undermining cash planning and management.

136. Procurement is centralized, and only smaller transactions are processed at the level of direct budget beneficiaries. For larger investment projects (RSD 30 million, or about US\$ 4 million, and above) the Investment Department initiates a public bid. For smaller projects and equipment acquisition that can be grouped across several courts, a centralized procurement process is used. Centralized processes have verification procedures, and construction projects are monitored via invoices and site visits. For small and more unique acquisitions, courts administer their own procurement process. These local procurement processes receive little oversight.

137. Internal controls, especially at the level of indirect budget beneficiaries, remain weak. Prior to 2008, approval was needed for each disbursement from the Ministry of Justice and Ministry of Finance. Ministry of Finance approval of payment orders continued through 2009, with the Treasury Department acting as controller. In 2010, these controls were devolved to individual spending units. But this has weakened the internal control environment, as controllers are generally part of the accounting department and too often the same staff members are involved in multiple aspects of a transaction with overlapping

⁸³ Allocations were established in the Ministry of Justice by February, but were not approved by the Ministry of Finance until late April.

responsibility for initiating, approving, verifying, and disbursing payments for goods and services.⁸⁴ In addition, while account codes establish monthly allotments to line items, there is no mechanism to verify that payments are made in accordance with the code specified. Effective mechanisms to ensure that disbursements are for the purposes and line items identified are thus lacking. Control appears to now be predominantly *ex post*, relying on quarterly reporting and on audits, as discussed below.

138. A weak internal control environment is aggravated because indirect budget beneficiaries have yet to benefit from the IFMIS-related improvements in accounting and reporting. Courts and prosecutors' offices lack direct access to the IFMIS, separate accounts are maintained, and quarterly financial reports are sent to the Ministry of Justice. The Treasury Department currently plans to incorporate indirect budget beneficiaries into the single treasury account.⁸⁵ This will significantly improve the reliability and timeliness of financial reporting.

Recommendations

139. Notwithstanding significant improvements in budget execution, major weaknesses remain. From the perspective of budget users, the most important shortcomings relate to cash management and weak internal controls. Internal controls have been weakened by the intended devolution of control functions to spending units in the absence of clearly defined control processes at the level of indirect budget beneficiaries. To address these weaknesses, the following recommendations are proposed.

140. Short term recommendations comprise:

- Rolling out the IFMIS to indirect budget beneficiaries
- Shifting the driving force behind cash management from cash availability to cash needs. Cash management—especially in the current highly volatile and uncertain fiscal environment—has been determined largely by cash availability rather than cash needs, as mirrored in the growing arrears on operating expenses. Resolving this issue could involve discussing with the Ministry of Finance to carry out a one-off settlement of existing arrears and improve cash planning through a targeted training program for indirect budget beneficiaries to enable compliance with revised budget execution procedures.
- Developing internal control regulations and procedure for indirect budget beneficiaries
- Training indirect budget beneficiaries in internal controls
- Reconsidering the current arrangement for managing revenue from court fees to move to unified appropriations for all judicial expenditures.

141. Medium term recommendations comprise:

- Using the Ministry of Justice's internal audit service (and, after the transition, those of the High Judicial and State Prosecutorial Councils) to audit and advise the application of internal controls in indirect budget beneficiaries. An internal control and audit framework also needs to be developed within the judiciary so that it can manage its own financial risks more effectively.
- In the longer term, once internal controls are strengthened, line-item controls could be relaxed to provide greater flexibility in deploying the resources of courts and prosecutors' offices and to improve efficiency in the use of budget allocations.

⁸⁴ To attempt a separation of duties, the following model has been implemented by the High Court of Belgrade. Budget fund requests are signed by both the Head of the Accounting Department and the President of Court. Payment request require the signatures of the Accounts Administrator, Head of the Accounting Department, and Head of the Sector or his or her deputy.

⁸⁵ However, computing capacity and required equipment present an unresolved obstacle.

4.5. Internal and external audit

142. If properly implemented, this last stage of the budget cycle ensures that resources are used legally and effectively. The audit and evaluation stage includes: (i) execution reporting; (ii) independent verification of accounts, and financial and performance reporting; and (iii) public disclosure. Strong and comprehensive audit and evaluation requirements are necessary to ensure budget integrity, both for consistency with legislated policy and to guard against malfeasance. Internal and external audit should support all other elements of the budget cycle by providing appropriate information input to review past financial compliance. Internal controls and audits are the first line of defense against waste, malfeasance, and corruption and for ensuring consistency with legislative intent. Internal controls also form a beginning foundation for assessing performance and an input into the auditing and reporting system. Without accurate tracking and classification of resource usage, it matters little how well priorities are established and the budget formulated. All efforts at establishing an effective and accurate budget can become undone in uncontrolled execution.

Current status

143. The audit function is in a state of restructuring, resulting in an absence of adequate internal and external control in the justice sector. There have been no external audits of some direct budget beneficiaries; for example, the Supreme Court has been inspected only twice in eight years. Indications are that, when irregularities are found by inspectors, explanations of necessity are accepted. In the past, the Ministry of Justice frequently audited indirect budget beneficiaries, but basic court audits are now infrequent. The weaknesses of the audit function are not unique to the judiciary, but cut across the government, as reflected in Serbia's low PEFA scores in this area. Many of the identified weaknesses therefore require actions at the system level, including a refined regulatory and institutional framework. The recommendations presented below focus on actions that can be undertaken at the level of the financial management structure of the judiciary.

144. The Public Internal Financial Control strategy recently adopted by the government, and the implementation of the amended Budget Systems Law, together set a medium-term agenda for changes to regulatory and institutional arrangements to comply with standard international practices.

145. Serbia is characterized by overlapping, fragmented and understaffed audit and inspection services. The Ministry of Justice, the Ministry of Finance, and budget beneficiaries have shared judiciary audit and control functions since 2008. The Ministry of Justice has established a unit for internal audits; however, its capacity remains limited. In addition, the Ministry of Finance's budget inspection unit has a mandate to cover the entire government. The Supreme Audit Agency is responsible for external audit, but its result audit coverage is limited and typically focused on large spending units. To date, external audit has not covered the judiciary.

146. The Ministry of Justice has established a Group for Internal Audit as a narrowly focused unit outside the sectors and secretariat, reporting directly to the Minister.⁸⁶ Since 2008, the Group's remit has been to conduct comprehensive tests of systems. The tasks set out for this unit are comprehensive and, if effectively carried out, could considerably aid the objectives of sound financial stewardship in the judiciary.⁸⁷ However, the existing systematization specifies only four staff members (a

⁸⁶ The Group was established in 2008 under requirements of the 2007 Budget System Law and regulations established in the Official Gazette of the RoS no. 82/07.

⁸⁷ These include: (i) planning, organizing, and performing audits; (ii) testing, analyzing, and evaluating the Ministry of Justice control functions for compliance with international standards for internal audit and Serbian internal audit

unit head and three auditors) to perform these functions, and the existing staffing complement is two. These numbers are not sufficient to fulfill the audit responsibilities encompassing a group as large and geographically dispersed as the judiciary.⁸⁸

147. Limited staffing has not diminished expectations. Beginning in 2008, the Minister of Justice approved a strategic plan and annual audit plan for the conduct of audits of budget beneficiaries and the Ministry of Justice. This plan was updated for 2009–2011. With the limited staff (and the assumption of acquiring a second auditor), the audit plan for 2009 included 120 audit days for 2009, 80 for 2010, and 120 for 2011. At full staff levels, no more than 12 operations audits could be performed in a single year. According to the 2009 annual report, only six audits were conducted. They entailed 106 recommended system or process changes. Seventy-three of these recommendations were accepted and implemented, one was partially implemented, 30 are pending implementation, and two were rejected due to the unavailability of the resources required for implementation.

148. The focus has been on systems audits (testing the veracity of financial control systems and making recommendations for procedural/system changes) and compliance audits (testing that the usage of resources is consistent with requirements established by law or regulation). The Group for Internal Audit surveyed indirect budget beneficiaries at the end of 2008 to identify risk factors for the establishment of the 2009 strategic plan and work plan.⁸⁹

149. Elements considered to be risk factors included the volume of transactions, level of management and control systems in place, sensitivity of activities, and share of aggregate transactions in a system as a share of budgetary resources for the judicial sector. Highest-risk systems were determined to be associated with wages and salaries and revenue collections. Procurement systems were judged to reflect moderate risks and cost systems low risk. Based on this, the Group for Internal Audit has established a work plan that identifies the systems that require the most attention (wages and salaries and revenue collections) and the budget units (larger scale) within which to prioritize testing.

150. Each audit includes an action plan for implementing follow-up measures, but managers are not required to accept recommendations. The action plan includes execution priorities, comments on the management of the unit subject to audit, a statement by the managers concerning the recommendations, identification of parties responsible for implementation, and the required time frame

regulations; (iii) verifying implementation of relevant laws; (iv) verifying compliance with internal control requirements; (v) evaluating the veracity of internal control systems regarding activities and performance; (vi) providing advice and expert opinions on the introduction of new systems and procedures; and (vii) delivering reports on internal audit findings, along with audit opinions and evaluations.

⁸⁸ Under the previous Internal Control Unit, an annual internal control plan was adopted by the Minister and implemented by a staff of three, a capacity far below that necessary. Pre-expenditure controls were required for amounts greater than RSD 50,000 to ensure adequate payment/spending controls, verification of legality, verification of accuracy, and verification of an existing contract. *Ex-post* control included verifications of consistency with planned budget, consistency with approved disbursement, actual cost, and consistency of disbursements with intended/designated purposes. The control plan cycled between types of transactions. In 2005 and 2006, it focused on budgetary transactions, and in 2007 it focused on procurement processes. Penalties were not assessed, but corrective measures were specified. The unit could appeal judgments; however, if the appeal was rejected, the unit/individual subject to the control action was required to deploy the corrective measures. If the subject failed to comply, criminal charges could be brought for misappropriation/misuse of resources.

⁸⁹ Given direct budget beneficiaries' experience with internal comptrollers' audits of their payments systems prior to 2008, their internal systems were felt to pose a lower risk and higher overall compliance and were omitted from this risk assessment.

for implementation. However, because budget managers are not required to accept recommendations, they can ignore them in principle and practice.

151. The judiciary receives limited inspections despite the additional control and audit functions performed by the Ministry of Finance’s Budget Inspection and Audit Sector through its Internal Audit and Budget Inspection Departments. Annually, this unit performs 30 to 40 budget inspections, but its focus is shifting towards supporting internal audit units across government entities rather than engaging directly in audit activities. The specifics of this workload are to be based on a work plan prescribed by the Minister of Finance for the current and following fiscal year. For 2007, 85 percent of inspections were unplanned, indicating the Minister’s level of influence on inspections undertaken. The work plan for 2010 includes three judicial entities, and five were inspected during 2009. The Ministry of Justice was last inspected in 2007. Inspection procedures are the same for direct and indirect budget beneficiaries. For the courts, inspections focus primarily on wages and salaries accounts. Specifically, violations have been found regarding compliance with the Law on Salaries in Public Agencies and Public Services and the Decree on Coefficients of employees in public services. The finding of an impropriety results in an order and time deadline for correction. If shortcomings are not corrected, legally prescribed remedies include an option to request the initiation of misdemeanor or criminal proceedings.

Recommendations

152. The High Councils cannot expect to be given effective control of public funds and resources unless they reciprocate by committing to accountability and transparency in the use of those funds. The recommendations below focus on actions that can be undertaken at the level of the financial management structure of the judiciary:

- Increasing the staff contingency in the Ministry of Justice’s internal audit group (and, after the transition, those of the High Judicial and State Prosecutorial Councils) to expand the coverage of both systems and compliance audits of all budget beneficiaries at least biannually.
- Establishing audit standards, including standardized audit selection procedures and audit plans, consistent with the capacity and fiscal significance of the spending unit; training and certifying internal auditors in compliance with the government-wide training and certification program operated by the Central Harmonization Unit in the Ministry of Finance for Internal Audit.

Chapter 5: Human resource management

5.1. Key findings and recommendations

153. As illustrated in Chapter 3, Serbia's courts and prosecutors' offices are labor-intensive public service organizations operating in a resource-challenged environment. At the beginning of 2010, the judiciary employed nearly 20,000 people across 200 institutions (including courts, prosecutors' offices, the Supreme Court, the Public Prosecutor, and the Ministry of Justice). Employees span from those appointed by the parliament (judges and prosecutors) to two groups of employees directly appointed by courts or prosecutors' offices: 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 their non-labor resources (such as fiscal, technological, and capital assets), and enhance public trust and confidence in the judicial sector.

154. This chapter aims to understand how efficiently human resources are being managed in the judiciary. Section 5.1 considers the national and international standards for the Serbian judiciary and the civil service reforms underway in Serbia, which together form the context in which human resources management in the judiciary needs to be seen. Human resources management of judges and deputy prosecutors presents different challenges than does that of civil service staff and employees. Accordingly, Section 5.2 addresses human resource issues related to civil service staff and employees and Section 5.3 deals with those related to judges and deputy prosecutors.

155. While the Ministry of Justice is a critical part of the judiciary and its management, this study does not consider human resources management for the ministry, beyond noting that it employs only one manager responsible for human resources management in the ministry and for determining staff numbers for courts and prosecutors' offices. The Swedish International Development Cooperation Agency is planning to fund a functional review of the Ministry of Justice in 2011, which is likely to address these issues.⁹⁰ Key findings and recommendations are presented in Box 12.

Box 12: Key Findings and Recommendations

Human Resource Management of Civil Servants and Employees

Key findings

- The reform of the Serbian judiciary is occurring simultaneously with significant reforms in the Serbian civil service, which require greater management sophistication and better-defined systems on the part of the judiciary than was previously the case.
- Neither the Supreme Court nor the Chief Public Prosecutor has traditionally carried out the human resource management responsibilities legally assigned to them, ceding responsibility to individual courts or prosecutors' offices in consultation with the Ministry of Justice.
- The High Judicial and State Prosecutorial Councils must be much more actively engaged in human resource planning, provision of policy guidance to courts and prosecutors' offices, and oversight to ensure transparency, fairness, and consistency in employee hiring and discipline. However, the councils lack the necessary resources and will to do so.
- The types and numbers of employees vitally affect judiciary performance. Evaluating the organizational

structure of the courts and prosecutors' offices and other human resources responsibilities could be absorbed by the councils in phases, with those positions most critical to case processing and court performance (such as judicial assistants and court managers) being considered first. This analysis could include temporary positions.

- The lack of clarity in hiring policies and consideration of appeals has been rendered acute by the recent restructuring of the network of courts/prosecutors' offices.
- Improvements in the judiciary's classification descriptions would make them a more meaningful management tool and promote consistent and equitable hiring, training, promotion, and discipline. Other critical lapses in hiring procedures include the failure to include an external member on employee selection panels and a lack of standardized and transparent methods for grading. Promotional criteria are even less specific than those for entry-level positions.
- Judiciary performance can only improve if performance assessment is prioritized. Basic performance management processes are not in place in the judiciary and need to be developed. Performance evaluations of civil servants are not used to identify training or other remedial actions. A rigorous performance appraisal system for the rest of state service is available to be used as a guide.
- The system for training and appointing new judges relies on a well-considered and ambitious scheme. In order to provide meaningful training and assessment, however, this scheme relies on a strong group of mentors and lecturers, which has yet to be created, and on special performance monitoring conducted by the courts and prosecutors' offices, for which procedures are not yet in place.
- To date, selection of judicial and prosecutorial assistants has been conducted outside the normal civil service process; the duties of these positions vary by court/office, and the positions are not consistently well used to promote effective case management.

Key short term recommendations

- Designate that human resource planning for the courts and prosecutors is a primary responsibility of the High Judicial Council and the State Prosecutorial Council.
- Provide the High Judicial Council and the State Prosecutorial Council with four analytical staff each and direct them to advise the Ministry of Justice on the use and number of the most critical positions, particularly judges, prosecutors' assistants, and court managers.
- Develop written employee hiring procedures with transparent and consistent selection criteria and a standard form to evaluate applicants.
- Expand employment commissions to include at least one external member.
- Create judicial appeals committees within the High Judicial Council and the State Prosecutorial Council to deal with appeals of hiring decisions.
- Promulgate selection criteria for mentors of judges and prosecutor trainees; develop job specific evaluation criteria, forms, and evaluation processes.
- Clarify that the Agency for Anticorruption should receive reports of suspected judiciary employee (non-judge and prosecutor) conflicts of interest and develop forms and processes for dealing with them.

Key medium term recommendations

- Continue advising on norms and job descriptions by focusing on IT staff, transcribers, and court secretaries.
- Amend all existing job descriptions by adding knowledge, skills, abilities, and ethical standards and amend those for court secretaries and managers by adding general and case flow management duties and qualifications.
- Follow the Law on Civil Service, which requires that high-performing internal candidates be given promotional preference over external candidates. Create selection lists in broad rankings that can be used by all institutions at the same level (for example, all basic courts).
- Specify that existing judicial and prosecutorial assistants will become career civil servants if not selected as judges or prosecutors.
- Train senior staff in the courts and prosecutors' offices.
- Revise performance evaluation instruments for all employees. Require that performance standards be set and

evaluations conducted in consultation with the employee being evaluated.

- Develop an ethics training program, first for judges and deputy prosecutors, then for all judiciary staff.
- Outline the functionalities required for position control and personnel tracking systems for the judiciary. Issue terms of engagement for an IT consultant to develop a judiciary specific human resources system.

Key recommendations in the long term

- Develop job-specific selection methods, including written tests, interviews, and other appropriate and transparent testing, to evaluate skills and abilities in addition to considering educational levels and years of experience.

Human Resource Management of Judges and Prosecutors

Key findings

- Prior to 2009, the number of prosecutors and judges was determined without a written methodology and generally by annual additions to the number established in the early 1990s. It is critical that the High Judicial and State Prosecutorial Councils promulgate a transparent methodology for determining the numbers of judges and deputy prosecutors that are needed going forward.
- The appointment process for judges and deputy prosecutors needs to be strengthened. The information submitted to the High Judicial or State Prosecutorial Council by candidates for initial office does not provide an adequate or transparent basis for selection. The criteria, form, and method for deciding that a judge or prosecutor should be retained have not been elaborated. Finally, despite the critical nature of these positions, only general criteria for the selection of court presidents and public prosecutors have been provided in statute or elaborated by the councils.
- Initial and continuing training for judges and deputy public prosecutors has been well thought out. Training to remedy poor judge or deputy prosecutor performance has not been designed, and it is not known how evaluation information will be used to inform the decision to require a judge or deputy prosecutor to attend training. In addition, critical and mandatory training of misdemeanor judges, recently transferred from the executive to the judicial branch, could be developed immediately.
- A simple, transparent evaluation framework, comprehensible to judges, courts, and the public, is preferable to ambitious programs that are demanding to implement and difficult to understand. While a great deal of thought and care has been exercised in crafting the judge evaluation rules, key issues could be addressed: (i) some of the quantitative and qualitative methods of evaluating judges are unclear; (ii) a judge's performance is to be evaluated in comparison to the entire country rather than colleagues in like-sized courts; (iii) the evaluation process would benefit from simplification (as would that for prosecutors); and (iv) the judicial evaluation procedures would be well served by a short pilot. In addition, the level of care and detail taken in developing evaluation proposals for initial appointment has not been extended to promotion considerations.
- Neither council has yet adopted a Code of Ethics that is binding on judges or prosecutors.

Key short term recommendations

- Specify managerial and organizational skills as key criteria in the selection of president judges and public prosecutors and develop the means to evaluate those skills.
- Create a standard application form for judge and prosecutor candidates, a standardized interview format, and a standard form for collecting information from previous employers.
- Refine the judicial and prosecutorial evaluation rules by:
 - Adding comparison of individual judge and prosecutor performance to those in institutions of like size, in addition to the nation as a whole;
 - Explicitly considering the complexity of matters heard by judges;
 - Developing qualitative rankings for criteria that are not naturally expressed in numerical terms, such as dedication;
 - Piloting the evaluation scheme in a few courts and prosecutors' offices.
 - Considering the evaluation of new judges and prosecutors at the end of two years rather than one.

- Focusing evaluations on opportunities for support, professional development, and education.
- Develop criteria, forms, and methods for deciding whether a judge or prosecutor who meets the qualifications during the three-year probationary period should be retained.
- Prioritize development by the High Judicial Council of mandatory training of misdemeanor judges.

Key medium term recommendations

- Develop an ethics training program, first for judges and deputy prosecutors, then for all judiciary staff.
- Make continuing training an explicit criterion for judge and prosecutor performance evaluation and career advancement.
- Develop criteria, forms, and methods for determining promotions of judges or prosecutors.

5.2. Analytical framework, international standards, and national context

156. This chapter will consider the interrelated areas of human resources management illustrated below (Figure 30). The United States National Center for State Courts⁹¹ has developed a concise framework for evaluating justice sector human resources management (Figure 30).

Figure 29: Framework for Analysis of Human Resource Management



157. In line with this framework, efficient and effective management of the judiciary will require: (i) developing a strategic vision and creating a well-considered organizational structure that reflects current needs and anticipates those that are coming up; (ii) conducting job analysis to define not only the essential duties but also the required knowledge, skills, and abilities of successful employees; the results would be classification descriptions that support consistent, fair, effective, and transparent selection of employees and rankings that accurately reflect differences in responsibility; (iii) undertaking analysis and definition of salaries to attract and retain staff and encourage superior performance while ensuring internal equity and budgetary soundness; (iv) engaging in employee recruitment and selection that attracts high-quality applicants, provides for job-relevant and efficient examination of candidates, and ensures consistency, representativeness, and transparency; (v) developing employee orientation and training programs to improve individual and justice system performance; (vi) managing performance, including setting individual performance expectations that tie to institutional goals and objectives, and appraising performance; consistency, fairness, and transparency are also critical here; (vii) fairly and defensibly disciplining, transferring, demoting, or terminating employees with inferior performance to

⁹¹ See National Center for State Courts, Core Competencies, Human Resource Management Resource Guide, found at <http://www.ncsc.org/topics/human-resource-management/human-resource-management/resource-guide.aspx>.

ensure optimal organizational performance; and (viii) promoting ethical behavior on the part of judges, prosecutors, and judiciary employees to enhance public trust and confidence in the judiciary sector.

158. The National Judicial Reform Strategy of 2006 is largely silent on the details of human resources management, but reform goals cannot be accomplished without better human resources management. The strategy does set the context for human resources management by:

- Emphasizing transparency, accountability, and efficiency;
- Calling for clear productivity and performance standards, effective use of judicial and prosecutorial resources, and a strong system for education and training; and
- Specifically envisioning that the High Judicial Council (and, by implication, the State Prosecutorial Council) would improve the effectiveness and performance of the judiciary jointly with court presidents and the Ministry of Justice.

159. The aspirations for Serbia’s judicial system are strikingly similar to those underpinning international good practices for human resources,⁹² namely:

- Fairness,
- Transparency,
- Representativeness,
- Efficiency,
- Certainty,
- Independence of the sector where it matters, and
- Enhanced relations with the other branches where they will continue to play a role.

160. United Nations and Council of Europe standards more directly address human resources issues for judges and deputy prosecutors and their importance to the independence and efficiency of the judicial system.⁹³ They do not address human resources management related to civil servants or public employees. These standards require transparent and effective appointment, promotion, evaluation, and discipline/discharge of judges and prosecutors and stress the necessity of initial and in-service training.

161. For civil servants, European good practices focus on compensation and performance management, including creating pay differentials that provide an incentive for performance.⁹⁴ Performance management is also promoted through linking institutional and individual employee objectives, communicating these objectives to staff clearly, appraising performance against these objectives annually, and focusing on the continuous development of employee skills. Consistency, fairness, and transparency are the underpinnings of these standards.

⁹² See United Nations 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 No R (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).

⁹³ They do not address human resources management related to civil servants.

⁹⁴ See Department for International Development. 2004. *Serbian Civil Service: Assessment of Pay and Benefits System*, Department for International Development (June).

162. The reform of the Serbian judiciary is occurring simultaneously with significant reforms in the Serbian civil service. The civil service reforms strengthen and clarify human resources management, including hiring, promotion, evaluation, and performance management. The civil service reform process began in 2005 with the passage of a significantly revised Law on Civil Servants followed by revisions to the Law on Pay for Civil Servants and Employees.⁹⁵ Several directives were subsequently issued to clarify how to implement statutory provisions in areas such as job classification and performance evaluation. However, attempts to implement civil service reforms need to be seen in light of the absence of a strong tradition of human resources management in the public sector. The civil service continues to be largely decentralized, and civil servants are employed by individual ministries rather than deployed by the state sector across ministries. In the judiciary, this means that individual courts and prosecutors' offices directly employ civil servants.

163. The responsibilities laid out under civil service reform require greater management sophistication and better-defined systems for the judiciary than was previously the case. These responsibilities are unlikely to be managed in a coherent, consistent, and transparent way by 127 individual courts (in the Supreme, Appellate, District, and Municipal Court systems) and 64 disparate prosecutors' offices⁹⁶ without greater direction. Decentralization of these responsibilities also hinders the view of the judiciary as a separate branch and undercuts its negotiating power with the rest of government. The sector needs to determine in which areas oversight will help guarantee fundamental rights or ensure efficiency and consistency. The preferred body or bodies for providing that oversight needs to be determined. These questions will be considered below, and recommendations for enhancing the daily management of human resources will be made.

5.3. Human resource management of civil service staff and employees

5.3.1 Organizational structure

Responsibility for determining the structure of the organization

164. Determining organizational structure is both a human resources planning function and a budgetary function (Chapter 4). The judiciary's structure affects its ability to deliver services, and improvement in the structure is essential to enhanced performance. A transparent organizational structure promotes confidence within the other branches of government and among employees that employment decisions are being made fairly. Nonetheless, the judiciary needs and appears to recognize the executive branch's legitimate role in setting overall budgetary limits on salary funding.⁹⁷

165. The Law on Civil Servants directs that approval of systematizations for the courts and public prosecutor' offices be assigned to the Supreme Court and Public Prosecutor, respectively.⁹⁸ However, neither the Supreme Court nor the Public Prosecutor has traditionally played this role, instead

⁹⁵ An employee performs auxiliary technical duties in a state body. While enjoying general labor protections for salary, safety, health care, protection of personal integrity, and collective bargaining rights, as described in Articles 12 and 13 of the Law on Labor Relations, employees do not share in the rights of civil servants. Civil servants represent between 50 and 75 percent of state sector employees. The proportion of civil servants to total employees in the judiciary is higher than in other sectors, due to the large number of attorneys and other analytical staff.

⁹⁶ Excludes the Supreme Court, Administrative Court, Constitutional Court, and Republic Prosecution Office.

⁹⁷ Budgetary control may be provided by capping total salary funding or by more discrete control over the number and classification of positions. Prior World Bank studies indicate that neither the systematization nor the personnel plan controls the number of positions in any given ministry. Control is instead exercised through provision of total salary funding. See World Bank. 2010. *Serbia: Right-Sizing the Government Wage Bill* (October).

⁹⁸ See Articles 44 and 46.

allowing the number of positions in each organization to be the responsibility of the individual court or prosecutor's office in consultation with the Ministry of Justice. The systemization includes both the number of positions and their general duties, thus setting out the entity's organizational structure. A position can be filled only if it is included in both the organization's systematization and its personnel plan, which is submitted at the same time as the draft budget.⁹⁹

166. During the recent reorganization, courts and prosecutors' offices drafted temporary acts of systematization,¹⁰⁰ ratified by the Ministry of Justice; a large number of employee demotions, promotions, transfers, and terminations resulted from the reorganization.¹⁰¹ Approximately 1,200 positions in the courts were eliminated.¹⁰² This is consistent with the reorganization's stated purpose of achieving improved efficiency and cost savings.¹⁰³ Special commissions of the High Judicial Council, State Prosecutorial Council, and Ministry of Justice then determined the specific individuals to be employed in each position. The Ministry of Justice did not confirm individual employment decisions.

167. Decisions about staff numbers per institution were not made in a transparent or consistent manner (see discussion of staffing norms below), and the continual redrafting of the systematizations has significantly disrupted court operations. The final number of employees remaining after this systematization was under reconsideration at the time this analysis was drafted, as existing figures were generally considered too low by both the Ministry of Justice and the justice institutions. Data from the European Commission for the Efficiency of Justice indicates that, in 2006, Serbia had 4.3 non-judicial employees per judge, placing it at the upper end of staff-to-judge ratios among the countries considered by CEPEJ. With the reorganization at the beginning of 2010, the ratio fell to 3.5 staff per judge, bringing the numbers to the middle of the range and slightly below those of Croatia and Montenegro. As part of this process, courts and prosecutors' offices are primarily asking to reinstate technical staff (such as telephone operators, janitors, mail couriers, and cleaning staff), accounting and procurement positions, and registry office staff. Many courts and prosecutors' offices have requested additional judicial or prosecutorial assistants to reach a ratio of one assistant to every judge or prosecutor.¹⁰⁴ The Ministry of Justice reports that it agrees in general with the argument that the courts require more judicial assistants, particularly in light of the decreased number of judges. The ministry has indicated that additional technology staff will be added to the basic and high courts, with the misdemeanor courts and prosecutors considered to be part of a later phase of automation support.

168. The types and placement of positions can significantly affect judicial system performance. Final approval of systematizations is to remain with the Ministry of Justice in the medium term.¹⁰⁵ However, we recommend that the councils play a strong advisory role to the Ministry of Justice in providing recommendations for the preferred organizational structure and effective use of the most critical positions. For example, delegating duties to senior staff in lieu of judges or deputy prosecutors, where feasible, frees up judges' time and is critical to an effective and efficient judiciary. Separating

⁹⁹ Law on Civil Servants, Article 47.

¹⁰⁰ Systematizations indicate the number of employees in each classification and the salary rank of the classification, in addition to providing general statements about the duties of the classification for each institution.

¹⁰¹ Articles 34 and 38 of the Law on Pay for Civil Servants and Employees provides that employees whose employment is terminated in a reorganization have a right to receive 65 percent of their salary for a maximum of six months and severance pay following the six-month period.

¹⁰² This number had been reduced through reassignments and attrition to 725 as of June 2010.

¹⁰³ These figures do not include misdemeanor courts.

¹⁰⁴ Courts are also requesting positions for off-site locations that were previously established in law but not used. These locations would enhance public access to the judiciary, in particular because the recent reorganization eliminated courts and prosecutors' offices in smaller vicinities.

¹⁰⁵ While the Supreme Court and Public Prosecutor were legally obliged to develop these systematizations under prior statutes, the responsibility for doing so has largely been adopted by the Ministry of Justice.

consideration of the ideal number and type of employees (which remains with the Ministry of Justice under the systemization process) and the number of judges and prosecutors (which is under the authority of the councils) impairs the optimal use of judges and deputy prosecutors.

169. These structural issues could be evaluated in phases, as the councils do not have the capacity to evaluate the entire judiciary structure. The first positions to be considered are those of judicial and prosecutorial assistants (the issue of the status or responsibilities of judicial and prosecutorial assistants is discussed in more detail below). These positions perform duties that would otherwise have to be performed by judges or deputy prosecutors and play a key role in case management.¹⁰⁶ The regression analysis conducted as part of Chapter 3 confirms the benefit of these positions on case management. Traditionally, the duties of these positions have varied widely by court and/or office; they are not consistently well used to promote effective case management. While the Court and Prosecutor Rules of Procedure indicate that activities conducted by preparatory departments, judges' assistants, and the judge who supervises their work are to be defined more precisely in the annual disposition of jobs, in fact the systematizations are not specific about required duties. Courts and prosecutors are missing an opportunity to use Judicial Assistants to their best advantage. The council's administrative structures do not envision positions to carry out this type of analysis.

170. In addition, it would be desirable for the councils to play a greater role in determining where and how court managers are to be used. The National Judicial Reform Strategy called for new professional court administration positions to be created by the end of 2009. The Rules of Procedure¹⁰⁷ give the authority to do so by providing that an organizational unit, managed by the Court Manager, may be formed to conduct court administration business. These administrators would assist president judges with administrative affairs in order to maximize the amount of the judge's time that can be spent on judicial affairs, regulating case flow and adjudicating cases. Currently, the Serbian judiciary relies heavily on the president judge to manage the administrative affairs of the court; providing professional assistance to them is particularly critical now given the increased number of cases and expanded jurisdiction of each court. The National Judicial Reform Strategy also recommended that the High Judicial Council provide a blueprint for new professional staff positions by detailing positions, roles, reporting, and other issues.

171. No court currently employs a court manager. However, the USAID Separation of Powers' project reports that 30 courts asked for manager positions in 2010. The project formed a working group to determine which courts should receive court managers as well as the hiring criteria.¹⁰⁸ The courts of highest jurisdiction (such as the Supreme Court and Appellate Courts) and those that share facilities with other courts were prioritized for receipt of a manager. No equivalent position is currently envisioned for prosecutors' offices.¹⁰⁹

172. The Rules of Procedure¹¹⁰ indicate that courts and prosecutors may form an information-technology and analytical service. These positions are becoming more common in the courts and prosecutors' offices. In many of the institutions reviewed, however, the number of IT staff falls below what the norm allows. In addition, a number of court presidents commented that existing IT staff may be

¹⁰⁶ For example, judicial assistants hear proceedings emanating from the Law on Inheritance, consider proposals on Regulation of Enforcement, and take statements in investigations. Prosecutors' assistants draft acts and record citizens' complaints, submissions, and statements.

¹⁰⁷ See Article 7.

¹⁰⁸ Eight to nine manager positions, including four in Belgrade, have been filled since the writing of the report. Approval of these positions is occurring outside of the normal systematization process.

¹⁰⁹ The Director of the Judicial Training Academy and staff of the USAID Separation of Powers Program have begun to discuss whether an analogous position of Director, Prosecution Office should be created.

¹¹⁰ Articles 39 (courts) and 25 (prosecutors).

underqualified, having been promoted from within the ranks of clerical staff without having specific IT training and experience. An analysis of the preferred level and qualifications of IT staff is needed.

173. Transcribers and court secretaries are two other important case management positions that could be considered for future analysis. A planning—if not an approval—role for the High Judicial Council and the State Prosecutorial Council would allow these bodies to provide the management oversight laid out in the laws on the councils for these essential positions.

Linkage between systematization and staffing norms

174. Underlying the systematizations for courts and prosecutors' offices are the Rulebooks on Criteria for Determining the Number of Court Staff in Courts and Prosecution Offices (hereinafter referred to as the norms).¹¹¹ For most classifications, employee norms are determined according to the number of judges or prosecutors, while the number of staff in enforcement and land registries is determined according to the number of cases filed.

175. The norms for courts provide for:

- One judge's assistant or trainee per judge of a basic, high, or appellate court¹¹²
- One assistant or trainee for each three misdemeanor judges
- One recording clerk/typist for each judge of first instance, and one for every two judges of second instance
- 0.8 staff performing administrative work for each judge in the basic and commercial court, 0.5 for each judge in a misdemeanor court, and 0.4 for each judge in a higher court; regardless of the ratio, each court must be provided with at least five administrative staff
- Up to three staff performing IT work in the basic, higher, and commercial courts and at least one IT staff in each misdemeanor court
- 0.4 technical staff for each judge in the basic court, and 0.2 technical staff for each judge in higher, commercial, and misdemeanor courts.

176. Similar provisions are made for prosecutors' offices:

- One assistant or trainee for every two basic and higher prosecutors¹¹³
- One recording clerk/typist for every three prosecutors
- 0.4 administrative staff for each prosecutor, with a minimum of five administrative staff per office
- Up to two IT staff in each basic and higher prosecution office
- 0.2 technical staff for each prosecutor in the basic and higher prosecution office

177. There is no clear link between the norms, the systematizations, and ultimately the budgets of judiciary entities.¹¹⁴ Permanent systematizations reviewed by the team for 2009 and the temporary systematizations for 2010 provide for varying ratios of employees to judges or prosecutors and do not appear to conform to existing norms. For example, while the norm would call for the Belgrade First Basic Court to have 192 typists, there are actually 211 in the systematization. On the other hand, the norms would allow Kraljevo High Court to have three IT staff, but there are only two in the systematization.

¹¹¹ Official Gazette of Republic of Serbia No. 72/2009 and 79/2009.

¹¹² Provided that the total number of judges' assistants does not exceed two-thirds and the number of judge trainees one-third of the total.

¹¹³ Same proviso regarding the balance between assistants and trainees.

¹¹⁴ This appears to be the case generally among Serbian ministries, according to a recent World Bank evaluation. Among the ministries evaluated, the Ministry of Education's inspectorate controls the number of positions by classification per school internally, even though this control is absent from the Ministry of Finance.

While, in theory, the justice sector relies on the norms to set the systematizations, this is in fact not entirely the case. The norms may themselves be an overly prescribed way of determining staffing levels given the complexity of justice institutions. As such, it may be reasonable for systematizations to vary from the prescribed norms. However, there are no transparent justifications for the staffing levels set in the systematizations.

Recommendations

178. In the short term, the High Judicial Council and State Prosecutorial Council could be provided with analytical staff so they may immediately begin to advise the Ministry of Justice on the use and number of the judiciary's most critical positions. This will require changes to the systematizations of the administrative offices of the two councils.

179. In addition, the High Judicial Council and State Prosecutorial Council could provide input on the organizational structure and desired staffing models (that is, the norms). In the short term, the councils could advise the Ministry of Justice on the number and placement of judicial and prosecutorial assistants and on the placement of court managers. This would be followed in years two and three by consideration of the use of IT staff, then transcribers and court secretaries, as these represent the positions most critical to effective and efficient case processing.

180. In the long term, consideration could be given to consolidating responsibility for human resources management of civil servants and staff in the two councils (that is, moving the responsibility from the Ministry of Justice to the High Judicial and State Prosecutorial Councils). This would allow for integrated management of resources, thus creating better circumstances for optimizing the resource mix.

Provision of temporary positions

181. Courts and prosecutors' offices are provided with extraordinary funding to hire temporary employees as part of their monthly salary allocation.¹¹⁵ These positions represent an ill-understood additional resource of the judiciary. Temporary employees are used to replace employees on leave, to address case overload, or for large cases. Approval of funds to hire temporary employees should be received from the Ministry of Justice, but the ministry does not dictate which positions may be filled on a temporary basis. The only limitation is that the position to be filled should be included as a classification afforded to the court or prosecutor's office.¹¹⁶ Other temporary employees may be included as contractors within the expenditure category of "goods and services." President judges, chief prosecutors, and the Ministry of Justice report that they have relied heavily on these positions historically and during the transition to the new organization of courts and prosecutors' offices. However, there is no central record of how many individuals work on a temporary basis in each court or prosecutor's office. Also, funds expended under goods and services for these positions are not readily available for analysis. It is not possible, therefore, to provide even a broad estimate of the extent of these temporary staffing resources or of the proportion used to fill vacancies versus providing assistance in addressing work overload.

182. The Ministry of Justice is surveying institutions to establish a firm permanent staffing number and could expand that effort to include the number and cost of temporary staff, including those under contract. The judiciary needs to know this information to form a firm basis for planning human resources going forward.

¹¹⁵ Law on Civil Servants, Article 63.

¹¹⁶ For example, to hire a temporary IT technician, the position must be included in the systematization but the number of temporaries is not regulated, except by the total funds provided.

Recommendations

183. In the short term, the Ministry of Justice could collect data on the extent and use of temporary positions in the courts and prosecution offices, including those under contract.

5.3.2 Position classification

184. 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. 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.” This more structured approach to classification, ranking, and selection is required of all ministries and government entities.

185. While recognizing the unique status of the judiciary, the decree envisions a more uniform system of classifying court employees.¹¹⁷ However, the Supreme Court, individual courts, and prosecutors' offices were not included in the training or the technical assistance they need to implement the decree's requirements, as the Ministry of Justice was presumed to be working on these issues on their behalf. Ministries were given only a short amount of time in 2005 to create approximately 150 standard classifications, though they were provided with job analysts to do so. The Decree on Classification¹¹⁸ indicated that courts and public prosecutors' offices were to appoint a person responsible for developing job descriptions, but no job analysts were provided to the courts, prosecutors, or the Ministry of Justice, and standardized job descriptions have not been completed in the judiciary. These courts and prosecutors' offices still have no human resources staff of this type, and it would be inefficient to employ them at each court or office, leading to a lack of consistency in position descriptions. This could instead be a function of the councils.

186. The systematization of the High Judicial and the State Prosecutorial Councils' Administrative Offices does not currently provide for any human resources support staff for the judiciary.¹¹⁹ The judiciary cannot carry out duties associated with preparing well-developed job classifications without additional resources.

Recommendations

187. Designating staff for human resource planning, including preparation of classifications, as a responsibility of the High Judicial Council and State Prosecutorial Council, would help to achieve greater nationwide consistency.

¹¹⁷ See, for example, Section IV: Special Provisions for Courts and Public Prosecutors' Offices, Decree of Classification of Civil Servants.

¹¹⁸ Article 42.

¹¹⁹ The proposed systematization of the High Judicial Council's Administrative Office includes one Human Resources Advisor responsible only for these affairs within the Administrative Office.

Content of judiciary classification descriptions

188. Improvements in the judiciary’s classification descriptions would make them more meaningful as a management tool. Job descriptions could include the skills required for each position, not just education and years of work experience.¹²⁰ Properly designed, classification descriptions would guide the selection, promotion, training, and performance management of employees and advance the judiciary’s goals of reducing delays and promoting more autonomous management.¹²¹ As currently drafted, the job descriptions included in court and prosecutors’ office systematizations do not describe the knowledge, skills, and abilities needed in courts and prosecutors’ office classifications, particularly critical for higher-level positions. In contrast, the High Judicial Council and State Prosecutorial Council have specified additional qualities sought in those holding offices in their administrative bodies. For example, the High Judicial Council has called for its administrative employees to possess, among other qualities, written and oral capabilities, mature judgment and flexibility, and computer skills. Similarly, Article 16 of the Draft Act on Systematization of the Administrative Office of the State Prosecutorial Council calls for appointees to have the capacity to plan, lead, organize, and efficiently perform duties; analytical capabilities; computer skills; and knowledge of legislation. These statements clarify the critical importance of and the skills needed for executive support positions. Language of this type could be considered for inclusion in all managerial job descriptions for the courts and prosecutors’ offices.

189. At the clerical and technical level, concerns have been expressed by president judges and donor agencies that staff are not able to perform the increasingly complex duties in the judiciary. The reasons for hiring underskilled staff include minimum requirements that are too low for many positions (for example, a high school degree and negligible experience levels) and insufficient evaluation of candidates’ skills prior to hiring.

Recommendations

190. Existing job descriptions could be strengthened by adding:

- Knowledge, skills, and abilities for each position to the minimum educational and experience requirements; this inclusion will guide hiring decisions and provide a basis for performance evaluation and remedial training, where needed;
- Management-related duties and qualifications (such as knowledge of court operations, public management skills, abilities listed above for High Judicial Council and State Prosecutorial Council executive staff) to the classifications for court secretaries and other appointed positions;
- The ability to develop and implement policies for improved case flow to classifications for court secretaries and other positions with a role in reducing delays; and
- Knowledge of ethical standards, as reflected in the code of conduct contained in the Law on Civil Servants.

191. These changes could be implemented in the medium term, following a decision regarding the preferred location for job analysts, as discussed above.

¹²⁰ These continue to be the primary criteria for placement in a rank.

¹²¹ As pointed out in DFID’s June 2004 report, *Serbian Civil Service: Assessment of Pay and Benefits System*, “the job ranking system is based on qualifications, experience and a broad definition of the job level. In practice qualifications and experience are the main criteria used....remuneration...is based on characteristics of individual civil servants (academic degree, years of service) rather than on the nature of work they perform.”

5.3.3 Compensation

192. The current definitions of the ranks upon which salaries are determined are broad, which is appropriate for setting compensation; however, a system for ranking newly created classifications in the judiciary is needed. Salaries for civil servants are set with reference to a base salary¹²² and application of a coefficient, according to rank, as described in the Law on Pay for Civil Servants and Employees.¹²³ There is an approximately 12.5-percent differential between grades, considered adequate to attract staff to higher-level positions.¹²⁴ Among the 13 ranks, eight of the non-executive ranks allow for increasing pay steps according to seniority. Positions were assigned to ranks during the 2005 classification effort. Future rankings of new judiciary positions are to be made by the president judge or public prosecutor, with oversight by the Ministry of Justice; these rankings could have significant salary implications and could lead to unjustified inconsistencies in ranking between the judiciary and other parts of the state service, thus presenting opportunities for corruption. External oversight is needed.

193. The judiciary has few vacancies, and president judges and prosecutors report no recruitment problems related to inadequate pay, with the exception of judicial and prosecutorial assistants in outlying regions.

194. Generally, civil servants move through the salary levels of each rank on the basis of seniority,¹²⁵ but the Law on Pay for Civil Servants and Employees also includes provisions that allow for additional pay for superior performance or absorption of additional workload. One performance provision provides for promotion to a higher step within a rank when employees are rated highly,^{126, 127} while another provides for a performance allowance of 50 percent of the employee's base pay to be provided at most once every three months in recognition of exceptional work results.¹²⁸ Both provisions are applied by the manager of the state entity. Under the Law on Labor Relations, the government may establish a reward in the form of monetary compensation, acknowledgement, gifts, and the like. The method of providing these bonuses or gifts and the criteria for doing so are not specified.

195. These pay-for-performance provisions have not been used extensively in either the judiciary or throughout the state service; to ensure transparency and fairness, the judiciary could not implement these provisions until a rigorous performance appraisal system is in place and the government has adopted standards for the rest of state service that can be used as a guideline. According to a 2004 evaluation completed for the Department for International Development (DFID) and the World Bank,¹²⁹ and confirmed during this assessment in meetings with current World Bank experts and officials from the Human Resources Agency, the evaluation process has not been implemented systematically and pay will not be linked to performance until at least 2011 and perhaps as late as 2013.

Recommendations

196. Rankings of any new positions in the judiciary could be confirmed by the Ministry of State Administration and Local Self Government and the Human Resources Agency to ensure

¹²² For example, the base salary for 2010 was RSD 16,560 per month.

¹²³ Article 15.

¹²⁴ DFID. 2004. *Serbian Civil Service: Assessment of Pay and Benefits System* (June).

¹²⁵ Article 23 of the Law on Pay for Civil Servants and Employees, Article 23. The increase is 0.4% percent for each year of service.

¹²⁶ Article 16.

¹²⁷ The Law on Pay included an interim provision limiting increases in step for superior performance to 20 percent of the employees in an institution for the period 2009–2011.

¹²⁸ Article 48.

¹²⁹ DFID, 2004.

consistency and transparency in salary setting. Doing so will require revisions to the Decree on Classification and Criteria for Description of Civil Servants' Job Posts.

197. The pay-for-performance provisions contained in Article 23 of the Law on Civil Servants should not be implemented for judicial staff before a more rigorous performance appraisal system is in place and guidelines for doing so have been adopted by the government.

5.3.4 Selection of employees (other than judicial and prosecutorial trainees)

198. Civil servants in the state sector are hired by individual ministries, but selection is guided by detailed processes and specific criteria. Competition for civil service positions is guided by the Law on Civil Servants, which provides for public announcement of available positions and use of employment commissions to select candidates (Article 54); assessment of professional education, knowledge, and skills through written examinations, interviews, and other appropriate testing means (Article 56); and creation of selection lists by the Employment Commission from which the ministry may select employees (Article 57).

199. For civil service positions within the judiciary, these activities are to be directed by the Supreme Court and the Public Prosecutor, but these bodies have not yet provided guidance on how to announce positions, form commissions, assess qualifications, or develop lists of qualified candidates. Under the Rules of Procedure,¹³⁰ the president judge or chief prosecutor is in charge of employment relations in the court. The structure clearly anticipates policy setting by a higher body and daily management of candidate selection by the president judge or chief prosecutor. However, hiring is now decided by each individual court or prosecutor's office without standardized procedures. This leads to a lack of transparency and consistency. The primary emphasis in hiring is on the educational level of candidates, easily evaluated through a paper review, without any additional examination of skills.

200. There is no requirement that internal judiciary candidates first be offered the chance to transfer within the judiciary at the same classification level or be given preference over external candidates for promotion, as required by the Law on Civil Servants.¹³¹ The judiciary has not included an external member on employee selection panels, as required by law. The Law specifies that, when internal job competitions are conducted by an employment commission appointed by "the Director,"¹³² the commission is to include a member from the Human Resources Department. In the case of courts and prosecutors' offices, neither the Ministry of Justice, nor the Supreme Court, nor the State Prosecutor is fulfilling this function, and the councils reported in several interviews that they did not believe it was in their mandate to do so. Inclusion of an external member would significantly enhance the transparency and fairness of the process.

201. There is no specific format for grading either entry-level or promotional candidates. Selection is based largely on an assessment of the individual's skills by the president judge or chief prosecutor, either through direct knowledge or, often, based on oral comments from others. A formalized rating scheme for positions that assesses an individual's qualifications against a list of attributes (such as knowledge, skills, and abilities) is needed to ensure transparency and equity.

¹³¹ Article 50 (Mandatory Nature of Internal Job Competition): "Internal job competitions shall be conducted for the purpose of filling work posts in State Administration Bodies and Government Offices if the work posts are not filled by way of re-transfer of Civil servants from the same State body."

¹³² Article 51. Director refers to the head of a government organization; if a ministry, it would be a minister, if a court, the president of the court.

202. The Law further calls for the formation of a Judicial Appeal Committee to consider appeals of selection processes, performance evaluations, and disciplinary actions¹³³ and gives the Supreme Court the responsibility of supporting the Committee in these duties.¹³⁴ Members of the Judicial Appeal Committee have historically been appointed jointly by the Supreme Court and the Republican Public Prosecutor from among the ranks of civil servants working at courts and prosecutors' offices. These appeals commissions had been formed prior to the recent reorganization of the court network but were not operating during the transition, and it is unclear who will take responsibility for forming them in the future.

203. The lack of clarity in hiring and appeals was rendered more acute by the recent restructuring of the network of courts and prosecutors' offices. The High Judicial Council and State Prosecutorial Council established temporary bodies to determine the number of employees per court or office (temporary systematization) and the employment of individuals. No rules were promulgated by the Ministry of Justice for the recent hiring process. Selection standards were not transparent. Acting president judges, prosecutors, and committees report relying on oral input from past leadership; employee seniority was not a factor.¹³⁵ There is a widespread perception that individual employment decisions were made based on personal preference. A large number of employee demotions, promotions, transfers, and terminations (estimated at 1,200) resulted from the reorganization. These personnel changes affected all ranks of employees, including high-level appointees; for example, a number of Heads of Registry were either moved or demoted. A large number of employees may again be moved or hired when the final number of positions is determined by the Ministry of Justice or when the investigative function is fully transferred to prosecutors.

204. Despite the recent experience of judiciary reorganization, neither the Ministry of Justice nor the councils assert that they will provide policy direction, assistance in testing techniques, or rating forms for selecting civil servants in the judiciary. The Secretary of the High Judicial Council indicates that the council's role of in dealing with unassigned staff is only to coordinate whether they can be placed in vacancies in other courts or prosecutors' offices.

205. Promotional criteria are even less specific than those for entry levels. There is not a clear career ladder to tie performance to promotion, encourage superior performance, or help the organization to retain talented staff.

Recommendations

206. Given the importance of transparency in gaining the public's trust and confidence in the judiciary, the following recommendations could be implemented as soon as possible:

- Requiring the High Judicial Council and the State Prosecutorial Council to establish guidelines for employment commissions to select candidates in conformance with the Law on Civil Servants; ensure that each hiring commission includes at least one external member.
- Developing written hiring procedures to include transparent selection criteria and a standard form to evaluate applicants against a list of attributes (such as knowledge, skills, and abilities), both for entry-level and promotional positions.
- Determining which bodies will be responsible for forming Judicial Appeal Committees to deal with appeals of hiring decisions.

¹³³ Article 144.

¹³⁴ Article 153.

¹³⁵ Some individuals interviewed for this assessment indicated that the status of employees (for example, as a single parent) was also considered, but we could not find statutory language providing for these exceptions.

207. Additional recommendations on changing the assumption that each institution stands alone as an employer will require more significant policy determinations, and could thus be implemented in the medium term:

- Clarifying the requirement that well-performing internal candidates be given preference over external candidates for promotional positions; considering employees of all institutions at the same level (for example, all higher courts and all basic prosecutorial offices) to be internal candidates;
- Creating selection lists to rank employees in broad groups, for each position, which could be used by more than one institution at the same level (such as all basic courts, either nationally or regionally, for example in Belgrade).

208. A final recommendation is to develop job-specific exams that validly test for skills needed in each position and go beyond consideration of only educational levels and years of experience. These methods may include written tests, interviews, and other appropriate and transparent testing means, which will take some time to develop. These efforts could begin in the short term but may not be completed until the longer term.

5.3.5 Selection of judicial and prosecutorial trainees

209. Judicial and prosecutorial trainees are considered civil servants, but so far have been selected and dismissed by individual president judges and chief prosecutors, absent specific criteria. While selection and evaluation processes are not generally well developed in the Serbian judiciary, the new system for training and appointing new judges relies on a well-considered and ambitious scheme:

- The High Judicial Council or State Prosecutorial Council proposes candidates that have completed the initial training in rank order of their grades on the entrance exam.
- If no candidates have completed the initial training, the councils propose a candidate that satisfies the general conditions of election.
- Upon completion of initial training, the trainee is obliged to apply for a job as a judge at misdemeanor or basic courts, or as a deputy basic public prosecutor.
- A person who has completed the initial training may be employed at the court or the prosecutor's office for a maximum of three years, as long as he or she applied for a judge or deputy prosecutor position and was not selected.¹³⁶
- After three years, trainees shall have an advantage over candidates who did not attend the academy in nominations for these offices.

210. It is intended that the first group of trainees be limited to 15–20 participants to allow the Academy to develop clear guidelines for their evaluation. In order to provide meaningful training and assessment, this scheme relies on a strong group of mentors and lecturers. Mentors will play a significant role in effectuating the new scheme; they are to be relieved of some of their regular duties and are entitled to additional compensation. Mentors and lecturers should be selected carefully and trained to perform their functions. However, the Law is silent on the selection criteria for mentors and lecturers and the type and length of training they are to receive. Furthermore, president judges are to provide activities in connection with professional training and advanced training of trainee judges, but the methods of doing so are not specified.¹³⁷

211. The Law on Judicial Academy and the standards promulgated by the Academy clearly do not intend for trainees to be treated as assistants in the courts or prosecutors' offices. These

¹³⁶ The appointment process for judges and deputy prosecutors is discussed further in the next section.

¹³⁷ Court Rules of Procedure, Article 8.

provisions also specifically indicate that judicial and prosecutorial assistants are automatically in line for a judgeship or prosecutor position.

212. To date, selection of judicial and prosecutorial assistants has been conducted outside the normal civil service process; the duties of these positions vary by court or office, and the positions are not consistently well used to promote effective case management. Nonetheless, a number of these office holders remain in state service without becoming judges or prosecutors, some reportedly for long periods of time.¹³⁸ Nor do they represent a small number of employees: there were 1,187 judicial assistants and 185 prosecutorial assistants in January 2010. However, the employment status of individuals employed in this capacity—meaning whether they will be required to leave the judiciary if they do not attend the training institute or become a judge or prosecutor—has not been clarified. Trainees and assistants will now work side-by-side with different expectations. To the extent that judge and deputy prosecutor positions are not available for trainees when they graduate, the ongoing use of judicial and prosecutorial assistants who did not graduate from the Academy may come into question.¹³⁹

Recommendations

213. Selection criteria for trainee mentors and lecturers could be promulgated. This is an urgent and critical step in implementing the important reforms contained in the Law on Judicial Academy.

214. It could be clarified that existing judicial and prosecutorial assistants will become career civil servants if not selected as judges or prosecutors. While important to success of the new training scheme, this reform may be pursued in the medium term.

5.3.6 Training

215. Civil servants and public employees are entitled to professional and in-service training,¹⁴⁰ but little direction is given on its content, form, or frequency. The Law on Labor Relations¹⁴¹ only states that the content and form of employee expert training and the manner of evaluating the acquired knowledge are to be regulated through acts passed by:

- Government for ministries and special organizations
- Supreme Court for courts
- Republican Public Prosecutor's Office for public prosecutors' offices

216. The Supreme Court and Republican Public Prosecutor's Office have not provided direction on the types and form of staff training. The Law on Judicial Academy now provides that training for administrative staff of the courts and prosecutors' offices is to be adopted by the Academy's Managing Board, with the agreement of the High Judicial Council and the State Prosecutorial Council.¹⁴² These provisions provide a framework for ensuring greater professionalism and efficiency among employees in the judiciary but have not yet been implemented.

217. The Judicial Training Academy's administrative training will focus on training president judges (and court managers, where they exist) in cooperation with the USAID Separation of Powers

¹³⁸ We were unable to obtain precise information about the tenure of these individuals.

¹³⁹ The Law on Judicial Academy does provide that assistants are obliged to attend special training programs, adopted by the Managing Board with the agreement of the High Judicial Council or State Prosecutorial Council.

¹⁴⁰ Court Rules of Procedure, Article 34; Prosecution Rules of Procedure, Articles 92–94.

¹⁴¹ Article 24.

¹⁴² Law on Judicial Academy, Article 52.

Project.¹⁴³ Joint training of court presidents, court managers, and other administrative staff in areas such as case and caseload management will be conducted where their collaboration is essential. President judges who lead each court have not traditionally received management training. Throughout Serbia, only six had received any court management training. However, training is needed in court finances, case flow management, human resources management, facilities management, media training, and dealing with emergency situations. USAID is proposing that, in the future, a judge could only become a president judge on completion of case flow and media training. Court managers would be provided with a five-day orientation course, with advanced training to follow in the next year. The Academy's intention is to include managers in the working group to develop this administrative training.

218. However, there are currently no plans for the Judicial Training Academy to provide either: (i) administrative training to the balance of senior court and prosecution staff, numbering approximately 400 people;¹⁴⁴ or (ii) management training to the Ministry of Justice. Additional management training is critically needed for the approximately 190 people working in the financial services of the court. These represent the next needed steps in enhancing training in the judiciary.

Recommendations

219. Develop training for senior staff other than court managers, beginning with prosecutor managers, if such a position is created. Given the number of training initiatives being pursued by the Academy and its limited resources, training for the remaining administrative staff in courts and prosecutors' offices could be delayed to the second or third year of reform.

5.3.7 Performance management

220. The Decree on Civil Servants' Performance Evaluation, adopted in 2005, applies to civil servants working in the courts. The decree and the underlying Law on Civil Servants reflect good practice standards in performance management. The decree requires, among other things, that employees be consulted when developing job objectives, and that performance assessment include the quantity and quality of work as well as employees' independence, creativity, initiative, precision, and level of cooperation. Evaluations are to be completed annually and ratings reviewed in person with the employee.¹⁴⁵ Special provisions apply for monitoring the work of probationary employees.¹⁴⁶ The overarching intention of the evaluation scheme is to promote improved management through consultation and continuous monitoring and remediation through training,¹⁴⁷ where appropriate, not simply to use evaluations to discipline or promote employees, although those aspects are also addressed there.^{148, 149} The disciplinary process and grounds for disciplinary action¹⁵⁰ are explicitly detailed in the legal framework for civil servants.¹⁵¹ The framework also provides for a hierarchy of lesser disciplinary offenses¹⁵² and actions,¹⁵³ including fines and limits on promotion, and a process for redress for disciplinary actions.¹⁵⁴

¹⁴³ The cost of the training is to be shared between the Academy and USAID according to a memorandum of understanding for 2009–2013.

¹⁴⁴ Includes heads of registry offices, and court and prosecution secretaries.

¹⁴⁵ Article 83.

¹⁴⁶ Article 65.

¹⁴⁷ Law on Civil Servants, Article 85.

¹⁴⁸ Law on Civil Servants, Article 88.

¹⁴⁹ Law on Civil Servants, Article 86; Law on Labor Relations, Article 35.

¹⁵⁰ Article 78.

¹⁵¹ Reasons for dismissal include prison convictions, assessment of work as “not satisfactory” on two non-consecutive occasions, or proof of conflict of interest.

¹⁵² Articles 107–108

¹⁵³ Article 110.

Each of these provisions is an effective means of enhancing performance. While linking compensation to performance has proven ineffective in Serbia, performance evaluations serve other valuable purposes such as determining where additional training is needed, which employees are most qualified for advancement, and whether to discipline and discharge low-performing employees. Without performance evaluation tools, organizations cannot improve the links between individual performance and institutional performance.

221. Performance management processes are not in place in the judiciary and need to be developed. The current system is not sufficiently objective or tied to the knowledge, skills, and abilities required for the classification, limiting its utility in providing pay for performance. Performance evaluations of civil servants are not used to identify training or other remedial actions.

222. The trainee selection scheme described above is to be enhanced through special performance monitoring conducted by the courts and prosecutors' offices, but procedures for doing so are not yet in place. Chief judges and public prosecutors are to send an annual report to the Academy on the work of judicial and prosecutorial assistants and trainees and the opinion of their mentors. The evaluation criteria to be used by mentors are not yet documented. To date, evaluation of judicial and prosecutorial assistants has been conducted using the general form for civil servants, which does not recognize the specific and critical role of assistants or that trainees they are likely to become members of the cadre of judges and deputy prosecutors in the future. The High Judicial Council, State Prosecutorial Council, and Judicial Training Academy could prioritize the development of specific evaluation criteria and a rigorous evaluation process for use by mentors in the courts and prosecutors' offices.

Recommendations

223. Judiciary performance can only improve if performance assessments of judicial support personnel are consistently applied. The first two recommendations below could be implemented as soon as possible, while the third recommendation could be completed in the medium term.

- Amend the rules of procedure to require that performance standards be set and evaluations conducted in consultation with the employee.
- Develop job-specific evaluation criteria and forms for judicial and prosecutorial assistants, as well as a rigorous evaluation process for use by mentors.
- Revise performance evaluation instruments for other employees to include assessments of the quantity and quality of work, independence, creativity, initiative, precision, and level of cooperation.

¹⁵⁴ Article 120.

5.3.8 Code of conduct

224. A Code of Conduct for Court Staff was proposed by USAID and reviewed favorably by the Ministry of Justice in 2006, but has not been adopted. A separate code of conduct may not be needed given that a clear code for civil servants is contained in the Law on Civil Servants.¹⁵⁵ This code specifies restrictions on the acceptance of gifts, additional employment that conflicts with judiciary employment, founding a business, or taking advantage of one's position to influence decision making.

225. More critical than specific codes of conduct for the judiciary are ethics training and enforcement. The conflict provisions are not all self-explanatory. Other European justice systems require ethics training for judges and deputy prosecutors; systems in the United States require such training for judges and prosecutors and their staff. There is no plan to provide ethics training to judges, prosecutors, or court staff. Also needed is a clear process and place for the public and employees to report suspected conflicts of interest by employees. The Agency for Anticorruption is the body responsible for receiving reports of suspected conflicts of interest for the state sector. In light of the importance of fighting corruption in the judiciary to public trust and confidence in the state sector, the Agency could prioritize including judiciary employee conflicts of interest. Forms and processes for reporting suspected conflicts could be made readily available to court users.

Recommendations

226. An ethics training program could be developed, first for judges and deputy prosecutors and then for all staff in the judiciary. While essential, this recommendation will require developing curricula, possibly with assistance from international experts, and selecting faculty. It is reasonable to expect that the Academy will develop this training in the medium term, once the substantive training that is currently under development for trainees is complete.

227. Ongoing reform efforts could ensure that the Anticorruption Agency will receive reports of suspected conflicts of interest on the part of judiciary employees and develop forms and a process for the public and employees to report suspected conflicts of interest.

5.3.9 Automation support for the human resource management function

228. Personnel records are maintained by each court or prosecutor's office. There is no central repository of human resources information that would allow the judiciary to provide position control information to budgetary authorities. As discussed above, the Ministry of Justice is not aware of how many individuals work in each court or prosecutor's office, either on a permanent or temporary basis, and has had to survey these institutions to establish a firm number for each permanent staffing complement.

229. At the same time, there are no systems to track an individual's employment history, including positions held and training acquired. The Rules of Procedure¹⁵⁶ allow for automated personnel record keeping, as long as data confidentiality is protected.

230. The judiciary needs to replace manual human resources recordkeeping with automated systems. This will enable tracking of authorized positions linked to the finance system (position control); collating information on individual employees' training and performance (personnel tracking), which does not need to be linked to the finance system; and tracking staff who have been appointed to positions (position control and personnel tracking), linked to the finance system. These systems could be integrated

¹⁵⁵ Articles 25–30.

¹⁵⁶ Article 69.

for ease of use. Even if the Ministry of Justice retains authority over position control, the High Judicial Council and State Prosecutorial Council could take the lead in developing the system.

Recommendations

231. In the medium term, the functionalities required for position control and personnel tracking systems for the judiciary could be developed. The Ministry of Justice could issue terms of engagement for an IT consultant to develop a judiciary-specific human resources system.

5.4 Human resource management of judges and deputy prosecutors

5.4.1 Organizational structure

232. Prior to 2009, the number of prosecutors and judges was determined without a written methodology, generally by annual additions to the number of positions established in the early 1990s. Requests were made by chief prosecutors to the Republican Public Prosecutor and by president judges to the Supreme Court, and confirmed by the Ministry of Justice. Determinations of need are reported to have been based on the number of completed cases reported quarterly and annually on statistical reports submitted to the Ministry of Justice and either the Supreme Court or Republican Public Prosecutor, but no written methodology was promulgated.

233. The High Judicial Council and State Prosecutorial Council are tasked with determining the number of judges or prosecutors for each institution. In the case of the High Judicial Council, this is done without Ministry of Justice approval, whereas ministerial approval is sought for the number of deputy prosecutors.¹⁵⁷ The methodology used to determine the number needed for the new network has not been codified, and extensive controversy has surrounded the determination of the number of judges and prosecutors, including concerns about lack of transparency. The State Prosecutorial Council has reanalyzed the needed number of prosecutors based on proposals from the Prosecutor's Association and increased the number of deputy prosecutor positions by 40, as well as proposing means for candidates who were not selected to review the evaluation of their qualifications. Similarly, in May 2010, the High Judicial Council adopted a decision to increase the number of judge positions by 104, but the basis for this decision is not clear.

234. It is critical that the judiciary promulgate a transparent methodology for determining the number of judges and deputy prosecutors that are needed. The methodology could account for the rate of incoming versus resolved cases in order to avoid increasing backlogs. Further discussion of issues surrounding the use of resolved cases as the primary factor in determining the needed size of each institution may be found in Chapters 3 and 4.

5.4.2 Selection of president judges and public (chief) prosecutors

235. The position of president judge is essential, with significant case flow and management responsibilities for both judicial and non-judicial activities. President judges are selected by the National Assembly to manage court administration in each court.^{158 159} The largest courts employ over 1,000 staff and manage a large number of cases of various types. While the president judge may delegate certain court administration activities to the deputy president or departmental presidents, the secretary of

¹⁵⁷ Law on Judges, Article 10; Law on Public Prosecution, Article 75.

¹⁵⁸ Law on Judges, Articles 69–80.

¹⁵⁹ Court Rules of Procedure, Articles 7 and 8.

the court, or a court manager, administrative and organizational responsibilities have traditionally been retained by President Judges.¹⁶⁰ To date, no court has appointed a court manager.

236. Similarly, the public (chief) prosecutor, selected by the National Assembly, is the administrative authority responsible for the proper and timely work of the office.¹⁶¹ The public prosecutor determines the organization of and allocates work to prosecutors and administrative staff, decides on employment issues, addresses reported irregularities and delays in case management, and safeguards the independence of the work of the public prosecutor's office. As there is no equivalent to the court manager in the public prosecutor's office, delegation, where it does occur, is limited to the deputy public prosecutor or the secretary of the prosecution office.

237. Despite the critical nature of these positions, only general criteria for selection of court presidents and public prosecutors have been provided in statute or elaborated by the councils. The Law on Judges only provides that the court president could possess managerial and organizational skills¹⁶² while calling on the High Judicial Council to set more specific criteria. Acting court presidents were appointed on January 1, 2010, but criteria for selection were not specified. Permanent president judges for the new court network were to be selected on April 1, 2010, but neither the process for selection nor the final selection has been determined. There are reportedly more than 1,000 applicants for 83 court president positions.

238. The Law on Public Prosecution provides no direction on how the State Prosecutorial Council is to initially select individuals for nomination to the post of public prosecutor.¹⁶³ In December 2009, the National Assembly selected 68 public prosecutors based on the recommendations of the State Prosecutorial Council, but without stated criteria or written decisions. As discussed below, the proposed evaluation scheme for prosecutors links evaluation to retention of public prosecutors on reappointment, but the initial decision making process is not specified.

Recommendations

239. Because of the essential nature of the positions of president judge and public prosecutor, the High Judicial Council and State Prosecutorial Council could in the short term specify criteria for selection of president judges and public prosecutors to allow examination of managerial and organizational skills. Standardized questions could be created concerning how candidates view management problems in courts and prosecutors' offices and how they would approach potential solutions.

5.4.3 Compensation¹⁶⁴

240. The steps in the pay scale for judges and deputy prosecutors appear reasonable. Judges and prosecutors are classified into five primary salary groups¹⁶⁵ based on the level of court. The base salary of a court president is 10 to 30 percent higher than the salary of a judge of that court, depending on the total number of judges in the court; the salary of a deputy court president is 5 to 15 percent higher.

¹⁶⁰ Statutes provide that some duties, including reviewing complaints about delays or other irregularities in proceedings and making personnel or budgetary decisions, cannot be legally delegated.

¹⁶¹ Law on Public Prosecution, Article 34, Prosecutor Rules of Administration.

¹⁶² Article 69.

¹⁶³ Draft Evaluation of Work of Public Prosecutors, Article 46.

¹⁶⁴ This analysis focuses only on compensation spreads. It was not possible to undertake a deeper analysis of compensation levels.

¹⁶⁵ Law on Public Prosecution, Articles 38–40 and 69–72.

The differential in pay between judges and prosecutors at different jurisdictional levels ranges from 14 to 25 percent.

5.4.4 Selection of judges and deputy prosecutors

241. The applications and evidence of eligibility submitted by candidates to the High Judicial Council or State Prosecutorial Council do not provide an adequate or transparent basis for selection.¹⁶⁶ The only specific information requested from candidates are diplomas, proof of citizenship and passage of the bar exam, and documents listing dates of employment. The National Assembly selects first-time judges and prosecutors from among candidates nominated by the High Judicial Council or State Prosecutorial Council.¹⁶⁷ The High Judicial Council and State Prosecutorial Council determine permanent appointment of judges or deputy prosecutors after three years of service without confirmation by the National Assembly. Selecting from among candidates without more information hinders open and consistent decision making and makes it difficult for the High Judicial Council to protect itself from claims of bias.¹⁶⁸ Provisions for insuring against discrimination are not in place. The more stringent entry and final exam requirements of the Judicial Training Academy (discussed above) will improve the ability to fairly and transparently evaluate judicial and prosecutorial candidates, but the High Judicial Council and State Prosecutorial Council will still be required to select candidates for nomination from among those completing the Academy.

242. The High Judicial Council and State Prosecutorial Council are also called upon under the law to obtain information and opinions about the qualifications, competence, and moral character of a candidate from organizations in which the candidate worked, but there is no standard method or format for doing so. If a candidate has worked in a court or prosecutor's office, for example as a judicial or prosecutor's assistant, the council is obligated to review his or her performance evaluation. If employed as a judge or prosecutor and seeking promotion, the opinion of the session of all judges or deputy prosecutors of that court or office and the opinion of the session of all judges of the immediately higher-instance court is to be obtained. This did not occur consistently in the recent process for selecting new judges and prosecutors. While these requirements broaden and clarify the grounds on which candidates are to be evaluated, there are no specific methods or formats for collecting this information, making it more difficult to compare candidates objectively and transparently.¹⁶⁹

243. The High Judicial Council or State Prosecutorial Council may also interview candidates, but interview forms and criteria are needed. To promote transparency and consistency, a set form for interviews needs to be developed, with rankings provided for each selection criteria. This will also simplify the councils' work, as they are required to provide a written explanation of why they have selected the proposed candidate.

244. The High Judicial Council and State Prosecutorial Council determine which judges and prosecutors are to be permanently appointed without input from the National Assembly. The criteria, form and method for deciding that a judge or prosecutor could be retained have not been elaborated. Two exceptions apply to the permanent appointment of judges, but not to those of deputy prosecutors:

¹⁶⁶ Law on Judges, Articles 47–49; Law on Public Prosecution, Articles 78–81.

¹⁶⁷ Law on Judges, Article 10; Law on Public Prosecutors, Article 75.

¹⁶⁸ Law on Public Prosecution, Article 82; Law on Judges, Article 46. For both judges and prosecutors, discrimination on any grounds in the nomination of candidates is prohibited, and the bodies are to consider the national composition of the population, adequate representation of members of national minorities, as well as knowledge of professional legal terminology in national minority languages used in court.

¹⁶⁹ A candidate has the right to view the information and opinions provided.

- A judge whose work during the first three-year term of office is assessed as reflecting “exceptional success” is automatically appointed to permanent office.
- A judge whose work during the first three-year term of office is assessed as “not satisfactory” may not be appointed to permanent office.

245. For judicial candidates who receive a ranking of “meets qualifications” and for all deputy prosecutor candidates, it is unclear how the councils will decide whether the judge or prosecutor should be retained. A scheme that allows discretion in retaining judges and prosecutors who meet qualifications is open to manipulation. At a minimum, the criteria for determining that a judge or prosecutor meets the “meets qualifications” standard could be promulgated.

Recommendations

246. Given the recent controversy concerning the selection of judges and prosecutors and the fact that new judges and prosecutors will need to be selected continuously, the following actions are recommended in the short term:

- Create a standard application form for judge and prosecutor candidates.
- Create a standard form for collecting information from prior employers of judge and prosecutor candidates.
- Develop a set form for interviews of judge and prosecutor candidates, with rankings provided for each selection criterion.
- Develop criteria, forms, and methods for deciding that a judge or prosecutor who meets the qualifications should not be retained.

5.4.5 Training

247. The United Nations and the Council of Europe emphasize a close link between initial and in-service training of judges and deputy prosecutors and the independence and efficiency of the judicial system. Among the most significant aspects of Serbian judiciary reform are the enhanced requirements for judge and prosecutor training by the Judicial Academy and the determination of training needs by the judiciary itself through the Program Council of the Academy.¹⁷⁰ This structure is closely aligned with the principles promulgated by the Council of Europe.¹⁷¹ Funds for the Academy’s work come largely from the republican budget, supplemented by donations and income from publications and projects.¹⁷²

248. Initial and continuing training for judges and deputy public prosecutors who were first selected before the training program came into being and who have not completed initial training are obligated to attend a special permanent training program.¹⁷³ The length and content of this training is not defined in the law. Instead, the Program Council of the Academy is to develop this training in the near term.

249. Other training for judges and prosecutors mandated by the Law on Judicial Academy includes training for:

¹⁷⁰ Comprised of 11 members (at least five judges, three public prosecutors, one staff member of a court or prosecutor’s office, and training experts).

¹⁷¹ European Charter on the Statute for Judges, Independence of the Judiciary, item 7, principles I 1 and 2 b, Recommendations no R (94)12 of the Committee of Ministers of the Council of Europe, 1.1.6.

¹⁷² Law on Judicial Academy, Article 22. The current state budget of the Academy is approximately US\$ 700,000.

¹⁷³ Law on Judicial Academy, Article 45.

- Judges and prosecutors dealing with cases under the Law on Juvenile Perpetrators of Criminal Offences and Protection of Juveniles under criminal and family law;
- Judges and prosecutors being promoted to a court of higher instance;
- Judges and prosecutors whose specialization has changed; and
- Judges and prosecutors affected by significant changes in legislation or case management procedures (such as the introduction of plea bargaining).

250. The law provides that the councils may require judges or prosecutors to attend special training programs to remedy poor performance, but how this will be effectuated has not yet been articulated. The High Judicial Council and State Prosecutorial Council have not determined how to implement these provisions, so it is unclear whether remedial training will be pursued seriously and whether funding for remedial training is to be budgeted by the Academy or by the institution to which the judge or prosecutor is appointed.

251. The evaluation scheme proposed for judges does not provide for consideration of pursuit of training. The Academy is tasked with maintaining and sending records of judges and prosecutors who have participated in training to the High Judicial Council and State Prosecutorial Council. This responsibility buttresses the provisions in the Law on Judges and Law on Public Prosecutors that participation of judges, public prosecutors, and deputy public prosecutors in training is one of the criteria for selection and career advancement. However, the evaluation scheme for judges proposed by the High Judicial Council does not provide for consideration of training in evaluating their performance. In contrast, the proposed prosecutor evaluation process developed by the Prosecutors' Association is explicit in listing pursuit of continuing education as a criterion for evaluation. The link between training and promotion needs to be clarified in the judicial evaluation process by making training an explicit criterion for performance evaluation and promotion.

252. Critical, mandatory training for misdemeanor judges, recently transferred from the executive to the judicial branch and given expanded jurisdiction, could be addressed immediately by the High Judicial Council. Until January 1, 2010, adjudication of misdemeanor cases was a function of the executive, not judicial, branch. Thus, all misdemeanor judges, whether new to the function or transferred from the executive branch, are considered new judges for the purposes of evaluation. However, those transferred from the executive branch are not required to participate in the intensive continuous Academy training that is required of new judges. The jurisdiction of the misdemeanor court has been expanded beyond traffic and other minor matters to encompass complex tax, customs, and currency exchange matters. Misdemeanor judges can now impose significant fines, imprison defendants for up to 60 days, and conduct formal hearings. The Academy could play a crucial role in training misdemeanor judges to handle these new responsibilities. However, according to the Director of the Academy, misdemeanor judges are expected to receive ad hoc training developed by the Association of Prosecutors using donor funding until the High Judicial Council passes more specific training requirements. This has not yet occurred.

Recommendations

253. The development by the High Judicial Council of mandatory training of misdemeanor judges could be prioritized in the short term.

254. Ongoing training could be an explicit criterion for performance evaluation and career advancement. While important, this recommendation is less critical than developing good entry-level criteria and could be considered in the medium term.

5.4.6 Performance management

255. Individual judicial evaluations can provide court leadership with valuable feedback for judicial development and education, appropriate placement or promotion, needed improvements in the court's administration, resource allocation, and predicting workload trends. Until this time, evaluation of judges and prosecutors has been guided by the Law on Judges¹⁷⁴ and Law on Public Prosecution,¹⁷⁵ respectively. Both statutes called for regular evaluation based on publicized, objective, and uniform criteria, through a procedure ensuring the participation of the judge or prosecutor being evaluated. However, in the past, evaluation of judges and prosecutors rested entirely on meeting minimum productivity standards and on assessment of the rate at which a judge's decisions were reversed in higher court. For judges,¹⁷⁶ monthly standards adopted by the Supreme Court required that judges adjudicate the following number of cases:

- Municipal court judges: 18 investigative cases, 14 criminal cases, 20 civil cases or 20 labor cases.
- District court: 5 investigative cases, 4 criminal cases, and 15 civil cases.
- Supreme Court: 15 criminal cases, 20 civil cases or 20 administrative cases

For deputy prosecutors, the monthly standard for finalized cases was generally:¹⁷⁷

- First-instance or municipal prosecutor: 15 cases
- First-instance criminal cases in district prosecution office: 5 cases
- Second-instance criminal cases: 45 cases for a full-time assignment
- First-instance commercial offenses: 40 cases
- Second-instance commercial offenses: 50 cases
- Civil and administrative cases: 150

256. In addition, the ratio of cases reversed by a higher court to those disposed was previously used as a measure of the quality of adjudication.

Proposed judicial evaluation scheme

257. Widening the judicial evaluation criteria beyond ratios of received to disposed cases and affirmed to reversed decisions to include advancement of the work of the court properly reflects the role of judges in the broader administration of justice. The High Judicial Council's Commission for Judges' and Court Presidents' Performance Evaluation has promulgated new rules for judicial evaluation. The proposed rules seek to ground performance evaluation not only in the amount of cases disposed, but also in the quality of decision making (evaluated by analyzing how well written judges' decisions were, their capability to conduct proceedings, and the length of proceedings) and each judge's role as a member of the court (described as "dedication to the court").

258. Judges are to be evaluated through reports made by president and supervising department judges, with the participation of a three-judge council from the higher court level, even though higher courts have not traditionally had a strong supervisory role. Rankings are expected to be made within point ranges provided in each category of evaluation, with points converted to a descriptive ranking (such as exceeds expectations, satisfactory performance, and unsatisfactory). Based on the decision of the High Judicial Council, a judge may also be evaluated outside the schedule on an

¹⁷⁴ Articles 32–33.

¹⁷⁵ Articles 99–102.

¹⁷⁶ Official Gazette 80/2005.

¹⁷⁷ Rules of Procedure on Administration in Prosecution Offices, Article 100. Juvenile cases were treated the same as adult criminal cases.

exceptional basis. This proposal, in draft form, has been circulated to all judges. Working meetings including judges from each level were to be held at each Appellate Court at end of April 2010, but have been delayed until further notice.

259. It is clear that a great deal of thought and care have gone into crafting the rules, but four key issues could be addressed before finalizing the evaluation rules.

260. Both quantitative and qualitative methods of evaluating judges need to be clarified and simplified. The committee could recognize and solve the most critical obstacle to implementation: a system-wide lack of reliable and comparable statistical data. Evaluating judges relies on accurate and consistent recordkeeping (Chapter 3). Because courts record dispositions in different ways, per-judge disposition figures could be compared with the court as a whole so that discrepancies in recordkeeping do not disadvantage judges from a particular court. Statistics for criminal cases pose issues of comparability depending on whether a jurisdiction assigns a single number to multi-defendant cases. For instance, a judge disposing of 10 “criminal cases” may have adjudicated 10 separate defendants or 17.

261. Evaluating a judge’s performance against that of colleagues in courts with a similar number of judges—rather than against the entire country—would provide more meaningful information. Doing so would also give the High Judicial Council information about court performance that can be used in making decisions on resource allocation (for example, are more judges needed in larger courts?) and improvements in practice (for example, do smaller courts need to introduce better case management practices?).

262. The evaluation scheme developed by the State Prosecutorial Council is stronger in this respect. The State Prosecutorial Council is careful to compare the number of decisions rendered in cases managed by the individual prosecutor with the average number rendered in cases managed by all prosecutors in the same office. This method of comparing performance allows for consideration of institutional factors that affect performance and could be considered by the High Judicial Council in evaluating judges. The prosecutor evaluation scheme is also explicit about the link between individual prosecutor performance and that of the prosecutor function as a whole, by providing that the goal of the rules is “to direct system and work improvement[s].”¹⁷⁸ In contrast, the purpose of performance evaluation as envisioned by the committee of the High Judicial Council is for “...election...and dismissal of judges,” and less explicitly for enhancing individual or institutional performance.¹⁷⁹ These provisions could be adopted by the High Judicial Council for use in evaluating judges.

263. The evaluation process would benefit from simplification. In attempting to create objectivity in ratings, the method proposed by the High Judicial Council calls for converting all evaluation criteria into points. The proposed method implies making over 20 calculations per judge evaluated, some of which vary by level of court. The proposed scheme would represent a significant workload for the panels and the staff of the High Judicial Council. The highly detailed protocol, introduced to ensure objectivity in the data used for evaluation, would require that the High Judicial Council collect and verify the data, perform and check all of the calculations, and prepare the reports needed. This is not a realistic workload for the three staff envisioned by the High Judicial Council for this function.

264. The complexity of the proposed scheme would likely require full-time effort on the part of the panel judges. The High Judicial Council needs to consider who would preside over the caseload of the 36 judges that would sit on the panels in the next year and the likely impact on case flow management. As was previously the case, one panel with a four-year term would be established for every

¹⁷⁸ Draft Rules for Prosecutor Performance Evaluation, Article 1.

¹⁷⁹ Draft Rules for Measuring Performance of Judges and Court Presidents, Article 33.

100 judges. Newly appointed judges and prosecutors would be evaluated annually for three years and existing judges once every three years. Nine panels, alone comprising 27 judges, would thus be needed to work full time in the next three years to evaluate all 800 newly appointed judges in each of those three years. On an ongoing basis, an additional three panels, comprising nine judges, would be needed to evaluate the approximately 400 judges who would be required to be evaluated on the three-year evaluation cycle.

265. President judges would also be presented with a significant new workload. Each aspect of the proposed “dedication” indicator, which encompasses a judge’s relationship with other judges, staff, and parties; readiness for teamwork; contributions to court improvements and enhancements; adherence to working hours; and use of overtime as evaluated by the president judge is converted to points.

266. The judicial evaluation procedures would be well served by a short pilot, conducted by committee members mentored by a judicial evaluation expert from an appropriate country.¹⁸⁰ The team could evaluate one to two judges in several courts, including a small jurisdiction, gathering aggregate and individual data from their original sources; performing the calculations; obtaining qualitative evaluations from the court president and the higher court; and completing the final evaluation form. Following the test evaluations, the proposed evaluation measures could be reviewed to address whether there are consistent data to measure individual performance against them in a credible and timely way and whether the workload of the evaluators is feasible. Rushing to utilize the evaluation criteria will delegitimize them. Clearly, in the interim, specific complaints against judges would continue to be investigated in accordance with the disciplinary procedures discussed below.

267. The High Judicial Council could consider how this information could be used to provide education programs for judges in need of improvement. The evaluation scheme should not be used only to determine whether judges should be retained, released, or promoted; it also should provide information about how performance could be improved through training and mentoring. Article 34 of the proposed prosecutor evaluation criteria provides that, if at the midpoint of an evaluation period it appears likely that a deputy prosecutor may be assessed as not satisfying job requirements, the public prosecutor could discuss the likely evaluation with the deputy prosecutor, specifying the reasons for this evaluation. This provision enforces the concept that evaluation could be used to improve performance and allows early identification of remedial training needs. This provision could be adopted by the High Judicial Council.

Proposed prosecutor evaluation scheme

268. The draft rules for chief prosecutor evaluation are specific about the competencies required of prosecutors. These include the capacity to apply professional knowledge, capacity to undertake process operations, analytic approach, capacity for judging and decision making, capacity to explain legal approaches, oral and written skills, and teamwork.¹⁸¹

269. Calculations of prosecutor performance are also highly complex, with many criteria to be considered. As for judges, the performance of prosecutors is evaluated once every three years, with performance of a first-time elected deputy public prosecutor evaluated annually for each of the first three years. Prosecutors may also be evaluated more frequently on an exceptional basis. The criteria for evaluating prosecutors are:

- Efficiency

¹⁸⁰ The High Judicial Council may want to consider piloting the judicial evaluations in the pilot courts for the weighted caseload study (Chapter 3).

¹⁸¹ Proposal for Evaluation of Prosecutors, Article 4.

- Timely case resolution
- Use of proper legal remedies
- Written and oral skills; capacity to explain legal approaches
- Adoption of new knowledge, professional education, and training
- Cooperation with employees, court and other state organs, organizations, and participants.

270. The level of care and detail exercised in developing the evaluation proposals has not been extended to considerations of promotion of deputy prosecutors or judges.. The State Prosecutorial Council and High Judicial Council decide on the selection of deputy public prosecutors or judges with tenure to another or higher office or court but neither the draft rules for evaluating judges or prosecutors for promotion are not well developed, indicating for prosecutors, for example, only that public prosecutors and deputy public prosecutors awarded a rating of “exceptionally successful performance of public prosecutorial function”, have priority for promotion.¹⁸² The draft rules for judges simply states that points received in evaluation are the basis for selection for a court of higher instance. As with judges who “meet qualifications” after the initial three year probationary period, criteria, forms and methods for deciding that a judge or prosecutor who meets the qualifications for promotion could be developed by the High Judicial Council and State Prosecutorial Council in the medium term.

Court presidents and public (chief) prosecutors

271. Criteria for evaluating president judges and chief prosecutors presents the same institutional issues as those described for the evaluation of individual judges. The criteria are not specific enough to allow consistent and transparent evaluation of court presidents, particularly given the consequences of a poor evaluation, summarized only as:

- Performance of the court; as with individual judges, court performance is evaluated by considering the number of dispositions only;
- Success in the management of court administration, to be evaluated by all judges of the court; and
- Legal and timely work of the court.

272. The proposed evaluation criteria for public (chief) prosecutors¹⁸³ are better articulated than those for president judges and better reflects the large scope of responsibilities of the chief prosecutor. The performance evaluation of a public prosecutor is conducted by the directly superior prosecutor¹⁸⁴ after obtaining the opinion of the Collegium of the higher prosecutor's office. In evaluating performance, periodic reports on the work of the public prosecutor's office are taken into account. These include:

- establishing promptness in the work of public prosecutions,
- general capacity to manage public prosecution,
- capacity to supervise,
- capacity to improve work of the public prosecutions, and
- risk management capacity.

Each term is defined carefully in the proposed rules.

Recommendations

¹⁸² Proposal for evaluation of prosecutors, Article 46.

¹⁸³ Article 21.

¹⁸⁴ Evaluation Procedure Article 102, Law on Public Prosecution.

273. Because of the critical nature of these criteria in establishing the legitimacy of the work of the High Judicial Council and State Prosecutorial Council, it is recommended that the councils refine the judicial and prosecutor evaluation rules by:

- Recognizing that statistical data collection across courts is inconsistent;
- Comparing individual judge and prosecutor performance to those in institutions of similar size, in addition to the nation as a whole;
- Explicitly considering the complexity of matters heard by judges;
- Using qualitative rankings for criteria, such as dedication, that are not naturally expressed in numerical terms;
- Piloting the evaluation scheme in a few courts and prosecutor offices;
- Instituting the evaluation of new judges and prosecutors at the end of two years rather than one; and
- Focusing evaluation on opportunities for support, professional development, and education; formative evaluations allow judges to improve continually rather than await a summative evaluation with serious career consequences.

5.4.7 Discipline and discharge

274. The processes for disciplining or discharging a judge or prosecutor are undergoing significant reform by the High Judicial Council and State Prosecutorial Council; their proposals essentially parallel each other and appear sound. The prior disciplinary scheme relied on complaints being brought by president judges or citizens to the Supervisory Council of the Supreme Court, which investigated each one.¹⁸⁵ Many of the complaints received concerned dissatisfaction with the outcome of a case, which is more properly appealed to a higher jurisdiction court, or timeliness in handling a case, more appropriately dealt with by president judges. There was reported to be a significant backlog of complaints.

275. Charges that are without merit may now be dismissed by the Disciplinary Prosecutor.¹⁸⁶ A disciplinary commission hears only charges forwarded by the prosecutor for having merit. This is a significant advance over the previous system.

276. Grounds for disciplinary action¹⁸⁷ are detailed in the Law on Public Prosecution and reflect the general evaluation scheme. Types of disciplinary offenses¹⁸⁸ for judges include:

- delay in proceedings, including failure to schedule a hearing, prolonging proceedings, delays in drafting decisions, and unjustifiable failure to notify the court president about cases with prolonged proceedings;
- processing cases out of order;
- frequent tardiness for hearings or non-compliance with working hours;
- incorrect treatment of parties or court staff;
- acceptance of inappropriate gifts, failure to recuse themselves where called for, inappropriate relations with parties or legal representatives, or other serious violations of the Code of Ethics; and
- non-attendance at mandatory training programs.

¹⁸⁵ Seven dismissals of judges were brought to the National Assembly by the Supreme Court in 2008 and 2009, four based on criminal convictions and three on dereliction of duty or incompetence.

¹⁸⁶ The councils stipulate the requirements for appointment, term duration, manner of termination of office, method of work decision making, and appointment of members of the disciplinary bodies.

¹⁸⁷ Law on Public Prosecution, Article 104.

¹⁸⁸ Article 90,

277. The distinction between minor and serious disciplinary breaches by deputy prosecutors and judges is well specified. Severe disciplinary offenses include: (i) actions that cause a serious disruption in the exercise of judicial or prosecutorial power or severe damage to the reputation of and public trust in the justice system; (ii) actions resulting in expiration of the statute of limitations; and (iii) repeated disciplinary offenses (defined as a three established offenses). The framework provides for a hierarchy of disciplinary sanctions, including public reprimand, which may only be used on a first offense, a salary reduction of up to 50 percent for up to one year, and limits on promotion.^{189, 190} The framework also sets out a process for redress for disciplinary actions.

278. The process for discipline is clear. A Disciplinary Commission established by either the High Judicial Council or State Prosecutorial Council may reject the motion of the Disciplinary Prosecutor or uphold it and impose a disciplinary sanction.¹⁹¹ If the Disciplinary Commission establishes the responsibility of a judge or prosecutor for a serious disciplinary offense, it shall institute dismissal proceedings.¹⁹² Disciplinary proceedings are closed to the public, unless the individual charged requests that they be public, and must take place within one year of the day the disciplinary offense was allegedly committed. Those charged have the right to be promptly notified of the motion of the Disciplinary Prosecutor, to examine the case file and supporting documentation, and to present evidence in person or through a representative.^{193, 194} Either the Disciplinary Prosecutor or the judge or prosecutor subject to disciplinary proceedings may appeal to the High Judicial Council or State Prosecutorial Council. The decision of the High Judicial Council or State Prosecutorial Council is final.^{195, 196}

279. Against this background, no recommendations are given in regard to discipline and discharge.

5.4.8 Codes of conduct

280. Although the Rules of the High Judicial Council¹⁹⁷ and of the State Prosecutorial Council¹⁹⁸ include a requirement to adopt a Code of Ethics, and the National Anticorruption Strategy calls for all public service institutions to adopt an integrity plan, neither council has yet adopted a Code of Ethics that is binding on judges or prosecutors. The Association of Judges and the Association of Prosecutors have adopted an Ethics Code that is obligatory for members of the Association, but there are no sanctions if members violate the code.

281. However, conflicts of interest are generally defined in the Laws on Judges¹⁹⁹ and Public Prosecutors²⁰⁰ and, as discussed above, conflicts of interest for judges and public prosecutors are considered disciplinary offenses. A judge may not hold office in bodies enacting or enforcing legislation, other public offices, or positions in autonomous province and local self-management units.

¹⁸⁹ Article 91.

¹⁹⁰ Law on Public Prosecution, Article 105.

¹⁹¹ Law on Judges, Article 97.

¹⁹² Articles 94-95.

¹⁹³ Article 96.

¹⁹⁴ Law on Public Prosecution, Article 109.

¹⁹⁵ Law on Judges, Article 98.

¹⁹⁶ Article 111.

¹⁹⁷ Article 2.

¹⁹⁸ Article 47.

¹⁹⁹ Article 30.

²⁰⁰ Article 49.

A judge or prosecutor may not be a member of a political party or act politically, engage in paid public or private work, provide legal services or advice for compensation, or engage in other activities contrary to the dignity and independence of a judge or damaging to the reputation of the court, as determined by the High Judicial Council or State Prosecutorial Council.²⁰¹ A judge does not have to obtain explicit permission to engage in compensated educational and research activity outside working hours or in teaching and research activities in a judicial training institution during working hours. A judge is required to notify the High Judicial Council of any engagement or work that may be deemed incompatible with his or her judgeship.

Recommendations

282. It would be desirable to develop and implement an ethics training program for judges and deputy prosecutors. While essential, this recommendation will require developing curricula, probably with the assistance of international experts, and selecting appropriate faculty. It is reasonable to expect this training to be developed by the Academy in the medium term, once the substantive training that is now under development for trainees has been completed. The resources to implement such a program would also need to be located and appropriately allocated.

²⁰¹ Law on Judges; Article 65, Law on Public Prosecution, Article 30.

Annex 1. Key financial staffing and caseload data

Financial Data – Broad Economic Article for Each Type of Judicial Entity, current year RSD

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan										
CONSTITUTIONAL COURT													
Expenditures for employees	28,478		32,427	32,744	37,058	40,991	71,571	62,854	101,310	80,519	124,149	93,986	121,029
Current expenditures	3,206		2,600	2,165	2,700	2,739	2,516	1,468	2,818	6,527	6,789	5,248	7,043
Capital expenditures	60		-	-	-	-	500	78	-	-	300	133	200
Total expenditures	31,744	-	35,027	34,909	39,758	43,730	74,587	64,401	104,128	87,046	131,238	99,367	128,272
Budget revenues	31,744		35,027	34,909	39,758	43,730	74,587	64,401	104,128	87,046	131,238	100,467	128,272
Court fees	-		-	-	-	-	-	-	-	-	-	-	-
Donations from international organizations	-		-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-		-	-	-	-	-	-	-	-	-	-	-
Total source of funding	31,744	-	35,027	34,909	39,758	43,730	74,587	64,401	104,128	87,046	131,238	100,467	128,272
JUDICIAL BODIES													
Expenditures for employees	930,691	796,117	1,621,871	1,667,266	1,862,724	2,186,497	2,302,609	2,169,551	571,137	945,282	804,193	1,112,598	2,085,485
Current expenditures	937,918	1,155,124	1,102,402	788,845	1,038,000	1,243,746	1,686,790	1,675,937	597,000	488,044	517,655	635,070	419,367
Capital expenditures	1,107,500	209,246	804,500	225,569	385,000	478,956	2,184,805	1,074,238	1,168,764	334,902	1,107,401	493,769	1,349,004
Total expenditures	2,976,109	2,160,488	3,528,773	2,681,680	3,285,724	3,909,199	6,174,205	4,919,726	2,336,901	1,768,229	2,429,249	2,241,438	3,853,856
Budget revenues	367,109	63,417	425,401	233,065	460,728	764,276	1,639,039	1,457,223	2,336,901	1,561,82	1,701,836	1,278,071	2,912,274

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan										
										4			
Court fees	2,606,000	2,097,071	3,103,372	2,448,615	2,824,996	3,144,923	4,535,166	3,462,502	-	206,404	727,413	963,367	941,582
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	3,000	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	2,976,109	2,160,488	3,528,773	2,681,680	3,285,724	3,909,199	6,174,205	4,919,726	2,336,901	1,768,229	2,429,249	2,241,438	3,853,856
SUPREME COURT / SUPREME COURT OF CASSATION													
Expenditures for employees	171,359	158,408	169,489	190,212	238,236	243,631	477,965	438,572	502,900	514,906	512,317	487,321	294,968
Current expenditures	12,786	8,042	6,850	5,902	6,800	8,319	10,870	13,178	16,300	17,691	21,221	14,704	18,305
Capital expenditures	-	-	-	-	-	-	-	-	2,000	2,017	12,000	-	7,001
Total expenditures	184,145	166,450	176,339	196,115	245,036	251,951	488,834	451,750	521,200	534,614	545,538	502,025	320,274
Budget revenues	184,145	-	176,339	-	245,036	-	362,227	360,672	363,870	378,234	388,538	350,744	240,170
Court fees	-	-	-	-	-	-	126,607	91,077	157,330	156,380	157,000	151,281	80,104
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	184,145	-	176,339	-	245,036	-	488,834	451,750	521,200	534,614	545,538	502,025	320,274
HIGHER COMMERCIAL COURT / COMMERCIAL APPEAL COURT													
Expenditures for employees	48,314	43,776	49,498	52,402	60,376	61,885	137,973	120,342	162,462	138,203	175,701	147,978	128,749
Current expenditures	4,911	2,241	2,530	2,303	11,530	6,362	7,511	8,920	12,203	9,363	12,885	12,236	13,505
Capital expenditures													

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
	-	-	-	-	-	-	3,100	3,362	2,400	3,888	5,247	2,455	1,643
Total expenditures	53,225	46,017	52,028	54,705	71,906	68,247	148,584	132,624	177,065	151,454	193,833	162,669	143,897
Budget revenues	53,225	-	52,028	-	71,906	-	126,463	107,934	150,533	126,582	167,808	132,207	93,851
Court fees	-	-	-	-	-	-	22,121	24,690	26,532	24,872	26,025	30,462	50,046
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	53,225	-	52,028	-	71,906	-	148,584	132,624	177,065	151,454	193,833	162,669	143,897
REPUBLICAN PUBLIC PROSECUTOR'S OFFICE													
Expenditures for employees	84,738	57,489	64,428	60,045	85,899	87,071	165,046	142,198	189,786	146,540	208,398	145,623	108,227
Current expenditures	33,723	7,023	9,134	5,474	5,800	6,593	9,347	6,435	8,975	8,628	10,479	9,979	12,731
Capital expenditures	-	-	-	-	-	76	530	324	1,000	193	1,000	409	1,702
Total expenditures	118,461	64,512	73,562	65,519	91,699	93,740	174,923	148,957	199,761	155,361	219,877	156,011	122,660
Budget revenues	118,461	-	73,562	-	91,699	-	156,418	144,277	170,911	145,376	195,418	145,775	83,494
Court fees	-	-	-	-	-	-	18,505	4,680	28,850	9,985	24,459	10,236	39,166
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	118,461	-	73,562	-	91,699	-	174,923	148,957	199,761	155,361	219,877	156,011	122,660
WAR CRIMES PROSECUTOR'S OFFICE													
Expenditures for employees	24,200	18,466	27,935	24,718	36,071	37,144	63,004	56,405	70,780	68,148	92,618	74,420	81,565
Current expenditures	11,673	2,345	4,836	3,337	5,200	5,671	7,945	7,974	15,260	10,892	14,052	11,110	15,760

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
Capital expenditures	1,000	485	-	-	-	298	1,084	1,049	900	663	1,000	905	1,501
Total expenditures	36,873	21,296	32,771	28,055	41,271	43,113	72,033	65,428	86,940	79,703	107,670	86,434	98,826
Budget revenues	36,873	-	32,771	-	41,271	-	68,721	60,702	67,806	68,057	74,165	66,892	66,132
Court fees	-	-	-	-	-	-	3,312	4,726	19,134	11,646	33,505	19,542	32,694
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	36,873	-	32,771	-	41,271	-	72,033	65,428	86,940	79,703	107,670	86,434	98,826
REPUBLICAN PUBLIC ATTORNEY													
Expenditures for employees	40,650	36,055	50,818	39,742	78,281	100,920	139,305	126,492	150,978	135,014	168,939	138,564	152,286
Current expenditures	9,695	5,077	5,900	6,371	5,400	13,750	102,083	72,455	74,188	99,164	74,051	88,330	62,360
Capital expenditures	-	-	-	-	-	-	1,100	694	1,200	1,980	1,400	540	1,000
Total expenditures	50,345	41,132	56,718	46,113	83,681	114,670	242,489	199,642	226,366	236,159	244,390	227,435	215,646
Budget revenues	50,345	-	56,718	-	83,681	-	230,507	194,811	216,486	224,582	235,633	220,203	205,501
Court fees	-	-	-	-	-	-	11,982	4,831	9,880	11,577	8,757	7,232	10,145
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	50,345	-	56,718	-	83,681	-	242,489	199,642	226,366	236,159	244,390	227,435	215,646
DISTRICT COURTS / HIGHER COURTS													
Expenditures for employees	881,413	815,992	895,718	906,081	1,010,353	1,063,073	1,637,897	1,562,395	2,044,613	1,788,831	1,883,144	1,727,788	1,343,739

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan										
Current expenditures	196,453	213,066	182,415	181,648	184,500	445,870	556,660	549,897	904,186	1,018,530	826,003	846,156	515,715
Capital expenditures	1,000	-	-	-	-	13,993	-	-	-	-	-	-	-
Total expenditures	1,078,866	1,029,059	1,078,133	1,087,729	1,194,853	1,522,936	2,194,557	2,112,293	2,948,799	2,807,360	2,709,147	2,573,944	1,859,454
Budget revenues	1,078,866	-	1,078,133	-	1,194,853	-	2,194,557	2,112,293	2,160,097	2,133,503	1,908,942	1,664,327	1,119,882
Court fees	-	-	-	-	-	-	-	-	788,702	673,858	800,205	909,618	739,572
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	1,078,866	-	1,078,133	-	1,194,853	-	2,194,557	2,112,293	2,948,799	2,807,360	2,709,147	2,573,944	1,859,454
MUNICIPAL COURTS / BASIC COURTS													
Expenditures for employees	2,919,933	2,745,757	3,111,976	3,108,081	3,519,610	3,601,557	5,074,694	4,808,461	6,350,365	6,052,524	6,357,342	5,851,442	4,731,983
Current expenditures	586,844	566,698	452,267	450,368	386,000	1,047,888	842,600	822,108	2,064,620	2,135,763	1,618,005	1,617,821	1,402,015
Capital expenditures	-	-	100	-	-	-	-	-	-	-	-	-	-
Total expenditures	3,506,777	3,312,455	3,564,343	3,558,449	3,905,610	4,649,445	5,917,294	5,630,569	8,414,985	8,188,287	7,975,347	7,469,262	6,133,998
Budget revenues	3,506,777	-	3,564,243	-	3,905,610	-	5,917,294	5,630,569	6,164,061	5,853,169	6,198,237	5,515,523	3,940,182
Court fees	-	-	100	-	-	-	-	-	2,250,924	2,335,118	1,777,110	1,953,739	2,193,816
Donations from international	-	-	-	-	-	-	-	-	-	-	-	-	-

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
organizations													
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	3,506,777	-	3,564,343	-	3,905,610	-	5,917,294	5,630,569	8,414,985	8,188,287	7,975,347	7,469,262	6,133,998
COMMERCIAL COURTS													
Expenditures for employees	379,018	354,944	400,029	398,674	451,907	463,653	667,925	637,009	851,826	796,063	869,984	751,324	639,955
Current expenditures	102,758	64,006	66,220	65,335	72,500	72,117	65,420	63,940	156,804	155,050	167,427	157,156	145,215
Capital expenditures	593	-	-	-	-	-	-	-	-	-	-	-	-
Total expenditures	482,369	418,950	466,249	464,009	524,407	535,770	733,345	700,948	1,008,630	951,113	1,037,411	908,480	785,170
Budget revenues	477,552	-	466,249	-	524,407	-	733,345	700,948	807,912	756,623	861,191	742,546	527,329
Court fees	4,817	-	-	-	-	-	-	-	200,718	194,490	176,220	165,934	257,841
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	482,369	-	466,249	-	524,407	-	733,345	700,948	1,008,630	951,113	1,037,411	908,480	785,170
DISTRICT PROSECUTION OFFICE / HIGHER PROSECUTION OFFICE													
Expenditures for employees	235,712	206,373	240,878	240,599	271,178	278,182	428,333	407,802	603,540	580,867	647,735	578,071	530,713
Current expenditures	26,972	17,131	13,260	13,324	13,200	13,004	18,554	15,298	40,030	39,108	67,505	31,476	41,165
Capital expenditures	-	-	-	-	-	-	1,615	-	-	-	-	-	-
Total expenditures	262,684	223,504	254,138	253,923	284,378	291,186	448,502	423,100	643,570	619,975	715,240	609,547	571,878
Budget revenues	262,684	-	254,138	-	284,378	-	448,502	423,100	479,430	468,513	554,580	472,742	419,384

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
Court fees	-	-	-	-	-	-	-	-	164,140	151,461	160,660	136,805	152,494
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	262,684	-	254,138	-	284,378	-	448,502	423,100	643,570	619,975	715,240	609,547	571,878
MUNICIPAL PUBLIC PROSECUTIONS / BASIC PUBLIC PROSECUTIONS													
Expenditures for employees	500,759	432,674	504,842	501,492	581,579	592,540	874,137	833,725	1,253,760	1,218,696	1,312,576	1,221,407	1,041,886
Current expenditures	43,317	36,375	29,350	28,482	27,100	26,720	38,330	35,944	84,473	82,870	104,005	65,501	83,315
Capital expenditures	500	-	1,000	-	-	-	-	-	-	-	-	-	-
Total expenditures	544,576	469,049	535,192	529,974	608,679	619,260	912,467	869,669	1,338,233	1,301,566	1,416,581	1,286,908	1,125,201
Budget revenues	544,076	-	534,192	-	608,679	-	912,467	869,669	956,479	971,502	1,099,471	998,661	819,008
Court fees	-	-	-	-	-	-	-	-	381,754	330,064	317,110	288,247	306,193
Donations from international organizations	500	-	1,000	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	544,576	-	535,192	-	608,679	-	912,467	869,669	1,338,233	1,301,566	1,416,581	1,286,908	1,125,201
MISDEMEANOR COUNCILS													
Expenditures for employees	55,416	47,232	54,877	54,567	62,252	62,450	97,839	91,325	128,981	140,737	145,828	137,301	-
Current expenditures	27,382	13,492	15,210	13,090	14,200	11,608	11,200	10,597	31,206	20,302	28,155	10,294	-

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan										
Capital expenditures	1,000	-	-	-	-	-	-	-	-	-	-	-	-
Total expenditures	83,798	60,724	70,087	67,656	76,452	74,058	109,039	101,922	160,187	161,039	173,983	147,595	-
Budget revenues	83,798	-	70,087	-	76,452	-	109,039	101,922	123,416	119,107	142,103	118,940	-
Court fees	-	-	-	-	-	-	-	-	36,772	41,931	31,880	33,155	-
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	83,798	-	70,087	-	76,452	-	109,039	101,922	160,187	161,039	173,983	152,095	-
MUNICIPAL MISDEMEANOR BODIES / MISDEMEANOR COURTS													
Expenditures for employees	896,339	838,465	969,502	967,777	1,098,190	1,123,925	1,532,187	1,442,442	1,867,231	1,870,874	2,048,800	1,826,678	1,720,624
Current expenditures	222,555	176,439	157,335	155,391	152,600	151,544	161,830	159,609	329,140	326,922	350,911	340,451	273,215
Capital expenditures	4,000	1,598	1,000	-	80,000	21,152	57,613	-	-	-	-	-	-
Total expenditures	1,122,894	1,016,502	1,127,837	1,123,168	1,330,790	1,296,621	1,751,630	1,602,051	2,196,371	2,197,796	2,399,711	2,167,128	1,993,839
Budget revenues	1,122,894	-	1,127,837	-	1,330,790	-	1,751,630	1,602,051	1,805,975	1,757,845	1,982,535	1,746,315	1,412,851
Court fees	-	-	-	-	-	-	-	-	390,396	439,951	417,176	420,813	580,988
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	1,122,894	-	1,127,837	-	1,330,790	-	1,751,630	1,602,051	2,196,371	2,197,796	2,399,711	2,167,128	1,993,839

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
										6			
MINISTRY OF JUSTICE													
Expenditures for employees	55,306	48,665	84,575	66,622	77,477	74,599	177,558	161,304	98,735	85,676	110,578	102,893	118,272
Current expenditures	196,120	59,007	179,020	140,783	488,975	163,826	487,864	356,646	554,984	907,564	196,247	230,682	311,693
Capital expenditures	1,380	2,530	3,000	3,007	3,500	159,717	1,339,517	533,135	36,600	276,272	15,000	1,379	4,601
Total expenditures	252,806	110,202	266,595	210,412	569,952	398,142	2,004,939	1,051,085	690,319	1,269,512	321,825	334,954	434,566
Budget revenues	222,806	91,833	244,195	195,936	227,220	391,316	1,911,020	1,046,247	632,319	1,265,297	280,825	333,318	386,165
Court fees	12,000	355	15,000	-	20,000	62	16,573	1,617	15,000	377	18,000	-	25,401
Donations from international organizations	18,000	18,014	4,400	11,230	319,732	6,764	76,596	3,221	40,000	3,838	20,000	1,636	20,000
Proceeds from sale of financial assets	-	-	3,000	3,246	3,000	-	750	-	3,000	-	3,000	-	3,000
Total source of funding	252,806	110,202	266,595	210,412	569,952	398,142	2,004,939	1,051,085	690,319	1,269,512	321,825	334,954	434,566
ADMINISTRATIVE COURT													
Expenditures for employees	-	-	-	-	-	-	11,398	-	27,431	-	-	-	191,875
Current expenditures	-	-	-	-	-	-	-	-	20,798	-	2,385	-	7,407
Capital expenditures	-	-	-	-	-	-	11,000	-	-	-	5,224	-	5,001
Total expenditures	-	-	-	-	-	-	22,398	-	48,229	-	7,609	-	204,283
Budget revenues	-	-	-	-	-	-	22,398	-	45,357	-	7,609	-	159,070
Court fees	-	-	-	-	-	-	-	-	2,872	-	-	-	45,213
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	22,398	-	48,229	-	7,609	-	204,283
APPEAL COURTS													
Expenditures for employees	-	-	-	-	-	-	115,336	-	269,400	-	-	-	845,905
Current expenditures	-	-	-	-	-	-	-	-	257,800	-	30,000	-	376,208
Capital expenditures	-	-	-	-	-	-	1,400,000	-	1,700,000	-	446,725	172,332	2
Total expenditures	-	-	-	-	-	-	1,515,336	-	2,227,200	-	476,725	172,332	1,222,115
Budget revenues	-	-	-	-	-	-	1,515,336	-	2,191,305	-	476,725	172,332	668,863
Court fees	-	-	-	-	-	-	-	-	35,895	-	-	-	553,252
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	1,515,336	-	2,227,200	-	476,725	172,332	1,222,115
HIGHER MISDEMEANOR COURT													
Expenditures for employees	-	-	-	-	-	-	-	-	-	-	-	-	250,703
Current expenditures	-	-	-	-	-	-	-	-	-	-	-	-	19,215
Capital expenditures	-	-	-	-	-	-	-	-	-	-	-	-	-
Total expenditures	-	-	-	-	-	-	-	-	-	-	-	-	269,918
Budget revenues	-	-	-	-	-	-	-	-	-	-	-	-	202,954
Court fees	-	-	-	-	-	-	-	-	-	-	-	-	66,964
Donations from international	-	-	-	-	-	-	-	-	-	-	-	-	-

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execu- tion	Plan										
organizations													
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	-	-	-	-	-	-	269,918
APPEAL PROSECUTIONS OFFICES													
Expenditures for employees	-	-	-	-	-	-	-	-	-	-	-	-	226,228
Current expenditures	-	-	-	-	-	-	-	-	-	-	-	-	16,958
Capital expenditures	-	-	-	-	-	-	-	-	-	-	-	-	-
Total expenditures	-	-	-	-	-	-	-	-	-	-	-	-	243,186
Budget revenues	-	-	-	-	-	-	-	-	-	-	-	-	177,495
Court fees	-	-	-	-	-	-	-	-	-	-	-	-	65,691
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	-	-	-	-	-	-	243,186
ORGANIZED CRIME PROSECUTORS													
Expenditures for employees	-	-	-	-	-	-	-	-	-	-	-	-	177,618
Current expenditures	-	-	-	-	-	-	-	-	-	-	-	-	41,808
Capital expenditures	-	-	-	-	-	-	-	-	-	-	-	-	4,000
Total expenditures	-	-	-	-	-	-	-	-	-	-	-	-	223,426
Budget revenues	-	-	-	-	-	-	-	-	-	-	-	-	139,187
Court fees													

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
	-	-	-	-	-	-	-	-	-	-	-	-	84,239
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	-	-	-	-	-	-	223,426
STATE PROSECUTORS COUNCIL													
Expenditures for employees	-	-	-	-	-	-	8,800	-	11,684	-	18,909	8,205	30,317
Current expenditures	-	-	-	-	-	-	8,360	-	8,000	-	15,501	4,177	15,777
Capital expenditures	-	-	-	-	-	-	-	-	-	-	2,793	-	4,500
Total expenditures	-	-	-	-	-	-	17,160	-	19,684	-	37,203	12,382	50,594
Budget revenues	-	-	-	-	-	-	17,160	-	19,684	-	37,203	12,382	50,594
Court fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	17,160	-	19,684	-	37,203	12,382	50,594
HIGH COURT COUNCIL													
Expenditures for employees	-	-	-	-	-	-	5,310	-	28,404	-	39,558	13,778	95,710
Current expenditures	-	-	-	-	-	-	5,050	2,449	4,200	-	19,501	2,763	21,000
Capital expenditures	-	-	-	-	-	-	-	-	-	-	6,876	2,552	17,176
Total expenditures	-	-	-	-	-	-	10,360	2,449	32,604	-	65,935	19,094	133,886
Budget revenues	-	-	-	-	-	-	10,360	-	32,604	-	65,935	19,094	133,886

DESCRIPTION	2004		2005		2006		2007		2008		2009		2010
	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan	Execution	Plan
Court fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	10,360	-	32,604	-	65,935	19,094	133,886
JUDICIAL ACADEMY													
Expenditures for employees	-	-	-	-	-	-	-	-	-	-	-	-	18,538
Current expenditures	-	-	-	-	-	-	-	-	-	-	-	-	13,110
Capital expenditures	-	-	-	-	-	-	-	-	-	-	-	-	2
Total expenditures	-	-	-	-	-	-	-	-	-	-	-	-	31,650
Budget revenues	-	-	-	-	-	-	-	-	-	-	-	-	31,650
Court fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Donations from international organizations	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of financial assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Total source of funding	-	-	-	-	-	-	-	-	-	-	-	-	31,650

Staffing Data – Number and Type of Staff for Each Type of Judicial Entity

Year	Name of Court	Judge / Prosecutor	Deputy Prosecutor	Civil Servant	Employee	Trainees of judges / prosecutors	TOTAL	TOTAL without judges / prosecutors & deputy
2004	Supreme Court of Serbia	68	0	138	5	0	211	143
2004	Higher Commercial Court	29	0	33	1	0	63	34
2004	Republic Prosecutors Office	1	36	0	0	0	37	0
2004	War Crimes Prosecutor's Office	1		0	0	0	1	0

2004	Republic Public Attorney	0		0	0	0	0	0
2004	District Courts	429	0	796	433	86	1744	1315
2004	Municipal Courts	1657	0	4989	805	433	7884	6227
2004	Commercial Courts	208		0	0	0	208	0
2004	District Prosecution Office	25	146	141	25	55	392	221
2004	Municipal Public Prosecutions	102	334	356	44	52	888	452
2004	Misdemeanor Council						0	0
2004	Municipal Misdemeanor Bodies						0	0
2004	TOTAL	2520	516	6453	1313	626	11428	8392
2005	Supreme Court of Serbia	74	0	159	5	0	238	164
2005	Higher Commercial Court	28		37	1	0	66	38
2005	Republic Prosecutors Office	1	36				37	0
2005	War Crimes Prosecutor's Office	1					1	0
2005	Republic Public Attorney						0	0
2005	District Courts	390	0	983	518	111	2002	1612
2005	Municipal Courts	1604	0	5005	1087	439	8135	6531
2005	Commercial Courts	200	0	668	74	34	976	776
2005	District Prosecution Office	25	106	171	25	43	370	239
2005	Municipal Public Prosecutions	102	340	397	36	72	947	505
2005	Misdemeanor Council						0	0
2005	Municipal Misdemeanor Bodies						0	0
2005	TOTAL	2425	482	7420	1746	699	12772	9865
2007	Supreme Court of Serbia	75		143	27		245	170
2007	Higher Commercial Court	28		42	15		85	57
2007	Republic Prosecutors Office	1	36				37	0
2007	War Crimes Prosecutor's Office	1					1	0
2007	Republic Public Attorney						0	0
2007	District Courts	414		781	866	97	2158	1744
2007	Municipal Courts	1598		3841	2695	392	8526	6928
2007	Commercial Courts	204		587	233	30	1054	850
2007	District Prosecution Office	25		155	83	35	298	273
2007	Municipal Public Prosecutions	102		309	206	87	704	602
2007	Misdemeanor Council						0	0
2007	Municipal Misdemeanor Bodies						0	0
2007	TOTAL	2448	36	5858	4125	641	13108	10624
2008	Supreme Court of Serbia	67		145	31		243	176
2008	Higher Commercial Court	31		52	19		102	71

2008	Republic Prosecutors Office	1	33	23	10		67	33
2008	War Crimes Prosecutor's Office	1	6	17	4		28	21
2008	Republic Public Attorney						0	0
2008	District Courts	414		842	812	97	2165	1751
2008	Municipal Courts	1604		3738	2440	349	8131	6527
2008	Commercial Courts	204		580	230	33	1047	843
2008	District Prosecution Office	26		158	82	33	299	273
2008	Municipal Public Prosecutions	102		318	197	80	697	595
2008	Misdemeanor Council						0	0
2008	Municipal Misdemeanor Bodies						0	0
2008	TOTAL	2450	39	5873	3825	592	12779	10290
2009	Supreme Court of Serbia	64		145	31		240	176
2009	Higher Commercial Court	31		56	26		113	82
2009	Republic Prosecutors Office	1	33	22	4		60	26
2009	War Crimes Prosecutor's Office	1	6	20	4		31	24
2009	Republic Public Attorney						0	0
2009	District Courts	416		874	856	90	2236	1820
2009	Municipal Courts	1605		3856	2509	358	8328	6723
2009	Commercial Courts	205		600	235	34	1074	869
2009	District Prosecution Office	25	59	161	85	33	363	279
2009	Municipal Public Prosecutions	101	104	344	206	92	847	642
2009	Misdemeanor Council						0	0
2009	Municipal Misdemeanor Bodies						0	0
2009	TOTAL	2449	202	6078	3956	607	13292	10641
2010	Administrative Court	36	0	85	5	0	126	90
2010	Supreme Court of Cassation	25	0	61	92		178	153
2010	Commercial Appeal Court	24	0	57	3	0	84	60
2010	Higher Misdemeanor Court	65	0	108	15	0	188	123
2010	Appeal Courts	210	0	340	64	0	614	404
2010	Appeal Public Prosecution Offices	3	53	43	12	2	113	57
2010	Republic Prosecutors Office	1	33	22	4		60	26
2010	War Crimes Prosecutor's Office	1	6	19	3		29	22
2010	Organized Crime Prosecutors						0	0
2010	Republic Public Attorney						0	0
2010	Higher Courts	299	0	754	419	62	1534	1235
2010	Basic Courts	1059	0	3174	1221	223	5677	4618
2010	Commercial Courts	137	0	445	94	16	692	555

2010	Misdemeanor Courts	497	0	1240	160	20	1917	1420
2010	Higher Prosecution Offices	22	109	186	18	24	359	228
2010	Basic Public Prosecutions	28	292	371	50	51	792	472
2010	TOTAL	2407	493	6905	2160	398	12363	9463

Note: Staffing data from 2006 were not available.

Staffing Data – Number and Type of Staff for Each Type of Judicial Entity, Positions

Year	Name of Court	Judge / Prosecutor	Deputy Prosecutor	Civil Servant	Employee	Trainees of judges / prosecutors	TOTAL	TOTAL without judges / prosecutors & deputy
2004	Supreme Court of Serbia	68	0	138	5	0	211	143
2004	Higher Commercial Court	29	0	33	1	0	63	34
2004	Republic Prosecutors Office	1	36	0	0	0	37	0
2004	War Crimes Prosecutor's Office	1		0	0	0	1	0
2004	Republic Public Attorney	0		0	0	0	0	0
2004	District Courts	429	0	796	433	86	1744	1315
2004	Municipal Courts	1657	0	4989	805	433	7884	6227
2004	Commercial Courts	208		0	0	0	208	0
2004	District Prosecution Office	25	146	141	25	55	392	221
2004	Municipal Public Prosecutions	102	334	356	44	52	888	452
2004	Misdemeanor Council						0	0
2004	Municipal Misdemeanor Bodies						0	0
2004	TOTAL	2520	516	6453	1313	626	11428	8392
2005	Supreme Court of Serbia	74	0	159	5	0	238	164
2005	Higher Commercial Court	28		37	1	0	66	38
2005	Republic Prosecutors Office	1	36				37	0
2005	War Crimes Prosecutor's Office	1					1	0
2005	Republic Public Attorney						0	0
2005	District Courts	390	0	983	518	111	2002	1612
2005	Municipal Courts	1604	0	5005	1087	439	8135	6531
2005	Commercial Courts	200	0	668	74	34	976	776
2005	District Prosecution Office	25	106	171	25	43	370	239
2005	Municipal Public Prosecutions	102	340	397	36	72	947	505
2005	Misdemeanor Council						0	0
2005	Municipal Misdemeanor Bodies						0	0
2005	TOTAL	2425	482	7420	1746	699	12772	9865
2007	Supreme Court of Serbia	75		143	27		245	170
2007	Higher Commercial Court	28		42	15		85	57
2007	Republic Prosecutors Office	1	36				37	0
2007	War Crimes Prosecutor's Office	1					1	0
2007	Republic Public Attorney						0	0
2007	District Courts	414		781	866	97	2158	1744

Year	Name of Court	Judge / Prosecutor	Deputy Prosecutor	Civil Servant	Employee	Trainees of judges / prosecutors	TOTAL	TOTAL without judges / prosecutors & deputy
2007	Municipal Courts	1598		3841	2695	392	8526	6928
2007	Commercial Courts	204		587	233	30	1054	850
2007	District Prosecution Office	25		155	83	35	298	273
2007	Municipal Public Prosecutions	102		309	206	87	704	602
2007	Misdemeanor Council						0	0
2007	Municipal Misdemeanor Bodies						0	0
2007	TOTAL	2448	36	5858	4125	641	13108	10624
2008	Supreme Court of Serbia	67		145	31		243	176
2008	Higher Commercial Court	31		52	19		102	71
2008	Republic Prosecutors Office	1	33	23	10		67	33
2008	War Crimes Prosecutor's Office	1	6	17	4		28	21
2008	Republic Public Attorney						0	0
2008	District Courts	414		842	812	97	2165	1751
2008	Municipal Courts	1604		3738	2440	349	8131	6527
2008	Commercial Courts	204		580	230	33	1047	843
2008	District Prosecution Office	26		158	82	33	299	273
2008	Municipal Public Prosecutions	102		318	197	80	697	595
2008	Misdemeanor Council						0	0
2008	Municipal Misdemeanor Bodies						0	0
2008	TOTAL	2450	39	5873	3825	592	12779	10290
2009	Supreme Court of Serbia	64		145	31		240	176
2009	Higher Commercial Court	31		56	26		113	82
2009	Republic Prosecutors Office	1	33	22	4		60	26
2009	War Crimes Prosecutor's Office	1	6	20	4		31	24
2009	Republic Public Attorney						0	0
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2009	Commercial Courts	205		600	235	34	1074	869
2009	District Prosecution Office	25	59	161	85	33	363	279
2009	Municipal Public Prosecutions	101	104	344	206	92	847	642
2009	Misdemeanor Council						0	0
2009	Municipal Misdemeanor Bodies						0	0
2009	TOTAL	2449	202	6078	3956	607	13292	10641

Year	Name of Court	Judge / Prosecutor	Deputy Prosecutor	Civil Servant	Employee	Trainees of judges / prosecutors	TOTAL	TOTAL without judges / prosecutors & deputy
2010	Administrative Court	36	0	85	5	0	126	90
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2010	Republic Public Attorney						0	0
2010	Higher Courts	299	0	754	419	62	1534	1235
2010	Basic Courts	1059	0	3174	1221	223	5677	4618
2010	Commercial Courts	137	0	445	94	16	692	555
2010	Misdemeanor Courts	497	0	1240	160	20	1917	1420
2010	Higher Prosecution Offices	22	109	186	18	24	359	228
2010	Basic Public Prosecutions	28	292	371	50	51	792	472
2010	TOTAL	2407	493	6905	2160	398	12363	9463

Note: Staffing data from 2006 were not available.

Caseload Data – Caseload Dynamics by Type of Case for Municipal and District Courts

Municipal Caseload Data

Caseload Indicator	Year		
	2006	2007	2008
Total Backlog	629093	610988	645547
Total New Cases	1345265	1364839	1073167
Total Cases	2005037	1975827	2108513
Total Resolved Cases	1390207	1346704	1396004
Total Draw	614839	629123	712509
Investigative - Backlog	17691	17651	21270
Investigative - New cases	49077	53247	56056
Investigative - Total	66768	70898	77326
Investigative - Resolved	49107	49556	54171
Investigative - Draw	17661	21342	23155
Fault - Backlog	47044	52749	55215
Fault - New cases	61098	150156	156280
Fault - Total	108142	202905	211495
Fault - Resolved	59847	148447	153171
Fault - Draw	48287	54458	58324
Litigation - Backlog	165205	141475	142408
Litigation - New Cases	205210	219943	210013
Litigation - Total	367852	361418	352421
Litigation - Resolved	225322	218117	216955
Litigation - Draw	141723	143301	135466
Non-Contentious - Backlog	39856	66167	74997
Non-Contentious - New cases	340564	379588	434700
Non-Contentious - Total	380330	445755	509697
Non-Contentious - Resolved	337443	371777	420648
Non-Contentious - Draw	43060	73973	89049
Enforcement - Backlog	323978	332836	330582
Enforcement - New Cases	478366	538213	580838
Enforcement - Total	801304	871049	911420
Enforcement - Resolved	471506	498609	519086
Enforcement - Draw	330118	372440	392334

Caseload Indicator	Year		
	2006	2007	2008
Total Backlog	31396	41126	46935
Total New Cases	195559	184470	189081
Total Cases	226955	225596	236016
Total Resolved Cases	184182	178154	179828
Total Draw	42577	47442	55823
Investigative - Backlog	1558	1080	1178
Investigative - New cases	4090	4087	4351
Investigative - Total	5648	5167	5529
Investigative - Resolved	4580	3948	4309
Investigative - Draw	1068	1219	1220
Fault - Backlog	5012	7035	7465
Fault - New cases	6535	55381	54041
Fault - Total	11547	62416	61506
Fault - Resolved	7311	54268	52547
Fault - Draw	4249	8148	8959
Criminal Cases (2 nd Instance) - Backlog	2270	2255	2415
Criminal Cases (2 nd Instance) - New cases	21173	23224	25207
Criminal Cases (2 nd Instance) - Total	23443	25479	27622
Criminal Cases (2 nd Instance) - Resolved	21188	23035	24785
Criminal Cases (2 nd Instance) - Draw	2255	2444	2472
Civil Cases (2 nd Instance) - Backlog	16308	27753	31868
Civil Cases (2 nd Instance) - New cases	82627	90644	93131
Civil Cases (2 nd Instance) - Total	98935	118397	124999
Civil Cases (2 nd Instance) - Resolved	74372	86257	84742
Civil Cases (2 nd Instance) - Draw	24367	32140	40257
Administrative - Backlog	1050	1513	1904
Administrative - New cases	5163	6017	4757
Administrative - Total	6213	7530	6661
Administrative - Resolved	4701	5562	4794
Administrative - Draw	1506	1968	1867
Rehabilitation - Backlog		422	911
Rehabilitation - New cases		1276	370
Rehabilitation - Total		1698	1281
Rehabilitation - Resolved	35	759	487
Rehabilitation - Draw	272	939	794

Annex 2 Partial list of persons interviewed

Albijanac, Dragoljub	Judge, Acting President of the High Court in Belgrade
Andjelic, Nenad	Head of department for general affairs, Supreme Court of Cassation
Bobeck, Joseph	Task Leader-Court Financing, USAID Separation of Powers Program
Boljevic, Dragana	President of the Judges Association
Buckovic, Vukica	Asistant Minister responsible for finances – Ministry of Justice
Davidovic, Milan	Judge, Acting President of Higher Court in Kraljevo
Dicic, Radmila Dragicevic	Judge, Acting President of the Appellate Court ion Belgrade
Djordjevic, Ljubivoje	Prosecutor, 1 st Basic prosecution office in Belgrade
Djunic, Srdjan	Judge, Acting President Basic Court in Kraljevo
Dolovac, Zagorka	President of the State Prosecutorial Council and Republic Public Prosecutor
Gjengsto, Halvor	Project manager - IMG
Homen, Slobodan	State Secretary – Ministry of Justice
Hugh Grant, Hugh	Advisor in MoF
Ignjatovic, Milena	Financial Analyst – Commercial Court in Belgrade
Ilic, Dragan	Prosecutor, President of the Prosecutors Association
Kareklas, Stephanos	Deputy Team Leader – ECO Project, EU funded technical assistance to the HJC
Kelly, Ellen	Senior Rule of Law Advisor - USAID
Kilibarda, Tomislav	Prosecutor, High prosecution office in Belgrade
Kiurski, Jasmina	Prosecutor, Member of the Prosecutors Association
Koturovic, Milica Vlastic	Head of HR department – Ministry of Justice
Krsikapa, Majda	Advisor for internatinal cooperation, projects and planing in the justice sector – High Judicial Council
Lakic, Milena	Head of the Budget, Analysis and Planning Department in the Sector for Material and Financial Operations – Ministry of Justice
Lukic, Dragana	Assistant Minister responsible for International Cooperation – Ministry of Justice
Martins, Adriano	Head of Operations, EU Delegation in Serbia
Mesarovic, Nata	President of the High Judicial Council and President of the Supreme Court of Cassation
Milicevic, Lidija	Head of financial department - Commercial Court in Kraljevo
Mircic, Vucko	Judge, Member of the High Judicial Council

Nikolic, Mira	Secretary of the Association of the Misdemeanor Judges
Paksunovic, Milena	Judge, Acting President of Commercial Court in Kraljevo
Pasalic, Zoran	Misdemeanor judge, Acting President of the Higher Misdemeanor Court in Belgrade
Pasic, Dejan	Assistant minister for ICT – Ministry of Justice
Ristic, Maja Matija	Secretary – Ministry of Justice
Simic, Vojkan	Assistant minister for judiciary – Ministry of Justice
Sobat, Tanj	Judge, Acting President of the First Basic Court in Belgrade
Stoiljkovic, Ruzica	Ministry of Finance
Stojanovic, Sonja	Court Secretary - Commercial Court in Kraljevo
Stuart, Ken	Chief of Party, USAID Separation of Powers Program
Trifkovic, Branka	Head of financial department – Commercial Court in Belgrade
Ukropina, Nenad	Prosecutor, Appellate prosecution office in Belgrade
Ula, Pal	Advisor in the Ministry of Finance
Vasiljevic, Dusko	Economist - WB office on Serbia
Vojnovic, Nikola	Task Leader – Administration of Justice, USAID Separation of Powers Program
Vujic, Nenad	Director of the Judicial Academy
Wes, Marina	Lead Economist – WB office in Serbia
Wessely, Verena	Program Manager, EU Delegation in Serbia

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- Law on Inheritance

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Annex 4. Status assessment of reform implementation

REVIEW OF JUDICIAL REFORMS

The recent judicial reforms in Serbia are based on Serbia's new Constitution, the 2006 National Judicial Reform Strategy, and the legislative package adopted in 2008.

The National Judicial Reform Strategy addresses primarily the reform of Serbia's court system and introduces a National Judicial Reform Framework with 12 key objectives under the four core principles of independence, transparency, accountability, and efficiency. The National Judicial Reform Strategy assigned additional goals under each of these 12 objectives and set a timeline with short-term, medium-term, and long-term intervals. The following matrix provides an assessment of the Government's achievements to date based on a recent 2009 Council of Europe report.²⁰² “-“ denotes no or very limited progress. “-/+” denotes partial or some progress. “+” denotes good progress.

I. Independent Court System

Establishment of High Judicial Council and State Prosecution Council		
Goals		Council of Europe Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> Composition, mandate, organization, and operating procedures established by law High Judicial Council Administrative Office established by law and a plan developed for its structure and staffing 	-/+
Medium-term (2008-2009)	<ul style="list-style-type: none"> New High Judicial Council members elected; additional by-laws and operating rules prepared and adopted Basic Administrative Office services set up and begin functioning 	-
Long-term (2010-2011)	<ul style="list-style-type: none"> High Judicial Council assumes full oversight for all activities under its authority Administrative Office fully operational 	-
Independent Budget Authority		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> Plan developed and adopted for the transitional budget process supported by the High Judicial Council Administrative office and necessary amendments to laws are prepared 	-
Medium-term (2008-2009)	<ul style="list-style-type: none"> High Judicial Council assumes authority over the administrative office and over preparation of the judiciary budget 	-
Long-term (2010-2011)	<ul style="list-style-type: none"> High Judicial Council assumes full authority for budget preparation Administrative office is ready to implement the new budget 	-

²⁰² Council of Europe, 2007.

Independent Policy & Rule-Making Authority		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> High Judicial Council designated as the future rule-making body for the judiciary and assumes partial competencies Plan developed and legal framework approved for integration of the competences of High Personnel Council and Supervisory Committee within the High Judicial Council 	+
Medium-term (2008-2009)	<ul style="list-style-type: none"> High Judicial Council assumes full rule-making authority for the judiciary High Judicial Council is fully empowered to make decisions regarding court administration 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> High Judicial Council operates in accordance with the best comparative practices 	–

II. A Transparent Judicial System

Open Judicial Selection, Promotion, Discipline and Removal from Office		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> Legal framework for new structure of selection, promotion, disciplinary, and dismissal process prepared New criteria for the appointment of judges or the selection of judges for new court, promotion, discipline, and dismissal approved 	+/-
Medium-term (2008-2009)	<ul style="list-style-type: none"> High Judicial Council replaced High Personnel Council and Parliament in disciplinary and dismissal proceedings Legal framework providing for supplementary criteria for selection and promotion prepared in harmony with the establishment of National Judicial Training Academy 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> High Judicial Council assumes full responsibility for selection, promotion, discipline, and dismissal of judges New criteria for appointment and promotion of judges taking into consideration initial and permanent training developed and adopted 	–
Appropriate Access to Court Proceedings		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> Existing rules and procedures on access to court information reviewed and primary weaknesses identified Supreme Court opinions scanned into a database, with access provided to judges, the media, and the public 	–
Medium-term (2008-2009)	<ul style="list-style-type: none"> Court rules and procedures revised to promote public access to court proceedings Database of Supreme Court decisions installed in law faculties and public libraries 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> An independent survey identifies additional reforms supporting greater public access to court information Appeals Courts decisions added to database, additional public access points installed 	–
Enhance Public Outreach and Participation		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> Public Relations Office and Information Desk established in the High Judicial Council 	–

	<ul style="list-style-type: none"> • A single mechanism for recording all judicial system complaints is established 	
Medium-term (2008-2009)	<ul style="list-style-type: none"> • Public Relations Offices and Information Desks established in the Supreme Cassation Court and selected courts • Judicial system complaints are collected and assessed in an annual summary report 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> • All courts equipped with public relations officers and information desks • High Judicial Council’s annual report integrates annual summary report of citizen complaints 	–

III. An Accountable Judicial System

Clear Judicial Productivity & Performance Standards		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> • Criteria for assessing judicial productivity reviewed and new criteria defined by the High Judicial Council • New judicial automatic productivity data systems tested in commercial and general jurisdiction courts 	–
Medium-term (2008-2009)	<ul style="list-style-type: none"> • The High Judicial Council assumes Supervisory Council’s responsibility for reviewing judicial productivity • A uniform data collection system is initiated throughout all courts, with training for court staff 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> • All judges held accountable to a revised standard of judicial productivity with regular performance reviews • National judicial productivity data system is fully functional 	–
Effective Case Management		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> • New professional staffing positions in court administration identified and proposed • Scheduling changes proposed to reduce average case duration • Commercial courts develop case management automation system • Select municipal and district courts modernize internal IT systems • Plan proposed transferring service of process to the private sector • Commercial courts conduct weighted caseload analysis to refine staffing requirements 	+/-
Medium-term (2008-2009)	<ul style="list-style-type: none"> • New professional court administration positions created • New calendaring changes implemented in select courts • Automated case management system installed in select commercial courts • General jurisdiction courts automate case management and integrate IT networks • Transfer begins service of process responsibility to the private sector • Modifications to commercial court staffing levels, and select other courts, based on weighted caseload analysis 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> • Courts fully staffed with new court administrators • New calendaring system implemented in all courts • Commercial courts complete full automation and system integration • Scanning begins of key case documents as initial step to electronic case files • Services of process responsibility transferred to private sector • General jurisdiction courts modify staffing levels based on weighted caseload analysis 	–

Effective Use of Judicial & Prosecutorial Resources		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> • New legal framework adopted, implementation and training begins • New legal framework adopted to enable plea bargaining; training in the implementation of the new law begins for judges, prosecutors, and attorneys 	–
Medium-term (2008-2009)	<ul style="list-style-type: none"> • Investigative judges and prosecutors assume new roles • Judges, prosecutors, and attorneys implement the new legal framework 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> • Investigative judges and prosecutors performing roles in accordance with best practices • Criminal procedure is more efficient in Serbia's courts 	–

IV. An Efficient Judicial System

Improved Access to Justice		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> • Legal aid system reviewed and a new law creating an integral legal aid system adopted • Existing ADR Center programs reviewed and additional programs proposed 	–
Medium-term (2008-2009)	<ul style="list-style-type: none"> • Institutional support for legal aid is provided and the system is put in operation; criteria for granting legal aid are defined • ADR Center receives approval from the Ministry of Justice and High Judicial Council to expand programs 	–
Long-term (2010-2011)	<ul style="list-style-type: none"> • Legal aid for civil/criminal cases provided using clear means test • ADR Center begins a comprehensive program 	–
Standardized System for Education & Training		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> • Judicial Training Centre conducts training of the judiciary and training of trainers; Ministry of Justice and High Judicial Council prepare and approve a plan for a National Judicial Training Academy • International assistance secured for the new Judicial Training Academy facility • The Ministry of Justice, High Judicial Council, and law faculties agree on design of new curriculum and judiciary departments 	+/-
Medium-term (2008-2009)	<ul style="list-style-type: none"> • National Judicial Training Academy established by law; trainers begin training of new judges and permanent training • New training curriculum for judges developed and approved by the High Judicial Council • Law faculties strengthen judiciary departments and offer additional practical training opportunities 	+/-
Long-term (2010-2011)	<ul style="list-style-type: none"> • Results analyzed and curriculum of the National Judicial Training Academy improved, final comprehensive training program developed, and its implementation begins • New training curriculum for court staff developed and approved by the Ministry of Justice and the High Judicial Council • First students trained under new curricula graduate and begin preparing for careers in judiciary and the Bar 	–

Modern Court Network		
Goals		Assessment of Performance
Short-term (2006-2007)	<ul style="list-style-type: none"> • Adoption of the new constitutional and legal framework for the change of court organization and jurisdiction • Primary capital investments required for major urban courts identified and proposal for international assistance prepared 	+
Medium-term (2008-2009)	<ul style="list-style-type: none"> • New courts operate in accordance with the constitutional legal framework, and court network is rationalized • International assistance secured for capital investments in major urban courts 	+/-
Long-term (2010-2011)	<ul style="list-style-type: none"> • Rationalized court network operates efficiently and in accordance with the best comparative practices • Reconstruction and construction of new court facilities completed 	+/-

Annex 5. Case types in the Serbian Judiciary

Serbian	English translation	Definition
Istraga	Investigation	Criminal investigation / pre-trial for criminal case <ul style="list-style-type: none"> Initiated by public prosecutor or in some cases (envisaged by the Law) by private persons Based on criminal investigation outcome, a judge may decide to launch/continue with criminal case or to finish procedure
Krivica	Criminal case	Typical criminal case <ul style="list-style-type: none"> Depends on charges may be processed in basic or higher court (envisaged punishment is the measurement for the court type)
Parnica	Litigation (civil case)	(Civil) Litigation <ul style="list-style-type: none"> Typical civil case, resolves issues among private persons and/or companies May be jurisdiction of basic, higher, or commercial court, depends on participants and/or value of the case There are several types of litigation: regular ("P"), labor issues in litigation ("P1") or family litigation-divorce, alimony, children care, and possession ("P2") Only in higher court, when higher courts adjudicate the case as a first-instance court there are two more types of litigation: "P3," or litigation over copyrights and intellectual property, and "P4," or litigation related to media issues (mostly amount of compensation after criminal verdict)
Vanparnica	Non adversary proceeding	Several case types: Bankruptcy, Enforcement (all types), Probate, Payment orders, etc.
Izvršenje	Execution (Enforcement)	Enforcement case type can be: <ul style="list-style-type: none"> "I"- enforcement based on court decision "Iv"- enforcement based on authentic documents (monthly bills for electricity, cable TV, phone...) "Iv1"- the same as "Iv" but with a short procedure
Rehabilitacija	Rehabilitation	Restitution for convicts after the time envisaged by the law or after prison time
Žalba na krivičnu presudu	Criminal upon appeal	Second-instance case upon appeal can be processed in higher or appellate court, depending on the envisaged penalty
Žalba na parničnu presudu	Litigation upon appeal	Second-instance case upon appeal can be processed in higher or appellate court, depending on the value of the case

Annex 6. Statistical method

The purpose of the following is to briefly describe the nature of the analytical instruments used in Chapter 3.

Descriptive Statistics

The structure of data might also be referred to as the distribution, which describes the manner in which different observations of a given variable relate to one another. This structure can be described in terms of characteristic measures of *central tendency* and *dispersion*:

- Measures of central tendency give the researcher an idea of where the middle of the distribution is located
- Measures of dispersion provide information about the spread of observations about said middle location.

These measures allow the analyst to more easily describe and compare distributions by summarizing a good deal of information contained in the data. Among the most widely used measures of central tendency and dispersion are the mean and variance.

The mean, or average, is significant because it represents the *expected value* of the next observation. In other words, if the researcher were to randomly draw another court from a selected population, her best guess at its expenditure level for a given process would be the average expenditure level from all previous draws (assuming the researcher lacks sufficient prior information that might suggest that some values are more likely to be drawn than others).

The variance²⁰³ is significant because it indicates the average squared deviation from the mean. Most observations do not exactly equal the average value. By squaring the distance between each observation and the mean (to make sure each deviation adds to the variance), and adding up all such figures, the researcher has an idea of how large the spread of observations is overall. For example, if the variance of expenditure levels across courts is low, there is a higher likelihood that the next draw will be close to the mean. If variance is high, there is a lower likelihood that the next draw will be close to the mean.

Other Measures

The median is often employed as a measure of central tendency to mitigate the influence of outlier observations. The median is either the middle value given an odd number of observations in the dataset, or the average of the middle two values given an even number of observations. Since the median depends on placement in the dataset, rather than the value of other observations, it resists distortion by outliers.

The standard deviation is another common measure of dispersion. Equal to the square root of the variance, it is more intuitive than variance because it is expressed in the same units of measurement as the data. For example, if one were analyzing the range of tax yields that may result from a given rate structure, the appropriate unit may be dollars. While the variance would provide useful information about the spread of observations, it would be measured in squared dollars (as a result of using squared deviations). The standard deviation, in contrast, preserves the additive nature of variance, while also being expressed in more intuitive dollar units. In so doing, it also allows the researcher to directly compare the dispersion figure with observations, enabling the researcher to use the number of standard deviations to measure the distance between each observation and the mean.

²⁰³ Variance = $[\sum(X-\mu_x)^2]/(n-1)$ where μ_x is the average of X and the summation occurs over all observations.

Variance as a measurement to describe dispersion is useful when considering a dataset in isolation. If comparison across datasets is desired, however, the variance measure does not account well for scale. For example, the operating surpluses/deficits of an organization are likely to be larger for larger organizations. However, volatility, measured as variation as a percentage of operating volumes, may be equivalent or even less for larger organizations for a number of reasons. Volatility is the appropriate measure because it provides information on the ability to absorb the fluctuations observed. A \$1 billion revenue shortfall is easier to handle in high-income countries than it would be in low-income countries. If the researcher adjusts the standard deviation by the size of the countries' economies, she can make apples-to-apples comparisons. This process is called normalization. The Coefficient of Variation is the standard deviation divided by the mean.

Multivariate Analysis

Multivariate analysis seeks to understand the relationship between two or more variables. In this report, the most significant type of relationship is one of association. The objective is to understand how much of the variance in variable Y is explained by movement in variable X. For example, if the objective were to study possible economies of scale in the processing of cases, one possible strategy would be to determine the relationship between the expenditures per case processed and the number of staff. The goal would be to determine how much, on average, a change in the number staff alters the amount of funds required to process a single case.

Two oft-used measures of association are covariance²⁰⁴ and correlation.²⁰⁵ Covariance provides information about the extent to which two variables move in concert—larger values indicate greater levels of association. The measure also yields information about the direction of association—negative values indicate that the variables move in opposite directions.

The problem with covariance is that it is dependent upon the units of the variables in question, which limits the ability to compare multiple measures of association. The researcher may, for instance, want to know which factor has a larger effect on expenditures per case—number of staff or case volume. The covariance between staff and expenditures would have different units than the covariance between case volume and expenditures. This problem is addressed via the measure known as correlation, which does not have units. Correlation has a similar interpretive meaning as covariance, but is bounded by the (-1,1) interval.

In a regression framework,²⁰⁶ the significance of estimated impacts is driven by whether or not the dependent variable (Y) and the explanatory variables (X) are sufficiently correlated. The stronger the correlation, the more reliable is the estimated impact. Regression analysis typically returns several key parameters. Among those most often used to interpret results are the β coefficient, the p-value, and the R^2 value. The size of the estimated impact is provided by the value of the β coefficient. The significance of the impact increases as the p-value decreases, and R^2 measures how much of the variation in Y is explained by variation in X.

²⁰⁴ Covariance = $\sum[(X-\mu_x)(Y-\mu_y)]$ where μ_x and μ_y are the average of X and Y, respectively, and the summation occurs over all observations.

²⁰⁵ Correlation = Covariance/ $(\sigma_x\sigma_y)$ where σ_x and σ_y are the standard deviations of X and Y, respectively.

²⁰⁶ Regression Model: $y = \alpha + \beta x + e$ where α is an intercept, β is the coefficient vector, and e is an error term.

Annex 7. Cost Drivers - Regression Analysis

1. What drives court-level, per-case operating expenditures?

A more nuanced analysis of comparative court performance can be provided by considering spending per case and how it is affected by the composition of the case portfolio of individual courts. To do so, simple ordinary least squares regression models are estimated using total operating spending per case (TSPC) as the dependent variable and regressing a set of variables on it that are expected to affect per case costs. The models are estimated by pooling data for municipal courts across three years (2006-2008). Unlike the analysis in the previous sections, regressions allow multiple factors to be assessed simultaneously in terms of their impact on per-case spending. The analysis approaches the question from two sides. First, the effect of case demand on average per-case costs is examined. The intuition of this analysis is that unit costs vary across different case types, and hence the case mix affects the average unit costs across court locations. Second, the model is augmented to estimate the effect of different spending patterns, such as court level composition of spending, on per-case unit costs.

The first simple model for municipal court per-case operating expenditures is as follows:

$$\text{TSPC}_i = b_0 + b_1\text{INVPCT}_i + b_2\text{FAULTPCT}_i + b_3\text{LITPCT}_i + b_4\text{VANPCT}_i + b_5 \text{TOTRES}_i + b_6\text{TOTRES2}_i + b_7\text{TOTRES3}_i + b_8\text{YEAR2006}_i + b_9\text{YEAR2007}_i + b_{10}\text{YEAR2008}_i + e_i,$$

where TSPC is created by dividing total operating expenditures by total number of resolved cases. In this estimation, case composition (percentage of the total resolved cases comprised of different types of cases) is used to estimate the effect of different workload compositions on per-case costs. Specific measures incorporated include investigative cases as a percent of total cases (INVPCT), fault cases as a percent of total cases (FAULTPCT), litigation cases as a percent of total cases (LITPCT), and uncontested cases as a percent of total (VANPCT).²⁰⁷ Total resolved cases of all types (TOTRES) are included in the model to estimate any scale economies that might exist. Total cases squared (TOTRES2) and cubed (TOTRES3) are also included as regressors to determining if scale economies follow a curvilinear function and to allow the plotting of this function. Binary year indicators are included, with a restriction that the sum of their coefficients equal zero. The results are presented in Table .

The composition of cases affects unit costs. The model accounts for 70 percent of the variance in per case spending and the estimated coefficients for all case composition variables are positive and significant (Model 2) except for uncontested cases (VANPCT). The implication is that for each percentage-point increase in the portion that each of these cases comprises of the total caseload, there is an increase in the court's per-case resource cost.²⁰⁸ This again implies that case composition is an important cost driver for courts and requires correspondingly appropriate adjustments in resources. Specifically, for each percentage-point increase in investigative cases as a portion of total cases resolved (INVPCT), the average costs per case increase by RSD 273 above the cost of execution cases. A 10-percent increase (or decrease) above the average proportion of investigative cases in total resolved cases results in a RSD 2,732 increase (or decrease) in the average cost of cases in a particular court. A 1-percent increase in the portion of total cases that require litigation (LITPCT) increases per-case costs by RSD 51 (RSD 507 for a

²⁰⁷ Because the sum of these, plus execution cases portion of the total, equals 100 percent, one case category had to be excluded from the model. This excluded category is execution cases (EXPCT). It implicitly is included in the models intercept term and provides the implicit departure to which all of the case proportions included in the model are compared.

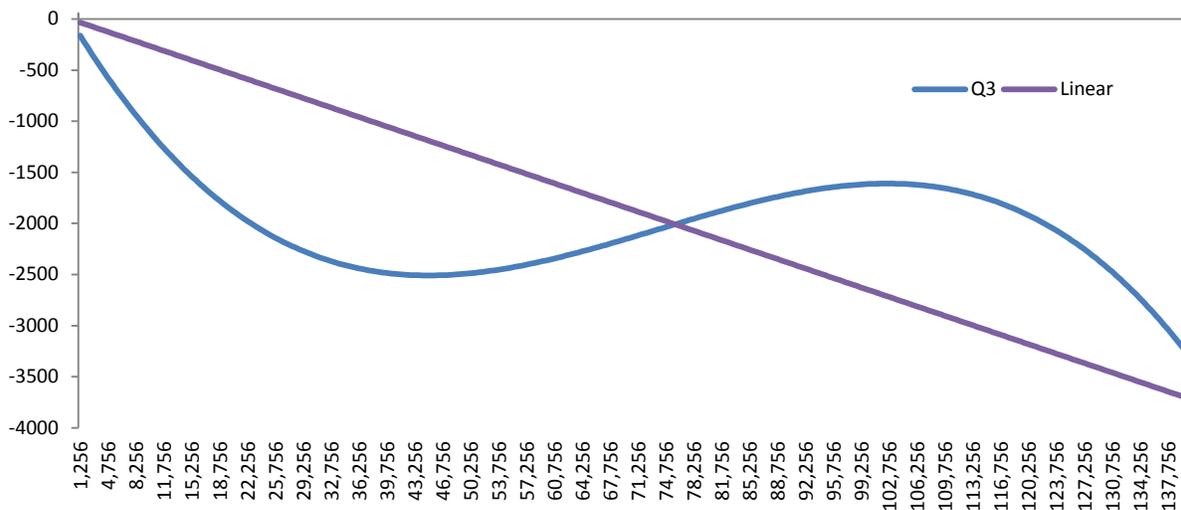
²⁰⁸ Implicitly this comparison is to the cost of processing execution cases, the omitted category.

10-percent change) and a 1-percent increase in a the portion of total cases that require a determination of fault (FAULTPCT) increases per-case costs by RSD 43 (RSD 434 for a 10-percent change).

Table A7-1: Per-Case Operating Spending as a Function of Case Distribution and Scale

Dependent Variable: Court Operating Spending / Total Resolved Cases (TSPC).						
Independent Variable	Caseload Distribution		Caseload & Spending Distribution		Caseload & Staffing Distribution	
	Coefficient	Standard Error	Coefficient	Standard Error	Coefficient	Standard Error
Intercept	2403.49	286.34***	4956.98	1561.58** *	4194.05	689.94** *
INVPCT – Investigative as % of total cases resolved	273.24	23.90***	257.08	24.68***	313.03	32.1***9
FAULTPCT– Fault as % of total cases resolved	43.41	10.31***	45.58	10.16***	46.29	11.85***
LITRPCT– Litigated as % of total cases resolved	50.76	6.59***	58.54	6.84***	55.35	9.98***
VANPCT– Uncontested as % of total cases resolved	0.49	3.66	2.18	3.64	-7.52	5.44
PSPRO – Personal services as % of TSDF			-34.48	17.76**		
STPRO – Specialized services & travel as % TSDF			0.837	19.35		
JUDGE – Judges as % of total staff					-21.47	19.89
TRAINEES – Judge trainees as % of total staff					-52.13	32.63*
CIVSERV – Civil servants as % of total staff					-26.26	6.54***
TOTRES – Total cases resolved	-0.13	0.013***	-0.146	0.0134***		
TOTRES ² – TOTRES squared	.00000209	3.034E-7***	0.00000238	3.093E-7***		
TOTRES ³ – TOTRES cubed	-9.45E-12	1.78E-12***	-1.08E-11	1.79E-12***		
TOTAL_STAFF – Total municipal court staff					-24.18	6.12***
TOTAL_STAFF ² - squared					0.11	0.039***
TOTAL_STAFF ³ - cubed					-0.00015	0.000063**
YEAR2006	24.54	90.30	18.75	89.96		
YEAR2007	57.64	73.78	56.09	72.78	91.33	62.16
YEAR2008	-82.18	72.99	-74.84	72.16	-91.33	62.16
n	282		282		183	
Adj. R ²	0.70		0.71		0.68	
P-value: <= .11 '*'; <=.05 '**'; <=.01***'.						

Figure A7-1: Per-Case Expenditures in Relation to Scale, Controlling for Case Composition



Source: World Bank staff estimates, Ministry of Justice.

Per-case costs vary with scale. A larger number of resolved cases results in a highly statistically significant reduction in the average per-case cost (see the coefficient for TOTRES), after controlling for case composition. The estimated scale economy is small on a per-case basis, but with some courts resolving approximately 140,000 cases, its implications grow. This scale effect is not uniform, however, across all levels of case workload. The coefficient for TOTRES2 is also significant and positive and the coefficient for TOTRES3 is significant and negative. This indicates that the scale economy pattern is “S” shaped. The effect of scale is first dampened at mid-levels (TOTRES2) and then accelerates again at higher scale (TOTRES3). The implication is that there is a threshold (possibly due to step variable costs) at which additional scale increases do not result in per-case processing savings. Once this range is exceeded, scale economies resume.

Figure A7-1 depicts the plot of per-case costs over the range of case volume. It shows the per case cost curve with the model estimated above (curve Q3) and for the model re-estimated with only the first order of the scaling variable (TOTRES, see curve labeled Linear). The comparison of these two curves shows the difference in the resulting pattern when different levels of caseload imply differing cost effects. Considering Q3, the mean case volume observed in municipal courts was 10,872 resolved cases per year. The range was from a low of 1,256 to a high of 139,431. Approximately 75 percent of court observations were for annual resolved case levels of 11,709 or below, however, more than 10 percent had more than 23,584. Expenditures follow these caseloads and the distribution on the per case spending variable is highly normal, symmetrical and without outliers. The graphed results show that the vast majority of courts fall well within the sharply downward sloping portion of the per case cost scale economy. Only for the courts in the top 5 percent of caseload (those with a case volume of more than 36,376) do the scale economies begin to bottom out. This rather vividly depicts the potential benefits to be gained by consolidating courts to take advantage of rather substantial per-case cost savings of up to RSD 2,500 per case resolved. It should be noted that these cost savings are to the court apparatus and do not consider the additional costs incurred by the citizenry of travel to more distant locations.

Using the results from the case distribution model for operating spending, predicted values can be estimated for all courts within the dataset. These predicted values represent the expected per-case cost for each court given its actual case distribution and the scale of its operations. If we compare these

predicted values to the actual values for each court,²⁰⁹ we have an estimate of the degree to which a particular court is, in actuality, spending more or less than expected (average) for its scale and case distribution. Table identifies the ten courts for which actual case spending most exceeds expected per-case spending along with the ten courts for which case spending is lowest compared to the model estimate. These results can be quite useful in directing further investigation as to the reasons why particular courts are functioning above or below estimated spending levels. The results of these investigations may provide insights into the possible existence of process and resource deployment variations that might be duplicated (or avoided) in different settings in order to maximize the effectiveness of the judicial system. They might also point to possible reallocation of resources for systemwide effectiveness improvements.

Table A7-2: Cost Per Case Outliers – Difference between Actual Per Case Costs and Costs Predicted by Model Estimates (amount above or below expected)

Municipal Courts with Lowest Cost Per Case		Municipal Courts with Highest Cost Per Case	
Name	Residual	Name	Residual
Municipal Court in Odzaci	-2,409	Municipal Court in Ljig	3,026
Municipal Court in Novi Pazar	-2,129	Municipal Court in Osecina	2,230
Municipal Court in Svrlijig	-1,873	Municipal Court in Kosjeric	1,819
Municipal Court in Aleksinac	-1,425	Municipal Court (5) in Belgrade	1,760
Municipal Court in Indjija	-1,286	Municipal Court in Subotica	1,670
Municipal Court in Pirot	-1,278	Municipal Court in Vlasotince	1,542
Municipal Court in Nis	-1,277	Municipal Court in Titel	1,442
Municipal Court in Kikinda	-1,255	Municipal Court in Dimitrovgrad	1,334
Municipal Court in Raska	-1,205	Municipal Court in Boljevac	1,265
Municipal Court in Veliko Gradiste	-1,201	Municipal Court in Krupanj	1,248

Does a different composition of court level spending affect per case costs? To understand the effects of different spending patterns on per-case costs, the per-case spending model was re-estimated with expenditures on personnel services (PSPRO),²¹⁰ and specialized services and travel (STPRO)²¹¹ included as regressors to test how the distribution of spending affects per case costs. These expenditure categories were chosen because of their importance to total spending. The metric for these variables is the percentage of total spending that they (PSPRO and STPRO) command in each court.²¹² The model augmented as follows:

$$TSPC_i = b_0 + b_1INVPCT_i + b_2FAULTPCT_i + b_3LITRPCT_i + b_4VANPCT_i + b_5PSPRO_i + b_6STPRO_i + b_7TOTRES_i + b_8TOTRES^2_i + b_9TOTRES^3_i + b_{10}YEAR2006_i + b_{11}YEAR2007_i + b_{12}YEAR2008_i + e_i.$$

Courts that spend more of their resources on personnel tend to be more efficient. The coefficients for these estimates (Columns 3 and 4 of Model 2) reflect the degree to which higher or lower concentrations of resources on these elements of spending reflect higher or lower overall case costs. The results suggest that, holding case distribution constant, a higher concentration of resources in personal services spending reduces overall per-case costs. To put it differently, costs are sometimes reduced by a

²⁰⁹ Specifically, we calculated the residuals of the model for each court.

²¹⁰ The corresponding economic article codes are 411-416.

²¹¹ Economic articles 422-424.

²¹² Because the sum of all spending ratios equals 100 percent, all spending categories cannot be simultaneously included in the model.

more balanced distribution of input resources. These results imply, however, that distributing resource usage away from personal services to other categories of spending does not reduce per case costs.²¹³ The results for the case distribution variables are largely unchanged from the previous model.

Finally, this model was also estimated with staff composition as regressors and total staff (and its square and cube) as the scaling factors. This allows an assessment of the degree to which differing staff concentrations affect per case costs. Staff composition was represented by the portion of total staff that was comprised of judges (JUDGE), judges' trainees (TRAINEES) and civil servants (CIVSERV). The omitted staff category was non-civil service employees. The model incorporating staff composition is as follows:

$$TSPC_i = b_0 + b_1INVPC_i + b_2FAULTPC_i + b_3LITRPC_i + b_4VANPC_i + b_5JUDGE_i + b_6TRAINEES_i + b_7CIVSERV_i + b_8TOTAL_STAFF_i + b_9TOTAL_STAFF_i^2 + b_{10}TOTAL_STAFF_i^3 + b_{11}YEAR2006_i + b_{12}YEAR2007_i + b_{13}YEAR2008_i + e_i .$$

Again, similar results are found for the effect of case composition on per case costs. The coefficients for all staff variables are negative, suggesting that increasing concentrations of professional staff (holding the level of staffing constant) results in lower per-case costs, and that significant economies of scale exist. However, the effect is insignificant for judges (JUDGES) and only marginally systematic for judges' trainees (TRAINEES). The results are, however, very strong for civil servants (CIVSERV). The coefficient implies that staffing complement matters and that a 1-percent increase in the portion of staff that are civil servants reduces the per-case cost by RSD 26.26. While less systematic for trainees, a 1-percent increase in their staffing share results in a RSD 52 reduction in per-case costs. This may be reflective of greater operational efficiency, when judges are supported by sufficient trainee and civil servant capacity, or simply reflective of the lower pay schedule of trainees and civil servants. The model was re-estimated (not shown) with total operating spending (and its square and cube) as the scaling variables and the results were unchanged, suggesting that there are efficiency advantages associated with increased trainee and civil servant staffing.

2. Understanding variation in the productivity of judges across courts: what drives the number of cases resolved per judge?

The production function in court proceedings revolves largely around the efficiency with which the resources of judges are combined with other court resources to process and adjudicate cases. Similar to the analysis of per-case costs, regression analysis is used to assess the impact of multiple factors on the productivity of judges. Models were estimated to identify the factors that contribute to the judges' ability to resolve cases. In these models, the average number of cases resolved by judges in each court (JUDGE_RES) was regressed on case composition,²¹⁴ expenditure composition,²¹⁵ and staff composition.²¹⁶ Total staff (and its square and cube) was used as the scaling factor. The complete judge efficiency/effectiveness model is:

$$JUDGE_RES_i = b_0 + b_1INVPC_i + b_2FAULTPC_i + b_3LITRPC_i + b_4VANPC_i + b_5PSPRO_i + b_6STPRO_i + b_7TRAINEES_i + b_8CIVSERV_i + b_9EMP_i + b_{10}TOTAL_STAFF_i + b_{11}TOTAL_STAFF_i^2 + b_{12}TOTAL_STAFF_i^3 + b_{13}YEAR2007_i + b_{14}YEAR2008_i + e_i .$$

²¹³ This model was also estimated using total spending as the scaling variable to control directly for scale of spending. This estimation produced similar parameter estimates.

²¹⁴ Case composition = (INVPC, FAULTPC, LITRPC, VANPC).

²¹⁵ Expenditure composition = (PSPRO, STPRO).

²¹⁶ Staff composition = (TRAINEES, CIVSERV, EMP).

Table A7-3: Determinants of Judge Effectiveness

Dependent Variable: Resolved Cases per Judge (JUDGE_RES).		
Independent Variable	Coefficient	Standard Error
Intercept	-2353.24	1102.73**
INVPCT	-72.49	13.52***
FAULTPCT	-11.56	4.89**
LITPCT	-16.89	4.22***
VANPCT	8.58	2.23***
PSPRO	11.29	9.38
STPRO	30.50	10.50***
TRAINEES	48.66	14.50***
CIVSERV	29.37	7.71***
EMP – Court employees as % of total staff	29.08	8.23***
TOTAL_STAFF	-2.94	2.62
TOTAL_STAFF2	0.021	0.016
TOTAL_STAFF3	-0.000033	0.000026
YEAR2007	-19.50	25.49
YEAR2008	19.50	25.49
n	183	
Adj. R ²	0.54	
P-value: <= .1 '**'; <= .05 '***'; <= .01 '****'.		

Consistent with the above findings regarding case composition, it heavily influences the number of cases that a judge can process. Across all courts, the average number of cases processed per judge for 2007 and 2008 was 735 annually. With execution cases implicitly within the model intercept, a 1-percent increase in the proportion of investigative cases (INVPCT) within a court produces a 73-case reduction in the number of cases processed per judge. A 1-percent increase in litigated civil cases (LITPCT) results in a 17-case decline and a 1-percent increase in the portion of cases that require a determination of fault (FAULTPCT) results in a 12-case decline. As would be expected, the existence of uncontested cases (VANPCT) allow judges to process more cases, at 9 cases more for each percentage-point increase in non-contested cases as a portion of caseload.

On the expenditure side, the greater the share of resources spent on specialized

services and travel (STPRO), the more cases a judge processes. This is most likely related to the effect of the deployment of contracted specialized legal services as an aid to the workload of judges. A 1-percent increase in specialized services and training as a portion of total spending increases the average cases resolved per judge by 31 cases.

The effects of staffing are large. Not surprisingly, extra support staff increase the resolved case output of judges. The magnitudes are large across the board, and it is surprising that the effects of an increase in general employees (EMP) is of approximately the same magnitude as an increase in the ranks of civil servants (CIVSERV, as a portion of total staff employment). This may be due to the absence of separation across the functions performed by civil servants and general employees or the use of general employees to free civil servants for more professional undertakings. Not surprisingly, an increase in the proportion of staff that are judge trainees (TRAINEES) has the most substantial impact on case output per judge. A 1-percent increase in judge trainees is associated with the resolution 49 more cases per judge. Interestingly, total staff (TOTAL_STAFF) alone does not have a significant effect on the cases resolved per judge.

3. Staff as an essential element in the court’s productivity: what drives court productivity?

Overall staff effectiveness is a critical component of the ability of courts to exercise their responsibilities. While staff and judge effectiveness are closely related, models were also estimated to assess the degree to which different staffing complements were related to different abilities to resolve cases. In these models, the average number of cases resolved per total court staff (RES_STAFF) was again regressed on case composition,²¹⁷ expenditure composition,²¹⁸ and staff composition.²¹⁹ Total staff

²¹⁷ Case composition = (INVPCT, FAULTPCT, LITPCT, VANPCT)

²¹⁸ Expenditure composition = (PSPRO, STPRO)

²¹⁹ Staffing composition = (JUDGE_PROS, TRAINEES, CIVSERV)

(TOTAL_STAFF) and its square (TOTAL_STAFF²) were used as scaling factors. Formally, the model is as follows:

$$RES_STAFF_i = b_0 + b_1INVPCT_i + b_2FAULTPCT_i + b_3LITPCT_i + b_4VANPCT_i + b_5PSPRO_i + b_6STPRO_i + b_7JUDGE_i + b_8TRAINEES_i + b_9CIVSERV_i + b_{10}TOTAL_STAFF_i + b_{11}TOTAL_STAFF_i^2 + b_{12}YEAR2007_i + b_{13}YEAR2008_i + e_i.$$

Table A7-4 Determinants of Resolved Cases per Staff

Dependent Variable: Resolved Cases/Total Staff (RES_STAFF).		
Independent Variable	Coefficient	Standard Error
Intercept	-41.86	138.72
INVPCT	-14.44	2.28***
FAULTPCT	-1.54	0.80*
LITPCT	-2.85	0.68***
VANPCT	1.71	0.36***
PSPRO	1.65	1.58
STPRO	4.14	1.75**
JUDGE	2.81	1.39**
TRAINEES	3.60	2.26*
CIVSERV	0.13	0.46
TOTAL_STAFF	0.16	0.20
TOTAL_STAFF ²	-0.000014	0.00049
YEAR2007	-4.66	4.31
YEAR2008	4.66	4.31
n	183	
Adj. R ²	0.55	
P-value: <= .11 '*'; <=.05 '**'; <=.01'***'.		

Like the results of previous models, case composition highly influences cases processed per staff member (Table A7-4). However, for cases involving the determination of fault, the relationship is not as direct as for judges, though it is systematic enough to be statically significant. Across all municipal courts, an average of 131 cases are resolved per staff member (compared to 735 for only judges), ranging from 50 to 709 across courts. Implicitly compared to execution cases (included in the model intercept), a 1-percent increase in the proportion of cases that are investigative (INVPCT) decreases the number of cases resolved per staff member by 14, while a 1-percent increase in litigations (LITPCT) and fault (FAULTPCT) cases decreases resolved cases per staff by 2.9 and 1.5, respectively. Alternatively, and consistent with the above, a 1-percent increase in the portion of cases that are uncontested (VANPCT) results in a 1.7 cases increase in cases resolved per staff member.

Expenditure side effects are consistent with those for judge effectiveness, though magnitudes are expectedly smaller. The greater the share of resources spent on specialized services and travel (STPRO), the more cases processed per staff member. This, again, is most likely related to the effect of the deployment of contracted specialized legal services as an aid to the overall workload of the court. A 1-percent increase in specialized services and training as a portion of total spending increases the average cases resolved per staff member by 4 cases.

Unlike estimates of the effectiveness of judges, where staff composition was a highly significant factor in increasing judge effectiveness, shifts in staff composition independent of judges have little effect on overall court staff effectiveness. Per-staff efficiency also does not appear to vary with the scale of staffing (TOTAL_STAFF*). Only an increase in judges as a proportion of total staff (JUDGE) has a significant effect on cases resolved per staff member. The effect of an increase in trainees, while of slightly greater magnitude, is only marginally significant. The obvious conclusion is that judges have the most significant effect on court outputs. Given that the employee category is the excluded category in this model, an increase in the portion of any staff category modeled (while controlling for total staff) implicitly comes at the expense of the employee staffing level. The results of this model suggest that the only staff category with a significant effect on overall staff efficiency, beyond the employee category, is judges. These results, coupled with the above results for judge effectiveness, indicate a significant contribution to judge efficiency by all employee groups and suggest the importance of getting the employment mix “right” to maximize system output. This does not suggest that adding judges is the only method for increasing

effectiveness, but instead that the formula for effectiveness is ensuring the appropriate mix between judges and other staff.

As for per-case spending, results from the judge effectiveness model (Model 3) can be used to generate predicted values for the expected number of cases resolved per judge (JUDGE_RES) for each court in the dataset.²²⁰ These predicted values represent the expected resolved caseload for judges in each court, given the court’s actual cases distribution and the scale of its operations. Comparing these predicted values to the actual values for each court provides an estimate of the degree to which judges in a particular court are performing at a higher or lower case-clearing rate than expected given the court’s scale and case distribution. Table A7-5 identifies the ten courts for which the actual case processing rate per judge most exceeds expected levels and the ten courts for which per-judge resolved cases is lowest compared to the model estimate. These results point to the need for further investigation into the specific local reasons why judges in a particular court setting are functioning above or below estimated case resolution rates. The results of these assessments may lead to insights into the most effective mix of resources and staff to support judicial processes as well as insights into the relative effectiveness of differences in court or personnel operations in promoting the effective usage of scarce personnel resources in the form of judges themselves. The insights provided by this directed inquiry may provide benchmarks for possibly duplicating best practices across different settings, with an intended outcome of enhanced judicial effectiveness.

Table A7-5: Cases Resolved Per Judge Outliers – Difference between Actual Cases Resolved Per Judge and Resolution Rate Predicted by Model Estimates (amount above or below expected)

Municipal Courts w/ Highest Cases Resolved Per Judge		Municipal Courts w/ Lowest Cases Resolved Per Judge	
Name	Residual	Name	Residual
Municipal Court in Vrbas	1055	Municipal Court Senta	-442
Municipal Court in Kanjiza	932	Municipal Court in Vladicin Han	-313
Municipal Court in Nis	697	Municipal court (2) in Belgrade	-298
Municipal Court in Odzaci	621	Municipal Court in Jagodina	-293
Municipal Court in Ada	454	Municipal Court in Kragujevac	-281
Municipal Court in Kikinda	392	Municipal Court in Titel	-279
Municipal Court) in Velika Plana	353	Municipal Court in Nova Varos	-273
Municipal Court in Pirot	318	Municipal Court in Krupanj	-270
Municipal Court in Veliko Gradiste	283	Municipal Court in Subotica	-270
Municipal Court in Valevo	267	Municipal Court in Kovaca	-258

²²⁰ Model 3 (Table) was first re-estimated including each of the case type variables squared (INVPCT2, FAULT2, LITRES2, VANRES2). This allows for the estimation of increasing or diminishing effects on productivity of case type and uniformity and produces more consistent estimates for individual courts. With these variables omitted in the initial estimate, the results of the model are more easily interpreted for deviation from the mean of the observations.

Annex 8. Serbia's Budget Calendar

DATE	ACTION
February 15	The Minister of Finance shall provide instructions for priority areas financing proposal.
March 15	The Republic of Serbia direct budget beneficiaries, shall submit to the Ministry their proposals for identification of priority areas financing for the budget year and for the two following fiscal years based on the instruction issued on February 15.
April 30	The Minister of Finance, in cooperation with the ministries and institutions in charge of economic policy and the economic system, shall prepare the Fiscal Strategy Report, which contains the economic and fiscal policy of the government with the projections for the budget year and for the following two fiscal years.
May 15	The Minister of Finance shall deliver draft Fiscal Strategy Report to the Fiscal Council.
June 15	The Fiscal Council shall pass their opinion about the draft Fiscal Strategy Report.
July 1	The Minister of Finance shall pass the draft Fiscal Strategy Report to the government for adoption.
July 15	The government shall adopt the Fiscal Strategy Report and they shall pass it to the National Assembly for consideration.
August 1	The Minister of Finance shall deliver the instruction for draft Republic of Serbia Budget.
August 1	The Minister of Finance shall deliver the Fiscal Strategy Report to the local government and mandatory social insurance organizations
August 31	National Assembly delivers their comments and recommendations on the Fiscal Strategy Report to the government.
September 15	The Republic of Serbia Budget direct beneficiaries and mandatory social insurance organizations shall deliver their draft medium-term and financial plan to the ministry.
October 1	The government, upon proposal by the Minister, shall adopt the revised Fiscal Strategy Report, with information on financial and other effects of the new policies, while taking into account the macroeconomic framework as updated after April 30.
October 5	The government shall deliver the revised Fiscal Strategy Report to the National Assembly
October 15	The Minister of Finance shall deliver to the government a draft law on the Republic of Serbia Budget, draft Decisions on granting approvals for financial plans of mandatory social insurance organizations and financial plans of mandatory social insurance organizations
November 1	The government shall adopt the draft Law on the Republic of Serbia Budget and deliver it to the National Assembly, together with the draft Decisions on granting approvals for financial plans of mandatory social insurance organizations and the financial plans of mandatory social insurance organizations.
December 15	The National Assembly shall pass the Law on the Republic of Serbia Budget and the Decisions on granting approvals for financial plans of mandatory social insurance organizations.