



2021 SERBIA JUDICIAL FUNCTIONAL REVIEW

Report

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Kingdom of the Netherlands



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Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
AVP	Automated Case Management System
BPMIS	Budget Planning and Management Information System
CCJE	Consultative Council of European Judges
CCPE	Consultative Council of European Prosecutors
CEPEJ	The European Commission for the Efficiency of Justice
CMS	Case Management System
CPC	Criminal Procedure Code
DBB	Direct Budget Beneficiary
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUR	Euro
FLA	Free Legal Aid
GDP	Gross Domestic Product
HJC	High Judicial Council
ICT	Information and Communication Technology
IMF	International Monetary Fund
IPSOS	IPSOS Global Market Research
JA	Judicial Academy
JIS	Judicial Information System
MDTF-JSS	Multi-Donor Trust Fund for Justice Sector in Serbia, administrated by the World Bank
MOF	Ministry of Finance
MOI	Ministry of Interior
MOJ	Ministry of Justice
PPO	Public Prosecutor's Office
RPPO	Republic Public Prosecutor's Office
RSD	Serbian Dinar
SAPA	Standardizes Software Application for Prison Administration
SAPO	Standardizes Software Application for Prosecution Organization
SAPS	Standardizes Software Application for the Serbian Judiciary
SCC	Supreme Court of Cassation
SIPRES	Software System for the Misdemeanor Courts
SPC	State Prosecutorial Council
USD	US Dollars
ZUP	Accounting software

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Objective, Scope, and Structure

The 2021 Serbia Judicial Functional Review measures progress against the 2014 Judicial Functional Review baseline and the 2019 Functional Review of the Prosecution System. The data collection was completed in the first half of 2021, covering 2014-2020. Detailed analysis was conducted only for the period 2014-2019, given that data for 2020 was not fully representative due to three months of court closure caused by the COVID-19 outbreak. To avoid distortion in the interpretation of data, 2020 was analyzed only at a general level. The preliminary findings and recommendations were discussed with stakeholders and development partners from February to April of 2022.

The aim of the 2021 Serbia Judicial Functional Review is to inform Serbia's EU accession negotiation process under Chapter 23 based on extensive evidence-based analysis. The Functional Review also presents an objective analysis of current sector performance. To enable comparison of the results, the methodology applied was the same as the one used in previous judicial functional reviews.

Assessments draw on a mix of quantitative and qualitative data. Statistical data was collected from Serbian judicial stakeholders and included data relevant to case management, finance and human resource, and ICT. In addition to statistical data, a multi-stakeholder perception and experience survey was completed in 2020 to provide information on access and quality of justice in Serbia, as well as experience with court cases in terms of efficiency. The assessment included legal analysis, a desk review, focus group discussions, and key informant interviews.

The 2021 Functional Review follows the structure of the 2014 Functional Review and considers both system performance and management of resources. System performance was evaluated against criteria of efficiency, quality, and access, while resource management considered human resources, financial resources, and ICT. In addition, the 2021 Functional Review assessed the governance and management, and integrity of the system. Each area is compared against relevant EU standards and good practices.

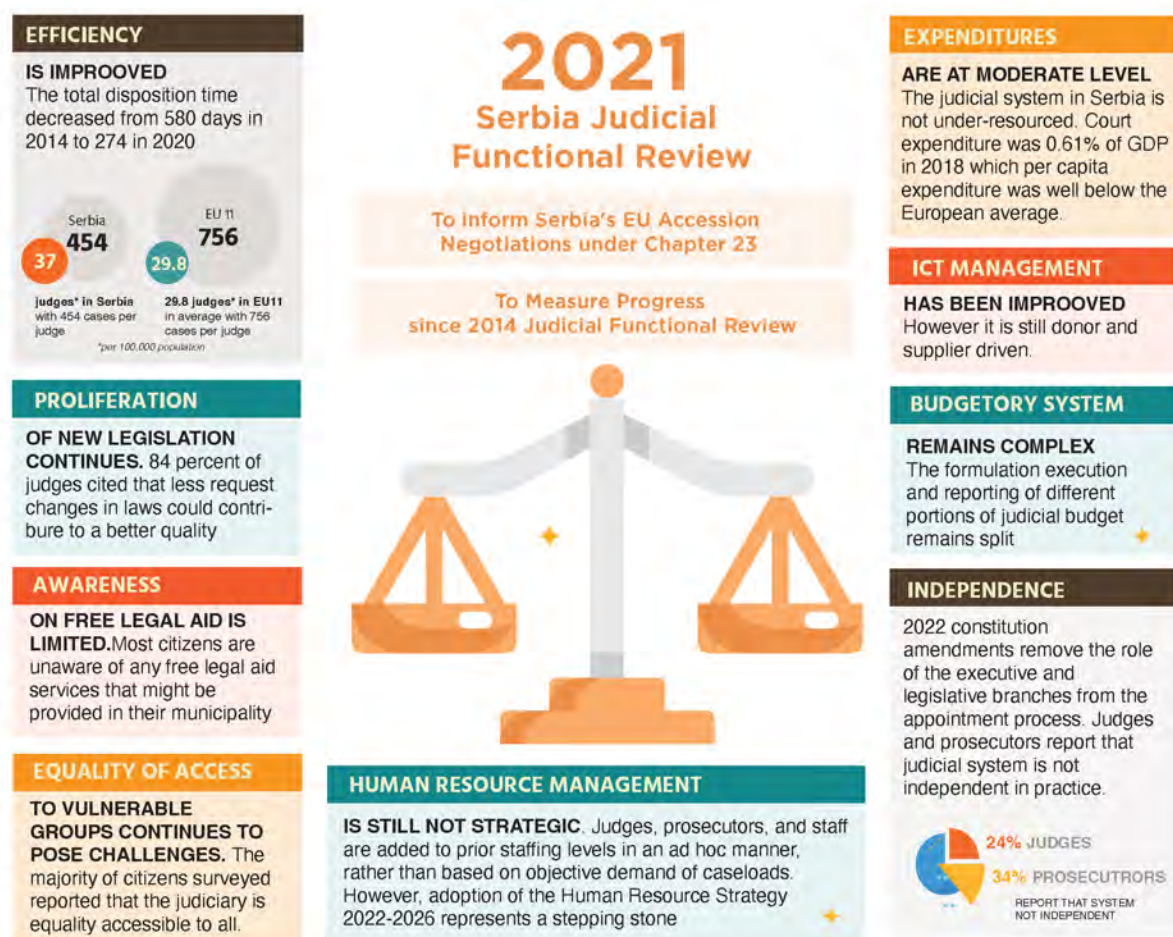
The 2021 Functional Review is sector-wide, with a focus on courts and public prosecutor offices as the main justice institutions in Serbia. The scope includes all types of cases, including litigious, non-litigious, commercial, administrative, misdemeanor, and criminal. The Functional Review covers other institutions in the sector to the extent that they influence service delivery by courts and public prosecutor offices, including the Ministry of Justice (MOJ), the High Judicial Council (HJC), the State Prosecutorial Council (SPC), the courts, the Public Prosecutor Offices (PPOs), the Judicial Academy, the police, and judicial professions (attorneys, notaries, private bailiffs, mediators, and expert witnesses).

Recommendations are designed to be actionable and specific with the objective of aligning the performance of the Serbian judiciary with that of EU Member States. Each recommendation is accompanied by a series of practical next steps to implement it. Each step also notes the institution that would be responsible for moving the recommendation forward, as well as other institutions whose collaboration is necessary for effective implementation. In addition, timeframes are indicated for each step, from short term (12 months) to medium term (2-3 years) and long term (5 years).

Serbian authorities will prioritize the implementation of recommendations through the revision of the Chapter 23 Action Plan. All recommendations were formulated in a consultative process with judicial stakeholders organized during April 2022.

Overall Conclusions and Suggested Priorities

1. Overall, Serbia's judicial system has implemented many reforms since 2014. However, the reforms did not significantly impact the performance outside of efficiency of case processing, and Serbia's performance falls below that of comparator European countries. This is partially due to an absence of sufficiently strong governance structures and frequently changing laws but also relates to a lack of communication with citizens and businesses. The main reform results identified through the Judicial Functional Review are presented below.



2. Most of the recommendations listed in the 2014 Judicial Functional Review remain unfulfilled. The suggested priorities that require continued emphasis include:

- developing a performance framework that tracks the performance of courts and Public Prosecutor's Offices (PPOs) against a targeted list of key performance indicators.
- ensuring that courts use the full functionality of their case management system to improve consistent application of law and consistency of practice;
- developing a comprehensive continuing training program for judges, prosecutors, and court staff;

- reforming procedural laws to simplify the service of process and business processes; and
- developing a more realistic and transparent budget within the existing resource envelope that promotes improvements in efficiency, quality of justice, and access to the judiciary.

3. Critically, the division of responsibilities between the key governing bodies remains unclear. The fragmentation of governance and management responsibilities stalls progress and dilutes accountability. This is true in areas such as budget planning, process re-engineering, human resources, and ICT and infrastructure improvements. The adoption of Constitutional amendments in February 2022 presents an opportunity for improvement in this area. However, implementing the new governance arrangement will require the preparation and adoption of laws and bylaws in line with the Constitutional amendments, which are planned for early 2023.

4. On a positive note, in recent years, the efficiency of the judicial system has improved:

- The total disposition time of Serbian courts decreased significantly by 47 percent, from 580 days in 2014 to 274 in 2020;
- Since 2014, the backlog of old utility bill enforcement cases has been resolved;
- The Law on Enforcement and Security transferred the responsibility for a significant part of enforcement cases from courts to private bailiffs.

5. However, despite improvements in the speed of case processing, the pending stock of court cases has increased. The available data do not distinguish between judicial performance and increased demand for court services – which is outside the control of the judiciary – as an explanation for this increase in the demand.

6. In addition, significant variations in efficiency across courts, in terms of efficiency, quality, workload, and service delivery, remain excessive. The workload is not equally distributed, leaving some courts very busy and others demonstrably less so. For example, in 2019, in Dimitrovgrad, a Basic Court judge received an average of 245 cases and resolved 317, while a Basic Court judge in Lebane received an average of 1,468 cases and resolved 1,487.

7. The legal framework for access to justice has improved due to the adoption of the Law on Free Legal Aid. However, local governments have not allocated adequate budget resources for its implementation, while public awareness of free legal services remains very low. Procedures for court fee waivers are still not unified, resulting in inconsistent access to justice. Attorney fees are more highly prescribed than in most of EU member states. For instance, attorneys continue to be paid per hearing or motion, which can encourage needless procedural steps.

8. Finally, resources are still not allocated efficiently across Serbia's judicial sector. Despite progress in aligning human resource management procedures with EU standards, there is no evidence of a strategic approach to managing human resources – the judiciary's largest resource by far - in the Serbian court and prosecution system. The staffing levels for judges, prosecutors, and staff appeared to be set in an ad hoc manner. This results in large variations in costs per active case across the judicial system and within the courts and PPOs of the same level. An absence of interoperability between Case Management Systems and budget execution systems prevented detailed tracking of expenses per case.

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

1. **Develop a result framework that tracks the performance of courts and PPOs against a targeted list of key performance indicators.** The result framework should include the most relevant indicators of efficiency, quality, and access to justice. The development and use of result

framework by Court Presidents, Supreme Court of Cassation, Heads of PPOs, RPPO, HJC, and SPC will lead to improvement in efficiency and increased accountability.

2. **Reform judicial package of laws to align it with 2022 Constitutional amendments to strengthen independence and integrity of judiciary.** Amendments to the judicial package should be in line with Venice Commission opinions and Consultative Council of European Judges (CCJE) and Consultative Council of European Prosecutors (CCPE) recommendations to protect Councils, courts, and PPOs' independence and prevent any undue influence on the judiciary.

3. **Ensure the full implementation of digitalization of the justice system through the roll-out of automatized case management systems in courts and PPOs and their interoperability.** Governance of the various digitalization efforts in the justice system will require special attention. The process should be chaired by the Ministry of Justice, with the active participation of other judicial stakeholders. In addition, sector leaders in the HJC, SCC, SPC, and RPPO should coordinate the implementation of the ongoing and future digitalization of the justice system. The MOJ together with the HJC and SPC should develop an ICT security standard to support the security standardization work of the judiciary. Digitalization of justice should contribute to the increase of accessibility and transparency of the judiciary. Furthermore, the adequate use of the ICT to improve efficiency will contribute to reducing pending stock and decreasing disposition time.

1. Governance and Strategic Management

1. The Review recognizes that Serbia's judicial system requires governance and management to oversee its performance and plan improvements, and to ensure that financial and other resources are used effectively. As was true for the 2014 Functional Review, this Review uses the terms 'governance' and 'management' as encompassing related but somewhat different functions:

- a. Governance: decision-making at the highest level to set policies, guidelines, rules, targets and plans, and
- b. Management: the implementation of decisions in an institution's day-to-day operations, and the provision of information and analysis to support the governing bodies' deliberations.¹

1.1. Main findings

2. The postponement of the Constitutional amendments influenced the pace of the reform of governing bodies. Prolonged delays in constitutional and legislative reforms of the system's governance and management stunted the judiciary's efforts to improve its operations until early 2022, when Constitutional amendments were adopted in the Parliament. In the National Judicial Reform Strategy 2013-2018, Serbia formally recognized the need for constitutional and legislative changes to strengthen judicial independence, reduce opportunities for undue influence, make the operation of the system more transparent, improve the efficiency of case processing, and use the system's financial, information technology and physical resources more efficiently. The planned constitutional amendments and legislative changes were to be completed in 2017.² However, most of these measures were only adopted in Constitutional amendments in February 2022, with implementing laws to be adopted by the end of March 2023 and implementing bylaws by the end of 2023..

3. Although constitutional amendments have been under consideration for several years, governing institutions still need to develop the rules, policies, and procedures necessary to implement constitutional and legislative changes. In April 2022, the MoJ appointed working groups to revise the laws needed to achieve the planned alignment with the amended Constitution.

4. Several different agencies remain responsible for governing the judicial system under the latest Constitutional changes, complicating governance. These include the Supreme Court of Cassation (SCC), the High Judicial Council (HJC), and the MoJ for the courts; the Republic Public Prosecutors Office (RPPO), the State Prosecutorial Council (SPC), and the MoJ for the system's prosecutors and Public Prosecution Offices (PPOs); and the chambers of notaries and enforcement agents plus the MoJ for those professions.

5. As of March 2022, several key areas remained in which system responsibilities still conflicted and/or overlapped. These included preparation and execution of the judicial budget and human resources management of judges and judicial staff (authority divided between the MoJ and the Councils, with dual reporting of the courts on their performance to the SCC and HJC). This overlap in responsibilities means that the MoJ, the HJC, the SCC, and the SPC still share responsibilities for setting

¹ 2014 Functional Review, page 207.

² They also appear in the Judicial Development Strategy 2019-2024, adopted in July 2019, and the revised Action Plan for Chapter 23, also adopted in July 2020.

and implementing significant policies regarding court resources and operations. The lack of ownership among those responsible for implementing particular reforms has jeopardized the success of the reforms.

6. The administrative offices of both Councils have limited capacities with respect to policy development and the design and implementation of policies. Human Resources Management (HRM) planning and professional development of judges and prosecutors, both contemplated as key Council responsibilities, suffers as a result. Instead, the primary responsibilities of the administrative offices continue to be keeping registers on judges and prosecutors and providing administrative support to the Councils and their permanent and ad hoc bodies.

7. At 131 total staff, MoJ appears understaffed, considering the ambitious agendas set forth by various strategic documents. The current number of staff does not appear to be sufficient to accomplish all the tasks set forth by the Action Plans for Chapters 23 and 24, the Judicial Development Strategy (2020-2025), the Strategy for Human Resources in the Judiciary (2022-2026) and the *Strategy for Development of ICT in the Judiciary* (2022 -2027).

8. After two comprehensive changes to the judicial network (2010 and 2014), the organization of courts and state prosecutors' offices throughout the country has been relatively stable over the past decade. Any future changes should be conducted carefully and gradually based on data-based assessments.

9. The management of courts and PPOs faces a number of challenges, particularly an overburdening of Court presidents and public prosecutors with administrative tasks that could be delegated. This has a negative impact on their ability to fulfill their strategic role of organizing their institutions to perform at the highest level possible and performing duties for which only they are authorized (e.g., deciding on requests for recusal of judges). Court presidents and public prosecutors spend too much of their time directly organizing the work, allocating tasks, and monitoring execution in the courts/PPOs, rather than managing those tasks through staff.

10. To date, systemic efforts to assess the internal organization of courts and prosecutors' offices to increase productivity and performance have been fairly limited. The HJC and SPC administrative offices currently do not have the human and technical capacity to deal with issues of the internal organization of individual courts/PPOs and delivery of court services. There is also insufficient attention to organizational innovations which could enhance efficiency in the courts/PPOs operation.

11. Workload among judges and public prosecutors is not evenly distributed. A case-weighting methodology was introduced in basic and higher courts of general jurisdiction and commercial courts in December 2021. It remains to be seen how it will impact the equalization of workload.

12. The overall resource planning and management process have been undermined by continuous and comprehensive policy changes in the judiciary over the past decade and the high level of uncertainty that has followed. The whole judicial system is in a constant state of flux, with a number of policy reforms occurring at the same time and year after year.

13. The strategic framework for judicial reform appears is detailed across a myriad of documents and its importance and benefits are not clearly communicated to the public. The current strategic

framework includes several documents: the Judicial Development Strategy 2020-2025, with the Action Plan for 2022-2025; the Strategy for ICT in the Judiciary 2022-2027; the Strategy for Human Resources in the Judiciary 2022-2026; and the Action Plan for Chapter 23. The objectives and measures envisaged in these documents are not always fully aligned. The Action Plan for Chapter 23 is an umbrella policy document, but it has not been updated, and some of its deadlines are not aligned with the Action Plan for the implementation of the Judicial Development Strategy 2022-2025. The World Bank 2020 Regional Justice Survey reveals shortcomings in the communication of strategic objectives and achieved results.

1.2. Structure and Powers of Governance and Management Bodies

14. Since 2014, both Councils have implemented significant measures for managing human resources for judges and prosecutors. The Councils are active in the selection, appointment, and professional development of the holders of judicial functions, as shown in Table 1 below. They also have assumed responsibility for many of the ethical and disciplinary issues relevant to judges and prosecutors, as will be discussed in more detail later.

15. Although the Human Resource Strategy in Judiciary was adopted in December 2021,³ the impact on the system has not yet been realized. The human resources management system in the analyzed period was still not fully based on merit,⁴ as required by the Action Plan for the Implementation of Chapter 23.

Table 1: Competences of the HJC vis-à-vis courts

Competences of the HJC vis-à-vis courts				
Appointment and dismissal of judges	Professional development of judges	Ethics and Disciplinary responsibility	Staffing levels and judicial administration	Budget
<ul style="list-style-type: none"> - elects judges to permanent judicial office; - rules on the termination of judges' office; - proposes candidates to the National Assembly for the first judicial tenure - appoints lay judges; 	<ul style="list-style-type: none"> - decides on the transfer and assignment of judges; - decides on the process of the performance appraisal of a judge and president of the court; - approves the curriculum for continuous training of judges and court staff, and monitors training programme implementation; - defines curricula for the initial training of judges. 	<ul style="list-style-type: none"> - passes the Code of Ethics for judges; - rules on incompatibility of other services and jobs with judge's office; - rules on issues of immunity of judges and Members of the Council - rules on objection to the suspension of judges - determines the composition, duration and termination of the mandate of the members of disciplinary bodies, appoints the members of disciplinary bodies and regulates the manner of operation 	<ul style="list-style-type: none"> - determines the number of judges and lay judges for each court; - performs affairs of the judicial administration within its remit. 	<ul style="list-style-type: none"> - proposes the volume and structure of budgetary funds necessary for the work of the courts' overhead expenses, and oversees disbursement of funds in accordance with law.

³ Strategy for human resources in the judiciary for the period 2022-2026, Official Gazette, no. 133/2021.

⁴ Commission Staff Working Document, Serbia 2019 Report, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2019 Communication on EU Enlargement Policy (COM(2019) 260 final), p. 15.

		<p><i>and decision making in disciplinary bodies</i></p> <ul style="list-style-type: none"> - <i>decides upon legal remedies in disciplinary proceedings</i> - <i>decides on the existence of conditions for compensation for damages due to unlawful and erroneous actions of a judge.</i> 		
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Table 2: Competences of the SPC vis-à-vis PPOs

Competences of the SPC vis-à-vis PPOs			
Appointment and dismissal of public prosecutors and their deputies	Professional development of PPOs and their deputies	Ethics and Disciplinary responsibility	Budget
<ul style="list-style-type: none"> - <i>Selects a list of candidates for Republic Public Prosecutor and Public Prosecutors, nominates Deputy Public Prosecutor candidates for the first election to the National Assembly;</i> - <i>Appoints Deputy Public Prosecutors to permanent office, appoints Deputy Public Prosecutors with permanent tenure to higher instances;</i> - <i>Appoints Acting Republic Public Prosecutors;</i> - <i>Decides on the termination of office of Deputy Public Prosecutor;</i> - <i>Establishes reasons for the dismissal from office of a Public Prosecutor and/or Deputy Public Prosecutors;</i> - <i>Adopts rules on procedure of election of SPC members from among Public Prosecutors and Deputy Public Prosecutors.</i> 	<ul style="list-style-type: none"> - <i>Adopts rules on criteria for performance appraisal of Public Prosecutors and Deputy Prosecutors;</i> - <i>Adopts decisions on legal remedy against the decision on performance appraisal of Public Prosecutors and Deputy Public Prosecutors;</i> - <i>Establishes the curriculum of the training programme for Deputy Public Prosecutors elected to office for the first time and for prosecutorial assistants;</i> - <i>Proposes the training programme for Public Prosecutors and Deputy Public Prosecutors with permanent tenure;</i> - <i>Keeps a personal file for each Public Prosecutor, Deputy Public Prosecutor and employee;</i> - <i>Transfers Deputy Public Prosecutors to a different PPO if the original PPO is closed.</i> 	<ul style="list-style-type: none"> - <i>Adopts the Code of Ethics for prosecutors;</i> - <i>Appoints and dismisses the Disciplinary Prosecutor and members of the Disciplinary Commission;</i> - <i>Adopts decisions on legal remedies in disciplinary proceedings;</i> - <i>Determines rules on suspension of the Republic Public Prosecutor and rules on the objection to the decision on suspension of a Public Prosecutor and/or Deputy Public Prosecutor;</i> - <i>Determines what other functions, affairs or private interests are contrary to the dignity and autonomy of the PPO.</i> 	<ul style="list-style-type: none"> - <i>Proposes the volume and structure of budgetary funds required for overhead expenses, and oversees spending.</i>

16. The Councils continue to lack authority over the judicial system’s budget. While responsible for budgeting for judges and prosecutors and for operational expenses of the courts and PPOs, the Councils do not have authority for setting or responsibility for managing the vast majority of the court and prosecutor funding, namely that for the administrative staff of the courts and PPOs. In addition, judicial capital investments remain under the authority of the MoJ. The Councils prepare and propose their own Council budgets, which are then negotiated directly with the Ministry of Finance and approved by the National Assembly as part of the central government budget. Even in that context, both Councils are, however, in a relatively weak negotiating position, as they are not part of the government and sometimes even compete for funds with the MoJ.

17. A 2018 decision of the Constitutional Court blocked the planned transfer of full authority for the judicial budget from the Ministry of Justice to the HJC and SPC, as had been envisaged in the 2013 National Judicial Reform Strategy and the Action Plan for Chapter 23.⁵ The same decision also blocked the planned transfer of competencies for monitoring the implementation of the Court Rules of Procedure and the Rules on Administration in Public Prosecution Offices from the MoJ to the Councils. A revision of the Law on Public Prosecution, which was supposed to transfer full budget competencies from the MoJ to the SPC, was also delayed⁶ and then was stopped due to the decision of the Constitutional Court.

18. The Councils' powers in relation to budgetary matters are now and would remain, under the proposed amendments, more limited than what is called for in European and international standards. The Councils' competency for budgetary matters under the amendments calls for Council preparation of a portion of budget proposals for the work of courts or PPOs "within the Councils' competence". Unless further amended, the Councils would continue to be responsible only for the budget of the holders of judicial functions but not for the budget of their administrative staff.⁷ New normative framework should provide for the Councils to determine general policies for internal organization of courts and PPOs, and that the HJC should to monitor the implementation of the judicial rules of procedure.

19. The division of responsibility for transferring prosecutors between offices and determining the total number of prosecutors in each PPO could be used to subject prosecutors to political influence. While both the SPC and the RPPO are authorized to transfer prosecutors to another PPO, the SPC can do so only when the original PPO is closed. The RPPO has the authority to transfer a prosecutor to another PPO without SPC consent at any time, presenting opportunities to undermine prosecutorial independence. For example, in 2017, the RPPO temporarily transferred a number of deputy public prosecutors to newly established special departments for suppressing corruption within the PPOs without any consultation with the SPC; this interfered with the SPC's authority to govern the system of PPOs and manage human resources.⁸ The responsibility for setting the number of prosecutors and their deputies in each PPO is also split, in this case between three bodies; the RPPO is responsible for analyzing each PPOs' workload, the SPC estimates the number of prosecutors needed per PPO, but the MoJ has the final word on the number of prosecutors in each PPO.

20. Some of the system's split in authority – particularly in the areas of initial appointment and dismissal of judges and deputy prosecutors -- could be mitigated through adopted Constitutional amendments. Constitutional amendments authorize the HJC to appoint and dismiss judges, including court presidents and the president of the Supreme Court of Cassation, currently outside the

⁵ Decision of the Constitutional Court No. IUZ-34/2016, adopted in December 2018. The amendments of the Law on Organisation of Courts, which would have provided the legal basis for the transfer of all court budget responsibilities (Article 32 of the Amendments of the Law on Organisation of Courts, Official Gazette RS, No. 101/13, 13/16, 108/16 и 113/17), including the budget of administrative staff, were challenged before the Constitutional Court. In December 2018, the Constitutional Court decided that the challenged provisions were not in line with the Serbian Constitution and hence annulled them.

⁶ European Commission, Non-paper on the state of play regarding chapters 23 and 24 for Serbia, November 2018.

⁷ For instance, see Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society, para. 40, p.11.

⁸ The system is established by the Law on Organization and Jurisdiction of Government Authorities in the Suppression of Organized Crime, Terrorism and Corruption (Official Journal, No. 94/2016), which came into effect in 2018 (BCBP report, p. 81).

competence of the HJC. In a similar vein, the amendments would add the appointment and dismissal of Public Prosecutors to the Prosecutorial Council's current power to appoint and dismiss Deputy Public Prosecutors. Adopted amendments also abolish the three-year probationary periods for deputy prosecutors and judges, which would also be a positive development.⁹

1.2.1. Composition of the Councils

21. Helpful Constitutional amendments related to the composition of the Councils were adopted in February 2022 after several years of public discussions and consultations. The Constitutional amendments exclude the executive branch from *ex officio* membership on the HJC, to satisfy concerns voiced by the CCJE.¹⁰ The new composition of the HJC includes 11 members: six judges elected by their peers, four prominent lawyers elected by a two-thirds majority of the National Assembly, and the president of the Supreme Court of Cassation.¹¹ The National Assembly no longer appoints judges or prosecutors to the Councils, which many observers hope will reduce opportunities for political influence on their work. If there is no qualified majority vote by the Assembly for the non-judge members, those members would be selected by a special commission composed of the President of the Constitutional Court, the President of the Supreme Court, the Republic Prosecutor, the Protector of Citizens (Ombudsman) and the President of the National Assembly.

22. Additionally, amendments rename the State Prosecutorial Council as the High Prosecutorial Council and retain the Minister of Justice on the Council, which still has 11 members. Of the 11 members, five would be selected among public prosecutors by their peers, while four prominent lawyers would be appointed by a two-thirds qualified majority of the National Assembly, and the Supreme Public Prosecutor of Serbia and the Minister of Justice would be *ex officio* members. If there is no qualified majority for the appointment of non-prosecutor members, the same five-member commission as for the HJC will select them.

23. Over the past few years, both Councils have established permanent working bodies for carrying out their authority. The bodies established by the High Judicial Council include the Commission for the Performance Appraisal of Judges and Court Presidents, the Electoral Commission, and disciplinary bodies (with a disciplinary prosecutor and disciplinary commission).¹² In addition, in 2018, the HJC established the Ethics Board as a temporary working body responsible for ethical issues, which became a permanent body with the adoption of the Amendments to the Law on High Judicial Council in 2021.¹³ In addition to permanent bodies organized by the Law on High Judicial Council, the Commission for appeal against the decision on the evaluation of judicial assistants¹⁴ The SPC has also established

⁹ Serbia, Venice Commission, Opinion on the draft amendments to the constitutional provisions on the judiciary, adopted at its 115th Plenary Session (Venice, 22-23 June 2018), paras. 44, 82 and 83.

¹⁰ The previous FR report (2014) noted that the composition of the Councils is generally in line with the European standards but that certain elements deviate from the CCJE's recommendations and good international practice. These deviations include the inclusion of the executive branch on the Councils and lack of managerial background of the Council members.

¹¹ Opinion of the CCJE Bureau following a request by the Judges' Association of Serbia to assess the compatibility with European standards of the proposed amendments to the Constitution of the Republic of Serbia which will affect the organization of judicial power, p. 6.

¹² Article 15 of the Law on High Judicial Council, Official Gazette RS, No. 116/2008, 101/2010, 88/2011, 106/2015.

¹³ Article 15 of the Law on Amendments and Supplement to the Law on High Judicial Council, Official Gazette RS, No. 76/2021.

¹⁴ Rulebook on the work of the Commission for appeal against the decision on the evaluation of judicial assistants, Official Gazette RS, No. 116/2012.

temporary working bodies, such as the Ethics Committee, the Working Group for Monitoring of Implementation of Judicial Legislation, and the Working Group for Training Curricula.

1.2.2. Managerial capacities of the Councils and transparency of their work

24. Skills central to the strategic development of the judicial system, such as strategic planning, policy analysis, organizational assessment, and management advisory services to the courts and PPOs, are in short supply on the Councils. Neither Council has enough positions allocated to analytical tasks. Most of the analytical positions which do exist focus on budget issues.¹⁵ The HJC training program for 2015-2018 centered on the technical competencies of HJC employees, with a certain number of trainings organized on strategic management.

25. The Administrative Offices of both Councils still are not fully staffed. In 2021, the Administrative Office of the HJC had filled 43 out of 60 planned positions,¹⁶ while the Secretariat of the SPC had filled 20 of 28 planned positions. A related issue is the lack of space for the additional staff needed by the Councils. The organizational chart of the Administrative Office of the HJC and the SPC are presented in Figure 1 and Figure 2 below.

¹⁵ The 2014 Functional Review identified gaps in the managerial skills and planning and analytical capacities of both Councils as key obstacles to reform. As of May 2021, neither Council had positions for a general manager or administrative director; instead, each Council had secretaries of their administrative offices, with a more limited level of competence than their counterparts in other European countries..

¹⁶ 2021 Annual report, High Judicial Council, March 2022.

Figure 1: Organigram of the High Judicial Council

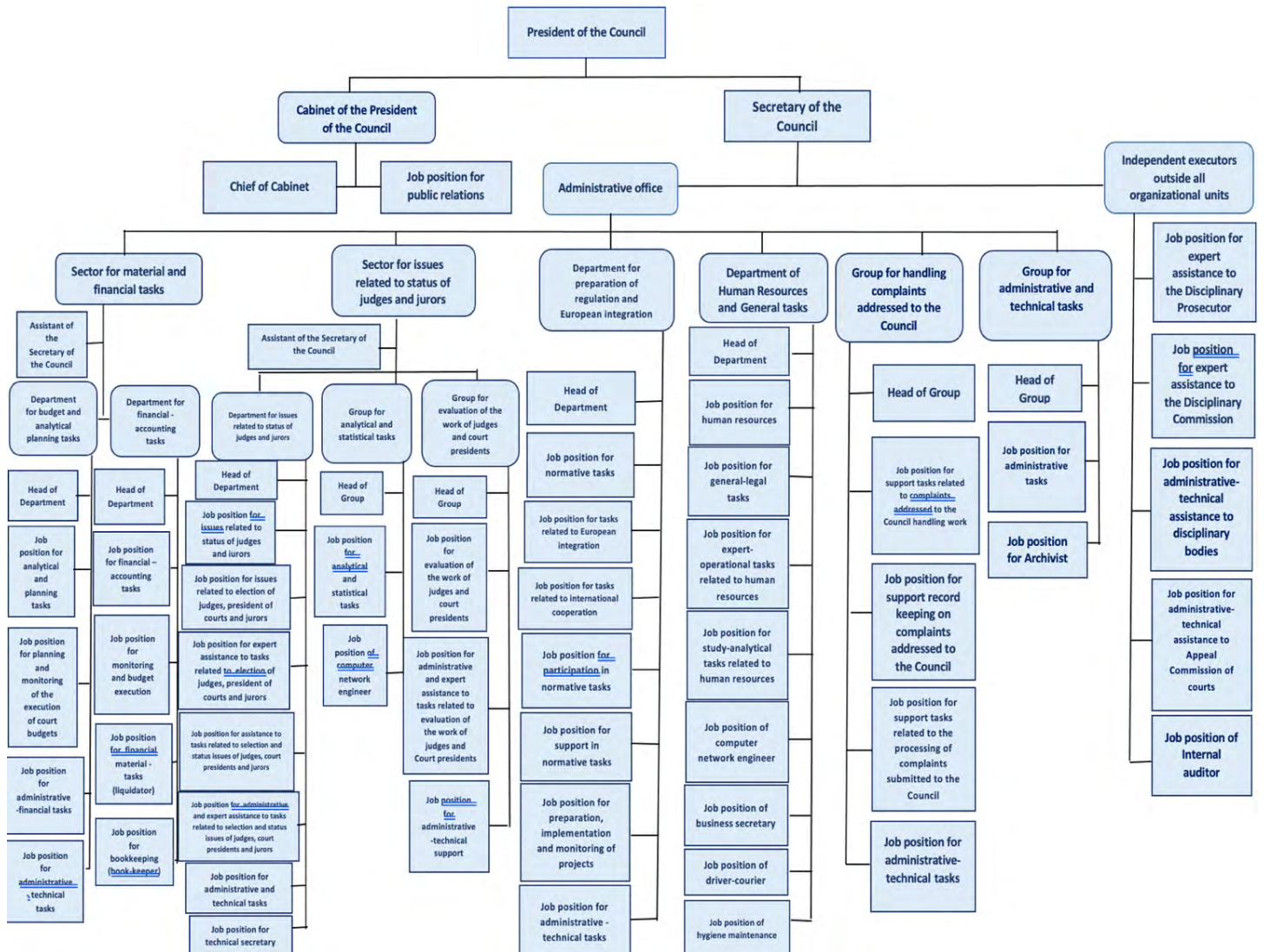
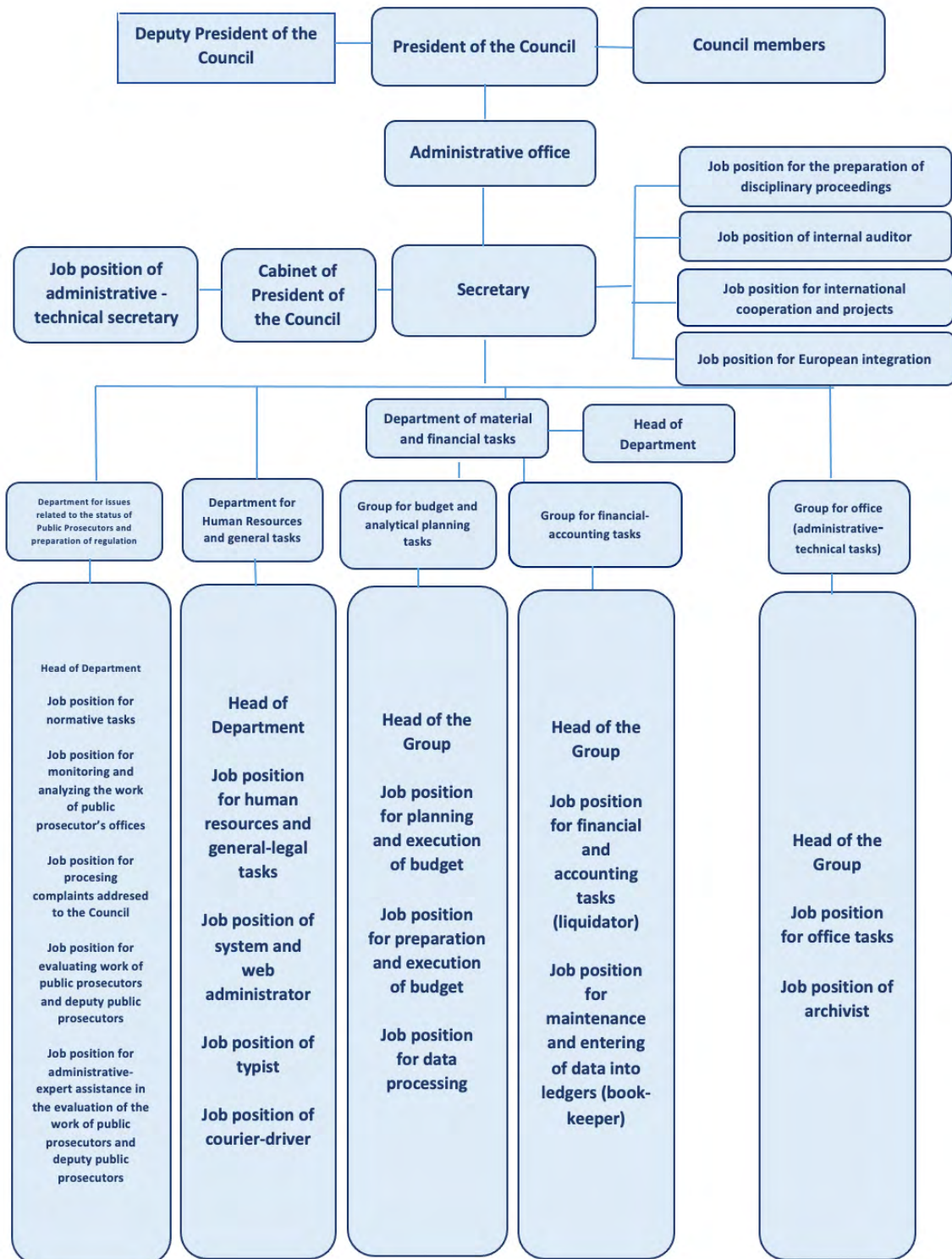


Figure 2: Organigram of the State Prosecutors Council



26. Notable progress was made in the Councils' institutional capacity for decreasing political pressure on the judiciary, especially within the SPC, but significant gaps remain. In 2017, the SPC created a more elaborate mechanism for both *ad hoc* and regular responses in cases of alleged political interference¹⁷ by establishing the Commissioner for Autonomy. The Commissioner had a mandate to take action upon individual complaints by deputy prosecutors and processed more than 40 individual complaints from 2017 to 2020.¹⁸ In addition, the Commissioner for Autonomy can act on his or her own motion, in line with the best international practices. The establishment and the operation of the Commissioner for Autonomy was positively assessed by the Council of Europe and the GRECO.¹⁹ However, there was no proper institutional setup to ensure the sustainability of this mechanism and the position of Commissioner was vacant for more than a year, from the expiration of the mandate in April 2020 until April 2021, when a new Commissioner was appointed.²⁰ In 2016, as required by the Action Plan for Chapter 23,²¹ the HJC amended its procedural rules to improve its capacity to investigate cases of alleged political interference in the judiciary upon requests by judges. However, the procedure has been used only in a very limited number of cases. Until April 2021 there was no mechanism that would enable the HJC to independently initiate investigation, and the latest amendments to the Rules of Procedure of the High Judicial Council introduced this possibility.²²

27. The transparency of the Councils' operations improved somewhat in line with the requirements of the Action Plan for Chapter 23. The December 2015 amendments of the laws on the HJC and SPC specify the conditions under which sessions of the HJC and SPC are open to the public and require that decisions and annual work reports of the Councils be reasoned and available on their websites.²³ Furthermore, the Councils' rules of procedures require the Councils to use various means to inform the public about conclusions reached on complaints about alleged political interference in the work of the judiciary. In addition, the SPC's Rules of Procedure envisage that its general acts will be available on its website and in its official gazette. Both Councils also have communication strategies.²⁴ In spite of these efforts, gaps in the transparency of the Councils still remain, including a lack of detailed explanations about promotions and appointments of the holders of judicial functions.²⁵

¹⁷ See Articles 9 and 12 of the Rules of Procedure of the State Prosecutorial Council, Official Gazette of the RS, No. 29/2017 and 46/2017.

¹⁸ Commission Staff Working Document, Serbia 2018 Report, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy {COM(2018) 450 final}, p. 14.

¹⁹ GRECO, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Compliance Report, Serbia, adopted by GRECO at its 77th Plenary Meeting (Strasbourg, 16-20 October 2017), March 2018, GrecoRC4(2017)8, Recommendation viii, paras. 58-62, pp.10-11; Policy Brief on Judicial Independence in Serbia, Preventing pressures on the prosecution service, State Prosecutorial Council and the Commissioner for Autonomy of the Public Prosecution, October 2018, pp.1-2.

²⁰ The mandate of the commissioner expired in March 2020, and a new appointment was made in April 2021. In 2021, the new Commissioner was working on seven cases.

²¹ See Action Plan for Chapter 23, No. 1.1.5.1. and 1.1.5.2.

²² See Article 27a – 27 v of the Rules of Procedure of the High Judicial Council, Official Gazette of the RS, No. 29/2013, 4/2016, 91/2016, 24/2017, 7/2018, 69/2018, 38/2021, 90/2021..

²³ Commission Staff Working Document, Serbia 2016 Report, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy {COM(2016) 715 final}, p. 13; USAID project "Rule of Law", Analysis of the implementation of National Strategy of Judicial Reform for the period 2013. – 2018., 2018, p. 18.

²⁴ HJC, Communication Strategy for the period 2016-2018 Communication Strategy of PPOs (2015-2020).

²⁵ Commission Staff Working Document, Serbia 2018 Report, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy {COM(2018) 450 final}, p. 14.

1.2.3. Capacities of the Ministry of Justice

28. The role of the MoJ is central to the delivery of the Action Plan for and the successful conclusion of negotiations on Chapter 23. As the leader of the Negotiating Group for Chapter 23, the MoJ must ensure the functioning of the entire "delivery chain" of planning, adaptation, and change management from the Action Plan to the completion of sub-chapters and eventually Chapter 23. The MoJ prepared the Action Plan, and provided administrative and technical support to the Councils for the Implementation of the Action Plan for Chapter 23.

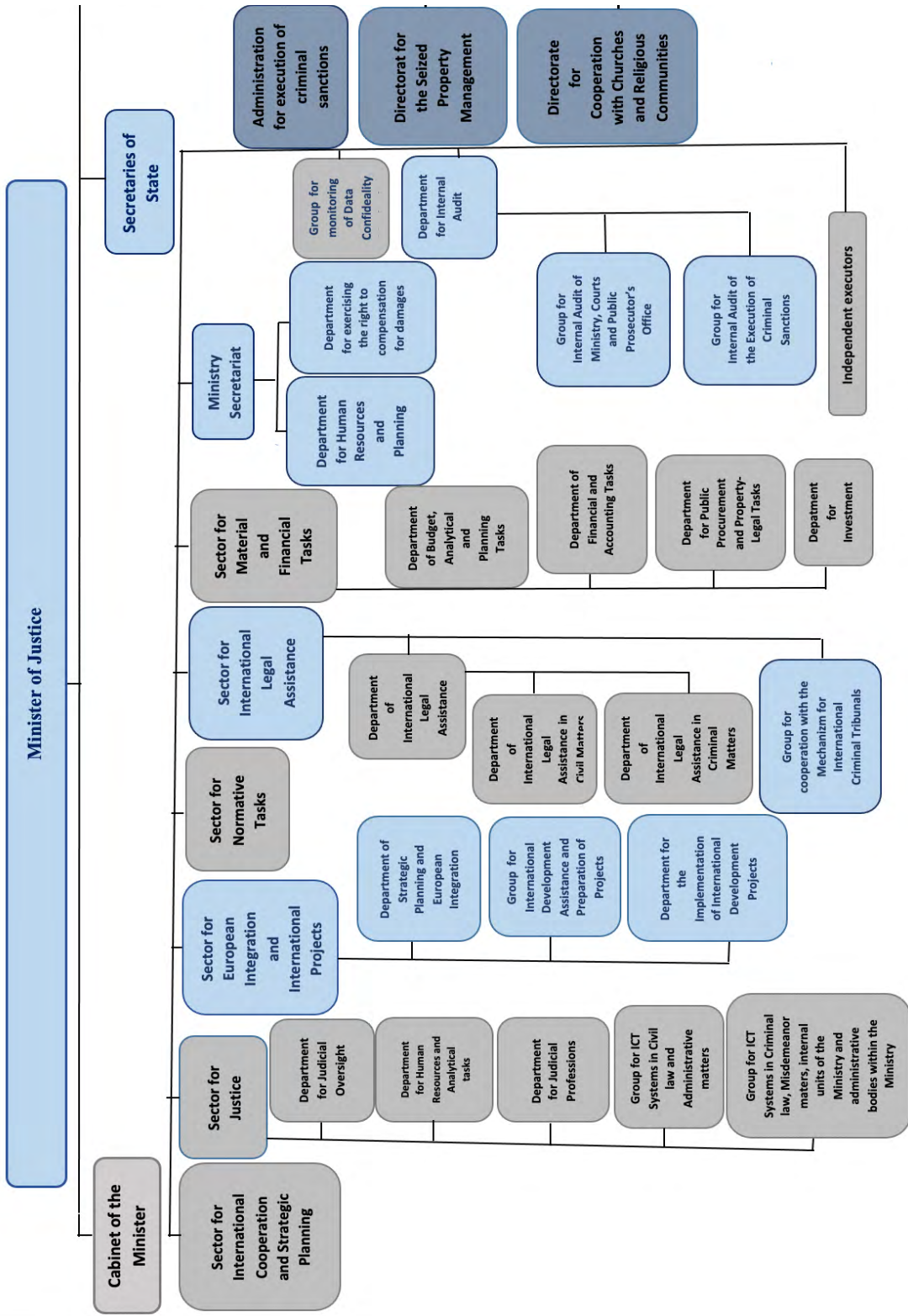
29. The MoJ remains understaffed relative to its responsibilities for the implementation of the Action Plan and other strategic documents. This issue continues from the 2014 Functional Review. There are gaps in the MoJ's analytical capacities for data collection, monitoring, and evaluation of results, as well as reporting on the implementation of the Action Plan for Chapter 23. As of January 2022, the MoJ had only 131 full-time employees (116 civil servants, 12 state employees, and three public officials), although the Rulebook on internal organization and systematization authorized 170 posts (148 civil servants, 19 state employees, and three public officials).²⁶ The number of temporary consultants at the MoJ also decreased from 10 to three in 2020, due to cuts in funding.

30. Several sectors of the MoJ needed to strengthen their capacities to continue reforms and effectively conduct the negotiation processes. These included the Department for Normative Affairs, responsible for aligning Serbia's legislation with the EU Acquis communautaire and assessing the impact of proposed legislative changes; the Sector for EU Integration and International Projects, the main MoJ body for strategic planning and provision of administrative support to the Negotiating Group for Chapter 23; the Department for the Judiciary, with responsibilities for public notaries, mediators and enforcement agents and the legal aid system; and the Department of Material and Financial Affairs, with responsibilities that include improving court infrastructure. The EU-funded project is currently providing timely and useful capacity-building support to all MoJ departments.²⁷ However, the project will end by mid-2022, when the MOJ will be focused on processing several tasks: amending the package of judicial laws to align them with the Constitutional amendments, applying the new accession methodology, and reporting on Chapter 23 implementation based on interim benchmarks.

²⁶ Information Booklet, 2022, available: <https://www.mpravde.gov.rs/dokumenta/60/izvestaji.php>

²⁷ See: www.euzatebe.rs/rs/projekti/eu-za-pravdu---podrska-za-poglavlje-23

Figure 3: Organigram of the Ministry of Justice



1.2.4. MoJ's Management Capacities Related to Courts and Prosecutors' Offices

31. Court Presidents and Public Prosecutors have significant and burdensome mid-level management responsibilities; particularly in larger courts and PPOs, the absence of sufficient high-level support staff undermines Court Presidents' and Public Prosecutors' ability to focus on broader strategic management. Court Presidents have traditionally managed and overseen their own courts and the courts below them in the hierarchy. The Law on Public Prosecution authorizes Public Prosecutors to manage each PPO, with responsibility for proper and timely performance of the office.²⁸ Public Prosecutors are responsible for managing cases; organizing internal operations; reviewing complaints and petitions; keeping statistics; drafting reports; and managing finances and materials. They must deal with complaints from parties to the proceedings and requests from parties for expediting work in particular cases. Public Prosecutors also are responsible for certain human resource and financial management matters (e.g., requests for annual leave of employees, issuing payment orders, etc.).

The specific duties of Public Prosecutors include but are not limited to managing the administration and operations of their PPO; handling labor issues of prosecutorial staff; ordering the correction of irregularities; ensuring timeliness in the PPO's work; and safeguarding the autonomy of prosecutors.

32. The performance of Court Presidents and Public Prosecutors varied during the period under study. Strong performance seems to be based on individual enthusiasm. Some Court Presidents used proactive management procedures, setting clear expectations for performance among their judges and staff.²⁹ Very little training was provided, and opportunities for Basic Court Presidents to meet and exchange experiences were rare.

33. More than one-third of the prosecutors heading PPOs are 'acting' prosecutors rather than formally appointed. Given the extensive responsibilities of each Public Prosecutor for the operation of each PPO, this has been detrimental to the functioning of the system as a whole, as well as to the individual offices. In 2021, out of 90 PPOs, there were 27 acting public prosecutors, 11 of whom were heads of the office.³⁰ The number of appointed Public Prosecutors rose from 48 in 2014 to 53 in 2015, 56 in 2016, and 59 in 2018, but fell to 52 in 2021.

34. The Secretaries in most courts and PPOs were judges and prosecutorial assistants with few management skills and little, if any, management training. There were no templates for staffing profiles for courts and PPOs. Secretaries assist Court Presidents and Public Prosecutors with administrative and technical tasks. Because the secretaries generally were judges and prosecutorial assistants, they hoped to become judges and Deputy Public Prosecutors, rather than pursuing Court or PPO management as a career.

1.2.5. MoJ Management of the New Judicial Professions

35. Over the past decade, several new judicial professions were established for the first time in the judicial system of Serbia; implementation and oversight have been effective. Bailiffs and their deputies

²⁸ Law on Public Prosecution, Article 34. See also the PPO Administration Book of Rules, Article 2.

²⁹ See information on innovation awards.

³⁰ 2021 Annual report of the SPC, February 2022.

were introduced by the 2011 Law on Enforcement and Security,³¹ and became operational in 2012, while public notaries commenced working on September 1, 2014. The new framework for the operation of the system of mediation was created in January 2015 by the enactment of the Law on Mediation.³² Public notaries and bailiffs have created a Public Notaries Chamber and a Chamber of Bailiffs, which are responsible for quality control of public notaries and bailiffs. In addition to those so-called “new judicial professions”, the judicial system also recognizes expert witnesses, court-certified interpreters, and translators, which are traditional parts of the judicial system.³³

36. The Ministry of Justice has important responsibilities for the work of judicial professionals. First, it is in charge of their appointment and dismissal. Second, it supervises the work of bailiffs and public notaries as well as the work of the Chamber of Public Notaries and Chamber of Bailiffs. Third, it is authorized to adopt regulations and guidelines for the lawful performance of judicial professions. For example, the MoJ adopted the Rulebook on the Manner of Supervision of the Work of Public Notaries in 2017.³⁴ Fourth, the MoJ keeps records of the holders of judicial professions, monitors the implementation of the relevant laws, and prepares annual reports on the performance of bailiffs, public notaries, and mediators.³⁵ Finally, the MoJ provides IT support to the work of the new judicial professions through the judicial information system (JIS), a platform that enables access to the databases of state bodies that are of relevance to their work: the Ministry of Interior (regarding the residence status of Serbian citizens), the Ministry of Public Administration and local self-government (which has a database of personnel records), the Cadaster, the Central Registry of Social Insurance, and the Business Registers Agency.

37. Although the MoJ did undertake efforts to strengthen the capacities of the Department for Supervision of Judicial Professions, additional capacity is needed to enable their effective monitoring. In 2016, the Rulebook on Internal Organization and Systematization was amended to envisage additional positions for the supervision of public notaries and bailiffs, and the 2018 Rulebook included nine positions.³⁶ This number of employees, however, is still not sufficient to enable a smooth supervision process.

38. Some progress also was made in strengthening the capacities of the holders of judicial professions. In line with the Action Plan for Chapter 23, in 2015, the Law on the Judicial Academy was amended to enable the Academy to offer professional development to public notaries and enforcement agents, based on agreements with their respective chambers.³⁷ Training has been held for public notaries, enforcement agents, mediators and expert witnesses, and cooperation between the aforementioned chambers, the Judicial Academy and other institutions was established with the

³¹ Law on Enforcement and Security, Official Gazette, No. 106/2015, 106/2016 and 113/2017.

³² Action Plan for Chapter 23, p. 20.

³³ Rulebook on the Internal Organization and Systematization of the Ministry of Justice, January 2016, Article 7.

³⁴ USAID Rule of Law Project, Analysis of the Implementation of National Strategy of Judicial Reform for the period 2013-2018, 2018, p. 91.

³⁵ Rulebook on the Internal Organization and Systematization of the Ministry of Justice, January 2016, Article 11.

³⁶ USAID Rule of Law Project, Analysis of the Implementation of National Strategy of Judicial Reform for the period 2013-2018, 2018, p. 89-90.

³⁷ Action Plan for Chapter 23, No. 1.3.1.1. and 1.3.6.25. and Law on amendments of Law on Judicial Academy, Official Gazette, No. 106/2015

adoption of bylaws, including the Rulebook on the initial training of candidates and the advancement of enforcement agents, as well as training of mediators.³⁸

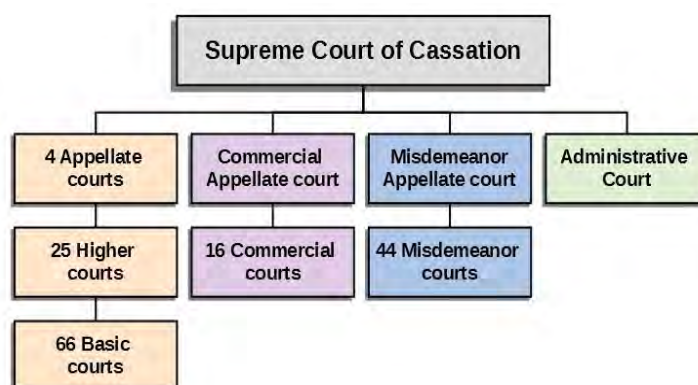
39. Reform activities regarding the work of judicial professions are ongoing. The Law on Enforcement and Securities was last amended in 2019³⁹ with the aim of establishing a more efficient enforcement procedure and introducing the protection of vulnerable citizens.⁴⁰ The MoJ is in the process of revising the statutory framework pertaining to expert witnesses, translators and interpreters.⁴¹ The regulations specifying rates of public notaries have been amended several times⁴² and the secondary legislation on monitoring of public notary functions by the Ministry of Justice was amended in 2020.⁴³ Furthermore, the Law on the Bar Exam needs to be amended to enable specialized exams for holders of the various judicial professions;⁴⁴ however, this reform is still pending.

1.3. Effectiveness of Operational Management

1.3.1. Internal organization of courts and prosecutors' offices

40. A new network of courts of general jurisdiction started operating in January 2014, as depicted in Figure 4 below.

Figure 4: Serbia's court network



³⁸ USAID Rule of Law Project, Analysis of the Implementation of National Strategy of Judicial Reform for the period 2013-2018, 2018, p. 57-58.

³⁹ Official Gazette, No. 106/2015, 106/2016, 113/2017, 54/2019, 9/2020.

⁴⁰ The amendments envisage that bailiffs should *ex officio* ensure that the enforcement procedure is carried out on the security and the object which are the least unfavourable for the debtor. Amendments also relate to compulsory enforcement on earnings, wages, salaries, compensation of salaries and pensions, by reducing the deductions from monthly annuities (from 2/3 to 1/2).

⁴¹ Amendments to the legislation on translators and interpretators were announced at the end of 2018, <http://prevodilastvo.blog/2018/01/17/sudski-tumaci-prvi-deo/>, and on the law on expert witnesses at the end of 2020; <https://www.rts.rs/page/stories/sr/story/125/drustvo/3659335/uskoro-izmene-zakona-o-sudskim-vestacima--sta-ocekujestruku.html>

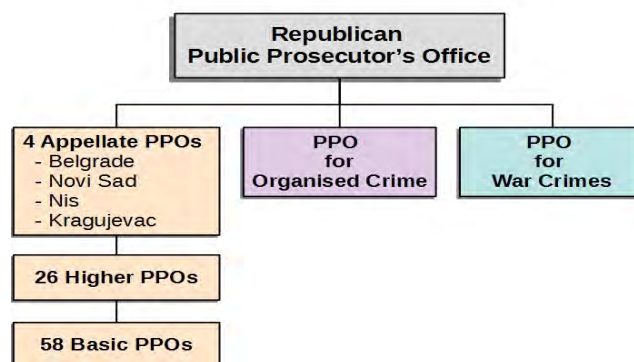
⁴² Official Gazette, No. 91/2014, 103/2014, 138/2014, 12/2016, 17/2017, 67/2017, 98/2017, 14/2019, 49/2019, 17/2020, 91/2020, 36/2021.

⁴³ Official Gazette, No. 32/2016, 152/2020.

⁴⁴ Revised Action Plan for Chapter 23, activity 1.3.1.1. and priorities of the 2016 Government: <https://www.danas.rs/drustvo/slozeni-zadaci-za-novu-ministarku/>.

41. The organization of Public Prosecution Offices has also changed substantively over the past decade. In 2010, the number of Basic PPOs was reduced from 109 to 34, and Appellate PPOs were introduced for the first time. In 2014, the PPOs network expanded to increase the number of Basic PPOs from 34 to 58, establishing 25 Higher PPOs; the network retained the four Appellate PPOs.⁴⁵ There also are two PPOs of special jurisdiction – one for Organised Crime and one for War Crimes. The organization of PPOs is presented in the Figure 5 below.

Figure 5: Serbia’s PPOs network



1.3.2. Managing caseloads and workloads

42. The 2014 Functional Review pointed out that systemic efforts to assess the internal organization of courts and PPOs in order to increase productivity and performance have been fairly limited. This finding remains relevant today. The 2014 Functional Review also found that the numbers of judges in the same types of courts do not correlate with the number of incoming cases, pending caseloads, or disposition rates. This directly impacts court efficiency and access to justice. The effects of these disparities are discussed in detail in the Efficiency chapter.

43. More critically, extreme workload differences between and within courts of the same type pose a risk for the quality of judgments and the application of the principle of equal access to justice. Judges with a high workload are under intense pressure to process as many cases as possible to reduce the existing backlog, which can encourage prioritizing speed over the quality of judgments. At the same time, citizens in areas in which judges have relatively low caseloads have a better chance of getting their cases resolved within a reasonable time, compared to citizens whose judges have high workloads.

44. In 2021, a new case-weighting formula to improve workload distribution was developed, tested and introduced in all basic and higher courts of general jurisdiction and commercial courts across the country. The AVP system was modified in the pilot courts to enable the use of the case-weighting methodology, which enables electronic random assignment of cases with a certain “weight” to judges.⁴⁶

⁴⁵ Law on Seats and Territories of Courts and Prosecution Offices, Official Gazette No. 101/2013.

⁴⁶ Over the past decade, significant efforts were undertaken to develop a case-weighting methodology, which is one of the obligations under the Action Plan for Chapter 23. After several attempts (see Box 1 below), the new case-weighting methodology was implemented in 20 pilot courts, 16 basic courts and four higher courts.

45. Although the case-weighting methodology may improve workload distribution within a given court, it will not solve the problem of huge differences in the workloads between the courts. Systemic measures are needed to equalize the distribution of the cases throughout the judicial network, including better human resource management (i.e., planning of human and financial resources based on the workload of the court).

46. On a positive note, there was significant progress in reducing backlogs, especially for enforcement cases. Almost one million enforcement cases were closed, as stated in the Annual Report on the work of the Courts. JEP contributed in 2016 by decreasing the number of backlogged cases by 828,248 (from 1,399,481 to 571,233), which represented almost 60 percent of all backlogged cases in those courts. This remarkable result was achieved thanks to backlog reduction plans of the Supreme Court of Cassation, implementation of a new Law on Enforcement, the commitment of the courts, and intense cooperation between the EU-funded “Judicial Efficiency” project team (JEP), the Supreme Court of Cassation, and the Ministry of Justice. A

47. Enforcement cases, however, still constituted about one-third of all unresolved cases in the Serbian judiciary. At the end of 2019, there were 1,701,312 unresolved cases in the Serbian judiciary, of which 621,674 were enforcement cases.

48. The workload differences between PPOs were notable, but not as significant as the differences between the courts. In 2019, the highest workload per prosecutor was recorded in the Korsumlija Basic PPO, with 562 cases per prosecutor, around four times higher than in the Basic PPO of Prijepolje, with 131 cases per prosecutor.

49. A case-weighting methodology for PPOs was developed and submitted to the SPC in 2015 but has still not been adopted. The Action Plan for Chapter 23 envisages the development of a case-weighting methodology for prosecution offices, taking into consideration specifics of the prosecutors’ work. Additional analysis is needed to ensure appropriate case weighting.

50. In spite of the absence of a case-weighting methodology, the members of the SPC redistributed the number of prosecutors’ positions in the PPOs, to address the challenges posed by the uneven workload.⁴⁷ This is a very positive development, which shows that a case-weighting methodology is not a *sine qua non* for ensuring appropriate workload in the judicial institutions.

1.3.3. Work processes and process re-engineering

51. Courts and PPOs face a variety of problems in their day-to-day operations. In some courts and PPOs, there was a lack of support and administrative staff, such as typists, which slowed the delivery of judgments. Some courts and PPOs have inadequate space for offices and courtrooms, which affects the timing of trials. For instance, In some courts, the enforcement departments are not located in the main court building, so cases have to be moved between buildings at different stages of their proceedings.

52. Traditional specialization of judges in criminal or civil matters posed a challenge for the efficient internal organization of courts. During the internship process, judges usually choose careers

⁴⁷ Workload Analysis, State Prosecutorial Council, 2016.

focusing on either criminal or civil law. With the introduction of prosecution-led investigations in 2013, a major part of the workload of criminal judges has been transferred to prosecutors. Court presidents, however, seemed to be reluctant to reassign criminal law judges to other types of cases, contributing to the disparities in workloads discussed in the previous section.

53. There was only limited progress with specialization of work and streamlined business processes in courts and PPOs. The efficiency of the internal organization of courts and PPOs largely depends on the management capability of each court president or Public Prosecutor. Some courts and PPOs employ streamlined processes to deal with certain types of cases, such as small claims, labor disputes and family issues. In many courts, however, the specialization process was handicapped by a freeze of recruitment in the public sector. The establishment of special departments to prosecute certain types of cases that require specialized skills was also possible only in larger PPOs, e.g., the First Basic PPO in Belgrade.

54. There also were several successful attempts to streamline business processes, which assumed the preparation of electronic forms for generating repetitive decisions, such as enforcement decisions (see Box 1).

Box 1: Examples of streamlining business processes

In June 2016, the EU's Judicial Efficiency Project (JEP) assisted the Supreme Court of Cassation (SCC) with the development of templates for typical decisions on enforcement cases that were integrated in and electronically generated through the existing AVP Case Management System. This facilitated closing a large volume of enforcement cases in courts across Serbia.

The SCC, in cooperation with the Ministry of Justice, prepared electronic forms in the AVP and SAPS case management systems for generating decisions in Higher and Appellate Courts, for cases in which the Ministry of Defense withdrew its appeals of claims for damages submitted by reservists. This meant judges did not have to make individual decisions in these cases.

55. Basic Courts were incentivized to improve efficiency and effectiveness through innovative business processes; the "Court Rewards Program" recognizes first-instance courts that improved efficiency and productivity in case processing. The program, initiated by the SCC, has been supported by the World Bank MDTF.

Box 2: Work process innovations in Basic Courts rewarded by the Supreme Court of Cassation.

In 2017, four courts were recognized for their efforts to innovate work processes. The Second Basic Court of Belgrade introduced its info-service for mediation. The Third Basic Court of Belgrade received an award for concluding a number of memoranda of cooperation with high school and university education institutions for student internship programmes. The Basic Court in Novi Sad improved its efficiency in handling enforcement cases through innovative communications with other relevant institutions (e.g., the police, tax administration, cadaster, etc.). The Basic Court of Uzice was recognized for the advanced use of information technologies to communicate with parties in cases, including electronic displays with daily data on all proceedings; electronic ordering of documents of confirmations issued by the court; and electronic communication with

PPOs and lawyers.

In 2018, the Second Basic Court in Belgrade received first prize for developing a software application that prints confirmation receipts for letters and that automatically updates the records of receipt confirmations. This has sped up the enforcement. The Basic Court of Pancevo also received an innovation award for developing software that controls the payment of expenses in criminal proceedings and enforced collection of court taxes.

Source: Decision of the Commission of the Supreme Court of Cassation, 26/9/2017; 29/9/2018.

56. Lessons learned from these innovations, however, have not been promoted or shared on a systematic basis, a function that should be carried out by the Councils.

57. The position of “court manager” or “court administrator” has had a positive effect on the management of courts, but the position is not used in many courts. The court administrator is the highest non-judicial position in the court system, responsible for managing administration and finances. The Law on Court Organisation of 2013 formally introduced the position of a court manager and codified the duties and responsibilities of this position. The law prescribes that an administrator should be employed at the highest instance courts, i.e., the Appellate Courts, in courts with 30 or more judges and when several courts share the same building and facilities. Only a few courts employ court managers. Although court managers have shown good results in practice, other courts that wanted to introduce this position were not able to do so after the Serbian Government introduced a hiring freeze in the public sector in 2014.

Another positive example of effective management in the judiciary

The Basic Court in Krusevac developed an in-house application which supports effective management of enforcement cases by making the work of court enforcement agents more transparent. The court president and enforcement judges can, on a daily basis, control the work of court enforcement agents and print reports of actions taken by them. By using this management tool, the Basic Court in Krusevac significantly reduced the backlog of enforcement cases.

58. Training modules on-court leadership created by the Judicial Academy were still not mandatory. The Judicial Academy organized several training sessions to give court officials effective techniques to manage and organize the work of the court. The training sessions, developed with the assistance of USAID, also gave the court presidents a chance to exchange information and experiences about their day-to-day management duties. The court leadership training program, however, has not been implemented continuously.

1.4. Effectiveness in Resource Management

59. Problems in resource management and coordination remain, stemming from the fragmentation of the responsibilities between the key governance institutions. The division of responsibilities results in a lack of coordination in resource planning and management, hampers the efficiency of financial management, and creates scope for outside political influence.

60. **Although an assessment of judicial infrastructure and ICT has been prepared,⁴⁸ there is no systematic planning or programming for ICT and infrastructure.** Decisions are still ad hoc, the longer-term costs of operations and maintenance are often overlooked, and there is not enough training available for ICT users to get the most out of the equipment. These issues are discussed in more detail in the ICT Management chapter.

61. **One of the critical problems for resource management was the lack of regulatory impact analysis of proposed legislation significantly affecting the judiciary.** Key pieces of legislation for which there was insufficient (if any) analysis of the human and financial resources necessary for their effective implementation included the organization of the court network, prosecution-led investigations and the introduction of special departments for corruption offenses. This gap triggered serious disturbances in the system, which for the most part have been handled (or not) “as we go along”. The risks of such an approach are best shown in the case of prosecution-led investigations, introduced in 2013, which was not followed by adequate human and financial resources and resulted in backlogs and arrears.⁴⁹

62. **While automated systems for statistical analysis have improved (see ICT Management chapter), the current system of collecting court statistics does not support meaningful analyses of the performances or effective planning of resources.**

1.5. Effectiveness in Strategic Management

1.5.1. Development of Strategies

63. **Reform of the judiciary has been one of the key strategic priorities of the Serbian government over the past two decades.** The first National Judicial Reform Strategy, with a stated goal of restoring public trust in the judicial system, was adopted by the Serbian National Assembly in May 2006. In 2013, Serbia adopted a new National Judicial Reform strategy (NJRS) for the period of 2013-2018 and an Action Plan for its implementation. In July 2020, the new Judicial Development Strategy was adopted.

64. **The key role in development of strategic documents was held by the Ministry of Justice.** Documents were developed by working groups supported by the Ministry of Justice as the institution responsible for coordination of the EU accession process under Chapter 23. All three strategic documents prioritized improvement of the quality, efficiency, effectiveness, and accessibility of the judiciary, as well as protecting its independence while ensuring the functioning of effective mechanisms of accountability.

65. **While the 2006 Strategy placed attention on the establishment of the new institutional framework, the 2013 Strategy primarily focused on legislation, without ensuring effective implementation.** The 2013 Strategy was accompanied by a lengthy Action Plan, which required an effective organizational and managerial approach to be implemented. The 2020 Strategy was adopted to ensure further judicial reforms in the following five-year period. Its priorities remain similar to the previous policy documents: strengthening of judicial independence and prosecutorial autonomy; strengthening of integrity of judicial office holders; and the quality and efficiency of the judicial

⁴⁸ EU Framework Project, IPA 2013.

⁴⁹ Functional Review of Prosecution System in Serbia, MDTF-JSS, 2019.

system.⁵⁰ The latter document was based on directions and recommendations issued by the European Commission in the Chapter 23 Screening Report,⁵¹ and on interim benchmarks contained in the negotiation position. However, this Strategy is still not accompanied by an Action Plan that prescribes specific measures, activities, deadlines, necessary funds and responsible bodies in charge of the implementation of the activities.

66. The Action Plan for Chapter 23 is the overarching strategic document adopted in July 2016 as the opening benchmark for negotiation under Chapter 23. On 10 July 2020, the Government of Serbia adopted a revised Action Plan with the aim of setting more realistic goals, as the EU has been placing much greater emphasis on the quality of the implemented reforms in the area of the rule of law.

1.6. Implementation of Plans and Measurement of Progress

67. Implementation of the 2013-2018 NJRS was hampered by delays and the proliferation of judicial reform documents and bodies. A Strategy Implementation Commission, led by the Ministry of Justice and consisting of 15 members representing all relevant institutions in charge of the implementation of the judicial reform⁵², was established in September 2013 to monitor and measure progress in the implementation of the Strategy and the accompanying Action Plan. Initially, the Commission organized regular monthly meetings, but beginning in 2018 it met only sporadically, for a total of 3-4 times each year.⁵³

68. Adoption of the Action Plan for the Implementation of Chapter 23 and the creation of the Council for the Implementation of the Action Plan for Chapter 23 in December 2015⁵⁴ reduced the focus of the MoJ on the detailed implementation of the NJRS.⁵⁵ The revised Action plan for Chapter 23 changed the monitoring mechanism and introduced the Coordination body for implementation.

69. The reports of the NJRS Strategy Implementation Commission usually were limited to box-ticking of the NJRS measures, and they did not include in-depth assessments of progress or lack thereof. The lack of central statistics for the judicial sector as of January 1, 2021, still hampers effective monitoring and evaluation of the sector's progress.

⁵⁰ *Ibid*, pp. 6-7.

⁵¹ Screening Report Serbia, Chapter 23 - Judiciary and Fundamental Rights, EU's Benchmarking within chapters 23 and 24 in accession negotiations with Serbia, Effects and Challenges, 2013.

⁵² The Strategy Implementation Commission was composed of representatives of the Ministry, the Republic Public Prosecutor's Office, the Supreme Court of Cassation, the High Judicial Council, the State Prosecutorial Council, the Committee on the Judiciary of the National Assembly of Serbia, a professional association of judges, a professional association of prosecutors, the Bar Association of Serbia, the Judicial Academy, a joint representative of law schools, the Ministry of Finance, a joint representative of the Chamber of Bailiffs, Public Notaries and Mediators, the Serbian European Integration Office, and the Government Office for Cooperation with Civil Society.

⁵³ EU Progress Report 2018. The same report concluded the lack of effectiveness on the part of the Commission could be attributed, at least in part, to its lack of adequate financial and administrative support.

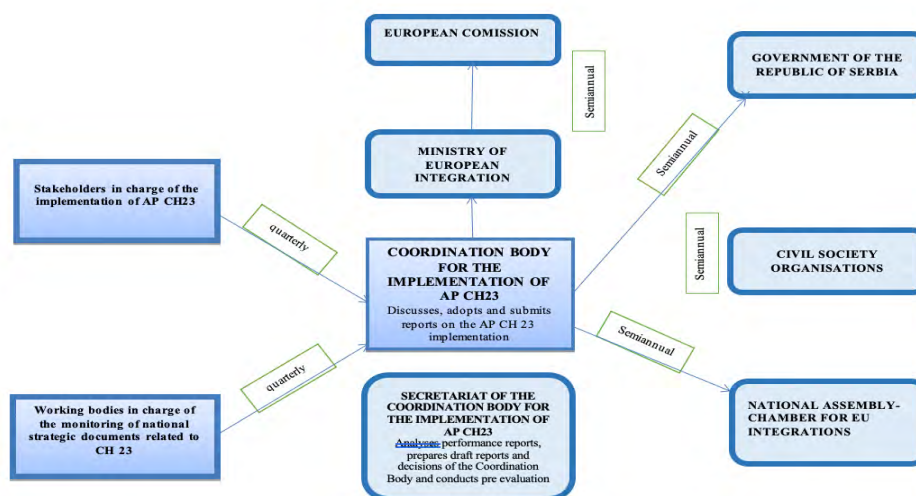
⁵⁴ The President of the Negotiating Group proposes members of the Council from among the ranks of civil servants and consultants who have already been engaged in the activities connected to the process of accession to the EU.

⁵⁵ At the request of the EU and to ensure uniformity of Serbia's strategic documents for the judiciary, the content of the NJRS was streamlined and aligned with the Action Plan for Chapter 23. See: M. Kolakovic Bojovic, "Efficient Monitoring and Evaluation of Judicial Reform as a Way to Speed Up Achieving the EU Standards", in B. Simeunovic Patric (ed), *The Police and Judicial Bodies as Guarantors of the Freedom and Security in State based on the Rule of Law*, Criminalistic-Police Academy, Faculty of Law, University of Kragujevac, Hanns Seidel Stiftug Foundation, pp. 145-146.

70. The reports of the Council for the Implementation of the Action Plan for Chapter 23 have been more detailed, but are limited to the EC recommendations from the Screening Report⁵⁶ and descriptions of implemented activities with no focus on achieved impact. In addition, the quality of reports by civil society organizations on judicial reform progress has varied.

71. The structure for monitoring and evaluation of the implementation of the Chapter 23 Action Plan is so complex that it may deflect attention from tracking the pace of reforms in the judicial system. The complexity of the system makes it difficult for those within the judicial system to keep abreast of what monitoring is being done, and by whom. The following chart is a streamlined view of the process.

Figure 6: Monitoring and Evaluation Mechanism according to the revised AP CH 23



72. The responsibility for monitoring the implementation of the activities envisaged in the Action Plan through July 2020 was entrusted to a variety of entities: the Implementation Council, the Head of the Negotiating Team for Accession Negotiations of Serbia to the European Union, the Negotiating Group for Chapter 23 led by the President/Head of the group, and the Coordination Body for the process of accession of the Republic of Serbia to the European Union,⁵⁷ which guides public administration issues within the accession process.

Box 3: Responsibilities for monitoring the implementation of the Action plan for Chapter 23

Council for the Implementation of the Action Plan for Chapter 23 was assigned to monitor the implementation of the activities in the Action Plan on a daily basis, in order to trigger an early warning mechanism in case of delays and other problems in the implementation of the Action Plan, and to coordinate the reporting process. The Council submitted monthly reports on the implementation of the Action Plan to the Negotiating Team for the accession of the Republic of

⁵⁶ Ibid.

⁵⁷ The structure of the Coordination Body Council includes: the member of the government responsible for European integration, who is also a chairman of the Council of the Coordination body, the Director of the Office for European Integration, the Head of the Negotiating Team, the heads of negotiating groups, state secretaries of the ministries whose representatives do not lead the negotiating groups, a representative of the National Bank of Serbia, the Deputy Director and Coordinator for EU funds in the EU Integration Office, and a representative of the Republic Secretariat for Legislation.

Serbia to the European Union, the President of the Negotiating Group on Chapter 23, and the Coordination Body Council. The Coordinating Body Council pays particular attention to ensuring that monthly reports encompass conclusions and recommendations from bodies that monitor the implementation of national strategic documents. The Council for Implementation of the Action Plan for Chapter 23 prepared quarterly reports on the implementation of the Action Plan, as well as biannual reports, to the European Commission. Quarterly and annual reports were published on the MoJ web page through 2019. These reports are activity-based and do not assess the effects of the reforms.

73. Serbian authorities also are required to ensure follow-up on recommendations from the Functional Review conducted by the World Bank in 2014. This obligation stems from the Common Negotiation Position, adopted by the Serbian Government and the EU,⁵⁸ which includes interim benchmarks to measure reform progress.

1.6.1. Communication of judicial reforms and support to the process

74. Court users and service providers have very different perceptions of the effect of previous and current justice reforms. Citizens (36 percent) and business representatives (34 percent) are generally more positive than negative. Judges are fairly polarized in positive (40 percent) and negative attitudes (39 percent), while the prevailing view of prosecutors is more negative (42 percent). This negative attitude among justice providers is expected, given the frequent reorganization of courts, reelection of judges, and many other actions which were not carefully planned and implemented, or which were delayed. Interestingly, those employed in court administration are the most optimistic concerning the direction of the reforms (45 percent believe the impact is positive). This result can be explained in part by the transfer of some of their duties to notaries and bailiffs. Perceptions of justice reforms have remained consistent amongst these groups over the last 10 years; this is not surprising, given that the Judicial Development Strategy for 2020 to 2025⁵⁹ prioritizes the same areas as previous strategic documents.

75. Lawyers have the most negative opinion of previous reforms, with most of them believing that reforms are not going in the right direction. More than half of attorneys (54 percent) believe that reforms have been harmful, and only 21 percent see them as positive. Lawyers were not systemically included in consultations about the reform process; in fact, they have mainly been excluded. In addition, lawyers were not satisfied with the decision to include them under Chapter 3 as providers of services, and to leave them outside of negotiations for Chapter 23.⁶⁰ Lawyers also protested the introduction of notaries by obstructing the work of the judiciary for four months in 2014. Their prevailing opinion is that the judiciary is inefficient, trials take an unbearably long time, and the quality of trials needs to be improved.⁶¹ Currently, they also express opposition to announced amendments to the Civil Procedure Code, claiming that the amendments will reduce access to justice.

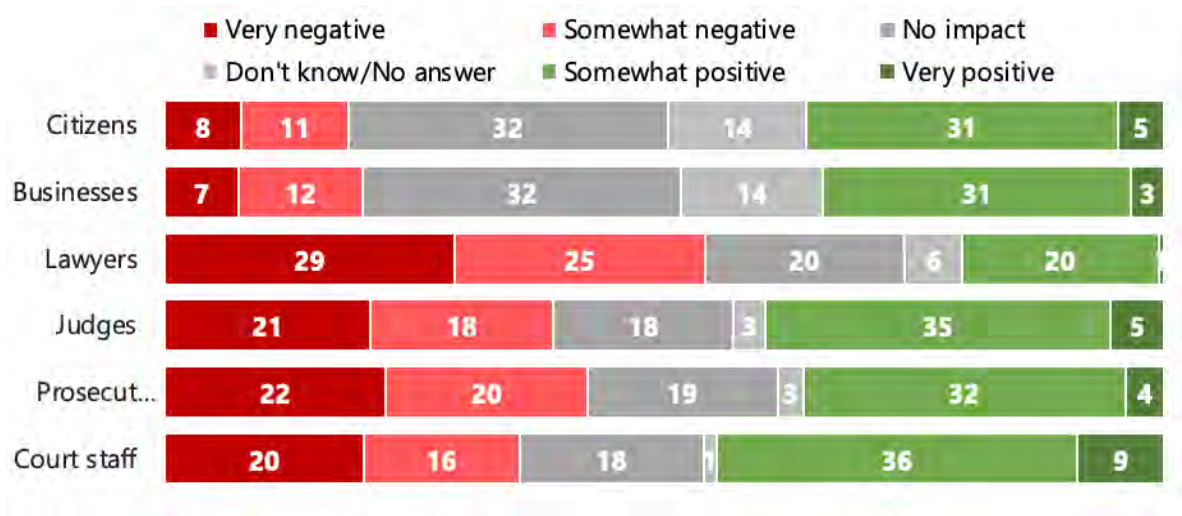
⁵⁸ Common Negotiation Position for Chapter 23 adopted in July 2016.

⁵⁹ Judicial Development Strategy, 2020-2025, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/101/1/reg>

⁶⁰ S. Brkic, Danas.rs, On the protests of lawyers (*O protestu advokata*), 26 November 2014.

⁶¹ Politika, Lawyers on the Reform of Judiciary, 11 January 2019.

Figure 7: Citizens, businesses, lawyers, judges, prosecutors and court staff: Evaluation of impact of justice reforms



Source: Regional Justice Survey for Serbia

76. There is also a different perception of the areas in which reforms had the greatest impact. Citizens and businesses associate previous justice reform with improvements in the quality of work and services, and secondarily with efficiency and accessibility. Judges and prosecutors believe reforms had the greatest impact on efficiency, and then quality of work and services. Court staff believes that reform most benefitted the quality of work, efficiency, fairness and impartiality. Lawyers think that reforms mostly helped to advance accessibility, and then efficiency and quality of work.

77. Citizens, businesses and justice professionals use different sources of information about ongoing judicial reforms; these sources should be consolidated and made relevant for designing dissemination plans. The communication strategies of judicial stakeholders should keep in mind citizens' and businesses' sources of information and target them to ensure better awareness of judicial reforms and results. While traditional media (especially TV programs and newspapers) are still very much a source of information for citizens, official websites are more popular among justice professionals. While official websites have improved (see ICT Management chapter), citizens still most commonly get information through TV programs (60 percent) and communication with family/friends (45 percent). Also, middle-aged (34 percent) and older generations (35 percent) read newspapers for this purpose more often than others (28 percent). It is not a surprise that the internet is noticeably more popular among younger people (18-44 years of age). Highly educated citizens (47 percent), residents of Belgrade (30 percent) and urban areas in general (28 percent) and those whose political affiliations are closer to the opposing parties (32 percent) more commonly use unofficial websites and various portals. Business representatives are usually informed through communication with colleagues/friends (44 percent) or by contacting a lawyer (43 percent), especially in the case of larger companies. Official websites are used by 12 percent of citizens, and by 27 percent of businesses.

78. The relationship between the judiciary and the media remains of concern. In late 2018, the HJC adopted a 2018-2022 communication strategy with the aim of advancing openness and proactive communication in all courts in Serbia.⁶² A new media strategy was adopted in February 2020, acknowledging that the last decade has been marked by an increase of tabloid content in violation of

⁶² Judicial Development Strategy 2020-2025, p. 34.

the presumption of innocence.⁶³ The negative image of the justice system results in part from an absence of public information portraying the importance of the work of the judiciary and efforts made to administer justice.

1.7. Recommendations and Next Steps

Recommendation 1: Develop a clear legal definition of the governance structure.

The goals of the 2022⁶⁴ Constitutional amendments included ensuring a clear definition of the governance structure, organization, and goals of the Councils and enhancing their management capacities to carry out their current responsibilities.⁶⁵ As part of the implementation of these recent amendments, a new legislative package is needed to amend the Law on the HJC, Law on the SPC, Law on Organization of Courts, Law on Public Prosecution, and relevant bylaws. This legislative package should ensure a clear division of responsibilities and powers to ensure efficient and effective governance over the judicial system. To avoid overlapping, unclear, or inconsistent legislation, it will be very important to:

- Amend the relevant legislation in line with Venice Commission and CCJE/CCPE recommendations to enshrine Councils and court independence, including appointments and promotions within the judicial system.⁶⁶ Amend the existing rules that prescribe the election of all elected members of the Councils at once every five years, replacing them with rotational elections that assist the retention of institutional memory and implementation of initiated activities. (MOJ, HJC, SPC, National Assembly – short-term)
- Consider introducing a general manager as the Head of the Administrative Offices of the two Councils to provide managerial oversight based on a job description requiring prior management experience and a hiring process independent of political influence. (HJC, SPC – medium-term)
- Improve human resource capacities of the HJC and SPC by hiring senior professionals of special profiles in the Councils authorized to propose directions and solutions for the policies that are under the responsibility of the Councils. (HJC, SPC – medium-term)

Recommendation 2: Create strategic and operational planning functions in the judiciary.

- Create an ongoing strategic and operational planning function in the judiciary to collect and analyze data and plan process improvements consistent with the CCJE standard that data collection is used to evaluate justice in its wider context⁶⁷ and reside in an independent institution in the judiciary.⁶⁸ (MOJ, HJC, SPC - short-term).
- Adapt the Functional Review's Performance Framework into a streamlined dashboard - to monitor system performance, with a small number (maximum of 10) of key performance indicators most likely to drive performance enhancements. (SCC, RPPO, MOJ – short-term)
- Consider increasing the focus on the effective rollout and implementation of a smaller number

⁶³ Strategy for Development of the system of public information in Serbia 2020-2025, "The Official Gazette of the Republic of Serbia", no. 11/2020.

⁶⁴ This recommendation is from the 2014 Judicial Functional Review and is still valid

⁶⁵ See for example CCJE Opinion 10 (2007), which states that '[p]rospective members of the Council for the Judiciary, whether judges or non-judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of the State, if he/she is the head of the government, nor any minister can be a member of the Council for the Judiciary. Each state should enact specific legal rules in this area.'

⁶⁶ This recommendation is from the 2014 Judicial Functional Review and is still valid.

⁶⁷ i.e., in the interactions of the judiciary with judges and lawyers, justice and police, case law and legislation, etc.

⁶⁸ See CCJE Opinion No. 6 (2004).

of reforms most likely to improve system performance from the perspective of court users.⁶⁹ Identify measurable targets. Monitor and document results, especially with respect to efficiency. (MOJ, HJC, SPC, Commission – short-term)

Recommendation 3: Increase the judicial sector’s capacity to analyze workload and determine resources.

Bolster the sector’s capacity to systematically analyze system workloads and determine the efficient resource mix to achieve policy objectives. Adding judges and staff to address performance issues is ineffective without a more rigorous evaluation of system needs.

- Monitor implementation of the case-weighting methodology in courts. (HJC, SCC – short-term)
- Create a planning, analytic, and statistics unit within each Council, with skilled staff who are capable of collecting and analyzing data about court and PPO performance. Task this unit to undertake human and financial resource planning and policy analysis functions focusing on the key performance areas. (HJC, SPC – short-term)
- Refine the weighting of cases over time to continually improve the allocation of resources to meet needs. (HJC, SCC – medium/long-term)

Recommendation 4: Re-engineer and streamline administrative processes in the courts and PPOs.

Re-engineering can result in more efficient and effective remedies for users and a reduced administrative burden on judges and staff without collapsing quality. Once the analytical unit is established, ongoing costs will be minimal.

- Establish a working group (comprising business process experts, judges, public prosecutors and judicial staff) to consider areas where re-engineering of processes would provide the greatest benefit. (HJC, SPC, Courts, PPOs – short-term)
- Facilitate organization of colloquia for Court Presidents to exchange information on recent attempts to improve processes. Ensure rollout of the best practices. (HJC, SPC in collaboration with MOJ, Court Presidents for local meetings – medium-term)

Recommendation 5: Disseminate information about system results to target audiences.

Improving public information would enhance trust and confidence, combat negative reports about the judiciary and demonstrate improvements in service delivery in line with Chapter 23. The SCC Annual Reports have improved, but the judiciary still lacks public presentation and dissemination. Low-cost methods of disseminating such information could include online information, posters, and handouts in courts and PPOs.

- Accompany Annual Reports with downloadable spreadsheets of system data for the benefit of analysts and researchers. Maintain email distribution lists for more frequent updates of progress. (SCC, HJC – short-term)
- Provide more detailed and disaggregated data in annual reports of the prosecution service. (RPPO short-term) Provide summary updates of recent reforms and their implications for court users and inform target audiences of proposed reforms using lay formats. (MOJ, Councils, SCC – medium-term)

⁶⁹ Innovative approaches of the courts are already identified in the SCC Awards program.

EXTERNAL PERFORMANCE: EFFICIENCY AND EFFECTIVENESS OF JUSTICE SERVICES

2. COURTS

This chapter examines the performance of the Serbian courts for judicial efficiency/effectiveness. The methodology used in this chapter corresponds to the one used in 2014 Serbia Judicial Functional Review, and data and findings of the 2014 Judicial Functional Review were used as a baseline. Data in this chapter were collected from the SCC and international reports, as explicitly noted in the corresponding text. The 2020 data, collected from the SCC report, are used herein only to demonstrate particular general trends as the effect of the Covid-19 health crisis made the year 2020 unprecedented and unfit for year-over-year comparisons. For more information see sections '*Impact of the Covid-19 Pandemic on Court Efficiency*' and '*Impact of the Covid-19 Pandemic on PPOs Efficiency in 2020*'.

2.1. Main Findings

79. From 2014 to 2019, the productivity in Serbian courts improved in many areas, but there were still domains that needed considerable attention. Most clearance rates were over 100 percent and the implementation of reforms that transferred most of the enforcement cases to private bailiffs and probate cases to public notaries. However, 'bulk' dispositions of enforcement cases made the largest contributions to the favorable clearance rates; without them, the improvements would not have been as remarkable.

80. Cases delegated by one court to another inflated the apparent number of cases nationally because these appeared in the statistics both as cases being disposed of in the originating courts and as cases registered in the courts receiving them.⁷⁰ The total number of delegations were seen in SCC's reports, but individual court reports did not report how many cases were delegated from or to that court.

81. The timeliness of case processing, measured through the CEPEJ disposition time indicator, dramatically and continually improved from 2014 to 2019, but with remarkable variations by case and court type. The total disposition time for Serbian courts decreased from 580 days in 2014 to 267 days in 2019. The total congestion ratio of courts in Serbia improved considerably, dropping to 0.73 in 2019.⁷¹ The pending stock was reduced by more than 40 percent from 2014 to 2018, or from 2,849,360 cases at the end of 2014 to 1,656,645 cases at the end of 2019. In 2020, the total disposition time reached 274 days, and the congestion ratio decreased slightly to 0.75, while the courts ended the year with 1,510,472 unresolved cases.

⁷⁰ In this chapter the term 'inflated' is used to describe caseloads, workloads and dispositions that are due to case processing rules counted more than once although they refer to a single legal matter or cases that would not be considered as such in other systems.

⁷¹ The congestion ratio is the number of unresolved cases at the end of one year/the number of resolved cases during the same year. This ratio does not reveal the age of the case stock, but it does help to correct any mistaken impression that a larger number of carry-over cases is intrinsically bad. If, for example, enforcement cases made up 95 percent of the Basic Courts' annual incoming cases (they do not), the congestion ratio would not reveal the age of stock.

82. The National Backlog Reduction Programme that started in 2014 markedly reduced the massive backlogs in Serbian courts even if it did not reach its stated goals.⁷² At the outset, the goal was to reduce the backlog to 355,000 cases by the end of 2018, from 1.7 million at the end of 2013. However, 781,000 backlogged cases were still pending at the close of 2018. The strategy was amended in 2016 to include a goal of approximately 350,000 backlogged cases for the end of 2020, which was not met, according to the SCC.

83. The Law on Protection of the Right to a Trial Within Reasonable Time may not have achieved its intended purpose. There is no evidence the Law has shortened court proceedings, and enforcing it requires more judicial resources to determine violations and penalties.

84. There was significant progress in reducing the courts' backlogs of enforcement cases, but it was not clear how effective private bailiffs had been in cases that had started as enforcement cases in the courts. The congestion ratio of enforcement cases in Basic Courts improved from 4.88 in 2014 to 1.47 in 2019, but many old enforcement cases were still in the courts as of 2019, the last year for which comparable data was available as of early 2021. The lack of genuinely effective and timely enforcement, particularly for cases arising in large courts, remained one of the biggest challenges for the Serbian court system.

85. The transfer of administrative tasks and probate cases to public notaries significantly reduced the work of many judges, although the transferred probate cases were still included in statistics about court caseloads, workloads, and dispositions. In 2013, Basic Courts received and resolved more than 700,000 verification cases, compared to roughly 110,000 in 2019. Also, in 2019, 91 percent of the 134,226 newly filed probate cases were transferred to public notaries, which was an increase of 38 percentage points from 2018. Although the transferred probate cases were still included in court statistics, courts had little or no work to do with them once they were transferred.⁷³

86. Except for the Administrative Court, Serbia's clearance rates for first-instance cases in 2018 exceeded those of EU courts. The Administrative Court's clearance rate for 2018 was notably lower than in other nations, but it improved in 2019.

87. While the number of judges on a court is a factor in the court's efficiency, it is not the only one. The addition of eight judges (one-fifth of the total) in 2018 was not enough for the Administrative Court to deal effectively with the increased number of cases and falling dispositions that year. By contrast, the Administrative Court increased its dispositions and clearance rate in 2019 despite losing seven judges (and only partly due to a decrease in incoming cases).

88. Dispositions per judge displayed substantial variations over time and between courts. The most stable dispositions per judge were recorded in the Appellate Misdemeanor Court, while dispositions

⁷² Starting in 2019, court cases in Serbia have been considered backlogged three years starting from the day of the submission of the initial action. Before 2019, cases were considered backlogged if they were older than two years starting from the day of the initial act, or older than nine months from the start of investigations in criminal cases. This study uses the definition of 'backlogged' as defined by the SCC over the applicable years. This report notes when the three-year definition for "backlogged" is used for years before 2019 to facilitate comparisons. Backlog issues are discussed in more detail below, in Section 1.3.2.8. on *Age Structure*.

⁷³ The described practices comply with the applicable case processing rules but still undeniably lead to one matter being counted several times.

per judge continuously increased in the Higher Courts and the Commercial Courts. Dispositions per judge in the Administrative Court declined sharply in 2018 and recovered in 2019.

89. The practice in Serbia of evaluating judges' productivity based on quotas for disposition is in tension with the need to resolve older and more complicated cases. The age structure of pending cases indicates how courts prioritize cases for processing and whether they are disposing of a significant number of new cases relatively quickly, while more complicated cases are left in part of the pending stock that may never be resolved.

90. The transfer of investigative responsibilities from courts to prosecutors was intended to improve courts' efficiency as well as objectivity. Because prosecutors' offices have required some time to implement the transfer, the short-term result has been some delays in case disposition by courts.

91. Enforcement of contracts lags behind that in other nations.

92. There is room for improvement in the efficiency of administrative tasks. Surveyed users indicated continuing issues with having to make multiple visits, visit multiple offices, or wait for a long time during court visits.

93. Courts still had too few and inadequate means to sanction parties and their attorneys for introducing delays in the progress of a case. In most circumstances, it is not mandatory for judges to discipline expert witnesses, parties, and attorneys for missing deadlines. As well as affecting inefficiency, inconsistent application of discipline can affect perceptions of fairness, and should be considered in light of the chapter on Quality, which stresses the importance of consistent application of laws.

94. The SCC's competitive Court Rewards Program put Serbia at the forefront of innovation among European judiciaries in incentivizing court performance. The program rewards improvement where it is most needed.

95. Meanwhile, court performance was intensely constrained by court management and organization, practice and procedure, and party discipline. Service of process has improved lately, but avoiding it is still quite easy. Discipline by opposing parties in meeting deadlines is still widely recognized as one of the main impediments of procedural efficiency. Scheduling of hearings, the number of hearings per case, the timeliness of their scheduling, and the frequency of cancellations and adjournments hinder the efficiency of courts and cause lengthy trials. The advantages of ICT tools are recognized but still not adequately utilized.

2.2. Demand for Justice Services (Workloads and Caseloads)

2.2.1. Chapter Summary

96. The demand for court services in Serbia increased by 25 percent from 2010 to 2019, from a total of 1,778,022 to 2,224,102 cases (including complex and simple matters). In 2019, 76 percent of all incoming cases were received by Basic and Misdemeanor Courts. The formal rise in the demand for court services in Serbia was caused partly by recent procedural reforms and case registration practices. Judges and court presidents interviewed by the FR team reported that judges and staff were

overburdened with work and believed that the only solution was adding more personnel to the system. With 1,867,911 cases received in 2020, the year heavily impacted by COVID-19 restrictions, the incoming caseload decreased by 16 percent.

97. According to the CEPEJ 2020 Report (2018 data), the overall demand for court services in non-criminal⁷⁴ cases in Serbia, as reflected in its incoming cases (caseload), was higher than the EU average, but Serbia had almost double the ratio of judges-to-population than the EU average. Relative to population, Serbian courts received 14.52 non-criminal cases per 100 inhabitants, while 12.34 cases were received in EU Member States. However, with 37 judges per 100,000 inhabitants, Serbian incoming caseloads per judge were, in fact, nearly half the EU averages.

98. Caseloads were distributed unevenly among courts and court types.⁷⁵ Some small courts were extremely busy, whilst larger ones were less so. Appellate Courts received a smaller caseload on average than the SCC. In short, reforms and court reorganizations have done little to address the uneven caseload distributions.

99. In 2019, workloads of Serbian courts reached the lowest level in the observed period from 2010, primarily due to backlog reductions. However, there were significant differences among court types. The workload of Basic Courts decreased by 35 percent from 2014 to 2019, i.e., there were more than 1 million pending cases fewer, while the workloads of Higher Courts more than doubled from 2014 to 2019, from a total of 145,345 cases to 344,205. The overall courts' workload decreased further in 2020 as a direct consequence of lower incoming cases and a favorable clearance rate of over 100 percent,

2.2.2. Introduction

100. Understanding the demand for court services as reflected in the incoming caseloads of courts, including the type and quantity of cases, court workloads, and their variations over time, is essential for proper assessment of court performance. Absolute numbers should always be put into context. To reach relevant conclusions, questions that need to be answered are always relative and expressed in ratios, percentages, and indicators. Whenever possible, case types are in this FR analyzed separately, in a manner disaggregated by available statistical reports.

Box 4: Case Weighting – the Serbian Experience

After several attempts, in December 2021, the case weighting study was implemented in all Basic and Higher Courts in Serbia, while in January 2022 it included the Commercial Courts. However, more time should pass to assess its effects on the system.

By the end of 2020, there had been two failed attempts at implementing a case weighting study in Serbian courts; a 2012 study was never adopted by the High Judicial Council and the second was abandoned in the

⁷⁴ CEPEJ refers to this category of cases as 'other than criminal'. It consists of litigious civil (and commercial) cases, general non-litigious civil (and commercial) cases that may include registration tasks like land or company registers, administrative law cases, and other. In Serbia, for instance, land and company registers are not a part of the judicial system as most of the enforcement cases as well.

⁷⁵ The uneven caseload may result from inadequately set territorial jurisdiction of individual courts, not only from excess of shortage of filled judges positions.

early stages i.e. it was limited to pilot courts only. One report on case weighting attempts in Serbia thought the recommendations of the study were not adopted because they appeared “to have also been overtaken by events (including another court reorganization, the reinstatement of dismissed judges, the privatization of some judicial functions, and the entry into effect of a new criminal procedures code.” For more details on the topic please see the World Bank paper ‘Case-weighting analyses as a tool to promote judicial efficiency: lessons, substitutes, and guidance’ from December 2017, <http://documents.worldbank.org/curated/en/529071513145311747/Case-weighting-analyses-as-a-tool-to-promote-judicial-efficiency-lessons-substitutes-and-guidance>, p. 2-3. The same study noted a second case weighting analysis was under way in 2017. Ibid. at p 2.

Case-weighting study techniques were developed in the 1970s to help courts analyze their personnel needs. More recent uses of these studies include determining reasonable caseloads, reallocating staff or cases between work units, setting productivity quotas and evaluation standards, and planning the merger or reduction of work units. For more details on the topic please see the same World Bank paper from 2017.

2.2.3. Overall Workloads and Caseloads

101. As was true for the FR2014, overall demand for court services is assessed in this report through caseloads and workloads with ‘caseload’ defined as the number of incoming cases for a given year, and ‘workload’ as the sum of the number of incoming and pending cases for a given year.

102. The rise in the demand for court services in Serbia from 2014 to 2019 was partly inflated by recent procedural reforms and case registration practices, while caseloads and workloads continued to be unevenly distributed among courts. Judges and court presidents interviewed by the FR team repeatedly said that judges and staff were overburdened with work and the only solution would be adding more staff.⁷⁶ The 2014 Judicial Functional Review found a falling demand for court services in Serbia (when defined as decreased caseloads), highly inflated caseload figures, and an uneven distribution of cases. Serbia’s demand for court services was weaker than EU averages; still, judges and staff throughout the system reported feeling busy and overburdened with work. In the period covered by this FR, the demand exceeded the EU average, while the number of judges *per capita* remained one of the highest among the Council of Europe (CoE) the Member States.

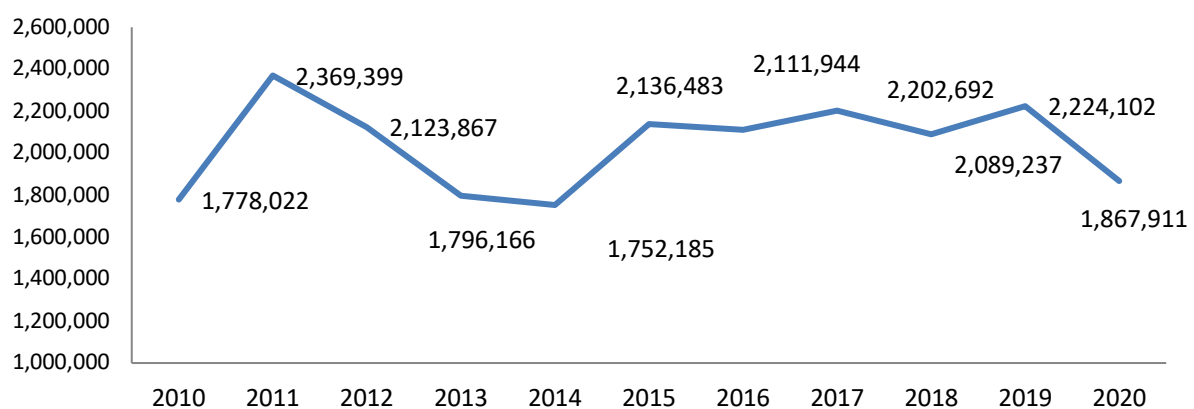
103. In 2019 Serbian courts received 2,224,102 cases across all courts. These included a large number of small matters that should have required very little judicial work as well as a lower number of complex cases. However, if Serbia’s court statistics did a more sophisticated job of differentiating between simple and complex cases, the system would have a more accurate view of its caseloads.⁷⁷

⁷⁶ According to the Annual SCC Reports, in 2017 and 2018, a total of 411 judicial positions were not filled because of a ban on the election of new judges prescribed by the Constitutional Court and the harmonization of the regulations governing the election of judges. By 2019, there were 319 vacant judicial positions.

⁷⁷ Serbian SCC reports exclude certain non-judicial (administrative) cases from overall case calculations. These matters are reported separately. Their numbers are high but they require little or no judicial, as opposed to court staff, attention (e.g. verification of documents by Basic Courts).

104. The number of incoming cases increased by 25 percent from 2010 to 2019, as displayed in Figure 8. From 2010 to 2013 (2014 Judicial Functional Review data⁷⁸), these numbers had fallen due to cuts in the types of cases being handled by courts. Several services and types of cases were transitioned to other providers (e.g. land registries, enforcement cases, and criminal investigations). The decline in coming cases from 2011 to 2013 was approximately 24 percent. This pattern changed radically from 2014 to 2019; more than 400,000 more cases were received in 2019 compared to 2013. Noteworthy portions of the increase that started in 2014 were due to case migrations from one court to another (which often resulted in misleading statistics about the number of cases in the system), new simple case types, and other changed practices, as analyzed in more detail below. In 2020, 1,867,911 cases were received, 16 percent cases fewer in comparison to 2019, primarily due to COVID-19 restrictions that caused lower demand for court services.

Figure 8: Incoming Cases in Serbia from 2010 to 2020



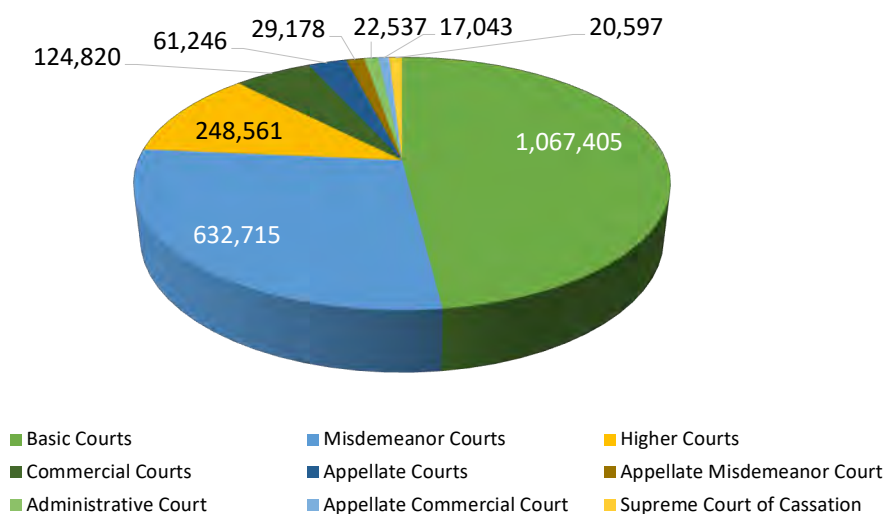
Source: SCC Data

105. Basic and Misdemeanor Courts received the highest number of cases in 2019, together accounting for 76 percent⁷⁹ of all incoming cases. Basic Courts received more than 1 million cases; the Misdemeanor Courts received approximately 600,000 cases and the Higher Courts just under 250,000 cases. Commercial Courts received more than 124,000 cases, and the total for other court categories was 150,601, although none of the other court types had more than 100,000 cases. Figure 9 displays the breakdown of incoming cases across court types in 2019.

⁷⁸ Data presented for 2010-2013 are illustrative. A precise comparison with the 2014-2019 data is not feasible due to differences in reporting methodology. Furthermore, the 2010 data did not include Misdemeanor Courts, the Higher Misdemeanor Court, the Administrative Court, Appellate Courts, and the SCC, all of which were newly introduced or 're-designed' during the 2010 court network reform.

⁷⁹ Basic Courts had 48 percent and Misdemeanor Courts had 28 percent.

Figure 9: Incoming by Court Type in 2019⁸⁰



Source: SCC Data

106. According to the CEPEJ 2020 Report (2018 data)⁸¹ the overall demand for court services in Serbia, as reflected in incoming non-criminal cases, was higher than the EU average. Relative to population, the Serbian courts received 14.52 non-criminal cases per 100 inhabitants, while 12.34 cases were received in the EU Member States and 12.65 in the Western Balkans.⁸² Serbia's demand for non-criminal cases, as defined above, increased by seven percent compared to the CEPEJ 2018 report (2016 data). This means that in 2018 around one in seven Serbians had a non-criminal case in court.

107. The CEPEJ 2020 Report found the demand for court services in criminal cases in Serbia was 12 times greater than the EU average. According to the CEPEJ, the number of incoming criminal cases per 100 inhabitants increased by 12 times from 2012 to 2014 (from 0.88 to 10.60) and then reduced somewhat in 2016 (although the number remained high at 7.07). The 2014 increase was caused by Serbia's new reporting methodology, which included misdemeanor cases and commercial offenses in the category of criminal cases.⁸³ It is also probable that the differences in criminal case numbers were affected by the variety of legal systems and reporting methodologies in CoE Member States. For instance, in the 2020 evaluation cycle that used 2018 data, CEPEJ introduced a new subcategory of

⁸⁰ Caseload data used for this FR are contained in the Megadata Table, World Bank. Data in the respective tables were collected from the SCC.

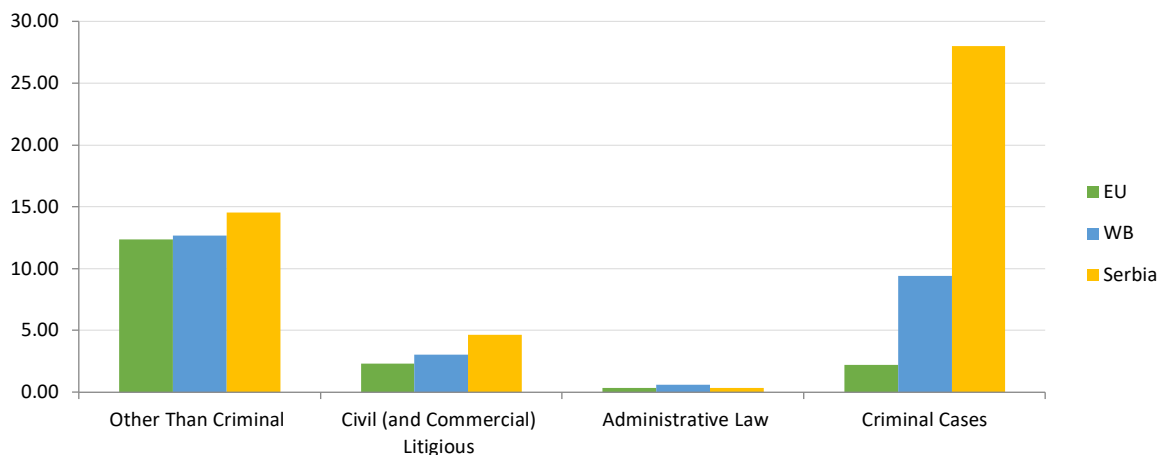
⁸¹ See CEPEJ Report on 'European judicial systems CEPEJ Evaluation Report – Edition 2020 (2018 data): 2020 Evaluation cycle (2018 data)', <https://rm.coe.int/evaluation-report-part-1-english/16809fc058> and CEPEJ-STAT Dynamic database of European judicial systems, <https://www.coe.int/web/cepej/dynamic-database-of-european-judicial-systems>. The structure of the 'other than criminal cases' category reported by the CEPEJ Member States varies depending on the national judicial systems but is harmonized according to CEPEJ methodology.

⁸² EU and Western Balkans averages in this FR were calculated by the World Bank team using CEPEJ data. EU averages include all EU Member States while Western Balkans averages include the following countries: Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia.

⁸³ CEPEJ Working Group on evaluation of judicial systems (CEPEJ-GT-EVAL) provided a peer review on judicial statistics in Serbia in March 2016. More details are available in the follow-up report and published online at: <https://rm.coe.int/16807481c9>. As a result of that peer review, Serbia started to include misdemeanor cases as criminal cases. This caused a jump in total incoming criminal cases reported to CEPEJ. In 2012 Serbia reported 63,285 incoming criminal cases while in 2014 this rose to 753,880. The methodology was further amended for the CEPEJ 2018 Report (2016 data) when enforcement of misdemeanor cases was excluded from the reported data, which contributed to the reduction of demand to 497,418 cases from 753,880 in 2014.

criminal cases named “other” which in Serbia’s case most probably inflated the average with various criminal cases,⁸⁴ some of them mentioned in this Functional Review as so-called ‘KR’ cases.

Figure 10: Incoming First Instance Cases per 100 Inhabitants (CEPEJ 2020 report)⁸⁵



Source: CEPEJ 2020 Report (2018 data)

108. For severe criminal cases,⁸⁶ as reported by CEPEJ Serbia was under the EU average. Serbia reported 0.74 incoming severe criminal cases per 100 inhabitants in the 2020 Report (2018 data), while the EU average was 0.82. There were 51,708 incoming cases of this type in 2018, representing one-tenth of the reported total of criminal cases. This essentially was the same percentage as severe criminal cases occupied in 2016.

109. Meanwhile, with 37⁸⁷ judges per 100,000 inhabitants, Serbia reported almost double the ratio of judge-to-population of the EU average. The only EU Member States and Western Balkans countries with higher judge-to-population ratios were Serbia’s neighbors Slovenia (42), Croatia (41), and Montenegro (50).⁸⁸ The incoming caseloads per judge in Serbia were, in fact, nearly half the EU averages.

110. Caseload statistics in Serbia remained highly inflated. As the 2014 Judicial Functional Review reported, Serbia counts many matters as ‘cases’ that would not be considered as cases in comparative systems (i.e., in COE or EU Member States), so the case numbers reported in this FR were inflated by matters that require very little or no attention from judges rather than their staffs. Serbia’s numbers

⁸⁴ These comprise a variety of peripheral matters in which judges or panels of judges decide on different procedural questions outside of trial, e.g. on a defendant's appeal during investigation.

⁸⁵ The Western Balkans average in this figure was vastly influenced by Serbia's high number of reported incoming criminal cases. Without Serbia in the calculation, the average would be 4.79.

⁸⁶ CEPEJ classifies as misdemeanor/minor offenses those offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, severe offenses are those offenses punishable by deprivation of liberty. Not all countries comply with this distinction. While CEPEJ attempts to ensure consistency among different legal systems but in reality, its data are not uniformly harmonized. For more see CEPEJ Explanatory note (2018 data), p.34, <https://rm.coe.int/cepej-explanatory-note-25-mars/native/168093ad3e>. In Serbia, the maximum penalty for misdemeanors is up to 60 days of incarceration. For other crimes, prosecuted in general criminal proceedings, the penalties range from thirty days to life imprisonment.

⁸⁷ According to CEPEJ reports the number of judges per 100,000 inhabitants in Serbia decreased from 2012 to 2014 from 40.5 to 38. There were no changes from 2014 to 2016.

⁸⁸ Croatia and Slovenia are EU11 Member States while Montenegro is a Western Balkans country.

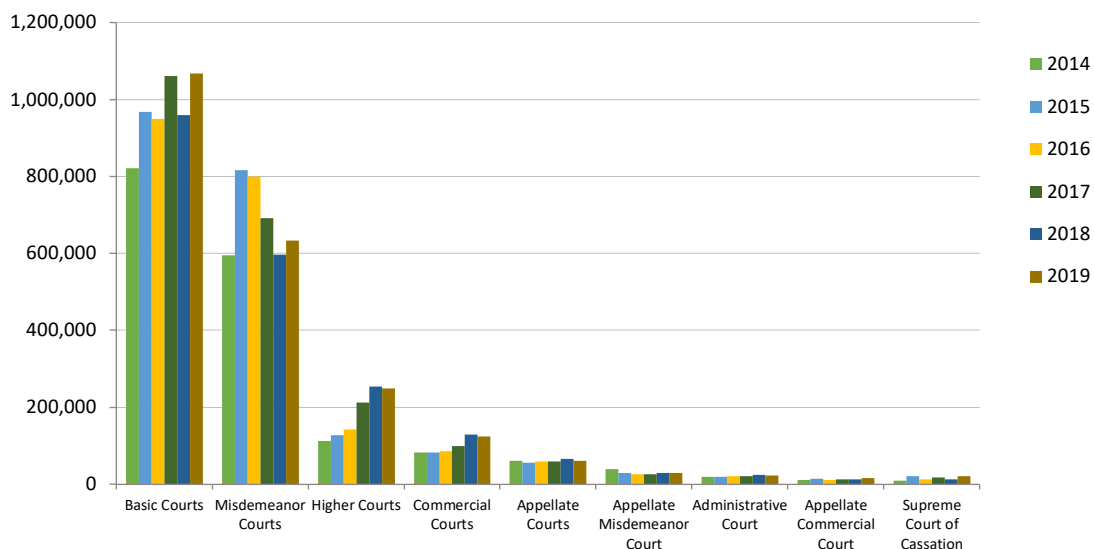
were even more inflated by double-counting since the same legal matter can be assigned multiple case numbers over time. For instance, cases were counted as dispositions in one court when the matter was delegated or transferred to another, and the receiving court would assign a new number to the case and count it as an incoming matter. The number of cases susceptible to double-counting during the period analyzed in this FR meant no one in the judiciary could have a reliable sense of how many cases requiring the attention of a judge were in the system. This impedes the reliability of statistical reports, especially when it comes to probate cases entrusted to public notaries or enforcement cases transferred among courts,⁸⁹ as discussed further in this analysis.

111. Rather than correcting inflated numbers of ‘cases’ and their implications for judicial workloads, many if not most stakeholders in Serbia accepted the reported numbers at face value. The reported failure of some courts to apply the applicable rules about court statistics consistently made the reliability of the statistics even more questionable, for the system as a whole, across categories of courts, and for individual courts.

2.2.4. Caseloads and Workloads by Court Type

112. The demand for justice services varied among court types over the years from 2014 to 2019. The Higher Courts, the Commercial Courts, and the Administrative Court reported increases each year from 2014 to 2018, but in 2019 these court types all recorded a slight decline. In other types of courts, demand fluctuated. Trends are displayed in Figure 11 below.

Figure 11: Incoming Cases by Co\$urt Type from 2014 to 2019

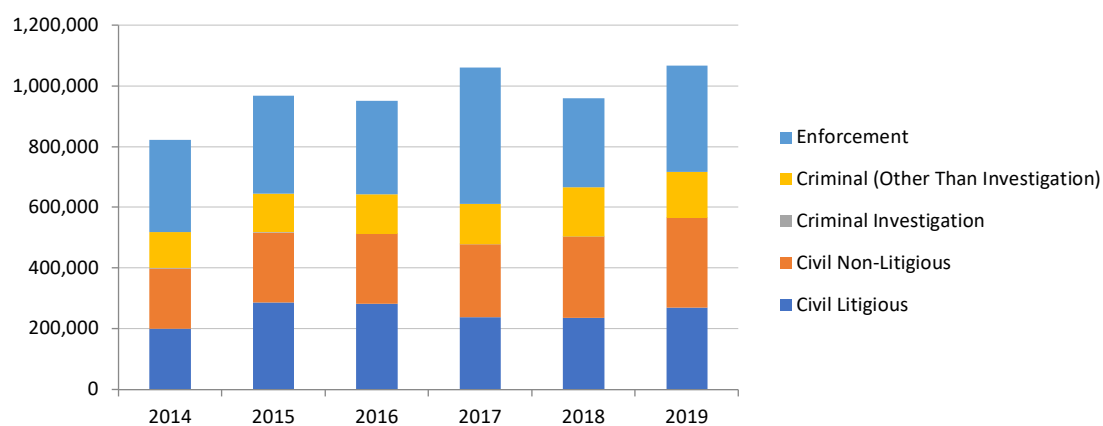


Source: SCC Data

⁸⁹ This transfer of enforcement cases among Belgrade's Basic Courts occurred once, in 2017 and was driven by legislative changes and establishment of new courts. More details are given further in this chapter in Box 2: Enforcement Cases and Their Impact on Overall Court Results.

113. The number of incoming cases in Basic Courts rose after 2014, which was not foreseen in the 2014 Judicial Functional Review.⁹⁰ In 2019 the number of incoming cases increased by 30 percent compared to 2014 and there was a similar increase in 2017. Although all incoming case types grew (excluding criminal investigations⁹¹), the most significant contributors to the rise in demand were litigious and non-litigious civil cases, as displayed in Figure 12 below. The primary cause of the reduction in demand recorded in 2018 was the decrease in the number of incoming enforcements.

Figure 12: Incoming Cases by Case Type in Basic Courts from 2014 to 2019⁹²



Source: SCC Data

Table 3: Incoming Cases by Case Type in Basic Courts from 2014 to 2019

	2014	2015	2016	2017	2018	2019
Civil Litigious	200,576	287,320	282,433	238,290	235,801	270,765
Civil Non-Litigious	198,294	230,275	230,029	240,375	268,532	294,255
Criminal Investigation	998	527	383	127	127	80
Criminal (Other Than Investigation)	118,599	126,616	130,055	133,465	161,347	151,146
Enforcement ⁹³	303,805	322,737	306,956	448,651	293,300	351,159

Source: SCC Data

⁹⁰ Since a fair share of enforcement cases were transferred to private bailiffs in 2011 and investigations were transferred to public prosecutors, the 2014 Judicial Functional Review erroneously expected that the judges would be left with enforcement cases that require little judicial work and a balanced workload of civil cases and criminal trials. See 2014 Judicial Functional Review, p. 59, para. 15, <http://www.mdtfjs.org.rs/archive//file/Serbiapercent20Judicialpercent20Functionalpercent20Review-Fullpercent20Report.pdf>.

⁹¹ Some investigations of existing criminal cases remained in the court system after the new CPC took effect, and they proved to have an unexpectedly long shelf life since some of them were still in the system by the end of 2019.

⁹² Due to exceptionally low numbers, incoming criminal investigations are indistinguishable in Figure 5, however the totals are given in Table 1 below.

⁹³ For this FR, the FR team disaggregated the SCC's data by case type depending on the type of the registries defined by the Court's Book of Rules. Enforcement cases in Basic Courts presented here are those reported under the following registries: Iv, I, li, liv, Ink, loi, lon, lpi, lplv, lplvlv, lplvlk.

Box 5: Enforcement Cases and Their Impact on Overall Court Results

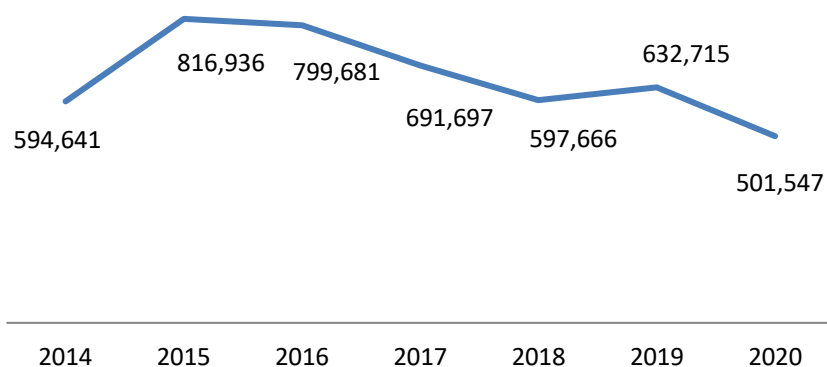
‘Bulk’ dismissals of enforcement cases in 2016 strongly influenced overall system results. At the beginning of the period covered by this Functional Review, enforcement cases in Basic Courts comprised much of the backlog and caused most of the congestion and delays in Serbian courts. At the end of 2015, a total of 1,802,009 enforcement cases remained unresolved, while 444,784 cases were disposed of. Most of these pending cases were inactive older cases stuck in the system. To facilitate their resolution, in 2016 the new Law on Enforcement and Security obliged creditors to choose whether they wanted enforcement to be done through the courts or by a private bailiff. If a creditor did not choose the case was dismissed, which caused the resolutions of enforcement cases in 2016 to almost triple to 1,164,312 and which markedly improved the statistical picture of Basic Courts’ operations.

The 2017 redistribution of approximately 170,000 enforcement cases among Belgrade’s three Basic Courts also inflated Serbia’s national caseload numbers. To distribute caseloads more evenly, these enforcement cases migrated from the First Basic Court in Belgrade to the Second and the Third Basic Courts. Statistically, these 170,000 cases were counted as disposed of in the First Basic Court and the counted as new cases in the other two courts. Consequently, they were counted twice on a national level. See the detailed discussion at *Enforcement in courts* in this chapter.

114. Incoming caseloads of Misdemeanor Courts increased dramatically in 2015 and 2016, primarily due to a specific types of execution cases. In 2019, Misdemeanor Courts received 632,715 cases. Expectedly, most of the courts’ caseload (almost one-third) was related to 167,111 incoming traffic cases. As displayed in Figure 13 below, peaks were recorded in 2015 and 2016, when approximately 200 thousand more cases were received. The increase was generated by traffic, public safety, and finance and customs matters. And what was even more significant by extreme jumps in misdemeanor execution cases of so-called ‘misdemeanor warrants’⁹⁴. Around 39 percent of all misdemeanor cases in 2019 were received in Belgrade’s Misdemeanor Court (247,222), while the lowest numbers were received in Misdemeanor Courts in Presevo (1,709) and Sjenica (1,232). The caseload of Misdemeanor Courts decreased by 21 percent in 2020.

⁹⁴ In 2014, the first year of application of misdemeanor warrants, Misdemeanor Courts received 87,558 execution cases. This jumped in the following years to 247,725 in 2015, 281,165 in 2016, 218,545 in 2017, 226,724 in 2018 and 310,882 in 2019.

Figure 13: Incoming Cases in Misdemeanor Courts from 2014 to 2020



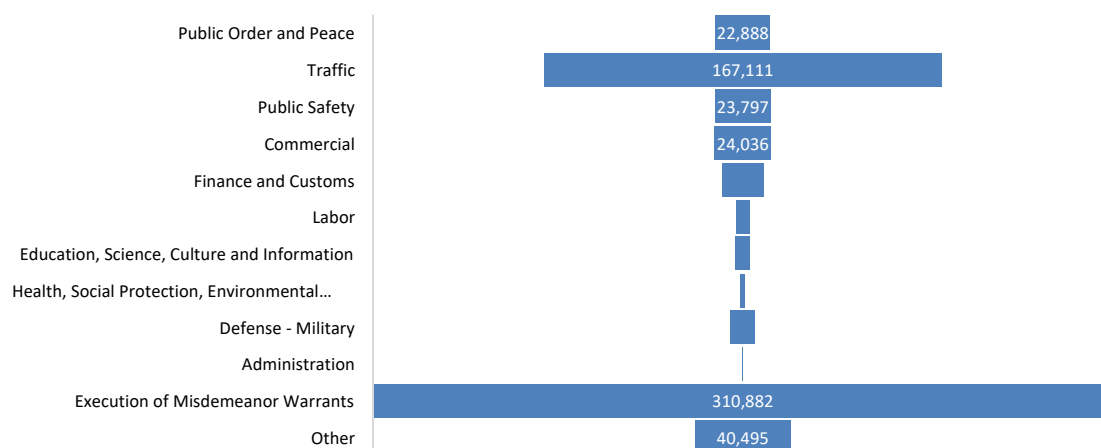
Source: SCC Data

Box 6: The New Law on Misdemeanors

Serbia’s Law on Misdemeanors introduced a ‘misdemeanor warrant’ for misdemeanor offenses for which a fixed fine is imposed. The warrants can be issued for minor offenses by the police or certain administrative bodies. The recipient can pay one half of the fine within eight days or s/he can ask the Misdemeanor Court to decide on the allegedly committed misdemeanor and/or the application of the full fine. The application of this Law begun on 1st March 2014; it has been amended three times since. (Official Gazette No. 65/2013, 13/2016, 98/2016, and 91/2019).

Unpaid misdemeanor warrants are executed by Misdemeanor Courts. Since the scope of the misdemeanor warrants in Serbia is increasing so is the number of these execution cases, which are registered under ‘IPR3’; ‘IPR3’ cases made up 38 percent of all misdemeanor cases in 2018 and 49 percent in 2019. In view of this, Misdemeanor Courts have even less time to conduct actual judicial proceedings and their workloads are significantly higher because they include the unpaid misdemeanor warrants.

Figure 14: Incoming Cases in Misdemeanor Courts by Case Type in 2019



Source: SCC Data

115. The growth of commercial offenses in Commercial Courts is a prime example of how poorly planned legislative changes can create even more burdens for the judicial system. In the Commercial Courts incoming cases have grown steadily, amounting to 124,820 in 2019, which was a 51 percent increase from 2014 but a three percent drop from 2018. This effect was driven by a five-fold increase in received commercial offenses, which increased to seven-fold in 2018. The Accounting Act⁹⁵ requires the Business Register Agency to submit complaints about commercial offenses against all legal entities that did not submit annual financial statements or statements of inactivity. In 2014, prior to the application of this provision, the Commercial Courts received just over 4,000 commercial offenses. By 2018 this figure had grown to almost 31,000. In 2019 it declined for the first time since 2014 to 23,000. These cases posed a burden not only to courts but also for the assigned public prosecutors.⁹⁶

116. The Higher Courts' caseload more than doubled from 2014 to a total of 248,561 in 2019. Incoming cases grew each year of the period from 2014 to 2018 by 13, 12, 48, and 20 percent, respectively. In 2019, a slight decline of three percent was recorded.

117. Incoming criminal cases (other than investigations) in Higher Courts were stable at around 50,000 until 2018, when almost 90,000 criminal cases were received, and in 2019 the incoming caseload jumped again to more than 120,000. The majority of the increase consisted of purely bureaucratic cases related to inquiries⁹⁷ of other bodies whether criminal proceedings are being conducted against an individual, received in the Higher Court in Belgrade registered under 'KR Po1'. In 2018 25,846 incoming 'KR Po1' cases were reported (43 times more than in 2017) and in 2019 there were 55,842 (93 times more than in 2017). The other category with significant increases consisted of the same case type registered under 'KR' (6,883 in 2019 incoming cases, twice as many as in 2017). It caused significant increases in 'KR' cases among eight of the 25⁹⁸ Higher Courts, while others received only a few or none of them. Criminal investigation cases remained at around 3,000, although with a slightly increasing tendency.⁹⁹

118. The number of civil litigious¹⁰⁰ cases in Higher Courts grew rapidly, as presented in Figure 15 below. From 2016 to 2017, the number of incoming litigious cases almost doubled, while in 2018 it

⁹⁵ Official Gazette No. 62/2013,30/2018 and 73/2019.

⁹⁶ The Serbian legal system inherited Commercial Courts' jurisdiction over commercial offenses from the Yugoslavian one. The model has been abandoned by Slovenia and Croatia, which transferred these types of cases to other courts (e.g., Misdemeanor Courts) or even non-judicial institutions (e.g., state agencies). Moreover, in those countries pursuit of offenders is in the hands of authorized complainants like a business register agency instead of the public prosecutors, but the cases still are handled by prosecutors in Serbia.

⁹⁷ In line with Article 15, Law on General Administrative Procedure (Official Gazette No. 18/2016 and 95/2018 – authentic interpretation).

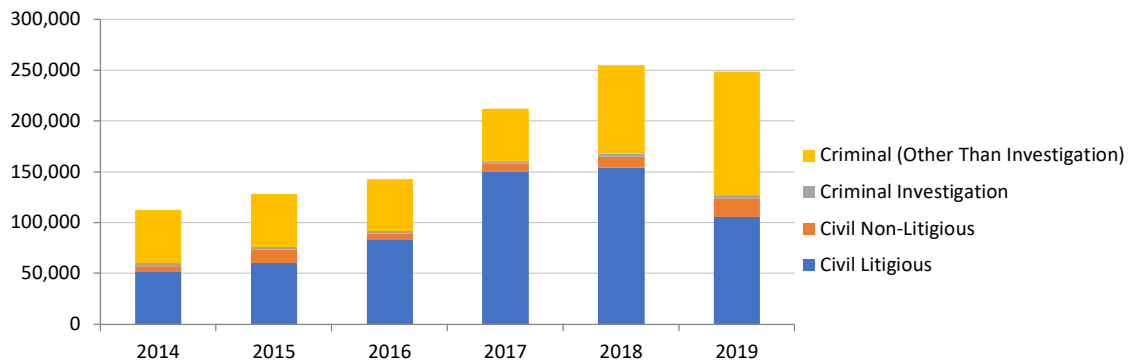
⁹⁸ These were Higher Courts in Sombor (2,598), Jagodina (1,644), Pirot (604), Leskovac (541), Valjevo (469), Kraljevo (358), Pančevo (307), and Belgrade (151).

⁹⁹ The exact cause of the increase in criminal investigation cases was unclear from the available information, but these eventually should disappear from the system. These criminal investigations which remained in courts are cases in which arrest warrants were issued before the passage of the CPC, in which the statute of limitations has not expired, and the procedure needs to be supplemented or the defendant is detained on a warrant.

¹⁰⁰ These are first instance cases with a claimed value of more than EUR 40,000. Regardless of the value, the Higher Courts were also competent to handle numerous procedures listed in particular laws - copyright disputes, protection against discrimination and harassment at work, etc. Civil litigious cases which Higher Courts handled in the second instance were also included in these figures.

grew by only two percent. Conversely, in 2019 a drop of 31 percent was reported. Overall, civil non-litigious cases more than tripled from 2014 to 2019, from 5,428 to 18,173.

Figure 15: Incoming Cases by Case Type in Higher Courts from 2014 to 2019



Source: SCC Data

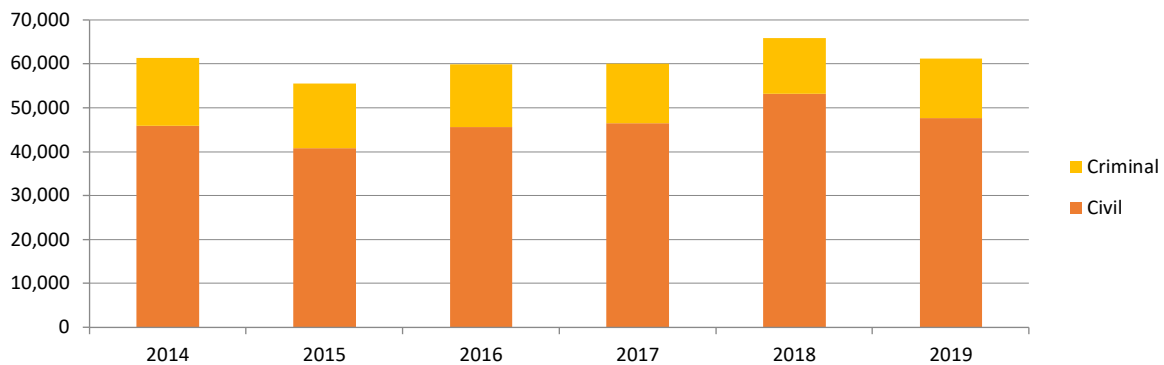
119. According to the SCC¹⁰¹ the primary cause of the increased caseload of litigious cases in 2017 was the glut of 56,342 first-instance civil matters filed by military reservists. These repetitive cases, which challenged the amount reservists were receiving as financial benefits, could have been disposed of by a so-called ‘pilot decision’ of the SCC which has been, according to the Civil Procedure Code, used for case law unification. These 56,000 cases probably were not the only cause for the high number of new civil litigious cases in 2017 and 2018, but the available data and interviews did not identify any other single driver behind them.

120. The Appellate Courts had a reasonably stable caseload throughout the period, as displayed in Figure 16 below. Nevertheless, compared to the period covered by the 2014 Judicial Functional Review their caseload decreased by roughly 40 percent, mostly due to the reduced numbers of incoming criminal cases. Still, the SCC¹⁰² reported in its 2017 Report that the effects of the military reservist cases had started to spill over to the Appellate Courts, and that more should be expected in 2018. In fact, 2018 incoming civil cases in Appellate Courts did grow by 14 percent over the previous year, but available data did not show if it was the reservist cases that caused the growth.

¹⁰¹ SCC 2017 Report (English version), at https://www.vk.sud.rs/sites/default/files/attachments/ANNUALpercent20REPORTpercent20ONpercent20THEpercent20WORRKpercent20OFpercent20THEpercent20COURTSpent20INpercent20THEpercent20REPUBLICpercent20OFpercent20SERBI Apercent20FORpercent202017percent20percent20-percent20correctedpercent20versionpercent2020180315percent20pgpercent209_2.pdf.

¹⁰² Ibid.

Figure 16: Incoming Cases by Case Type in Appellate Courts from 2014 to 2019



Source: SCC Data

121. The SCC’s caseload of civil cases more than doubled from 2014 to 2019 – from 6,971 to 18,182, largely due to an expansion of the Court’s jurisdiction in 2014.¹⁰³ Revision¹⁰⁴ cases grew each year; from 3,735 in 2014, to 5,480 in 2015, 5,732 in 2016, 7,102 in 2017, 9,907 in 2018 and 10,531 in 2019. The revision threshold was reduced to 40,000 EUR and a so-called ‘special revision’¹⁰⁵ was introduced as a new extraordinary legal remedy, causing the caseload to increase.¹⁰⁶ Nevertheless, the overall civil caseload of the SCC was, to some extent, inflated by delegation cases registered under ‘R’ (issues posed by delegations also are discussed at Section 1.3.2.2. *Case Dispositions*, below). In 2015 there were 7,123, in 2017 there were 6,734, and in 2019 there were 6,469 ‘R’ cases included in the incoming caseload of the SCC, while in the other observed years, there were no more than 200 of these simple matters. Criminal incoming cases in the SCC varied modestly over the years from a minimum of 1,539 cases (registered in 2015) to a maximum of 1,898 cases (registered in 2016).

122. The Administrative Court experienced a constant increase in its incoming caseload until 2019, when it declined by 11 percent. It received 19,423 cases in 2014, 20,315 in 2015, 21,548 in 2016, 21,741 in 2017, 25,426 in 2018, and 22,537 in 2019. This increase was consistent with the continuous expansion of the Court’s jurisdiction through new laws relating to restitution, protection of labor rights of employees working in local government and electoral cases, among others.

123. The 25 percent reduction in the caseload of the Appellate Misdemeanor Court from 2014 to 2019 was instigated by the elimination of two types of cases from its jurisdiction related to public procurement and sentencing. The Appellate Misdemeanor Court received 39,103 cases in 2014, 29,583 cases in 2015, 26,658 cases in 2016, 26,444 cases in 2017, 29,702 cases in 2018, and 29,178 cases in 2019. The reduction was attributable to the elimination of appeals in the court lodged against decisions of the Republic Commission for Protection of Rights in Public Procurement Procedures and appeals concerning the substitution of a fine for imprisonment. The former category dropped from 9,879

¹⁰³ In total the SCC received 20,597 cases of all types in 2019, while 9,161 cases were received in 2014.

¹⁰⁴ A revision is an extraordinary legal remedy that may be filed with the SCC to contest a final and binding second instance decision, in compliance with the provisions of the Civil Procedure Code.

¹⁰⁵ A so-called ‘special revision’ may be lodged even if a ‘regular’ revision is not allowed if the question in matter is a legal issue of general interest, a question of case law harmonization, or interpretation of law.

¹⁰⁶ In the Civil Procedure Code amendments published in Official Gazette no. 55/2014, in Article 23, the revision threshold was reduced from 100,000 EUR to 40,000 EUR for non-commercial litigious cases. It remained at 100,000 EUR for commercial cases.

incoming cases to only nine, while the latter decreased from 3,059 to 340 incoming cases. Other incoming case types varied through the period, but their influence on the total caseload of the Court was much weaker. For instance, there were almost 10 percent more traffic cases received in 2018 than in 2014.

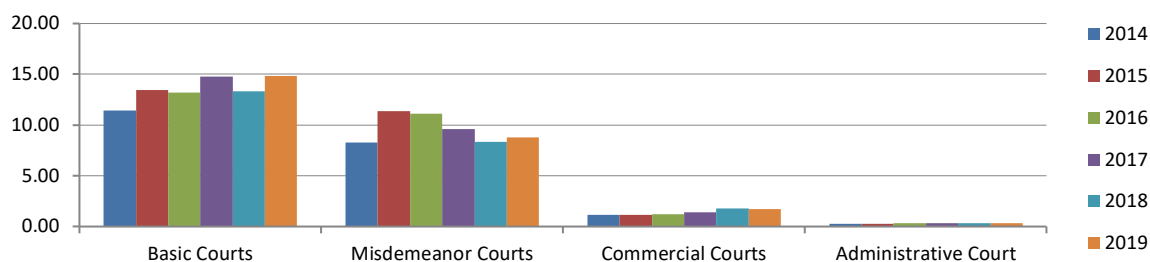
Box 7: Misdemeanors Related to Public Procurement

In 2013, jurisdiction over first-instance misdemeanors related to public procurement was transferred from the courts to the Republic Commission for the Protection of Rights in Public Procurement Procedures (Public Procurement Act, Official Gazette No. 124/12, 14/15 and 68/15). In practice this solution proved impossible to implement due to procedural and practical impediments. For instance, the Republic Commission did not have the instruments to ensure the execution of sentences, nor to ensure the presence of defendants. Competence over public procurement misdemeanors was returned to courts by a brand new Public Procurement Act as of August 2020 (Official Gazette No. 91/2019).

2.2.5. Demographic Differences in Demand

124. Calculated for all courts, Serbia's incoming caseload grew from 24.38 cases per 100 inhabitants in 2014 to 30.95 cases per 100 inhabitants in 2019.¹⁰⁷ Not surprisingly, the highest incoming numbers by court type in 2019 were recorded in Basic and Misdemeanor Courts with 14.85 and 8.80, respectively. Trends in demand per 100 inhabitants per court type are detailed in Figure 17 below.

Figure 17: Incoming Cases by Court Type per 100 Inhabitants in First Instance Courts¹⁰⁸ from 2014 to 2019



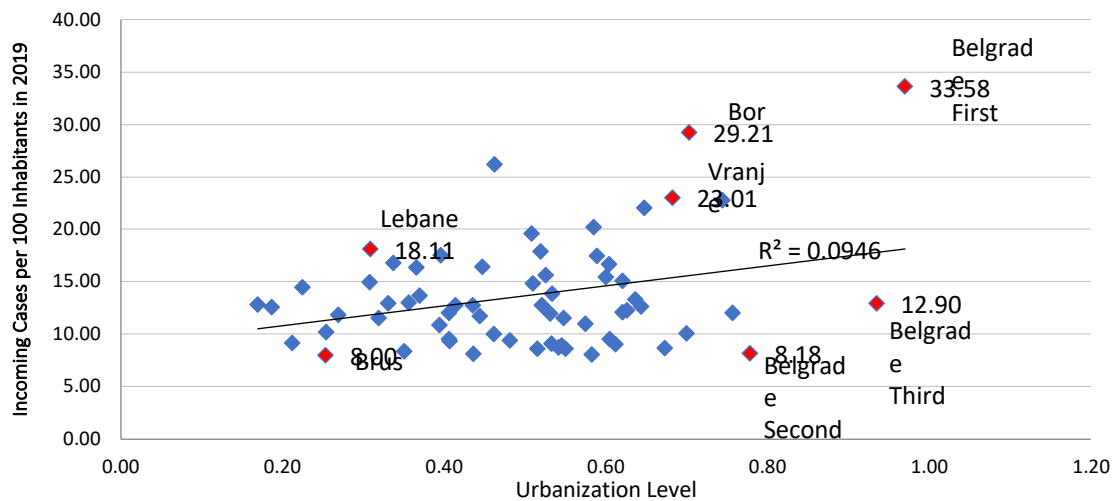
Source: SCC Data and WB Calculations

125. Contrary to a view commonly heard in Serbia, there was no firm correlation between court size and the burden posed by incoming cases - some areas covered by smaller courts had relatively higher caseloads than courts of the same types in larger cities. The misconception that courts in capitals and regional centers faced significantly higher demand was very typical among those interviewed by the FR team, mostly because of the higher absolute number of cases in the larger courts. Figure 18 demonstrates the lack of correlation between urbanization levels and per capita caseload regardless of the available number of judges. Caseloads per judge are analyzed in the following section.

¹⁰⁷ For these calculations the 2011 Census of Population, Households and Dwellings in the Republic of Serbia was used as detailed in the following webpage <http://popis2011.stat.rs/?lang=lat>.

¹⁰⁸ Due to their mixed jurisdiction of first- and second-instance cases, Higher Courts are not included in the chart.

Figure 18: Basic Courts – Incoming Cases per 100 Inhabitants in 2019 vs. Urbanization Level



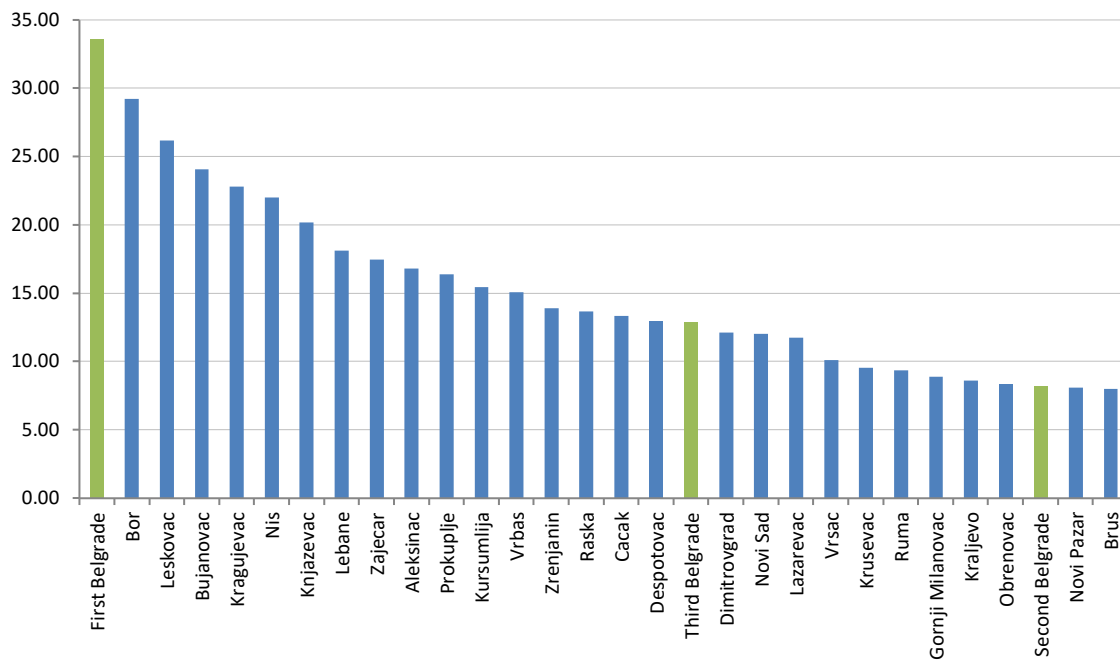
Source: SCC Data, Statistical Office of the Republic of Serbia and WB Calculations

126. Of all Belgrade’s courts, only its First Basic Court and Higher Court were the highest among their peers in terms of received cases per 100 inhabitants. The Second and the Third Basic Courts were 62nd and 28th, respectively. As for the Appellate, Misdemeanor¹⁰⁹ and Commercial Courts, Belgrade’s courts were second.

127. The highest caseload per 100 inhabitants in 2019 was recorded in the First Basic Court in Belgrade – 33.58 incoming cases per 100 inhabitants. Interestingly, the second-highest demand at 29.21 incoming cases per 100 inhabitants was recorded in Basic Court in Bor, which covered only one-tenth of the population covered by the First Basic Court in Belgrade. Examples of smaller courts with higher caseloads were found in other court types as well. In Figure 19 below, Belgrade’s courts are displayed in green.

¹⁰⁹ Among Misdemeanor Courts, the absolute record holder each year was a small court in a town of 3,000 inhabitants – Presevo. In 2015 the Misdemeanor Court in Presevo received 96 cases per 100 inhabitants. Presevo lies just next to the busy North Macedonian border and border-related misdemeanors probably made up much of the caseload.

Figure 19: Incoming Cases in Selected¹¹⁰ Basic Courts per 100 Inhabitants in 2019



Source: SCC Data and WB Calculations

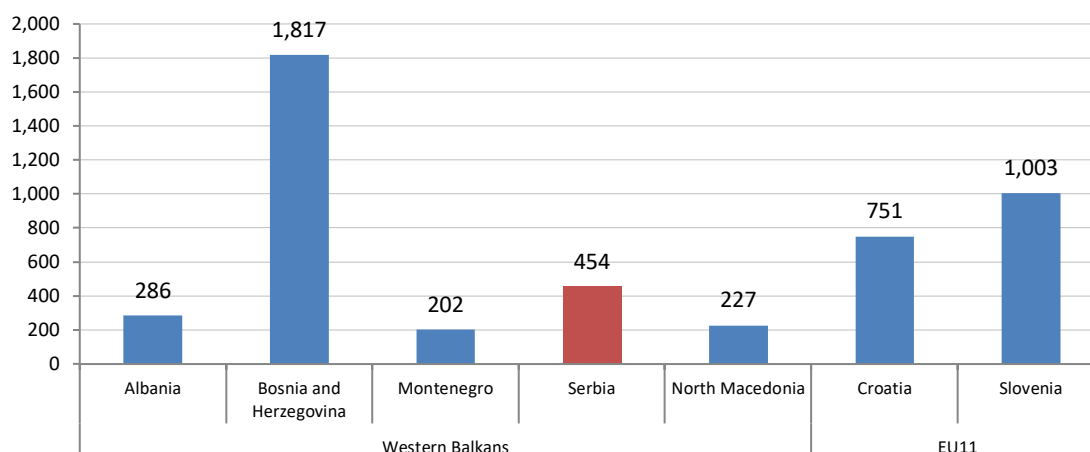
2.2.6. Caseloads per Judge

128. CEPEJ data¹¹¹ reveal that Serbia's average number of incoming, non-criminal first-instance cases per judge was lower than of some of Serbia's Western Balkans and EU11 regional peers. Incoming caseload per judge is measured by dividing the number of received cases by the number of judges. As displayed in Figure 20, judges from Bosnia and Herzegovina, Slovenia, and Croatia received several times more cases than Serbian judges. These countries usually serve as appropriate comparisons to Serbia because their similar legal traditions, but that may not be as true for caseloads since legislative reforms have changed the jurisdictions of courts in these countries over time. For example, both Croatia and Slovenia count land registry and company registry cases as non-criminal cases (although most of the work on these matters is entrusted to the courts' administrative staff), while in Serbia, these matters are handled by specialized agencies rather than courts. In addition, some of the peer countries' enforcement cases have remained in the courts to a much greater extent than they have in Serbia.

¹¹⁰ Courts of various sizes were selected for this figure as well as for the other figures in this FR that display 'selected' courts.

¹¹¹ This calculation has been provided by the World Bank using CEPEJ 2018 data. The calculation divides the number of incoming first instance non-criminal cases by the total number of professional first instance judges.

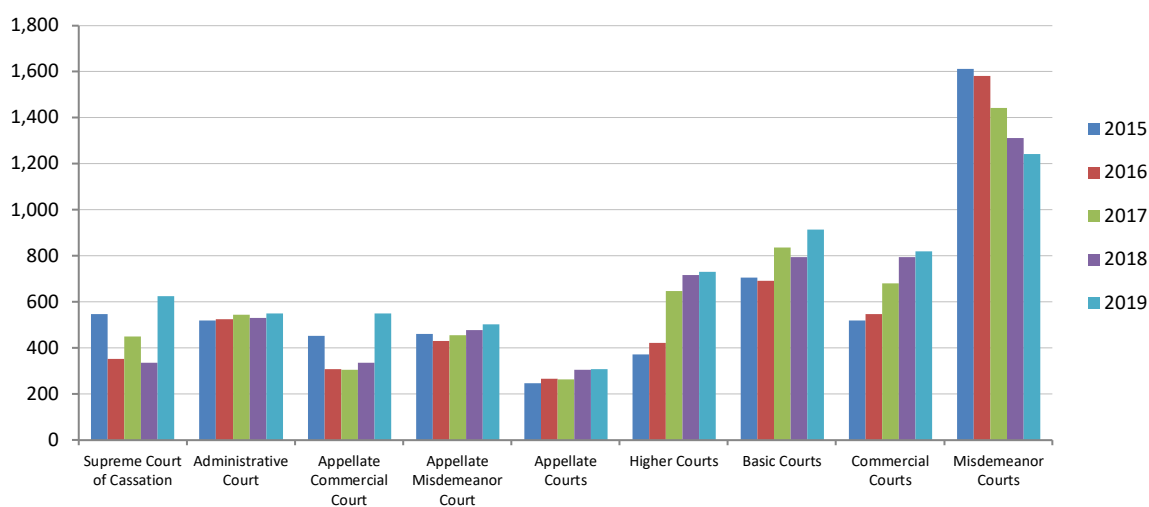
Figure 20: Non-Criminal Caseload per Judge in Selected Countries in 2018



Source: CEPEJ 2020 Report (2018 Data)

129. Incoming caseloads per judge varied in Serbia across court types from 2015¹¹² to 2019. They increased consistently only in the Higher and Commercial Courts. In contrast, there was a persistent decline among Misdemeanor Courts. For other court types, the caseload per judge varied from year to year, as displayed in Figure 21 below.

Figure 21: Caseload per Judge by Court Type from 2015 to 2019



Source: SCC Data and WB Calculations

130. The caseload per judge in Misdemeanor Courts in 2015 was the largest caseload covered by this FR, at 1,611. Misdemeanor Courts' caseload per judge decreased after that due to a combination of falling incoming cases and an increasing number of filled judge positions. What had been a relatively stable rate of around 450 incoming cases per judge for the Appellate Misdemeanor Court started increasing in 2018: it reached 479 in 2018 and 503 in 2019.

¹¹² In this calculation, the number of judges equals the number of filled positions. The data for 2014 were unavailable.

131. In Basic Courts, the average caseload per judge in 2019 was 914 cases; however, there were substantial differences among individual courts that did not correspond to their size, as shown in Table 4 below. The 2019 caseload per judge grew by 15 percent compared to 2014, due to increased civil and enforcement cases and a slight reduction in the number of sitting judges. Of the 66 courts analyzed below, only 15 percent were within average values while 38 percent were above average and 47 percent below average.

Table 4: Average Caseloads per Judge in Basic Courts in 2019¹¹³

Court	Incoming Cases	No. Of Judges	Caseload per Judge	Court	Incoming Cases	No. Of Judges	Caseload per Judge
Lebane	7,342	5	1,468	Vranje	20,387	26	784
Third Belgrade	55,039	38	1,448	Obrenovac	6,076	8	760
Aleksinac	12,951	9	1,439	Despotovac	6,040	8	755
Leskovac	46,026	33	1,395	Backa Palanka	6,599	9	733
First Belgrade	157,551	115	1,370	Mladenovac	10,256	14	733
Pozega	10,596	8	1,325	Cacak	15,364	21	732
Knjazevac	6,361	5	1,272	Senta	5,702	8	713
Sombor	21,497	18	1,194	Novi Pazar	10,624	15	708
Bor	14,201	12	1,183	Lazarevac	6,895	10	690
Subotica	23,608	20	1,180	Brus	3,428	5	686
Uzice	19,783	17	1,164	Mionica	3,417	5	683
Sremska Mitrovica	10,210	9	1,134	Ub	4,086	6	681
Kragujevac	48,599	43	1,130	Prokuplje	12,244	18	680
Loznica	14,616	14	1,044	Raska	3,373	5	675
Nis	66,349	64	1,037	Zajecar	12,669	19	667
Vrbas	15,288	15	1,019	Ruma	7,937	12	661
Zrenjanin	21,324	21	1,015	Gornji Milanovac	3,958	6	660
Kraljevo	13,189	13	1,015	Pancevo	16,197	25	648
Kikinda	11,065	11	1,006	Paracin	13,267	21	632
Prijepolje	6,855	7	979	Vrsac	8,145	13	627
Velika Plana	11,632	12	969	Surdulica	8,109	13	624
Second Belgrade	43,519	45	967	Stara Pazova	12,334	20	617
Kursumlija	4,787	5	957	Ivanjica	6,107	10	611
Veliko Gradiste	3,753	4	938	Krusevac	14,889	25	596
Trstenik	5,596	6	933	Novi Sad	54,029	92	587
Sabac	26,233	29	905	Bujanovac	5,087	10	509
Pozarevac	22,290	25	892	Negotin	5,793	12	483
Pirot	10,127	12	844	Sjenica	2,398	5	480
Becej	5,848	7	835	Priboj	2,344	5	469
Jagodina	14,816	18	823	Sid	2,789	6	465
Smederevo	16,395	20	820	Valjevo	11,284	27	418
Petrovac on Mlava	5,641	7	806	Majdanpek	1,629	5	326
Arandjelovac	9,636	12	803	Dimitrovgrad	1,226	5	245

Source: SCC Data and WB Calculation

¹¹³ The numbers for courts with caseloads per judge that were above national average are in pink, numbers for courts only 10 percent above or below the average are in blue, and the numbers for courts below the national average are in green.

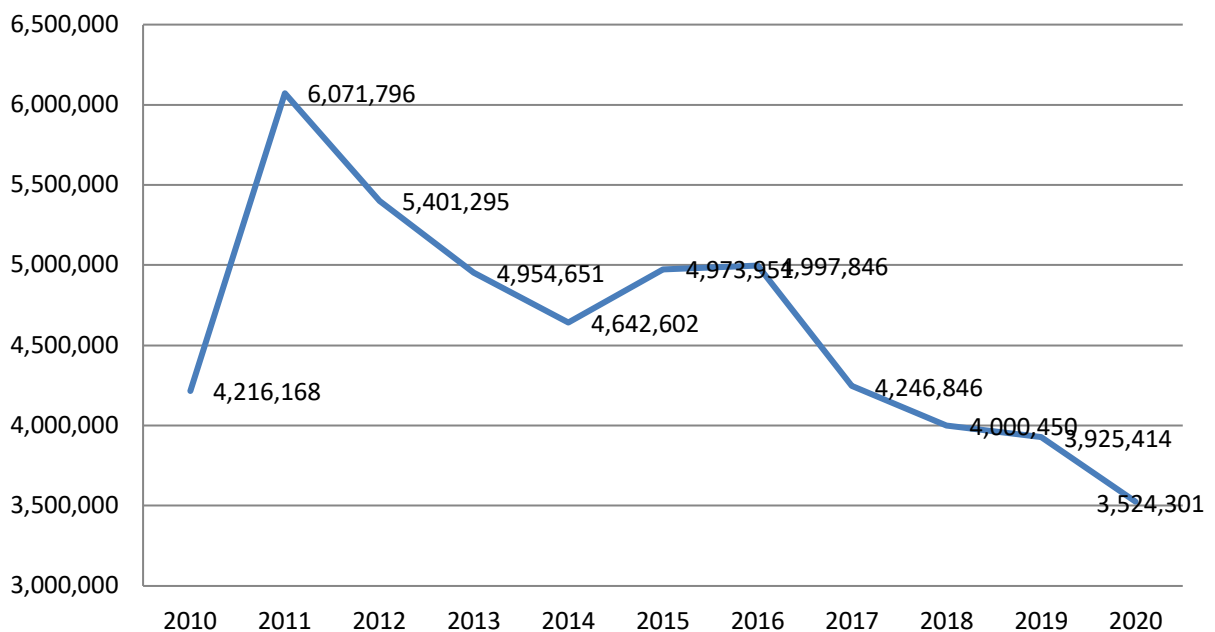
In 2014 Serbia completed the reinstatement of many previously dismissed judges and prosecutors, and a new network of courts of general jurisdiction started operating. As of 1 January 2014, the number of Basic Courts was increased from 34 to 66, although some courts continued to operate in multiple locations. The most important change was undoubtedly the establishment of another court in Belgrade – the Third Basic Court in Belgrade.

The establishment of the new network heavily impacted court organization and administration, particularly for the Basic Courts. Many cases had to be transferred between courts, and many categories of court statistics needed to be adjusted accordingly. All of the changes required time for judges and their staff to adapt to new routines, which also impeded court efficiency.

2.2.7. Workloads

132. Overall court workloads, defined as the sum of received cases and carried-over cases from previous years, as noted above, declined by seven percent in Serbia from 2010 to 2019.¹¹⁴ In 2014 the workload comprised 4,642,602 cases, 3,925,414 cases were handled in courts in 2019, while 3,524,301 cases were pending in 2020. See Figure 22.

Figure 22: Workloads in Serbian courts from 2010 to 2020

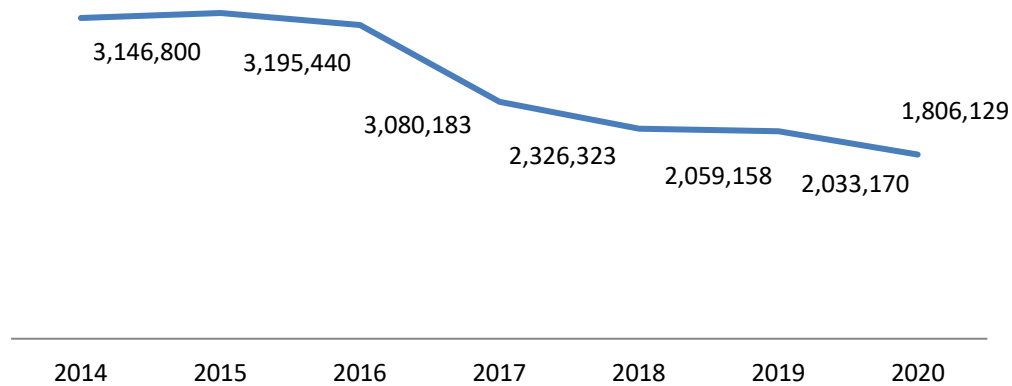


Source: SCC Data

133. Fifty-two percent of the total court workload in 2019 consisted of Basic Court cases. Basic Courts' workload decreased by 35 percent from 2014, i.e., there were more than 1 million pending cases fewer in 2019. As discussed elsewhere in this FR, the reduction was caused primarily by falling enforcement workloads in Basic Courts. In 2020, the workload of Basic Courts fell further, by 11 percent, to 1,806,129 cases. See Figure 23.

¹¹⁴ Ibid 10.

Figure 23: Workloads in Basic Courts from 2014 to 2020



Source: SCC Dana

134. Workloads of Higher Courts more than doubled from 2014 to 2019, from 145,345 cases to 344,205. The numbers increased each year except 2019, but the most drastic increases occurred in 2017 and 2018, by 47 and 30 percent, respectively.

135. All other types of court workloads also increased from 2014 to 2019, except for the Appellate Misdemeanor Court and the Appellate Courts. The Appellate Misdemeanor Court and the Appellate Courts reduced their workloads by 22 and 12 percent, respectively.

2.3. Efficiency in the Delivery of Justice Services

2.3.1. Chapter Summary

136. From 2014 to 2019, the productivity in Serbian courts improved in many areas, but there were still domains that needed considerable attention. Most clearance rates were over 100 percent due to the increase in dispositions, and implementation of reforms that transferred enforcement cases to private bailiffs and probate cases to public notaries. However, ‘bulk’ dispositions of enforcement cases made the largest contributions to the favorable clearance rates and without them, the improvements would not have been as remarkable.

137. As noted in the previous section, delegated cases inflated the number of cases nationally. These appeared in the statistics both as cases being disposed of in the originating courts and as cases registered in the courts receiving them. The total number of delegations were seen in SCC’s reports but individual court reports did not report how many cases were delegated from or to that court.

138. The timeliness of case processing, measured through the CEPEJ disposition time indicator, continually improved from 2014 to 2019, but with remarkable variations by case and court type. The total disposition time for Serbian courts decreased from 580 days in 2014 to 267 days in 2019 and the total congestion ratio of courts in Serbia improved considerably, dropping to 0.73 in 2019.¹¹⁵ The

¹¹⁵ The congestion ratio is the number of unresolved cases at the end of one year/the number of resolved cases during the same year. This ratio does not reveal the age of the case stick, but it does help to correct any mistaken impression that a larger

pending stock was reduced by more than 40 percent from 2014 to 2018, or from 2,849,360 cases at the end of 2014 to 1,656,645 cases at the end of 2019. In 2020, the total disposition time reached 274 days, the congestion ratio decreased slightly to 0.75, while the courts ended the year with 1,510,472 unresolved cases.

139. The National Backlog Reduction Programme that started in 2014 markedly reduced the massive backlogs in Serbian courts even if it did not reach its stated goals.¹¹⁶ At the outset, the goal was to reduce the backlog to 355,000 cases by the end of 2018, from 1.7 million at the end of 2013. However, 781,000 backlogged cases were still pending at the end of 2018. The strategy was amended in 2016 to include a goal of approximately 350,000 backlogged cases for the end of 2020, which was not met, according to the SCC.

140. There was significant progress in reducing the courts' backlogs of enforcement cases, but it was not clear how effective private bailiffs had been in cases that had started as enforcement cases in the courts. The congestion ratio of enforcement cases in Basic Courts improved from 4.88 in 2014 to 1.47 in 2019, but many old enforcement cases were still in the courts as of 2019, the last year for which comparable data was available as of early 2021. The lack of genuinely effective and timely enforcement, particularly for cases arising in large courts, remained one of the biggest challenges for the Serbian court system.

141. The transfer of administrative tasks and probate cases to public notaries significantly reduced the work of many judges, although the transferred probate cases were still included in statistics about court caseloads, workloads, and dispositions. In 2013, Basic Courts received and resolved more than 700,000 verification cases, compared to roughly 110,000 in 2019. Also In 2019, 91 percent of the 134,226 newly filed probate cases were transferred to public notaries, which was an increase of 38 percentage points from 2018. Although the transferred probate cases were still included in court statistics, courts had little or no work to do with them once they were transferred.

142. Meanwhile, court performance was intensely constrained by court management and organization, practice and procedure, and party discipline. Service of process has improved lately, but avoiding it is still quite easy. Party discipline is still widely recognized as one of the main impediments of procedural efficiency. Scheduling of hearings, the number of hearings per case, the timeliness of their scheduling, and the frequency of cancellations and adjournments hinder the efficiency of courts and cause lengthy trials. The advantages of ICT tools are recognized but still not adequately utilized.

number of carry-over cases is intrinsically bad. If, for example, enforcement cases made up 95 percent of the Basic Courts' annual incoming cases (they do not). The congestion ratio does not reveal the age of stock.

¹¹⁶ Starting in 2019, court cases in Serbia have been considered backlogged after three years starting from the day of the submission of the initial act. Before 2019, cases were backlogged if they were older than two years starting from the day of the initial act, or older than nine months from the start of investigations in criminal cases. This study uses the definition of "backlogged" as defined by the SCC over the applicable years. This report notes when the three-year definition for "backlogged" is used for years before 2019 to facilitate comparisons. Backlog issues are discussed in more detail below, at Section 1.3.2.8. *Age Structure*.

2.3.2. Production and Productivity of Courts

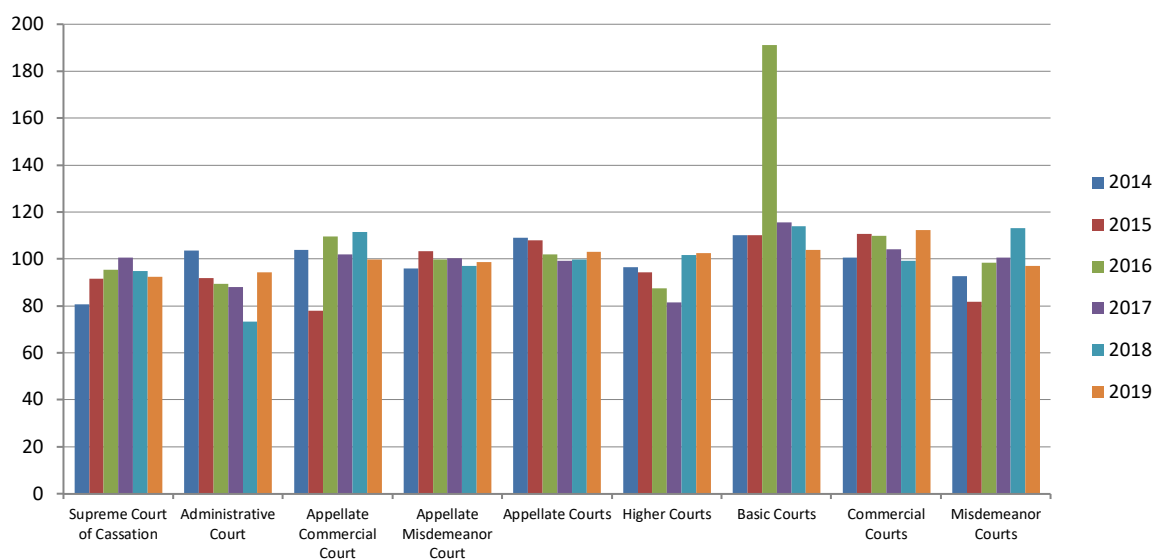
143. The terms ‘production’ and ‘productivity’ are based on the indicators of clearance rates, total dispositions, and dispositions per judge. These indicators are actionable, meaning they can be used as the bases for various measures to improve court efficiency. They also enable objective comparison between and among different courts and court types. Each indicator is described in more detail below.

2.3.2.1. Clearance Rates

144. Clearance rates, which measure the number of resolved cases as a percentage of the number of incoming cases, are among the most commonly used indicators to monitor court performance both inside and outside of Europe. A clearance rate indicates whether the court is keeping up with its caseload or generating pending stock. A clearance rate below 100 percent indicates that pending stock is being generated, while a clearance rate of over 100 percent suggests that the it is being reduced.

145. The combined clearance rate for all courts in Serbia from 2014 to 2019 remained at over 100 percent, although it temporarily decreased to 98 percent in 2015. The most exceptional year during the period was 2016, when numerous enforcement cases were dismissed, as noted above, and as a result, the overall clearance rate for 2016 was 140 percent. In 2017, the combined rate was still over 100, at 106 percent, while in 2020, it reached 108 percent.

Figure 24: Clearance Rates by Court Types from 2014 to 2019

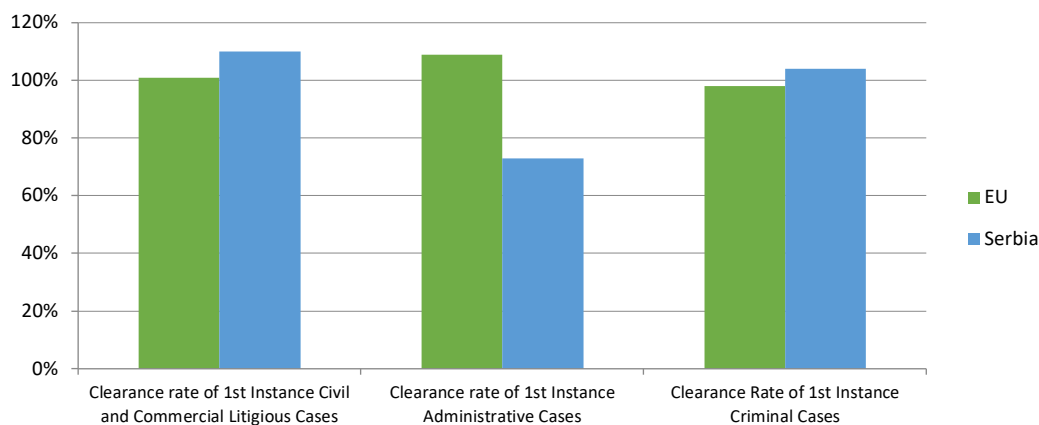


Source: SCC Data and WB Calculations

146. Except for administrative cases, Serbia’s clearance rates for first-instance cases in 2018 exceeded those of EU courts, according to the CEPEJ 2020 Report. In 2018, Serbia’s clearance rate of 73 percent for administrative matters was 36 percentage points lower than the rate for cases in the EU. In civil and litigious commercial cases, Serbia achieved an overall clearance rate of 110 percent, as opposed to the EU average of 101 percent. Serbia’s clearance rate for criminal cases was 104 percent, six percentage points higher than the EU average. Compared to the CEPEJ evaluation cycle that examined data from 2016, these results represented an improvement in the civil, commercial, and

criminal domains but a decline for administrative cases. However, available data was not enough to explain the variations in clearance rates among courts within the same categories, which underlines the need for individual courts and the SCC to conduct and publish more analyses of the reasons for the often extreme differences in court productivity.

Figure 25: Clearance Rates of 1st Instance Cases According to CEPEJ 2020 Report (2018 data)



Source: CEPEJ Report 2020

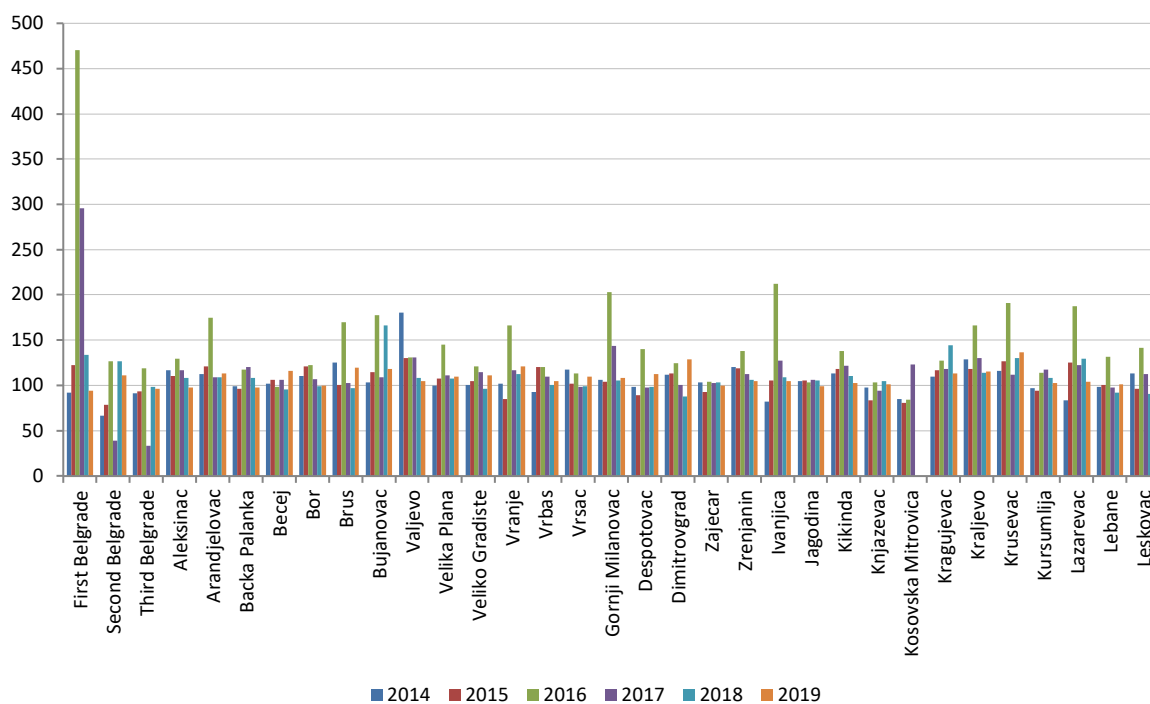
147. Overall clearance rates of Serbia’s Basic Courts from 2014 to 2019 were well above 100 percent; even more impressively, starting in 2017 the results show the Basic Courts owed their favorable clearance rates to results achieved in non-enforcement civil and criminal cases, rather than the dismissal of backlogged enforcement cases. Dismissal of enforcement cases was the primary factor in the positive clearance rates from 2014 through 2016. Setting enforcement cases aside, Basic Courts resolved fewer civil cases than they received in 2014 and 2015, while the calculated clearance rate for 2016 was 101 percent.¹¹⁷ The Basic Court overall rates were 110 percent in 2014 and 2015, 191 percent in 2016, 116 percent in 2017, 114 percent in 2018 and 104 percent in 2019.

148. Clearance rates of many individual Basic Courts were close to or higher than 100 percent but with substantial variations even among courts of similar size and/or urban setting. For example, the First Basic Court in Belgrade achieved 92 percent in 2014, while in 2015, this rose to 123 percent. The unfavorable clearance rate of the First Basic Court in Belgrade in 2014 probably was due in large part to the reorganization of the court network (see Box 8). Unsurprisingly, the influence of enforcement dismissals was considerable in this court, causing extremely high clearance rates in 2016 (470 percent) and 2017 (295 percent). In contrast, both the Second and Third Basic Courts in Belgrade had positive clearance rates in 2016, but in 2017 this changed dramatically solely because of the high number of enforcement cases transferred to them from the First Basic Court in Belgrade: this was done, at least in part, to align the distribution of these cases with the territorial limits of those courts. For 2017, the Second Basic Court reported a clearance rate of 39 percent, while the Third Basic Court’s clearance rate was only 34 percent. In 2018, clearance rates recovered to 127 percent for the Second Basic Court and 99 percent for the Third. While much of this improvement was due to the dismissal or transfer to private bailiffs of many of the transferred enforcement cases, there were improvements in clearance rates for other types of cases as well.

¹¹⁷ As the cases that remained in the courts were more complex than the ones given to private bailiffs.

149. **Thirteen¹¹⁸ Basic Courts of varying sizes and locations did not achieve 100 percent clearance rates in 2019.** However, half of these ‘underperformers’ were very close to 100 percent, with clearance rates of 97 percent or higher. The lowest clearance rate among them was that of the Basic Court in Leskovac at 88 percent, which was caused by the combination of an increased incoming caseload mainly of civil litigious cases and a 13 percent reduction in the number of judges at the Court compared to 2015 and 2016.¹¹⁹

Figure 26: Clearance Rates of Selected Basic Courts from 2014 to 2019



Source: SCC Data and WB Calculations

150. **The Higher Courts’ clearance rates were relatively low and decreased from 2014 to 2017, but the overall results increased rapidly in 2018 and 2019, when their combined rate was 102 percent.** In 2017 only the Higher Court in Prokuplje managed to reach a clearance rate above 100 percent (at 101 percent). All other courts were well below 100 percent, even down to 66 percent in the Higher Courts in Kragujevac and Pirot. In 2018 the variations were particularly extreme -- from 70 percent in Kragujevac to 172 percent in Krusevac. In 2019, 68 percent of Higher Courts had clearance rates of 100 percent or more, but the SCC did not release any analysis that accounted for the more uniform results, if one was done.

¹¹⁸ The Basic Courts in Leskovac (88 percent), Požega (93 percent), Petrovac on Mlava (94 percent), First Court in Belgrade (94 percent), Sremska Mitrovica (94 percent), Obrenovac (96 percent), Novi Sad (96 percent), Third Court in Belgrade (97 percent), Backa Palanka (97 percent), Aleksinac (98 percent), Subotica (98 percent), Pancevo (98 percent) and Jagodina 99 percent.

¹¹⁹ Courts may be considered as underperforming due to different reasons including sudden increase in demand and/or decrease of resources. However, the judicial system should ensure an appropriate level of flexibility to respond to such challenges.

151. From each year from 2014 to 2019, only the Higher Court in Belgrade reported a clearance rate below 100 percent, while no single Higher Court had a clearance rate of 100 percent or higher throughout the period. In 2019, Higher Courts in Valjevo and Kragujevac reversed a negative series of clearance rates that stretched back to 2014 by achieving 123 and 119 percent, respectively. Both of those courts received fewer cases and disposed of more civil first-instance cases in 2019 than in the previous years.

152. The Appellate Courts' overall clearance rate dropped from 109 percent in 2014 to 99 percent in 2017 and then increased to 103 percent in 2019. In 2019, each of the four Appellate Courts produced favorable results with clearance rates equal to or over 100 percent: 106 percent in Belgrade, 103 percent in Kragujevac and Nis, and 100 percent in Novi Sad.

153. Clearance rates for the Misdemeanor Courts varied widely from 2014-2019, and not all of the reasons for the variations were clear from available data. There also was no available information from the judiciary about the cause of the fluctuations. From 2014 to 2018 Misdemeanor Courts improved their overall clearance rate to 113 percent, but it dropped it to 97 percent in 2019, without any apparent regard to the number of judges in the courts. The number of judges in Misdemeanor Courts fell by 10 percent from 2015 to 2018, but the remaining judges still resolved more cases each year and improved their productivity during that period. In contrast, the number of judges then increased by 12 percent in 2019, but dispositions decreased by nine percent. The highest clearance rate in 2019 was produced by the Misdemeanor Court in Vranje (126 percent), while the lowest was that of the Misdemeanor Court in Sremska Mitrovica (74 percent). Of the 44 Misdemeanor Courts in Serbia, 30 of them, or 68 percent, achieved clearance rates of 100 percent or higher in 2019, which was a reduction of 19 percentage points compared to 2018.

154. In 2019 the Appellate Misdemeanor Court clearance rate improved by two percentage points compared to 2018 but was still negative due to increased incoming caseloads in 2018 and 2019. With a rate of 99 percent in 2019, the Court still did not manage to match the positive rates it had from 2015 to 2107.¹²⁰

155. Commercial Courts' overall clearance rates varied between 100 to 110 percent, and the same generally was true of the Appellate Commercial Court. The highest clearance rate of Commercial Courts was 112 percent recorded in 2019. The lowest was 99 percent in 2018, a year when 44 percent of the Commercial Courts could not reach the 100 percent clearance rate. These were Commercial Courts in Belgrade, Kraljevo, Sombor, Valjevo, Sremska Mitrovica, Cacak, and Leskovac (which had the lowest clearance rate of the group at 89 percent). In 2019, only the Commercial Court in Pancevo did not achieve a clearance rate of 100 percent, and it came close at 98 percent. The one-year drop in its clearance rate reported by the Appellate Commercial Court in 2015 was caused primarily by a jump in incoming cases (particularly claims involving the right to trial within a reasonable time in bankruptcy cases), while the number of dispositions remained unchanged.

156. Clearance rates for the Administrative Court decreased each year from 2014 (104 percent) to 2018 (73 percent): 2019 brought signs of a limited recovery with a clearance rate of 94 percent. The

¹²⁰ The Appellate Misdemeanor Court received 26,444 cases in 2017, 29,702 in 2018 and 29,178 in 2019.

declines in the clearance rates for the Administrative Court were accompanied by the constant growth of the Court's pending cases. The addition of eight judges (one-fifth of the total) in 2018 was not enough for the Court to deal effectively with the increased number of cases and falling dispositions that year. In 2019, the court lost seven judges, so the increased clearance rate for 2019 had to be due to the 11 percent decrease in incoming cases and a 14 percent increase in dispositions.

157. The SCC significantly improved its clearance rate each year from 2014 (81 percent) to 2017 (101 percent in 2017), but the rate declined in 2018 (95 percent) and 2019 (92 percent), apparently due to increased numbers of civil cases. The SCC reported its declining clearance rates in 2018 and 2019 were due to “changes in regulation on the jurisdiction of the Supreme Court of Cassation, reduction of the review threshold to EUR 40,000 € in RSD equivalent, the introduction of a special revision as a new extraordinary legal remedy, as well as the expansion of the jurisdiction of the highest court to decide on the revision, i.e. to decide on the new extraordinary legal remedies.”¹²¹

2.3.2.2. Case Dispositions

158. Many judicial systems use case dispositions - the total number of cases resolved each year – as an indicator of court production and productivity, but these statistics were inflated to some extent in Serbia for the period under review. For purposes of this FR, “dispositions” refer to the resolution of cases in a particular court. As this chapter already has shown, many of Serbia's reported dispositions are not final resolutions because the case may have been delegated or transferred, appealed or remanded to a lower court for further proceedings. As an incoming case in the new court, those cases would have received a new number, so the same legal matter may have had several case numbers during its lifetime and be counted as a “disposition” several times.

159. Significant variations in dispositions may demonstrate the need to reallocate resources, adjust targets or budget allocations, and can be used to assess the effects of specific reforms. For example, in Serbia, the number of case dispositions was heavily influenced by the introduction of the Criminal Procedure Code 2013 (CPC) with its transfer of investigative responsibilities from courts to prosecutors in late 2013, and the introduction in 2012 of private bailiffs for the enforcement of court decisions.¹²² Both of these reforms enabled judges to reallocate their efforts to other case types.

In the period from 2012 to 2019, the SCC delegated cases from Higher Courts in Belgrade and Novi Sad to other Higher Courts. In 2013 approximately 5,000 cases were delegated, in 2015 7,000, in 2017 5,000 and in 2019 6,200, meaning that roughly five to ten percent of the “dispositions” in those years did not resolve the cases. These delegations falsely inflated national caseload figures, since they were again counted as new matters with separate case numbers in the receiving Higher Courts.

160. In 2019 the SCC delegated approximately 6,200¹²³ cases from overburdened courts.¹²⁴ This intervention aimed to (*ad hoc*) distribute cases more evenly among courts and thus facilitate faster resolutions. In 2015, 2017 and 2019 this possibility was used to a greater extent.¹²⁵ Although this is not

¹²¹ Annual Report on the Work of the Courts in the Republic of Serbia for 2019, p. 18.

¹²² The terms ‘private enforcement agents’ and ‘private bailiffs’ are used interchangeably throughout this chapter of the FR.

¹²³ There is no precise number since the delegation cases are reported together with the conflict of jurisdiction cases.

¹²⁴ As prescribed by Article 30 of the Law on the Organization of the Courts, Official Gazette no. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013, 106/2015, 40/2015, 13/2016, 108/2016, 113/2017, 65/2018, 87/2018 and 88/2018.

¹²⁵ 7,150 delegations and conflict of jurisdiction cases in 2015, 6,599 in 2017, and 6,408 in 2019.

clear from the available reports, considerably fewer resolved delegations registered in other studied years is a result of conflicts of jurisdiction cases reported under the same category.¹²⁶ There is no adequate mention of delegations in Serbian annual court reports, and the criteria applied for it remained unknown for this analysis. Yet, since data confirm that certain smaller courts tend to be busier than the larger ones, it would be essential to consider that factor while deciding on delegations.

161. Variations in disposition numbers also were due in part to factors that were exogenous to the judiciary, such as the attorney strike in Belgrade of 2014-15 (see Box 9 below), and perhaps the rumored tendency of some judges to concentrate on cases that are the most easily resolved.

Box 9: The Attorney Strikes in 21st Century Serbia

The Bar Association of Serbia organized a strike of approximately 8,500 Serbian attorneys which effectively stopped legal proceedings in civil and criminal cases throughout the country for several months, starting in September 2014. The lawyers objected to proposed legislation that would have barred them from drafting real estate contracts and contracts related to matrimonial and probate law since the authority to handle those matters was being transferred to public notaries. Lawyers warned that the monopolization of such services by public notaries would negatively impact the right of citizens to choose their counsel, and could impact client privacy because notaries were not bound by the confidentiality guarantees of the client-counsel relationship.* Attorneys also wanted to be allowed to pay tax based on their income, instead of the fixed-rate tax imposed on certain legal services. They also sought a 10 percent reduction in their income tax. More than four months after the strike began, the Serbian National Assembly conceded to the demands and amended the disputed provisions of the Law on Notary Public and other laws in January 2015. The request to reduce the taxation was met as well.

The High Judicial Council reported that 120,386 court proceedings were postponed (some unofficial estimations were even higher) during the four-month strike. This information was published by the Anti-Corruption Council in its Supplement to the Second Report on Judicial Reform or Report on Adoption of Judicial Laws and Their Resulting Consequences, 04 December 2014. Data analyzed by the FR team corroborate that the attorneys' strike indirectly decreased judicial efficiency in 2014.

Serbian lawyers also declared a week-long strike in 2019, to protest the killing of a prominent attorney who had been on the legal team that defended former Yugoslav president Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia.

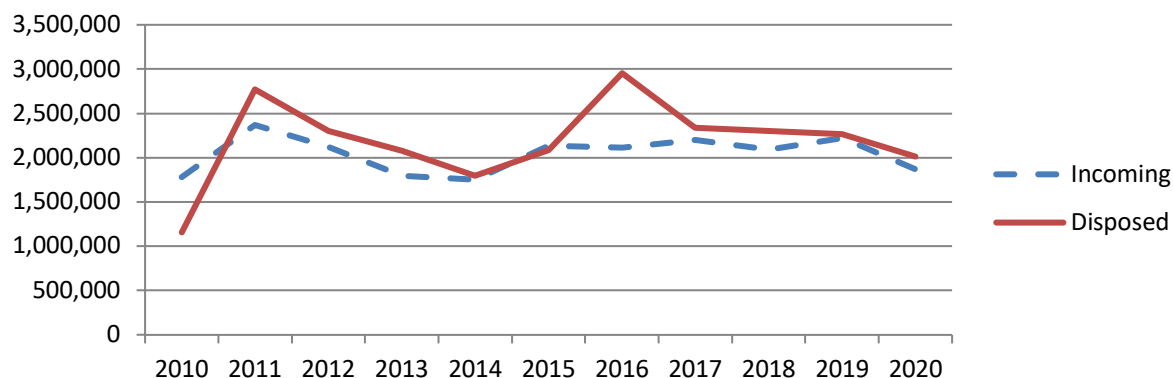
**Notaries must provide the court with any and all case documents the court requests.*

162. In 2019 Serbian courts reported the disposition of 2,268,769 cases, a 27 percent increase from 2014. As incoming caseloads grew in the Misdemeanor, Basic, Higher and Appellate Commercial Courts, as well as the SCC, so did their dispositions. Figure 27 below displays variations in annual dispositions of Serbian courts from 2010 to 2019 and illustrates that, for the most part, the system reported disposing of more cases than it received. The Basic Courts' positive results produced a major spike in 2011, which the FR2014 attributed to the withdrawal of large numbers of cases involving unpaid utility bills, and there were remarkable numbers of disposed of cases again from 2014 to 2016 (2016 being a

¹²⁶ 117 delegations and conflict of jurisdiction cases in 2014, 116 in 2016, and 575 in 2018.

prime year for the disposition of enforcement cases). Dispositions started declining in 2017 with a 21 percent drop. This was followed by a two percent drop in 2018, an additional one percent drop in 2019, and an 11 percent drop in 2020.

Figure 27: Total Dispositions of Serbian Courts from 2010 to 2020



Source: SCC Data

163. As shown in Table 5 and Figure 28 below, total annual dispositions varied noticeably across court and case types, with the Basic and Misdemeanor Courts having the strongest influence on the overall numbers. Dispositions consistently increased only in Commercial Courts. The previously impressive improvements in the Higher Courts ended in 2019, with a decline of two percent.

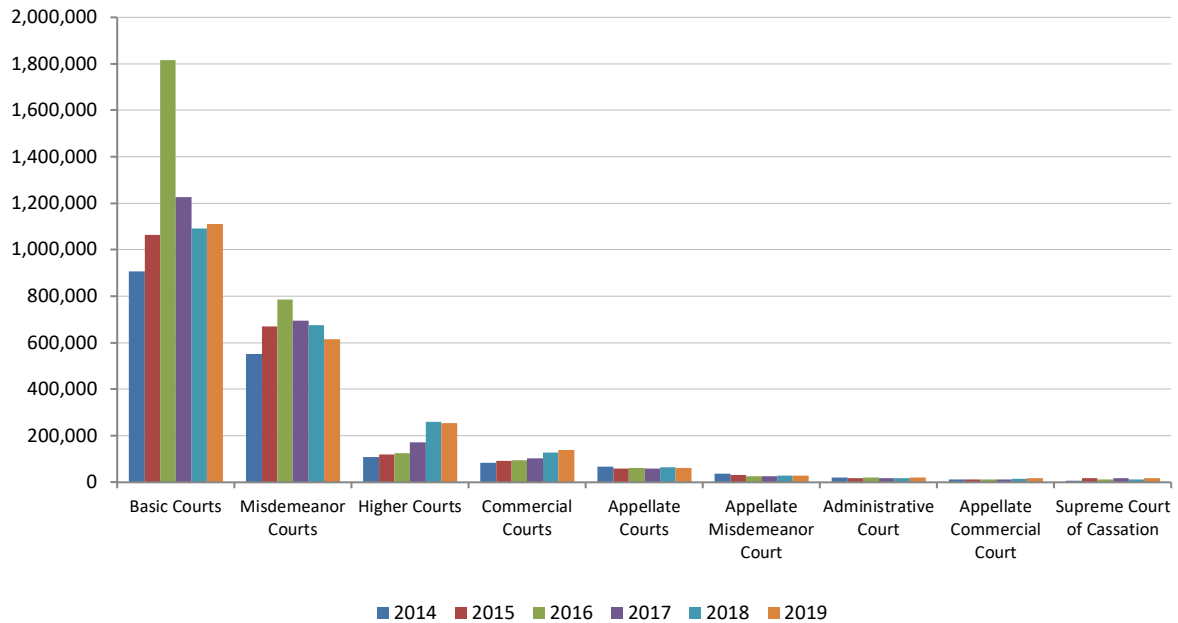
Table 5: Total Dispositions by Court Type and Case Type from 2014 to 2019

	2014	2015	percent Change	2016	percent Change	2017	percent Change	2018	percent Change	2019	percent Change
Basic Courts	906,843	1,065,071	17percent	1,815,045	70percent	1,226,428	-32percent	1,093,219	-11percent	1,110,393	2percent
Civil Litigious Cases	186,372	263,288	41percent	279,302	6percent	257,627	-8percent	249,228	-3percent	245,459	-2percent
Civil Non-Litigious Cases	187,032	219,321	17percent	234,560	7percent	249,897	7percent	270,444	8percent	290,623	7percent
Criminal Investigation	4,046	1,056	-74percent	520	-51percent	213	-59percent	136	-36percent	90	-34percent
Criminal (Other than Investigation)	132,569	136,622	3percent	136,351	0percent	136,899	0percent	161,398	18percent	151,682	-6percent
Enforcement	396,824	444,784	12percent	1,164,312	162percent	581,792	-50percent	412,013	-29percent	422,539	3percent
Higher Courts	109,037	120,817	11percent	125,132	4percent	173,319	39percent	259,716	50percent	254,759	-2percent
Civil Litigious Cases	49,287	54,134	10percent	62,239	15percent	110,566	78percent	160,243	45percent	113,547	-29percent
Civil Non-Litigious Cases	4,315	9,074	110percent	9,630	6percent	7,395	-23percent	9,998	35percent	16,694	67percent
Criminal Investigation	3,103	3,705	19percent	2,851	-23percent	2,708	-5percent	2,833	5percent	2,903	2percent
Criminal (Other than Investigation)	52,332	53,904	3percent	50,412	-6percent	52,650	4percent	86,642	65percent	121,615	40percent
Appellate Courts	66,817	60,032	-10percent	61,191	2percent	59,474	-3percent	65,757	11percent	63,187	-4percent

Misdemeanor Courts	551,039	669,559	22percent	786,261	17percent	696,607	11percent	676,361	-3percent	614,246	-9percent
Appellate Misdemeanor Court	37,563	30,597	19percent	26,604	13percent	26,520	0percent	28,856	9percent	28,786	0percent
Administrative Court	20,149	18,681	-7percent	19,274	3percent	19,180	0percent	18,666	-3percent	21,285	14percent
Commercial Courts	83,021	92,151	11percent	95,152	3percent	104,080	9percent	127,720	23percent	140,082	10percent
Appellate Commercial Court	11,347	11,315	0percent	12,805	13percent	12,470	-3percent	15,446	24percent	16,993	10percent
Supreme Court of Cassation	7,396	19,109	158percent	12,457	35percent	17,682	42percent	13,129	26percent	19,038	45percent
TOTAL	1,793,212	2,087,332	16percent	2,953,921	42percent	2,335,760	21percent	2,298,870	-2percent	2,268,769	-1percent

Source: SCC Data

Figure 28: Total Dispositions by Court Type from 2014 to 2019



Source: SCC Data

164. The sudden peak in dispositions of Basic Courts in 2016 was caused by an almost three-fold increase in resolved enforcement cases. This extraordinary result arose from the passage of the Law on Enforcement and Security¹²⁷, which produced a dramatic number of dismissals of enforcement cases, as discussed above, particularly in 2016 (see Box 5). If enforcement cases are not considered, Basic Courts disposed of only five percent more cases in 2016 than in 2015.

165. Probate cases entrusted to public notaries inflated the disposition numbers for Basic Courts. The SCC mentioned in its 2019 Annual Report that Basic Courts delegated 122,708¹²⁸ of the 134,226 probate cases they had received to public notaries, and the only work done by the courts was processing the delegations. The delegations represented around 40 percent of the Basic Courts'

¹²⁷ Official Gazette No. 106/2015, 106/2016, 113/2017 and 54/2019.

¹²⁸ These included 55,005 for the purpose of issuing a death certificate and 67,703 for conducting probate proceedings.

290,623 civil non-litigious cases in 2019. For more on the activities of notaries, see the discussion in section 1.3.4 *Public Notaries: A Promising Start* below.

166. The limited issues involved in many cases handled by Higher, Commercial, and Misdemeanor Courts contributed to the higher number of dispositions in these courts. Repetitive issues were notable in military reservist cases in Higher Courts, commercial offenses in Commercial Courts, and commercial, traffic, and misdemeanor warrant execution cases in Misdemeanor Courts.

167. Available data does not explain the decreasing number of dispositions in the Administrative Court through 2018. The Court's caseload increased through 2018, but its dispositions declined, even though its number of judges remained fairly stable through those years.¹²⁹ In 2019 the Court had seven fewer judges than it had in 2018, and the incoming caseload declined by 11 percent while dispositions grew by 14 percent. However, even this increase in dispositions was not enough to stop the accumulation of more pending cases.

Box 10: Innovative Ideas for Better Caseload Distribution

An interesting and practical solution to the problem of uneven caseloads has been implemented by neighboring Croatia by streamlining the appeals process in County Courts. A total of 15 County Courts had heard appeals from the Municipal Courts, based on territorial jurisdiction. Croatia moved away from the territorial jurisdiction of appeals, made a random assignment of cases compulsory through a CMS, and permitted second-instance County Courts to decide appeals in civil and criminal cases from all Municipal Courts. This reform reduced the time taken to decide appeals, evened out the workload of County Court judges, and increasingly harmonized the application of case law across the court system.

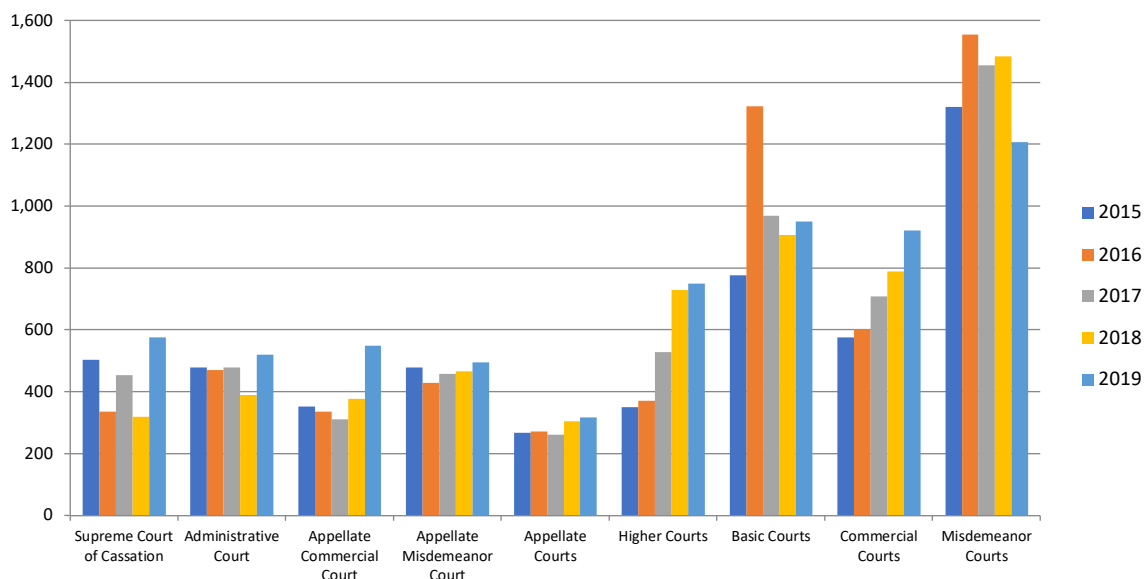
2.3.2.3. Dispositions per Judge

168. Dispositions per judge, measured by dividing the number of disposed of cases by the number of judges¹³⁰, displayed substantial variations over time. In absolute numbers, Basic and Misdemeanor Courts had the most significant differences in dispositions among their judges, while the most stable dispositions per judge were recorded in the Appellate Misdemeanor Court. Dispositions per judge continuously increased in the Higher Courts and the Commercial Courts. In the SCC, dispositions per judge varied from year to year, while in the Administrative Court they declined sharply in 2018 only to recover again in 2019. Figure 29 below gives an overview.

Figure 29: Average Dispositions per Judge from 2015 to 2019

¹²⁹ The Court had between 39 and 41 judges from 2015 to 2017, 48 in 2018, and 41 in 2019.

¹³⁰ In this calculation, the number of judges equaled the number of filled positions. The data about filled positions for 2014 were unavailable.



Source: SCC Data and WB Calculations

169. Dispositions per judge in Basic Courts peaked in 2016 to 1,322, due to the high number of dismissed enforcement cases. In other observed years, the average number of dispositions varied within less dramatic values. Without enforcement cases, the averages of Basic Court reported dispositions per judge would have been far lower but still increased consistently (452 in 2015, 474 in 2016, 509 in 2017, 565 in 2018, and 589 in 2019).

170. As with the averages for caseload per judge, there was no correlation between court size and the disposition per judge ratio, as displayed in Table 6 below. Of 66 analyzed courts, 23 percent were within the average values, 38 percent were above average, and 39 percent were below average. Belgrade’s Basic Courts fell into the above-average category, together with other courts of various sizes.

Table 6: Average Dispositions per Judge in Basic Courts in 2019¹³¹

Basic Court	Disposed Cases	No. of Judges	Dispositions per Judge	Basic Court	Disposed Cases	No. of Judges	Dispositions per Judge
Lebane	7,437	5	1,487	Pirot	10,514	12	876
Aleksinac	12,669	9	1,408	Despotovac	6,796	8	850
Third Belgrade	53,229	38	1,401	Prokuplje	15,221	18	846
First Belgrade	148,671	115	1,293	Brus	4,093	5	819
Knjazevac	6,437	5	1,287	Jagodina	14,661	18	815
Mladenovac	18,021	14	1,287	Krusevac	20,298	25	812
Kragujevac	54,945	43	1,278	Novi Pazar	12,155	15	810
Sombor	22,603	18	1,256	Raska	3,889	5	778
Pozega	9,900	8	1,238	Petrovac on Mlava	5,289	7	756
Uzice	20,958	17	1,233	Ub	4,502	6	750
Leskovac	40,376	33	1,224	Surdulica	9,513	13	732
Bor	14,197	12	1,183	Obrenovac	5,808	8	726
Kraljevo	15,202	13	1,169	Senta	5,744	8	718
Subotica	23,155	20	1,158	Lazarevac	7,163	10	716
Nis	70,202	64	1,097	Backa Palanka	6,430	9	714

¹³¹ Courts with dispositions per judge that are above national average appear in pink, court with caseloads around average (10 percent over or under average) are in blue, and courts below national average are in green.

Second Belgrade	48,413	45	1,076	Gornji Milanovac	4,281	6	714
Sremska Mitrovica	9,647	9	1,072	Mionica	3,527	5	705
Vrbas	16,069	15	1,071	Vrsac	8,940	13	688
Velika Plana	12,796	12	1,066	Paracin	14,248	21	678
Zrenjanin	22,382	21	1,066	Ruma	8,080	12	673
Loznica	14,621	14	1,044	Zajecar	12,689	19	668
Veliko Gradiste	4,163	4	1,041	Ivanjica	6,406	10	641
Prijepolje	7,249	7	1,036	Pancevo	15,953	25	638
Kikinda	11,370	11	1,034	Stara Pazova	12,512	20	626
Kursumlija	4,933	5	987	Bujanovac	6,017	10	602
Becej	6,802	7	972	Novi Sad	51,869	92	564
Trstenik	5,811	6	969	Sjenica	2,757	5	551
Vranje	24,643	26	948	Negotin	6,525	12	544
Cacak	19,563	21	932	Sid	2,858	6	476
Arandjelovac	10,920	12	910	Priboj	2,369	5	474
Pozarevac	22,736	25	909	Valjevo	11,832	27	438
Sabac	26,146	29	902	Majdanpek	1,682	5	336
Smederevo	17,922	20	896	Dimitrovgrad	1,584	5	317

Source: SCC Data and WB Calculation

171. Misdemeanor Courts produced an average of 1,207 disposed cases per judge in 2019, which was a decrease of 22 percent from 2016 although there were many variations among courts. This 22 percent drop occurred even though these courts overall had the same numbers of judges in 2019 as they did in 2016, after two years of considerably fewer¹³² judges. Dispositions per judge in Misdemeanor Courts peaked temporarily in 2016 as judges worked to resolve an increased inflow of traffic, commercial, and misdemeanor warrant execution cases. In contrast, average dispositions for the Appellate Misdemeanor Court were relatively stable overall: 478 cases resolved per judge in 2015, 429 in 2016, 457 in 2017, 465 in 2018, and 496 in 2019.

172. The Higher Courts' disposition per judge increased steadily in 2015 and 2016, with jumps of roughly 40 percent in 2017 and 2018. These judges each disposed of 350 cases on average in 2015, 370 in 2016, 528 in 2017, 730 cases in 2018, and 749 in 2019, even though the total number of judges varied by only five percent over the same period. The 2017 disposition per judge increased primarily due to cases filed by military reservists that flooded the Higher Courts. In 2018 and 2019, this ratio was heavily influenced by 'KR' cases (see para 30).

173. Disposition per judge in Commercial Courts grew consistently, with notable increases in 2017, 2018, and 2019 despite fluctuating numbers of judges. From 2015 to 2017, Commercial Courts lost 13 judges and then gained 15 in 2018, only to lose 10 in 2019. The average number of disposed of cases for Commercial Court judges was 576 cases in 2015, 602 cases in 2016, 708 in 2017, 788 in 2018, and 922 in 2019. The increases were triggered by a rising incoming caseload of commercial offenses, which involved relatively limited issues. Concurrently, the Appellate Commercial Court had 32 judges in 2015, 41 judges in 2018, and 31 in 2019. Their average disposition per judge ranged from a minimum of 312 in 2017 to a maximum of 548 cases in 2019.

174. Appellate Courts exhibited lower dispositions per judge than the SCC from 2015 to 2019 since the SCC had higher incoming caseloads. Similar situations can be seen in comparator jurisdictions (e.g.

¹³² There were 506 Misdemeanor Court judges in 2016, 479 in 2017, 456 in 2018 and 509 in 2019.

in Montenegro). Nevertheless, this calls for greater attention, possibly, the SCC's jurisdiction needs to be revised because too many cases reach it or the caseload is inflated by simple matters. The numbers per judge for the SCC were 503 in 2015, 337 in 2016, 453 in 2017, 320 in 2018 and 577 in 2019. For Appellate Courts, the average dispositions per judge were 267 in 2015, 272 in 2016, 261 in 2017, 304 in 2018, and 318 in 2019.

2.3.2.4. Court Rewards Program



175. The SCC's competitive Court Rewards Program, which put Serbia at the forefront of innovation among European judiciaries in incentivizing court performance, deserves to be expanded to recognize the benefits of more initiatives by lower courts. The Rewards Program was included in the Supreme Court of Cassation's Court Book of Rules to motivate courts and the people working in them to improve court operations. Launched by the SCC in 2016, the Rewards Program had gone through four cycles by the end of 2019. There was no competition in 2020 presumably because of the difficulties all courts had in executing even routine operations in the face of Covid-19 concerns and restrictions.

176. Monetary prizes were set at a level the SCC hoped would attract entries and which could be used for the benefit of winning courts as a whole. The awards also bestowed recognition and prestige on all entrants. Winning courts could choose to spend their prize money on ICT hardware, office equipment, or materials for the beautification of the court.

177. The Program appropriately focused on solving some of the most troublesome issues facing the Misdemeanor, Basic, Higher and Commercial Courts by making awards for the "most considerable improvement in backlog reduction" and the "largest improvement in the number of resolved cases per judge." Winners have been drawn from each group of courts, as shown in Table 7 below. By focusing on 'most improved player' awards, the program has aimed to motivate lower-performing courts to improve their operations and lift average performance across the judiciary. By measuring performance on a 'per judge' basis for the one award, the program controls for variation in court size, so smaller courts with fewer judges have an equal chance of success.

Table 7: Court Rewards Program Laureates from 2016 to 2019¹³³

		The most considerable improvement in backlog reduction	The largest improvement in the number of resolved cases per judge
2016	1st	Basic Court in Nis	First Basic Court in Belgrade
	2nd	Third Basic Court in Belgrade	Basic Court in Leskovac
	3rd	Second Basic Court in Belgrade Basic Court in Lebane	Basic Court in Novi Sad
2017	1st	Commercial Court in Belgrade	Higher Court in Leskovac
	2nd	Basic Court in Lazarevac	Higher Court in Nis
	3rd	Basic Court in Ivanjica Basic Court in Bujanovac	Third Basic Court in Belgrade Higher Court in Kruševac
2018	1st	Basic Court in Kragujevac	Higher Court in Belgrade
	2nd	Basic Court in Nis	Higher Court in Vranje
	3rd	Commercial Court in Novi Sad	Misdemeanor Court in Novi Sad
2019	1st	Commercial Court in Belgrade	Commercial Court in Leskovac
	2nd	Basic Court in Krusevac	Commercial Court in Nis
	3rd	Higher Court in Belgrade	Higher Court in Valjevo

Source: SCC website

2.3.2.5. Timeliness in Case Processing

178. A crucial aspect of judicial performance, timeliness, is tightly connected to the right to a fair trial¹³⁴ and a key EU concern for Chapter 23 of Serbia’s pre-accession negotiations. In this study, timeliness is addressed through four indicators; pending (carried over) cases, congestion rate, case age structure, and disposition time. According to the 2014 Judicial Functional Review, the Serbian judiciary’s timeliness results were mixed but improved from 2010 to 2013. Serbia’s pending stock was high in comparison to the EU through 2013, comprised mostly of older cases since judges primarily disposed of newer ones. Congestion rates remained high at around 1.41, particularly in Basic, Misdemeanor, and Commercial Courts, and lists of aging cases were not produced or analyzed routinely. Time to disposition varied markedly by case and court type (e.g., 98 days in Higher Courts and 736 days in Basic Courts). While the 2014 Judicial Functional Review noted that in civil and commercial cases Serbia produced disposition times in line with EU averages, in enforcement cases the times were far worse than elsewhere in Europe. The disposition times calculated by the FR team based on CEPEJ methodology were found to be optimistic since high appeal rates and recycling of cases through retrials after appeals further prolonged the final resolution of disputes, which was not reflected in the results of the disposition time indicator.

179. Timeliness of case processing, determined by the CEPEJ disposition time indicator, continuously improved from 2014 to 2019, although results in some areas were still not in the acceptable range. Disposition times in Serbian courts decreased from 580 days in 2014 to 267 days in 2019, but with remarkable variations by case and court type. High appeal rates and recycling of cases remained an issue. The total congestion ratio of courts¹³⁵ in Serbia improved considerably and dropped

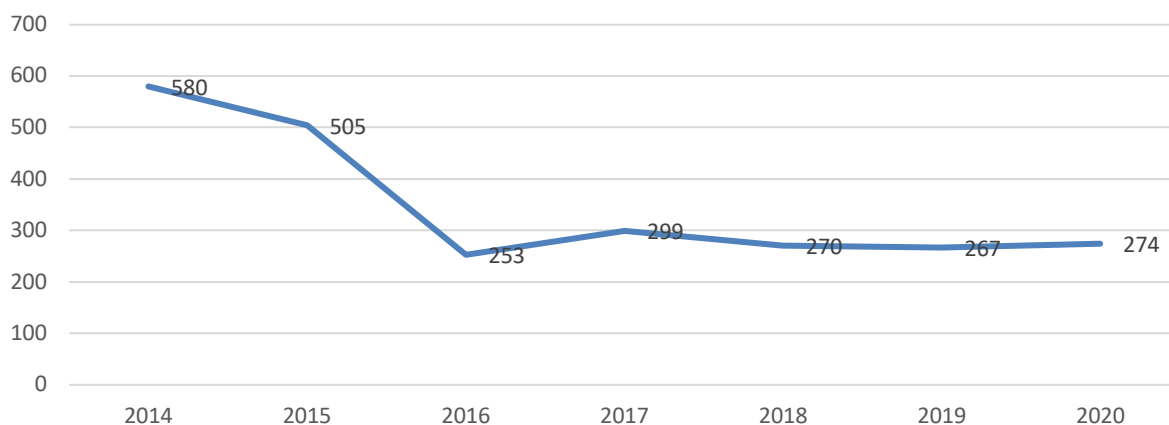
¹³³ Court rewards were not presented in 2020, presumably due to COVID-19 pandemic safety measures.

¹³⁴ As defined by Article 6 of the of the European Convention on Human Rights everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. See http://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹³⁵ As the 2014 Judicial Functional Review explained, congestion ratios help to assess the importance of pending stock by analyzing two figures – the number of cases carried over and the number of cases disposed. Ideally, the congestion ratio should be well under 1.00, indicating that pending stock is far less than the annual outflow.

to 0.73 in 2019: pending case stock dropped by more than 40 percent from 2014 to 2019, from 2,849,360 cases at the end of 2014 to 1,656,645 cases at the end of 2019. In 2020, the total disposition time of Serbian courts grew slightly to 274 days, while the congestion ratio increased to 0.75. With 1,510,472 cases in 2020, the total pending stock of Serbian courts declined further by nine percent. In line with 2014 Judicial Functional Review recommendations, aging lists of pending cases were introduced to SCC statistical reports to monitor timeliness. Starting in 2014, the lists were regularly monitored by court management throughout the period covered by this FR. However, the primary review of the lists was done through the implementation of the National Backlog Reduction Programme, which did not cover all the courts in Serbia (see Box 12 below).

Figure 30: Overall Disposition Times of Serbian Courts from 2014 to 2020



2.3.2.6. Number of Pending (Carried-Over) Cases

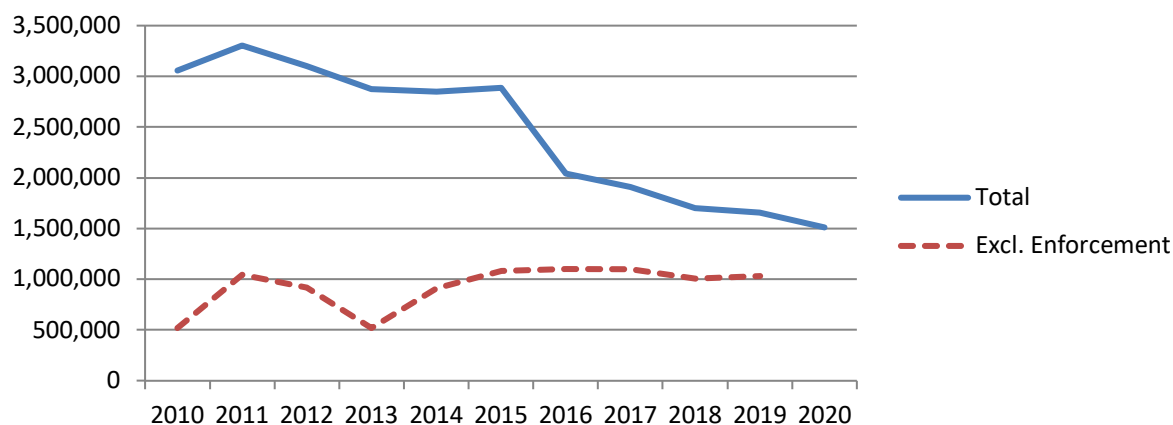
180. The pending cases indicator compares the number of unresolved cases carried over from one year to the next: these cases are also referred to as pending stock or backlogged cases. The existence of some pending cases is unavoidable as no court can resolve all cases entering each year – some cases enter the system too late or are too complex to be disposed of before the year’s end. Pending cases become problematic when their numbers increase from year to year and include many older cases. Pending cases are sometimes described as backlogged, but in Serbia and many other countries, ‘backlog’ refers only to pending cases over a certain age.¹³⁶

181. Serbia’s courts did not tackle their non-enforcement pending stock effectively, even though the overall pending stock decreased by 42 percent from 2014 to 2019. In 2019, the total of pending cases was 1,656,645. As shown in Figure 31 below, Serbia’s pending stock started declining sharply in 2016, and this continued through 2019. But if enforcement cases in Basic Courts were excluded from the calculation, the total pending stock of the country’s courts would have increased each year from 2014 to 2017, by a total of 20 percent. Only in 2018 did pending stock decrease by eight percent, but

¹³⁶ As already noted, in Serbia court cases are now considered backlogged after three years starting from the day of the submission of the initial act. This FR uses the same definition of backlogged. For more details about backlogs, see section 1.3.2.8. ‘Age Structure’.

it increased again by three percent in 2019. The non-enforcement pending stock data for 2020 were not included in this analysis.

Figure 31: Pending Cases at the End of Year from 2010 to 2020



Source: SCC Data

182. Basic and Misdemeanor Courts held 88 percent of all unresolved cases at the end of 2019. Basic Courts held 56 percent, while 32 percent of the unresolved cases were in the Misdemeanor Courts. In the same year, the lowest number of unresolved cases was recorded in the Appellate Misdemeanor Court with 2,711 cases, which was only 0.16 percent of all unresolved cases in Serbia.

183. By the end of 2019, 621,674 or 38 percent of all unresolved cases in Serbian courts were enforcement cases in Basic Courts - a reduction of 1,313,851 cases compared to 2014. Enforcement cases comprised 67 percent of Basic Courts' unresolved cases in 2019, compared to 86 percent in 2014. Expectedly, most of the reduction, or 825,587 cases,¹³⁷ occurred in Belgrade's First Basic Court followed by Basic Courts in Kragujevac, Cacak, Nis, Novi Sad, Mladenovac, and Krusevac, with over 30,000 fewer pending enforcement cases each. Conversely, the Second and Third Basic Courts in Belgrade increased their enforcement pending stock by 76,459 cases and 63,694 cases, respectively, through the migration of cases from Belgrade's First Basic Court to these courts.

184. The second-largest pending stock belonged to the Misdemeanor Courts, largely due to the execution of warrants. From 2014 to 2019, Misdemeanor Courts increased their unresolved cases by 12 percent, or 95,000 cases.

Table 8: Unresolved Cases at the End of Year by Court and Case Type from 2014 to 2019

	2014	2015	2016	2017	2018	2019
Basic Courts	2,239,927	2,130,369	1,265,138	1,099,895	965,939	922,777
Civil Litigious Cases	183,727	207,654	210,784	191,444	178,045	203,359
Civil Non-Litigious Cases	63,120	73,923	69,391	59,853	57,941	61,591
Criminal Investigation	809	273	136	50	41	31
Criminal (Other than Investigation)	56,746	46,510	40,217	36,783	36,860	36,122

¹³⁷ These reductions resulted from dismissals and migrations.

	2014	2015	2016	2017	2018	2019
Enforcement	1,935,525	1,802,009	944,610	811,765	693,052	621,674
Higher Courts	36,308	43,586	61,429	100,326	95,648	89,446
Civil Litigious Cases	22,736	29,142	50,482	90,520	84,188	76,254
Civil Non-Litigious Cases	1,355	5,023	1,235	996	2,163	3,643
Criminal Investigation	1,573	977	836	883	942	1,138
Criminal (Other than Investigation)	10,644	8,444	8,876	7,927	8,355	8,411
Appellate Courts	20,435	15,958	14,727	15,240	15,429	13,488
Misdemeanor Courts	438,969	586,433	599,224	594,277	515,581	533,968
Appellate Misdemeanor Court	2,656	1,620	1,627	1,517	2,329	2,711
Administrative Court	24,262	25,896	28,176	30,750	37,514	38,769
Commercial Courts	76,686	67,708	59,099	54,927	55,891	40,628
Appellate Commercial Court	6,535	9,734	8,600	8,342	6,728	6,778
Supreme Court of Cassation	3,582	5,315	5,905	5,812	6,521	8,080
TOTAL	2,849,360	2,886,619	2,043,925	1,911,086	1,701,580	1,656,645

Source: SCC Data

185. The transfer of most investigation cases from courts to prosecutors left a stock of pending cases in affected courts. Responsibility for most criminal investigations moved from Basic and Higher Courts starting in late 2013, but some of the investigation cases were still pending in the courts from 2014 to 2019. At the end of 2014, Basic Courts had 809 investigations in pending stock and only 31 in 2019. In Higher Courts, 1,573 pending investigations in 2014 declined to 942 in 2018 but grew again to 1,138 in 2019¹³⁸.

186. The transfer of investigation cases from courts to PPOs reduced the inventory of the courts but created a new backlog for prosecutors, which they were still struggling to process in late 2020. The transfer was based in part on the assumption that having prosecutors responsible for investigations would make it easier for judges to conduct trials with open minds about the case. It also was expected that the transfer of responsibility would reduce the overall costs and processing times for investigations. However, this Functional Review cannot confirm those expected results occurred: see the discussion at Chapter 2. *Efficiency, Timeliness and Productivity of Prosecutors' Offices* for additional details on this issue.

187. The pending stock of non-investigation criminal cases gradually declined in Basic Courts from 56,746 cases in 2014 to 36,122 in 2019, whereas in Higher Courts, it remained stable at around 8,000 cases.

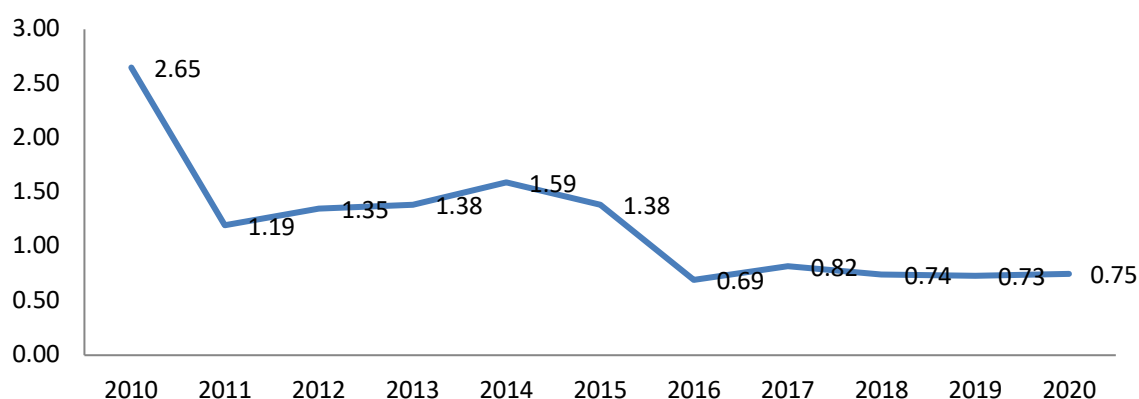
¹³⁸ Investigations in Basic courts in this analysis include registers "Ki" and "Kir", while in Higher courts the register for preparatory proceedings against minors are the ones that almost entirely influence the described trend. Conversely, the number of pending "Ki" and "Kir" cases fell from 182 in 2014 to thirteen in 2019.

2.3.2.7. Congestion Ratios

188. As this FR already has explained, a congestion ratio is a number of unresolved cases at the end of one year divided by the number of resolved cases during the same year. This indicator illustrates that having a larger number of carry-over cases is not always intrinsically bad. Courts should work to keep the ratio well under 1.00, meaning that pending stock is far less than the annual outflow. However, courts that are congested with enforcement cases tend to be congested generally, and they present a specific challenge to court presidents, who need to juggle their resources to correct what they can. If they have judges put more emphasis on one case type, such as reducing the number of enforcement cases, others will suffer. Presumably, most court presidents try to spread resources evenly, so most case types are covered equally well or equally poorly.

189. The total congestion ratio of courts in Serbia improved tremendously during the period under review, ending at 0.73¹³⁹ in 2019. As with other indicators, enforcement cases influenced this trend significantly. A vast pending stock of idle enforcement cases caused undesirable ratios throughout the period displayed in Figure 32 below. Although Serbia's ratio improved considerably, as this FR and its predecessor have noted, the congestion ratio is not the only indicator examining how efficiently the court system handles its workload. In 2020, the overall congestion ratio increased slightly to 0.75.

Figure 32: Congestion Ratio from 2010 to 2020



Source: SCC Data and WB Calculations

190. As Table 9 displays, there was considerable variation for their congestion ratios among and within different types of courts. Basic Courts and the Administrative Court were the only types of courts which did not have ratios below 1.00 for the entire period under review, but the results improved markedly for Basic Courts starting in 2016, which saw the biggest disposition of enforcement cases from the Basic Courts. The Appellate Misdemeanor Court, the Appellate Courts and the SCC produced favorable congestion ratios (up to 0.5) over the five years, while Table 10 also shows there were significant differences by case type, even in the courts with more favorable ratios overall.

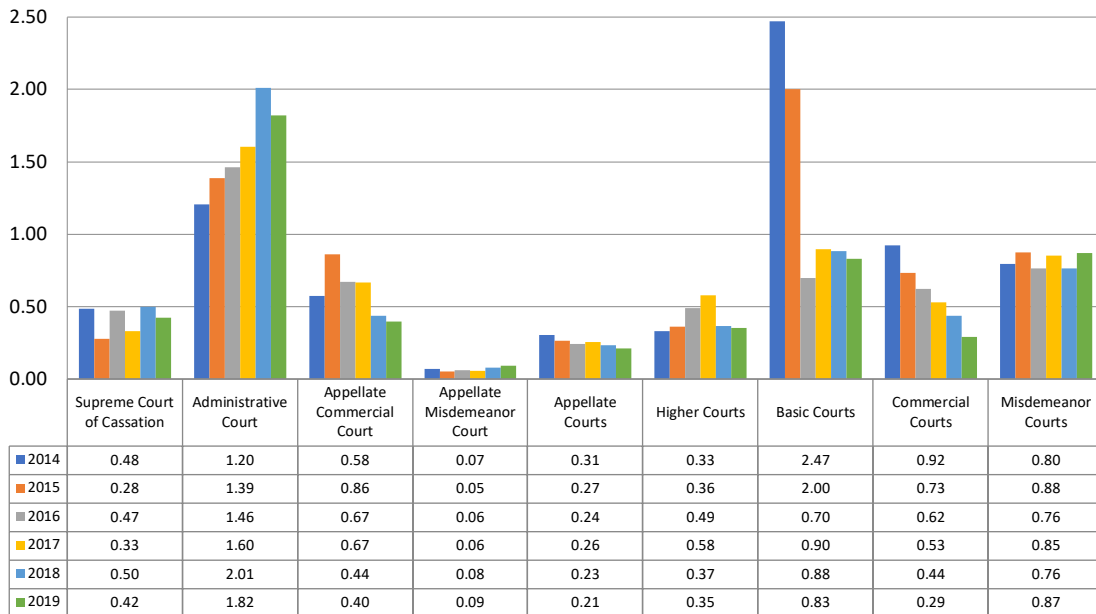
¹³⁹ Based on 1,656,645 unresolved cases at the end of 2019 and 2,268,769 resolved in 2019.

Table 9: Congestion ratios by Court Type and Case Type from 2014 to 2019¹⁴⁰

	2014	2015	2016	2017	2018	2019
Basic Courts	2.47	2.00	0.70	0.90	0.88	0.83
Civil Litigious Cases	0.99	0.79	0.75	0.74	0.71	0.83
Civil Non-Litigious Cases	0.34	0.34	0.30	0.24	0.21	0.21
Criminal Investigation	0.20	0.26	0.26	0.23	0.30	0.23
Criminal (Other than Investigation)	0.43	0.34	0.29	0.27	0.23	0.24
Enforcement	4.88	4.05	0.81	1.40	1.68	1.47
Higher Courts	0.33	0.36	0.49	0.58	0.37	0.35
Civil Litigious Cases	0.46	0.54	0.81	0.82	0.53	0.67
Civil Non-Litigious Cases	0.31	0.55	0.13	0.13	0.22	0.22
Criminal Investigation	0.51	0.26	0.29	0.33	0.33	0.39
Criminal (Other than Investigation)	0.20	0.16	0.18	0.15	0.10	0.07
Appellate Courts	0.31	0.27	0.24	0.26	0.23	0.21
Misdemeanor Courts	0.80	0.88	0.76	0.85	0.76	0.87
Appellate Misdemeanor Court	0.07	0.05	0.06	0.06	0.08	0.09
Administrative Court	1.20	1.39	1.46	1.60	2.01	1.82
Commercial Courts	0.92	0.73	0.62	0.53	0.44	0.29
Appellate Commercial Court	0.58	0.86	0.67	0.67	0.44	0.40
Supreme Court of Cassation	0.48	0.28	0.47	0.33	0.50	0.42
TOTAL	1.59	1.38	0.69	0.82	0.74	0.73

Source: SCC Data and WB Calculations

Figure 33: Congestion Ratios by Court Type from 2014 to 2019



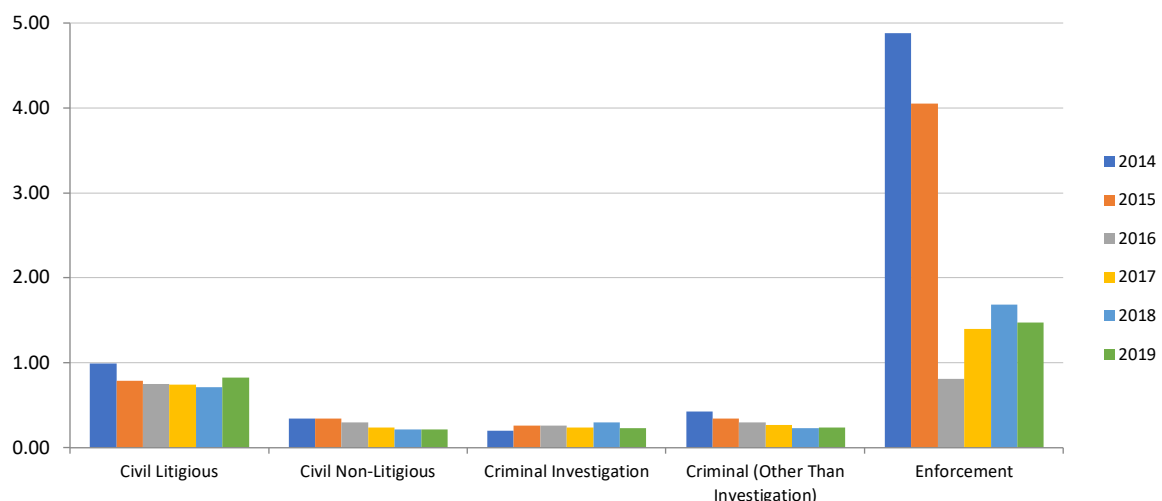
Source: SCC Data and WB Calculations

¹⁴⁰ Congestion rates are color-coded to signal their severity. Black is satisfactory, orange is concerning (from 0.51 to 1.00), red alarming (from 1.01 to 2.00) and purple even more so (over 2.00).

191. While Basic Courts had better ratio results starting in 2016, the results among them were very uneven, and data did not indicate the cause of the discrepancies. The Basic Courts’ overall ratios were below 1.0 with 0.70 in 2016, 0.90 in 2017, 0.88 in 2018, and 0.83 in 2019. In total, 46 Basic Courts or 70 percent displayed ratios of 0.50 or below in 2019; the lowest congestion ratio (0.10) was recorded in Basic Court in Dimitrovgrad, which had five judges. However, the size of a court was not the determining factor for the 2019 ratio results: the Basic Court in Novi Sad (a large court with approximately 100 judges) had a congestion ratio of 0.46, the Basic Court in Obrenovac with eight judges was the only court with a ratio between 1.00 and 2.00, and Belgrade’s three Basic Courts, were the only ones with ratios over 2.00.

192. Within Basic Courts, congestion ratios also varied by case type, as displayed in Figure 34 below. Congestion ratios of civil litigious and non-litigious cases generally improved, although of the two categories, only the non-litigious cases were in the target zone. Criminal investigation ratios were stable, and other criminal cases were improving, although both sets of ratios were well under 0.50. The congestion of enforcement cases improved substantially from 4.88 in 2014 to 0.81 in 2016. However, it deteriorated again to 1.40 in 2017, 1.68 in 2018, and 1.47 in 2019.

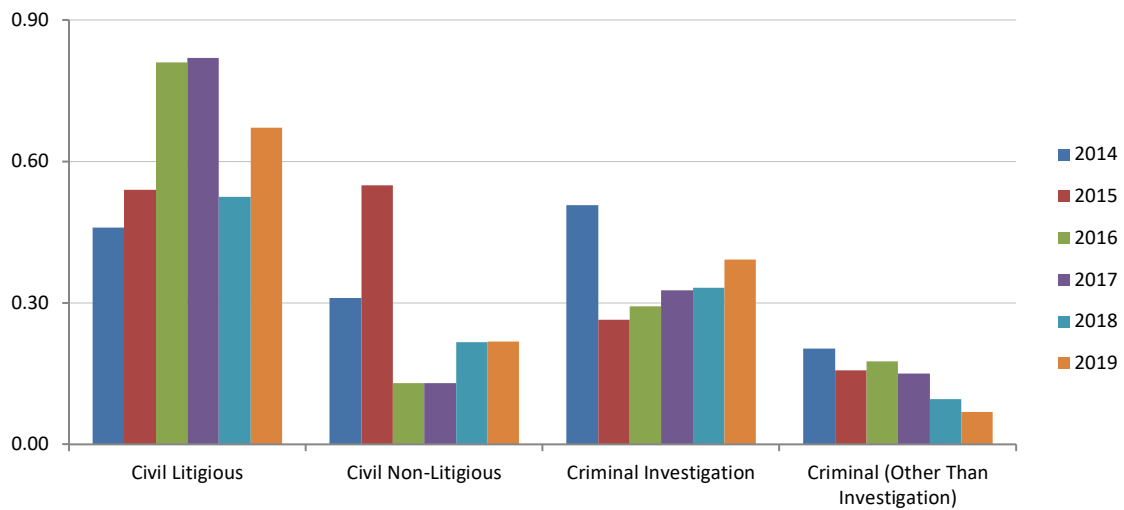
Figure 34: Congestion Ratios of Basic Courts by Case Type from 2014 to 2019



Source: SCC Data and WB Calculations

193. Increasing congestion in Higher Courts in 2016 and 2017 was related primarily to civil litigious cases. While criminal, criminal investigation cases, and civil non-litigious cases showed low congestion (with some exceptions displayed in Figure 35 below), congestion ratios of civil litigious cases grew, almost doubling from 2014 to 2017. In 2018, the congestion ratio of civil litigious cases declined to 0.53, only to grow again to 0.67 in the following year.

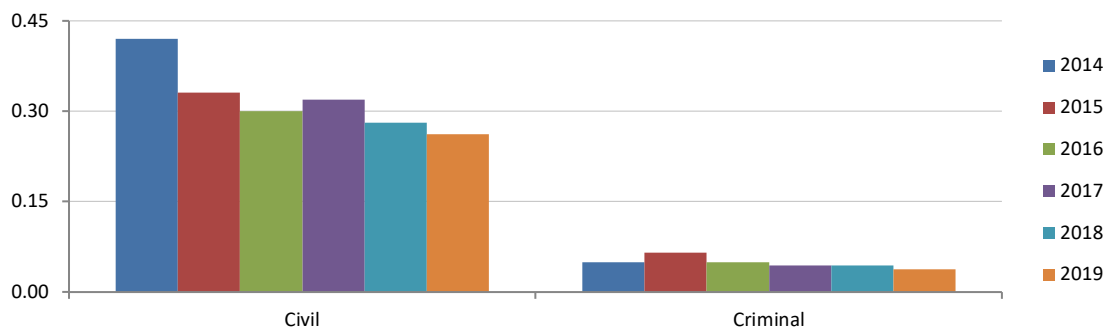
Figure 35: Congestion Ratios of Higher Courts by Case Type from 2014 to 2019



Source: SCC Data and WB Calculations

194. Appellate Courts maintained low congestion ratios for both civil and criminal cases. Congestion ratios of civil cases even declined, as presented in Figure 36 below.

Figure 36: Congestion Ratios of Appellate Courts by Case Type from 2014 to 2019



Source: SCC Data and WB Calculations

195. Congestion ratios consistently decreased in the Commercial Courts from 0.92 in 2014 to 0.29 in 2019, showing they successfully handled their pending stock even though they had rising incoming caseloads. There were similar results for the Appellate Commercial Court.

196. Misdemeanor Courts remained relatively stable, with ratios ranging from a maximum of 0.88 in 2015 to a minimum of 0.76 in 2016 and 2018.

2.3.2.8. Age Structure

197. The age structure of pending cases indicates how courts prioritize cases for processing and whether they are disposing of a significant number of new cases relatively quickly, while more complicated cases are left in part of the pending stock that may never be resolved. This behavior is particularly apt to occur when judges are assessed through productivity quotas, which are explained below in Box 11. The SCC reports used as data sources for this FR provided the total numbers of unresolved each year, and the number of disposed of backlogged¹⁴¹ cases per year and by court type. The age of unresolved cases was further disaggregated by the following categories: three to five years, five to ten years, and more than ten years. This disaggregation by age was unavailable for disposed of, backlogged cases.

Box 11: Judicial Production Quotas

The performance of a judge's work is evaluated on the basis of the number of cases the judge resolves on the merits during a month in relation to the number that should be completed - the monthly quota – and the basis for the quota depends on the case type. Cases resolved not on the merits are counted as one-third of cases resolved on the merits. If the judge is assigned cases of different types, the quantity of work is determined by the sum of the achieved percentage for each type of case, in relation to the monthly quota for those matters. Productivity quotas in Serbia are defined by Rules on Criteria, Measures, Procedure and Authorities for Evaluation of the Work of Judges and Presidents of Courts, Official Gazette No. 81/2014, 142/2014, and 41/2015.

198. By increasing the threshold for backlogged cases from two to three years in 2019, the SCC instantly reduced the number of backlogged unresolved cases by approximately 100,000 or more than one-tenth. Serbia also eliminated the category of “aged” (in the court for more than nine months) in unresolved criminal investigations. This purely administrative change meant a considerable portion of cases that had been in the system for more than two but less than three years were excluded from the reach of the National Backlog Reduction Programme.

199. In February 2021, the SCC presented a completely new National Backlog Reduction Programme for the period from 2021 to 2025.

200. While the SCC’s willingness to implement the National Backlog Reduction Programme was laudable, the Programme did not meet the original goals set originally, nor the 2020 goals in the 2016 amendments. At the outset, the goal was to reduce the backlog by the end of 2018 from 1.7 million to 355,000 cases. However, 781,000 backlogged cases were still pending at the end of 2018. According to the SCC analysis in the new Programme for 2021-2025,¹⁴² the reasons that the goals of the 2016 amendments were not met included a very high caseload ins Belgrade courts and appellate courts; an

¹⁴¹ Not all cases defined as backlogged by Serbian statistics violate international standards of timeliness but the older the cases is, violation is more likely. To repeat for the sake of clarify, until 2019 the Serbian definition of a backlogged case was older than two years starting from the day of the initial act, older than nine months for investigations, and this definition was stricter than in neighboring countries. For example, both Croatia and Montenegro characterize a case as backlogged at three years. As of 2019 Serbia adopted the same three-year standard as its two neighbors.

¹⁴² The Programme for 2021-2025 is available at the SCC’s website, <https://www.vk.sud.rs/sites/default/files/files/ResavanjeStarihPredmeta/Unifiedpercent20Backlogpercent20Reductionpercent20Programmepercent20inpercent20thepercent20RSpercent20v2.pdf>.

unexpected increase in the number of incoming cases; the failure to fill vacant judicial positions, and especially, the effects of the COVID-19 pandemic. At the end of 2020, regardless of the pandemic, the Programme met its objectives for enforcement cases since fewer pending enforcement cases remained compared to the number projected in the Programme. The SCC reported that on 20 June 2020 there were 526,869 backlogged cases remaining in all matters, which was roughly 50 percent more than the Programme had envisioned.

Box 12: National Backlog Reduction Programme Measures

2014 – 2020

The National Backlog Reduction Programme was based on both general measures (legislative changes and staffing arrangements) and specific ones (e.g. internal court procedures). Courts were obliged to adopt individual backlog reduction programmes, maintain backlog reduction teams, monitor and separately register backlogged cases, assign backlogged cases to at least three of the most experienced judges (at least three judges to ensure random assignment), and apply guidelines contained in the Programme for court registry operations, the establishment of preparatory departments, and the introduction of e-justice. Another set of more specific measures were set for enforcement cases as these made up most of the backlogged cases. These measures also relied on legislative amendments (e.g. discontinuance of enforcement of claims of up to RSD 1.000 (~ EUR 8.50) when unsuccessfully tried on movable assets), more active monitoring, and focused activities.

2021 – 2025

The newly adopted Programme contains a broad set of measures, some of which relate to the previous measures, such as filing vacant judges’ and staff positions and adopting backlog reduction plans. The measures also include legislative amendments, training, software upgrades, and the adoption of individual annual backlog reduction plans per court and per judge. According to the Programme, establishing preparatory departments in courts and making the use of preliminary hearings also are planned, as suggested by the 2014 Judicial Functional Review. During the Programme implementation, courts are to report quarterly to the SCC Working Group on their progress.

201. Despite the National Backlog Reduction Programme, the number and the age of cases and the system’s latest productivity results make it is clear that the backlog numbers will not improve rapidly. Serbian courts still are burdened with many backlogged cases, of which many may well violate Article 6 of the ECHR and other international standards¹⁴³. The SCC’s Aging List of Unresolved Cases in Table 10 displays the composition and age structure of unresolved cases from the date of each case’s initial act. By the end of 2019, there were 255,272 cases older than 10 years across the system, which represented 41 percent of all backlogged cases. The majority of backlogged cases (44 percent) were five to 10 years old – 272,964 of them.

Table 10: Aging List of Unresolved Cases by Court Type and Case Type in 2019

	Age of Unresolved Cases				
	Total	0-3 years	3-5 years	5-10 years	Over 10 years
Basic Courts					
Civil Total	264,950	239,180	14,891	9,145	1,734
Civil Litigious	203,359	180,589	13,260	8,036	1,474

¹⁴³ For example, Article 14(3)(c) of the International Covenant on Civil and Political Rights speaks about a right to be tried without undue delay, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

Civil Non-Litigious	61,591	58,591	1,631	1,109	260
Criminal Investigation	31	1	18	12	0
Criminal (Other than Investigation)	36,122	33,731	1,480	807	104
Enforcement	621,674	88,723	42,109	240,492	250,350
Basic Courts Total	922,777	361,635	58,498	250,456	252,188
	56percent	39percent	6percent	27percent	27percent
Higher Courts					
Civil Total	79,897	55,585	16,449	6,675	1,188
Civil Litigious	76,254	51,970	16,434	6,665	1,185
Civil Non-Litigious	3,643	3,615	15	10	3
Criminal Investigation	1,138	1,123	11	2	2
Criminal (Other than Investigation)	8,411	7,208	628	514	61
Higher Courts Total	89,446	63,916	17,088	7,191	1,251
	5percent	71percent	19percent	8percent	1percent
Appellate Courts					
Civil	12,973	6,407	3,244	2,556	766
Criminal (Other than Investigation)	515	293	82	113	27
Appellate Courts Total	13,488	6,700	3,326	2,669	793
	1percent	50percent	25percent	20percent	6percent
Commercial Courts					
Commercial	40,628	28,218	4,533	7,559	318
	2percent	69percent	11percent	19percent	0.78percent
Appellate Commercial Court					
Commercial	6,778	5,187	1,271	288	32
	0.41percent	77percent	19percent	4percent	0.47percent
Misdemeanor Courts					
Misdemeanor	533,968	525,522	5,639	2,807	0
	32percent	98percent	1percent	0.53percent	0.00percent
Appellate Misdemeanor Court					
Misdemeanor	2,711	2,589	122	0	0
	0.16percent	95percent	5percent	0percent	0percent
Administrative Court					
Administrative	38,769	38,031	731	7	0
	2percent	98percent	2percent	0.02percent	0percent
Supreme Court of Cassation					
Civil	7,664	3,107	1,880	1,987	690
Criminal (Other than Investigation)	300	300	0	0	0
Administrative	116	116	0	0	0
Supreme Court of Cassation Total	8,080	3,523	1,880	1,987	690
	0.5percent	44percent	23percent	25percent	9percent
TOTAL	1,656,645	1,035,321	93,088	272,964	255,272

202. Ninety-five percent of all backlogged unresolved cases in Basic Courts in 2019 were enforcement cases. The system also was burdened with many backlogged civil and criminal cases. In 2019, 8,036 of the civil litigious cases were five to 10 years old and 1,474 were older than 10 years. There were still 12 investigations that had been pending for five to 10 years.

203. Progress in the backlog reduction of Basic Courts' civil cases, both litigious and non-litigious, varied over the years, but there were advancements. For instance, the number of unresolved civil cases older than three years was reduced by three percent from 26,673 in 2018 to 25,770 in 2019.

204. In 2019 the number of cases older than three¹⁴⁴ years dropped by 10 percent (66,000 cases) on a national level, but the numbers of backlogged enforcement cases were still growing at alarming rates. The most substantial reduction by far was in Basic Courts, where there were 903 fewer pending backlogged civil cases and 68,204 fewer backlogged enforcement cases, which represented reductions of three and 11 percent, respectively. However, in 2018 there were 190,000 enforcement cases older than 10 years and this number increased to 250,000 in 2019, an increase of 31 percent. Higher Courts increased the number of backlogged pending cases by more than 27 percent (5,000 cases) between 2018 and 2019, Misdemeanor Courts increased them by 61 percent (3,000 cases), and the SCC by 28 percent (1,000 cases). Backlogged cases decreased in the Appellate Courts and the Commercial Courts by 14 percent (1,000 cases) and 32 percent (6,000 cases), respectively.

205. The situation was better in other court types, but there were still many severely backlogged cases that needed to be addressed immediately. The biggest portion of backlogged cases in both Higher and Appellate Courts were civil cases, at 95 and 97 percent, respectively. Around one-fifth of all pending commercial cases were five to 10 years old (7,559), while in the SCC, 59 percent of all pending cases were backlogged civil cases (4,557). There were no criminal or administrative cases in the SCC that had been in the system long enough to be considered backlogged.

206. While Misdemeanor Courts were included in the aging lists, different standards applied to them because of the very short statutes of limitations pertaining to their cases. In misdemeanor cases, the general statute of limitations requires the initiation of action within one year of the event, and cases generally have to be resolved within two years from the event. Most cases unresolved after two years must be dismissed, although longer deadlines apply to specific misdemeanors such as customs and tax.

207. In contrast to their treatment of unresolved backlogged cases, the SCC's reports did not disaggregate resolved backlogged cases by their age, although average times calculated on a theoretical level can be deceptive. Aging lists presented as annual dispositions by the age of the case would give a better picture of whether the courts were resolving only newer cases. The failure to provide the age of the case for backlogged cases that had been resolved meant the SCC could not determine how long it had taken for an old – or even very old – case to end.

¹⁴⁴ This paragraph pertains to cases older than three years for both 2018 and 2019, regardless of the differences in the definition of a backlogged case in those years.

208. In 2019, nine percent of all cases disposed of across the system were backlogged, which was a reduction of four percentage points over 2018. During 2014 courts disposed of 305,519 backlogged cases; the figures were 495,708 for 2017, 311,018 in 2018, and 2019 in 214,234. The 2019 results were affected to some extent by the change from two to three years in the definition of backlogged cases, as reported above.

Table 11: Disposed 'Old' Cases by Court Type in 2019

	Disposed Total	Disposed "Old"	percent	Variation 2018-2019
Supreme Court of Cassation	19,038	8,607	45percent	-13percent
Appellate Courts	63,187	17,701	28percent	-12percent
Higher Courts	254,759	31,610	12percent	-2percent
Basic Courts	1,110,393	130,156	12percent	-7percent
Administrative Court	21,285	1,862	9percent	-23percent
Appellate Commercial Court	16,993	4,346	26percent	-17percent
Commercial Courts	140,082	12,405	9percent	-2percent
Appellate Misdemeanor Court	28,786	999	3percent	-7percent
Misdemeanor Courts	614,246	6,548	1percent	0percent
TOTAL	2,268,769	214,234	9percent	-4percent

Source: SCC Data

Box 13: The Law on Protection of the Right to a Trial Within a Reasonable Time

The rising number of claims concerning the right to a trial within a reasonable time confirmed that the length of proceedings remained a pressing issue in Serbia, even as these cases also contributed to congestion in the courts. The Law on Protection of the Right to a Trial Within Reasonable Time (Official Gazette No. 40/2015) transferred jurisdiction over these matters from the Constitutional Court to courts of general and special jurisdiction. The Law, which came into effect at the beginning of 2016, allows parties to file a complaint with the court president if they believe their case is taking too long to resolve. The parties have the right to appeal if their complaint is rejected, if the president of the court does not decide on it within two months, or if the complaint is accepted, but there are no actions taken to expedite the procedure. The Law also provides for monetary compensation for material damages and for immaterial damages from 300 to 3,000 EUR.

The total number of complaints for all courts quadrupled from 2016 to 2019 from 25,854 to 100,600, and the courts were falling behind in addressing them. The number of complaints almost doubled from 35,092 in 2017 to 68,720 in 2018. Courts had clearance rates of only 90 percent for these cases and hence faced rising pending stock. In 2017 and 2018, approximately 4,000 cases fewer were resolved than received, and in 2019 this difference more than doubled to approximately 10,000. Not surprisingly, the highest pressure was on Basic and Commercial Courts, which respectively had 44 and 31 percent of the incoming caseload in 2019.

Monetary compensation claims were also burdening the system. In 2019, a total of 21,078 cases for monetary compensation for immaterial (non-pecuniary) damages were received (approximately double than in 2018) and 10,747 for compensation of material damages (approximately five times more than in 2019). Due to the high and rising inflow of these cases, the pending stock grew constantly. According to the SCC, most of these monetary compensation cases sought the enforcement of court decisions that had been affected by the Law on Privatization; for instance, the Law suspended the enforced collection of claims stemming from labor disputes.

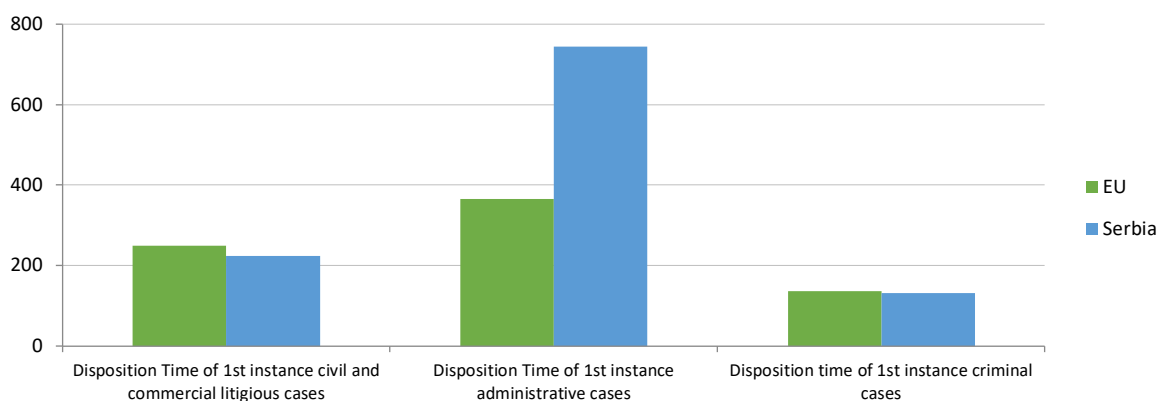
There was no data indicating the provisions of the Law have resulted in shortening the length of cases. The Law is of questionable practical value since not only is there no evidence the Law has shortened court proceedings, but enforcing it also requires more and more judges to spend time deciding on possible violations.

2.3.2.9. Disposition Time on the SATURN Method

209. As Serbian statistics still do not provide data on actual disposition times, an alternative indicator developed by CEPEJ under the SATURN method is used in this section to estimate the average times of dispositions.¹⁴⁵ The formula compares cases resolved to those carried-over during one year. The SATURN methodology rests on a purely theoretical assumption of a 'FIFO' (First In, First Out) approach to case resolution. Real times, as experienced by court users, may be completely different since this indicator does not distinguish between older, backlogged cases and recently filed cases that have been processed rather quickly.

210. According to the CEPEJ 2020 Report based on 2018 data, Serbian disposition times for first-instance civil and commercial litigious cases were 25 days lower than the EU average of 250 days. At 225 days, Serbia also reported a better disposition time than the Western Balkans average of 258 days. Countries ranking worse than Serbia in the Western Balkans region were Bosnia and Herzegovina (483 days) and Montenegro (229 days). Serbia fared worse than the EU average for matters handled by the Administrative Court, whereas for criminal ones, it performed only slightly better than the EU – by five days – as displayed in Figure 37 below.

Figure 37: Disposition Times of 1st Instance Cases According to CEPEJ 2020 Report



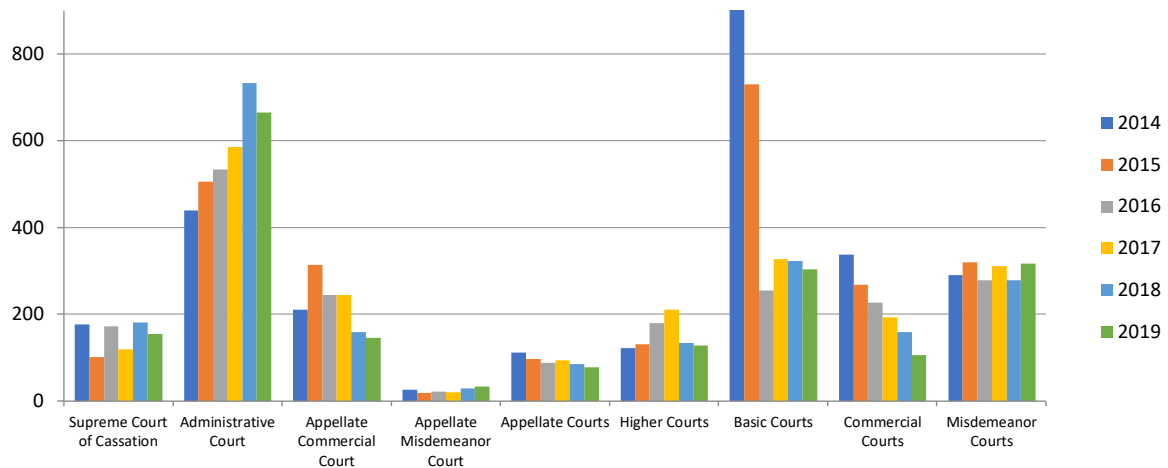
Source: CEPEJ 2020 Report

211. Disposition times in Serbian courts, totaled for all courts, decreased from 580 days in 2014 to 267 days in 2019 and 274 days in 2020. In 2016, it even fell to 253 days due to the reductions in backlogged enforcement cases. Nevertheless, some of the variations among court types were so extreme the improved overall disposition time for 2019 should not be taken at face value. The highest

¹⁴⁵ For more information on CEPEJ indicators and SATURN see, <https://rm.coe.int/commission-europeenne-pour-l-efficacite-de-la-justice-cepej-cepej-guid/1680788300>. The disposition time formula is $365 / (\text{resolved cases} / \text{pending cases})$. The ratio measures how quickly the court system turns over received cases – that is, how long it takes for a type of case to be resolved.

disposition time per court type in Serbia in 2019 was 20 times higher than the lowest one - 665 days for the Administrative Court (which was a decrease from the previous year) compared to 34 days for the Appellate Misdemeanor Court. Detailed disposition times are displayed in Figure 38 below.

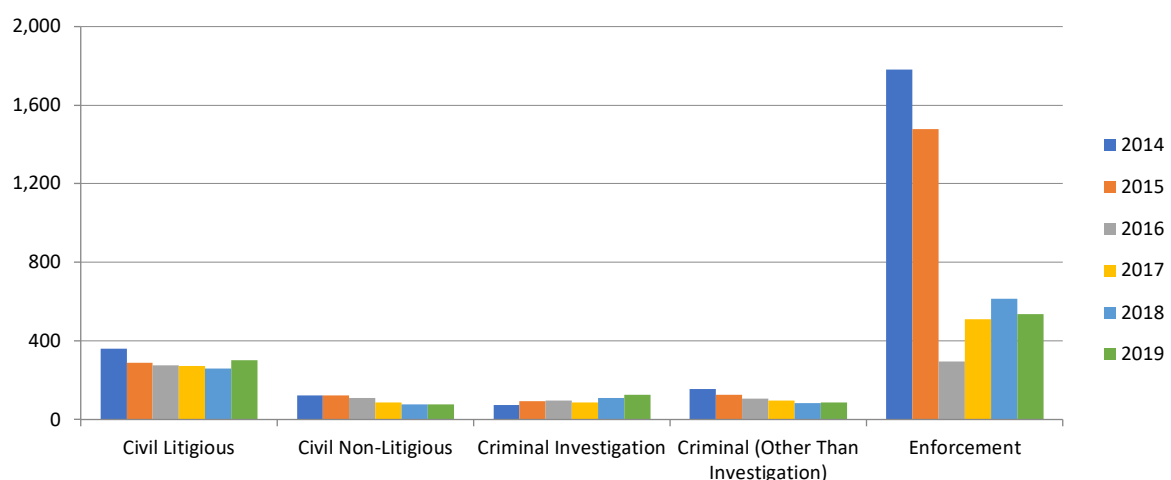
Figure 38:Disposition Times by Court Type from 2014 to 2019



Source: SCC Data and WB Calculations

212. The disposition time indicator revealed there were modest variations for the Basic Court except for enforcement cases. While disposition times of other case types decreased or were stable from 2014 to 2019, enforcement cases did not become relatively stable until 2017. In 2019, the highest disposition time was reported by the Second Basic Court in Belgrade (985 days), and the second-highest was reported by the Third Basic Court in Belgrade (831). The First Basic Court came third with 773 days. In contrast to these high numbers, Basic Courts in Bor (44 days) and Dimitrovgrad (37 days) reported the lowest disposition times. Disaggregating the results by case type, as displayed in Figure 39 below, enforcement cases were the major factor driving the Belgrade disposition times as courts with no enforcement difficulties had the lowest disposition times overall and by case type.

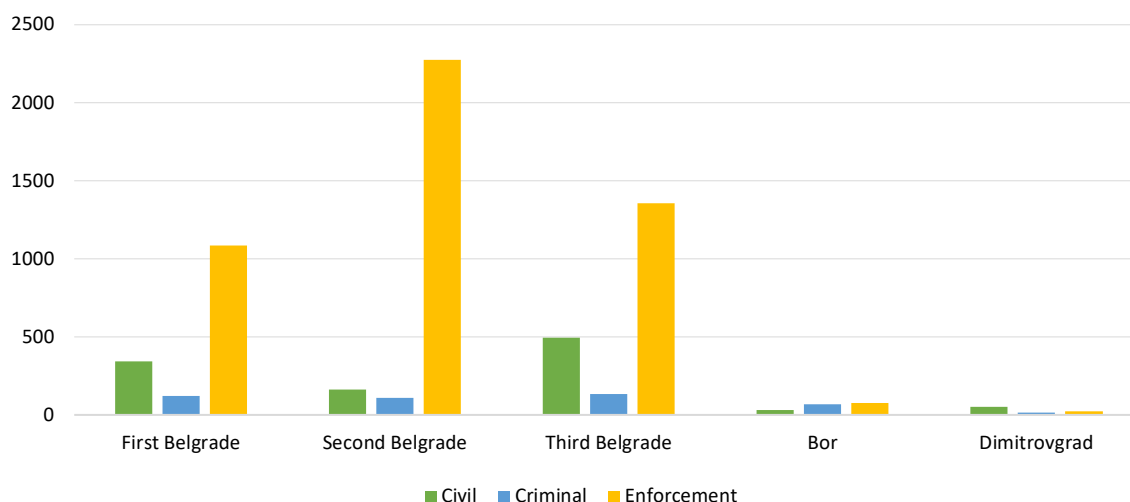
Figure 39: Disposition Times by Case Type in Basic Courts from 2014 to 2019



Source: SCC Data and WB Calculations

213. A side-by-side comparison of disposition times in Belgrade’s Basic Courts shows the one-time effort to reduce the number of backlogged enforcement cases in 2016 was only a stopgap measure, and did not solve the enforcement problem either for the courts of the parties involved. While the 2016 concentrated resolution of enforcement cases produced a marked improvement, the 2019 numbers show a significant part of the problem has persisted.

Figure 40: Disposition Time in Selected Basic Courts by Case Type in 2019



Source: SCC Data and WB Calculations

214. Appellate and Higher Courts also had very broad variations in their disposition times. Among Appellate Courts in 2019, the highest disposition time was reported in Belgrade (103 days), while the lowest was reported for Novi Sad (40 days); the Novi Sad Court had the highest number of appellate judges after Belgrade.¹⁴⁶ The other two Appellate Courts, in Kragujevac and Nis, were in the middle with 76 to 80 days. The highest disposition time for Higher Courts was for the court in Novi Sad with 310 days, while the lowest one was in Negotin, with 13 days.

215. Commercial Courts had declining disposition times, while in Misdemeanor Courts, they varied widely. In 2019, the highest disposition time among Commercial Courts was in Belgrade (163 days), while the lowest was in Subotica (28 days). Belgrade’s Misdemeanor Court had the highest time to disposition at 474 days, while the champion among Misdemeanor Courts was the one in Presevo, at only 100¹⁴⁷ days.

2.3.2.10. Perception of Timeliness as Reported by Court Users

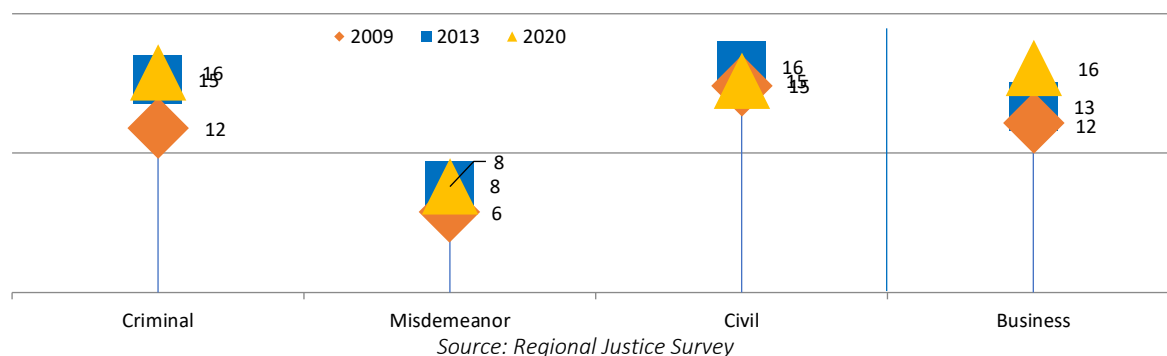
216. According to the Regional Justice Survey, the average number of months from case filing to first instance judgment, as reported by court users, did not improve over time, and even grew by four months in business sector cases. The perceived first instance average duration improved only in civil cases, by one month compared to 2013. As illustrated in Figure 41 below, in criminal cases, the average

¹⁴⁶ There were 76 appellate judges in Belgrade, and 43 in Novi Sad.

¹⁴⁷ The Misdemeanor Court in Presevo received by far the highest number of cases per 100 inhabitants while its disposition times remained one of the lowest.

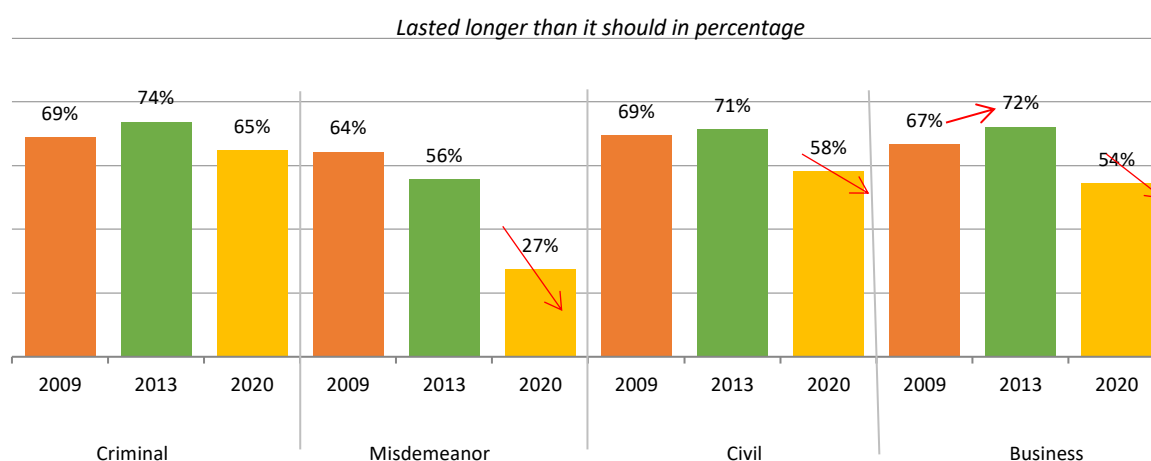
perceived duration for first instance cases was approximately 16 months, which was one month more than in 2013 and four months more than in 2009. In misdemeanor cases, the result from 2020 matched the results from 2013. The highest variation was reported in business sector cases which were perceived as lasting three months more than in 2013, and four months more than in 2009.

Figure 41: Average Number of Months from Case Filing to First Instance Judgment as Reported by Court Users¹⁴⁸



217. In more positive news for the court system, the share of court users who perceived that their first instance case lasted longer than it should decreased in 2020 in all examined categories, compared to both 2009 and 2013 results. Nevertheless, more than one-half of the users were still dissatisfied with the duration of their first instance proceeding in all case types except for misdemeanor. In misdemeanor cases, the number of users that stated that their court proceeding was longer than necessary halved from 2013 to 2020, from 56 to 27 percent. For the business sector, the percentage of dissatisfied users declined from 72 percent in 2013 to 54 percent in 2020 although the perceived case duration increased over the same period.

Figure 42: Share of Court Users who Perceived that their First Instance Case Lasted Longer than it Should (2009, 2013 and 2020)¹⁴⁹



¹⁴⁸ Survey Questions 2009, 2013, 2020: *When was the case filed: month and year?/When was the first instance judgment rendered: month and year?* Population base: public and members of business sector with experience with court cases that reported data. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

¹⁴⁹ Survey question regarding the difference between the duration of the case in months reported by court users and the users' estimations of the number of months the case should have lasted: *When was the case filed -month and year?/How long do you think the first instance proceeding should have lasted - in months?* Population base: public and members of business sector with experience with court cases. Multi-Stakeholder Justice Survey, World Bank, 2014

2.3.3. Effective enforcement

218. This section is designed to synthesize the discussion of enforcement cases that has run through this chapter, since they represent one of the top challenges facing Serbia's court system. Effective enforcement is a crucial element of any legal system,¹⁵⁰ affecting the quality of a system as well as its efficiency. Without effective enforcement of court decisions, there can be no true access to justice, and any improvements in other aspects of a system's efficiency or quality are not worth pursuing. Effective enforcement¹⁵¹ also is an essential requirement of Chapter 23,¹⁵² since it vital to the rule of law, protection of citizens' rights, and economic development¹⁵³.

219. In the period covered by this FR, the lack of genuinely effective enforcement, particularly in large courts, remained one of the biggest challenges of the Serbian judicial system despite all the reforms undertaken through 2019. Moreover, there was insufficient data available to conclude that overall private bailiffs were doing an effective and/or reasonably priced job of enforcing cases.

220. The introduction of private bailiffs, launched in 2012, significantly impacted courts' caseloads, workloads, and dispositions. Monetary enforcement (mainly of unpaid utility bills) was removed from courts, which led to a sharp fall in Basic Courts' incoming caseloads. Due to implementation problems, several interpretations and amendments to the Law on Enforcement and Security¹⁵⁴ were passed, which culminated with the adoption of a new law in 2015¹⁵⁵ that has been amended several times since then.

221. The 2015 Law on Enforcement and Security introduced numerous changes designed to address the lingering lack of efficient enforcement procedures, the number of enforcement cases still in the courts, the absence of harmonized case law, and the general dissatisfaction of creditors with the enforcement regime. In most cases, the Law completely entrusted enforcement of judgments to private bailiffs. Only four particular case types remained in courts: (i) those involving the joint sale of immovable property and movable property, (ii) those in which a debtor is obliged to do or abstain from doing an act or not to prevent someone else's action, which s/he would normally

¹⁵⁰ Council of Europe Recommendation to Council of Ministers R(2003)17.

¹⁵¹ The 2014 Judicial Functional Review found Serbia lagged far behind the EU Member States in terms of effective enforcement, but this was not a surprise to anyone in the court system. Enforcement cases comprised much of the courts' backlog and was one of the primary factors underlying the system's congestion and case processing times. By the end of 2013, a total of 2,019,006 enforcement cases remained unresolved. Unpaid utility bills made up approximately 80 per cent of the enforcement caseload. The introduction of private bailiffs and mass resolution/purging of (mostly utility bills) enforcement cases were considered as promising tools for enforcement backlog reduction.

¹⁵² More information on Serbian Chapter 23 negotiations may be found at <https://www.mei.gov.rs/eng/documents/negotiations-with-the-eu/accession-negotiations-with-the-eu/negotiating-positions/chapter-23/>.

¹⁵³ For more on enforcement and economic development see the World Bank Doing Business webpage, <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts/why-matters>.

¹⁵⁴ Official Gazette no. 31/11, 99/11, 109/13, 55/14 and 139/14.

¹⁵⁵ Official Gazette no. 106/2015, 106/2016, 113/2017 – authentic interpretation and 54/2019. Authentic interpretation of laws is a legal mechanism whereby a legislator gives the authentic meaning to a specific legal norm. It has the same legal force as the law.

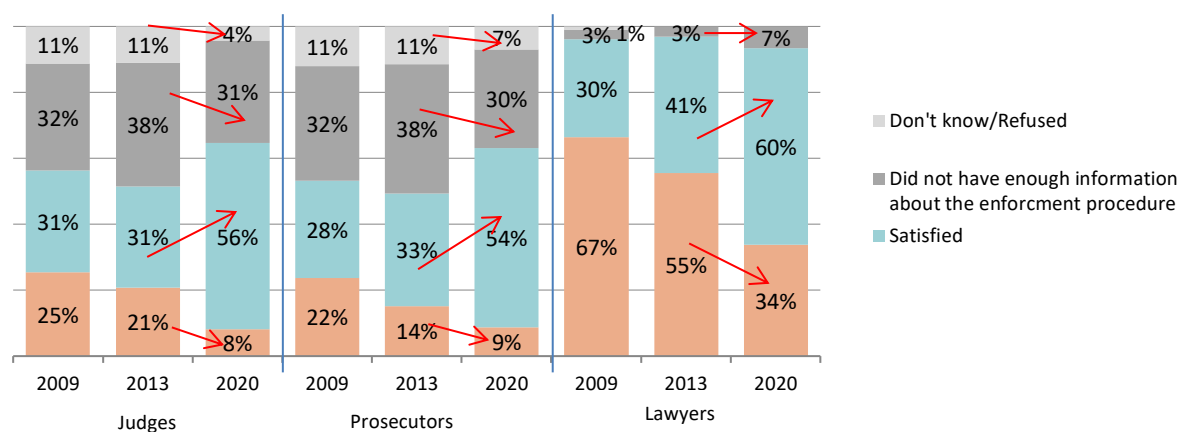
be authorized to prevent (iii) family relationships; and (iv) returning employees to their jobs. The Law also provided for a two-instance appeal system both for court and private bailiff enforcement cases.¹⁵⁶

222. Amendments to the Law on Enforcement and Security that came into force as of 1 January 2020, introduced new measures aimed at improving efficiency and introducing additional safeguards. Article 166 transferred all pending enforcement cases from courts to private bailiffs regardless of their initiation date, and provided additional options for dismissal of inactive cases and petty claims. The amendments should result in the dismissal of many dormant court cases, while new safeguards were added to limit execution against salaries and pensions and to prevent execution on homes in case of claims worth less than 5,000 EUR, reduce the costs of executions to parties, etc.

223. Other novelties introduced in 2020 were intended to streamline the enforcement procedure. Electronic filings, voluntary settlement of claims, electronic auctions, and shorter deadlines are among them.

224. The satisfaction of judges, prosecutors, and lawyers with the procedure of enforcing court judgments increased improved consistently from 2013 to 2020. In total, 56 percent of interviewed judges in 2020 were satisfied with the enforcement procedure of court judgments, an increase by 25 percentage points over 2013. The increase with prosecutors was 21 percentage points¹⁵⁷ and 19 percentage points with lawyers. Figure 43 below compares the evaluations in the surveys conducted in 2009, 2013, and 2020.

Figure 43: Satisfaction with the Procedure for Enforcing the Court Judgment¹⁵⁸ (2009 and 2013 – over the past 3 years; 2020 – over the past 12 months)



Source: Regional Justice Survey

¹⁵⁶ Appeals lodged against the private bailiffs' decisions will be decided by second instance courts - the Higher Courts and the Appellate Commercial Court. Objections will be decided by a three-member panel of first instance courts i.e. Basic or Commercial Courts.

¹⁵⁷ Outside of the criminal domain, the prosecutors may intervene in various court and non-judicial proceedings, for example in civil court proceedings, but also in administrative proceedings, administrative disputes, proceedings before the constitutional court, etc.

¹⁵⁸ Survey Question 2009, 2013: *How satisfied were you with the procedure for enforcing the court judgments in cases you worked on, in last three years?* Population base: judges (other than appellate judges); prosecutors; lawyers, total population. Multi-Stakeholder Justice Survey, World Bank, 2014/ Survey Question 2020: *How satisfied are you with the procedure for enforcing the court judgments in the cases you worked on over the past 12 months?* Population base: judges, prosecutors; lawyers, total population. Regional Justice Survey, World Bank, 2020.

2.3.3.1. Enforcement in Courts

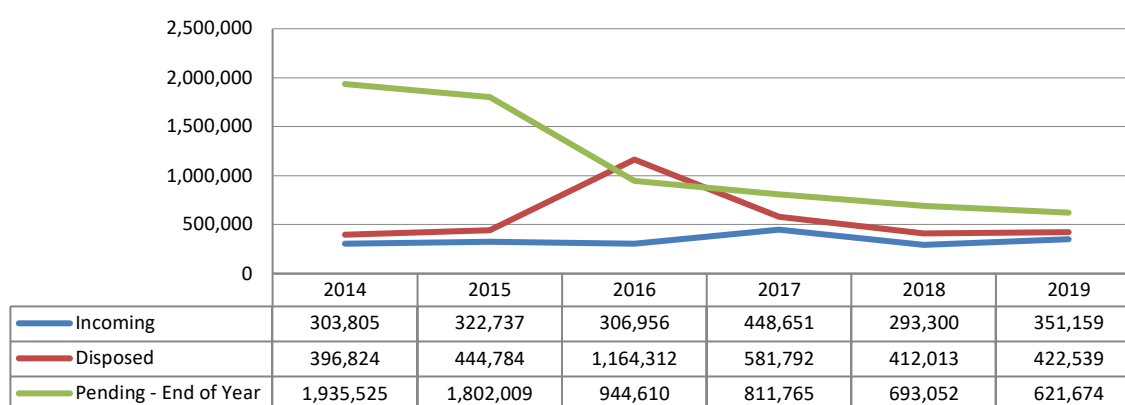
225. Despite the notorious reputation of the courts for lax enforcement of judgments, most large creditors opted to have courts retain their pending enforcement cases or did not respond at all when asked if they preferred to keep the cases with the courts or have them transferred to the new private bailiffs. For example, according to July 2016 data from the First Basic Court in Belgrade,¹⁵⁹ creditors chose the court in 417,163 cases court and private bailiffs in 22,944 cases. At the same time, creditors did not respond in the remaining 554,809 cases. Judges interviewed by the FR team thought one of the primary reasons for the creditors' choice to stay in the courts was because they expected court enforcement expenses to be lower.

226. A significant incoming caseload of enforcement cases was redirected from courts to private bailiffs. In 2019¹⁶⁰ the bailiffs' total pending stock amounted to 1,968,438 cases, an increase of 22 percent over the previous year. Seventy percent of cases were categorized as utility bills. In total, 541,574 cases were disposed or 28 percent of all pending cases in 2018.

227. According to 2017 data¹⁶¹, the total claimed amount for the cases redirected to private bailiffs was RSD 555,750,689,547 (~ EUR 4.7 billion), out of which RSD 57,608,669,719 (~ EUR 489 million) were collected (approximately 10 percent). According to the Chamber, the collection percentage is higher since the total amount also includes those claims which are *de facto* impossible to collect (e.g. stayed procedures, suspended procedures). (The Chamber's 2018 and 2019 reports did not provide data on claim values.)

228. Basic Courts reduced their pending enforcement stock by 64 percent in 2019, from 1,935,525 cases in 2014 to 621,674 cases in 2019¹⁶². Incoming enforcement cases grew in 2017 due to the dismissals of cases among Belgrade's courts (see Box 5).

Figure 44: Incoming, Disposed and Pending Enforcements in Basic Courts from 2014 to 2019



Source: SCC Data

¹⁵⁹ Data given at regional meeting of court presidents.

¹⁶⁰ The annual report for 2019 is available at <http://www.komoraizvrsttelja.rs/sites/default/files/dokumenti-komore/podacipercent20izpercent20godisnjegpercent20izvestajapercent20zapercent202019percent20godinu.xlsx>.

¹⁶¹ The annual report for 2017 is available at <http://www.komoraizvrsttelja.rs/sites/default/files/dokumenti-komore/>.

¹⁶² According to the SCC information, as of June 30, 2022, the total number of pending cases in courts was 1,243,741, of which 30,450 were pending enforcement cases (in Basic and Commercial Courts).

229. Fifty-three percent of cases pending at the end of 2019 in Basic Courts were enforcement cases older than five years (primarily based on authentic documents or 'lv' registry cases¹⁶³). According to the SCC's report, at the end of 2019, 240,492 of Basic Court enforcement cases were five to 10 years old, while 250,350 were older than 10 years.

230. Despite the 2020 legislative amendments and the expansion of private bailiffs' jurisdiction, many backlogged writs based on authentic documents were still in Basic Courts as of June 2020. More precisely, there were 134,655 cases aged five to 10 years and 269,166 cases older than 10 years. It was not clear if these cases were supposed to be transferred to private bailiffs or to remain in the courts.

231. The congestion ratio of enforcement cases in Basic Courts improved significantly from 4.88 in 2014 to 1.47 in 2019. There were still far more unresolved than disposed enforcement cases. Nevertheless, apart from Basic Courts in Sremska Mitrovica, Bor, Subotica, Aleksinac, Leskovac, and Petrovac on Mlava,¹⁶⁴ all Basic Courts resolved more enforcement cases than they received, and in some courts much more.

Box 14: An Innovative Approach to Enforcement Tracking in the Basic Court in Krusevac

As part of the 2019 Court Rewards Program, the Basic Court in Krusevac received an acknowledgment for innovation based on its monitoring of the activities of court bailiffs, by having the bailiffs record their work in a specifically developed IT application. The judges, clerks, and the court president all were able to monitor the bailiffs' work, including which case each bailiff planned to work on that day, where the bailiffs were, and how many cases they resolved during the day.

2.3.3.2. Private Bailiffs

232. Of the approximately 230 private bailiffs in Serbia, 70 were located in Belgrade as of January 2021.¹⁶⁵ The jurisdiction of a private bailiff corresponds to the territory of a Higher and a Commercial Court. The Chamber of Private Bailiffs allocated the enforcement of unpaid utility bills on a random basis¹⁶⁶ and the creditor selected the private bailiff for other types of cases.

233. According to the Law on Enforcement and Security, Ethical Code¹⁶⁷, and by Standards of Professional Conduct¹⁶⁸ regulate the operations of private bailiffs and govern their accountability. The

¹⁶³ Authentic documents are utility bills, bills of exchange, checks, public documents, business records excerpts, legally certified private documents and documents considered by law as public, which are used for obtaining an enforceable title for uncontested claims.

¹⁶⁴ The highest clearance rate, of 333 percent, was produced by the Basic Court in Mladenovac. In contrast, the Basic Court in Petrovac on Mlava produced a clearance rate of 79 percent, the Basic Court in Leskovac of 91 percent and the Basic Court in Aleksinac reported a clearance rate of 93 percent.

¹⁶⁵ A total of 308 private bailiffs are planned for the system.

¹⁶⁶ Random allocation is regulated by a specific bylaw (Official Gazette No. 2/2020). The procedure is administered electronically (i.e., via email). The creditor is obliged to ask the Chamber to assign a private bailiff to the case. The assignment is done alphabetically, there is no random allocation computer algorithm available for now.

¹⁶⁷ Official Gazette No. 105/2016.

¹⁶⁸ Official Gazette No. 90/2019.

Chamber of Private Bailiffs adopted the Code in 2016, and the MoJ adopted the Standards in December 2019.

234. There were few publicly available and regularly updated sources of information about the work of private bailiffs. This section draws on what was available online and through interviews, but much more could be done to open their work to the public.

235. Private bailiffs' statistical data were incomplete and inconsistent from 2012 until an independent review of reporting issues was done in 2016. In its 2016 report '*Analysis of Changes in the Reporting System on the Work of Private Bailiffs and Statistics on the Work of Private Bailiffs 2012-2015*',¹⁶⁹ the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) analyzed the bailiffs' data. Data were found to be inaccurate, many useful data were not collected (e.g. case age), the collected data were not used appropriately to monitor the bailiffs and the private bailiff system, and feedback was not given to private bailiffs to promote their compliance with applicable rules. Following the report, the MoJ adopted a bylaw¹⁷⁰ in 2016 that introduced obligatory reporting forms for bailiffs, and the Chamber of Private Bailiffs started publishing annual statistical reports in 2017.¹⁷¹ However, as of April 2021, there was still no unified IT system for reporting by individual bailiffs that could facilitate effective monitoring of their work or more straightforward data collection, and no independent analysis had been done to assess the quality of the bailiffs' reporting since 2016. On the other hand, private bailiffs continued to criticize the regulations for data collection as too complicated, overly extensive and requiring too much of their time.

236. Available data indicate the introduction of private bailiffs has not solved all of the issues in Serbia's enforcement regime. Representatives of the Chamber of Private Bailiffs interviewed by the FR team estimated it took an average of approximately 100 days to dispose of their members' enforcement cases (although this assessment may not have included cases with *de facto* uncollectable claims), compared to 635 days required for court cases as of 2018, but this could not be confirmed through available data. For 2019, based on the publicly available data from the Chamber, the FR team calculated an overall disposition time of 960 days, with 1,165 days for utility cases and 644 days for other case types. The total clearance rate was 66 percent, with 64 percent for utility cases and 70 percent for other case types.

237. The introduction of private bailiffs has been met with opposition in Serbia, as it has been in many other countries. For instance, there have been complaints against the *modus operandi* of private bailiffs, and the governing legal framework has been perceived as faulty and prone to abuses, specifically in terms of costs and expenses. Other complaints have alleged that private bailiffs claim unjustified expenses, while others have claimed violations of debtors' rights. In response to these

¹⁶⁹ For more details see the following link,

<http://www.komoraizvrsitelja.rs/sites/default/files/Analiza%20promena%20u%20sistem%20izve%C5%A1tavanjapercent20opostupanjupercent20I%20statistikapercent20opercent20radupercen20I%20zapercent20periodpercent202012-2015percent20percent281percent29.docx>.

¹⁷⁰ Official Gazette No. 37/2016-3, 50/2018-71, <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2016/37/1/reg>.

¹⁷¹ The 2016 annual report is available online, http://www.komoraizvrsitelja.rs/sites/default/files/dokumenti-komore/Analiza_rada_JI_za_2016_godinu.pdfhttp://www.komoraizvrsitelja.rs/sites/default/files/dokumenti-komore/Analiza_rada_JI_za_2016_godinu.pdf.

complaints, Serbia made the legislative changes discussed above and conducted a public information campaign funded by the USAID Rule of Law Project.¹⁷²

238. Serious concerns have been raised over the years regarding excessive bailiffs' expenses and accompanying costs included in the fee schedule. USAID's analysis of private bailiff fees and expenses¹⁷³ compared the initial costs¹⁷⁴ in court and private bailiffs cases. It concluded that only in Basic Courts, for claims of up to RSD 30,000 (~ EUR 255), were costs lower in courts than with bailiffs. The opposite applied to higher claims in Basic Courts and all claims in Commercial Courts. See Table 12. However, this comparison should be examined with caution since it did not include all possible additional bailiffs' expenses, which can be substantial.

Table 12: Comparison of Enforcement Initial Costs in Courts and with Bailiffs (2012 Tariff of Private Bailiffs Fees and 2016 Amendments)

Private Bailiffs (PB)/Basic Courts (BC)/ Commercial Courts (CC)	Claim in RSD	Initial Expenses in RSD	percent of Court Fee in Relation to Bailiff Expense
PB/Individuals and Legal Entities	10,000 ~EUR 85	3,000,00 ~EUR 25	-
BC/ Individuals		1,900,00 ~EUR 16	-37 percent
CC/ Legal Entities		3,900,00 ~EUR 33	30 percent
PB/Individuals and Legal Entities	30,000 ~EUR 255	3,000,00 ~EUR 25	-
BC/ Individuals		3,100,00 ~EUR 26	3 percent
CC/ Legal Entities		5,700,00 ~EUR 48	90 percent
PB/Individuals and Legal Entities	60,000 ~EUR 510	3,600,00 ~EUR 30	-
BC/ Individuals		4,300,00 ~EUR 37	19 percent
CC/ Legal Entities		7,500,00 ~EUR 64	108 percent

Source: USAID

239. A new Tariff of Private Bailiffs Fees¹⁷⁵ came into force on January 1st, 2020, which reduced the list of possible costs and the amounts of particular fees.¹⁷⁶ The Tariff limits the number of items that public bailiffs may charge, and the duplication of proceedings is no longer considered an eligible expense. Although the Tariff reduces the amounts of individual fees, greater cost reduction is expected

¹⁷² The project produced two guides, one for private bailiffs and one for citizens: Handbook for Private Bailiffs on Public Relations in November 2019, https://www.rolps.org/public/documents/upload/Prirucnikpercent20zapercent20javnepercent20izvrsitelje_web.pdf, <http://www.komoraizvrsitelja.rs/sites/default/files/moja-prava-u-izvrsnom-postupkuyucom.pdf>, and My Rights in Enforcement Proceedings, 2020, <http://www.komoraizvrsitelja.rs/sites/default/files/moja-prava-u-izvrsnom-postupkuyucom.pdf>.

¹⁷³ Costs of Enforcement – Analysis of Private Bailiffs' Tariffs, 2017. The analysis is based on the 2012 Tariff of Private Bailiffs Fees and the 2016 amendments.

¹⁷⁴ Fees for the preparation and management of cases.

¹⁷⁵ Official Gazette No. 90/2019.

¹⁷⁶ E.g., the success fee for a debt of:

- RSD 6,000 to RSD 12,000 (EUR 50 to EUR 100) is now RSD 1,440 (~EUR 12) instead of RSD 1,800 (~EUR 15)

-RSD 12,000 to 30,000 (EUR 100 to EUR 255) the fee was RSD 2,880 (~EUR 25) and from January 1 2020 it is RSD 2,400 (~EUR 20).

from a reduction in the number of applicable fees and situations where they are applicable. The amendments were welcomed by the public, but since the Tariff is new, it is too early for this FR to evaluate its impact.

Box 15: Tariff or Private Bailiffs Fees

Private bailiffs/enforcement agents are entitled to fees for the preparation, management and archiving of cases, undertaking individual actions (e.g. service of process, photocopying of cases, issuance of decisions), and success fees calculated depending on the amount collected by the bailiff. The fees for preparation, management and archiving of cases range from RSD 960 (~EUR 8) to RSD 250,000 (~EUR 2,125), while the success fees range from RSD 960 (~EUR 8) to RSD 2 million (~EUR 17,000). Fees for undertaking individual actions are limited to 10 specific types of actions with the lowest fee of RSD 12 (~EUR 0.10 for photocopy per page).

The highest fees foreseen for individual actions are related to decision-making and various means of enforcement. These are (i) 30 percent of the fee for the preparation, management and archiving of cases for each started hour (max. eight hours a day) for viewing of real estate and movables, public bidding, inventory of real estate and movables, seizure and delivery of movables, emptying and delivery of real estate, performed physical division, execution of an act that can be undertaken by another person (with the maximum set at RSD 75,000 or ~EUR 640), and (ii) 20 percent of the fee for the preparation, management and archiving of cases for each started hour (max. eight hours a day) for the decision on execution, the decision by which it was decided on: the complaint of a third party, the request for elimination of irregularities, proposal for postponement of execution, suspension of the procedure, costs of the procedure, decisions referred to in Article 48 of the Law on Enforcement and Security and for drawing up a conclusion on the advance, a conclusion on a settlement, conclusion on sale and conclusion from art. 66, 67 and 193 of the Law on Enforcement and Security (with the maximum set at RSD 50,000 or ~EUR 425).

240. According to the Chamber of Private Bailiffs, a lack of case-law harmonization in courts impedes bailiffs' work. As required by its Statute,¹⁷⁷ the Chamber tried to establish a Council for Case-Law Harmonization consisting of both bailiffs and judges. This was discontinued after the Anti-Corruption Agency ruled there were possible conflicts of interest between judges and bailiffs since judges decide on appeals lodged against private bailiffs' decisions. To overcome this impediment, the Chamber proposed to constitute a case-law harmonization mechanism under the MoJ or the Judicial Academy, but as of April 2021, the MoJ had not decided on the proposal.

2.3.3.3. Enforcing Contracts

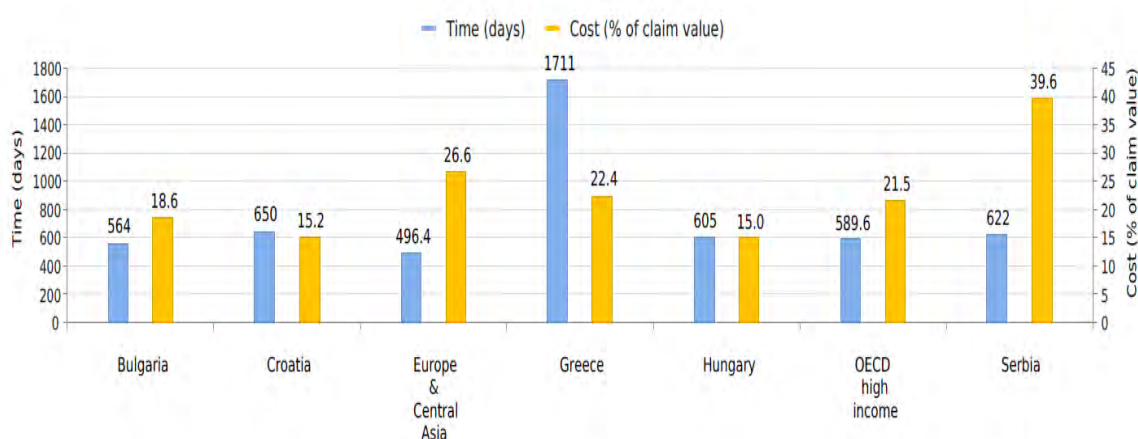
241. Although improving, Serbia still faces significant issues when it comes to enforcement effectiveness. Frequent legislative amendments, remaining pending stock of (backlogged) enforcement cases in courts, and problems concerning the introduction and operation of private bailiffs hinder the system. The situation may not be as critical as in the previous period covered by the FR 2014 but is still far from satisfactory.

¹⁷⁷ Official Gazette No. 105/2016, Article 53.

242. Serbia’s ranking in enforcing contracts as rated by Doing Business¹⁷⁸ has deteriorated slightly. In the 2020 report, Serbia ranked 65th with an average of 622 days needed to resolve a dispute, counted from the date the plaintiff files a lawsuit until payment. From 2016 onwards, Serbia’s rank in this category varied from 73rd in 2016, 61st in 2017, 60th in 2018, and finally 65th in 2019 and 2020.

243. The cost of enforcing a contract in 2019 amounted to 39.6 percent of the claim value. This was several times higher than in comparator jurisdictions such as Bulgaria (18.6 percent), Croatia (15.2 percent), Greece (22.4 percent), and almost double the Europe and Central Asia (ECA) average of 26.6 percent. For details see Figure 45 below.

Figure 45: Enforcing Contracts in Serbia and Comparator Jurisdictions – Time and Cost



Source: Doing Business Report 2020

2.3.4. Public Notaries: A Promising Start

244. The introduction of public notaries in 2014 removed a significant load of administrative tasks from the Basic Courts by allowing them to redistribute some of their personnel to work on other matters, but the effect of public notaries on probate caseloads is harder to assess. The primary focus of introducing the notaries was to remove verification and probate cases from the courts; while the verification reforms have worked well, courts still handle a significant number of probate cases.

245. In 2019, Basic Courts received and resolved approximately 110,000 verifications, compared to more than 700,000 verification cases in 2013. A limited range of verifications remained in courts, e.g., verifications under the Apostille Convention.¹⁷⁹ Predictably, registry staff saw cuts in their workloads due to the verifications reforms, while the workloads of judges were not affected substantially. However, judges benefited indirectly from the increased availability of administrative resources.

¹⁷⁸ This Doing Business indicator was calculated for a so-called standardized case in Belgrade’s Commercial Court. For more information see http://www.doingbusiness.org/en/data/exploreconomies/serbia#DB_ec.

¹⁷⁹ See <https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>.

246. Little data was available on the efficiency or effectiveness of having public notaries available to handle probate cases.¹⁸⁰ The incoming caseload of probate cases registered under case code 'O' was stable and just under 140,000, and more cases were disposed of than received each year from 2016 and 2019.¹⁸¹ However, SCC statistical reports did not segregate probate cases heard before a court from those being handled by public notaries.

247. Unlike enforcement cases that are assigned at the outset to private bailiffs, probate cases are first opened in Basic Courts and then assigned to public notaries. These cases become an integral part of the court statistics and are considered to be cases disposed of by the court. As a result, the transfer of probate cases may have augmented available judicial resources, but it cannot be said to have improved the reported efficiency of the Basic Courts, as noted in previous sections of this chapter.

248. Practices varied among courts; many cases were still dealt with by courts and not by public notaries. In 2014 courts were given the option to entrust procedural actions or the entire probate proceedings to public notaries. The latter possibility was rarely used, which is why in 2016, the SCC issued so-called Conduct Instructions¹⁸² to encourage courts to change their practice. The figures below indicate it took some time for courts to accept these instructions. According to the SCC 2019 Annual Report,¹⁸³ 91 percent of received probate cases in 2019 were transferred to public notaries, an increase of 38 percentage points over 2018. According to courts interviewed for this FR, the other nine percent of received probate cases consisted of cases in which the parties exercised their right to specifically ask for court processing and cases that, by law, could not be delegated to notaries (e.g., amendments of probate decisions due to subsequently found assets, or (rarely) probate cases including the application of foreign law. Obliging the courts to handle particular types of probate cases and allowing parties to choose between the courts and the public notaries seemed to hamper the purpose of the probate reforms, which was to unburden the courts of simple cases.

249. Judges interviewed found public notaries to still were not be skilled or trained well enough to process probate cases. Lack of procedural proficiency, un-harmonized practices, and cooperation of the Chamber of Public Notaries with the courts were identified as critical problems.

250. The FR team found courts varied considerably in their probate case practices. Judges interviewed described different internal solutions and practices regarding case allocation (i.e., which cases were assigned to notaries and which remained in courts) and case processing in general. This topic deserves systematic monitoring and more in-depth analysis than this FR can provide.

251. SCC data showed there were relatively few objections to the decisions of public notaries. There were 137 objections in 2016, 132 in 2017, 129 in 2018, and 175 in 2019. In 2015 there were 1,001

¹⁸⁰ Regulated by Law on Non-Contentious Proceedings Probate, Official Gazette No. 25/1982, 48/1988, 46/1995, 18/2005, 85/2012, 45/2013, 5/2014, 6/2015 and 106/2015. Cases received as of 1st September 2014 in which court fees had not been paid were eligible for transfer to public notaries.

¹⁸¹ In 2015 143,433 cases were received and 133,910 disposed, in 2016 138,458 cases were received and 143,529 disposed, in 2017 138,890 cases were received and 152,077 disposed, in 2018 135,968 cases were received and 141,368 disposed, and in 2019 134,226 cases were received and 139,036 disposed.

¹⁸² The SCC instructions are available at <https://www.paragraf.rs/dnevne-vesti/170516/170516-vest7.html>.

¹⁸³ Of 135,968 received cases, 72,330 were delegated to public notaries in 2018 and, out of 134,226 received cases, 122,708 were delegated in 2019.

objections out of which 928 mistakenly¹⁸⁴ arose from a single Basic Court, in Bujanovac. Even fewer appeals were brought before Higher Courts regarding notarial decisions, although their numbers increased every year: there were 20 in 2015, 52 in 2016, 94 in 2017, 156 in 2018, and 218 in 2019.¹⁸⁵

2.3.5. Procedural Efficiency

252. Delays in service of process, poor court time management and delays in scheduling of hearings, lack of modern case management techniques, procedural abuses, frivolous claims and appeals, procedural bottlenecks, and repeated registration of the same matter under many case numbers all were identified as promoting inefficiency in the 2020 Regional Justice Survey. There was no remarkable improvement in resolving most procedural inefficiencies in Serbia, although the FR2014 recommended several ways to mitigate their effects.¹⁸⁶ Some of these issues, e.g., having one matter included in the system through several different case numbers and the lack of weighted case management techniques, already have been addressed in this and other Chapters of this Functional Review. This section provides a brief update on other procedural factors affecting efficiency.

253. Courts still had too few and inadequate means to sanction parties and their attorneys for introducing delays in the progress of a case. Parties and attorneys reportedly avoided service of process, deliberately failed to attend the hearings, submitted irrelevant briefs, and introduced irrelevant evidence. There were procedural tools for judges to avoid delays in a case and to discipline expert witnesses, parties, and attorneys for missing deadlines, but there were no rules making it mandatory for judges to use the tools in most circumstances.

254. There was no single CMS that could be used to monitor and detect irregularities so that competent authorities can respond timely and appropriately. A unified CMS would allow judges to organize their dockets and allow heads of departments and court presidents to manage their departments/courts. A specific benefit of CMS is the active monitoring of case flows to prevent cases from becoming inactive.

255. A substantial portion of those working within the court system supports the general idea of improving court performance through the reform of court procedures. More than 70 percent of the judges and more than 80 percent of lawyers questioned in the Regional Justice Survey thought improving the courts' internal processes, the "responsiveness of the parties" and coordination among institutions could improve court efficiency. Support for specific reforms might not be as widespread, but the Survey results indicate those most familiar with the workings of the system already have identified the source of many of the system's inefficiencies. In total, 78 percent of lawyers, 42 percent of judges and 35 percent of prosecutors identified court or court staff errors as prolonging cases, while obstructive tactics by the parties were identified as contributing to delays by 72 percent of the lawyers, 79 percent of the judges and 91 percent of the prosecutors.¹⁸⁷ In comparison to the 2013 survey, gaps

¹⁸⁴ In its 2016 report, the Basic Court in Bujanovac acknowledged that the reported figure referred to another case type.

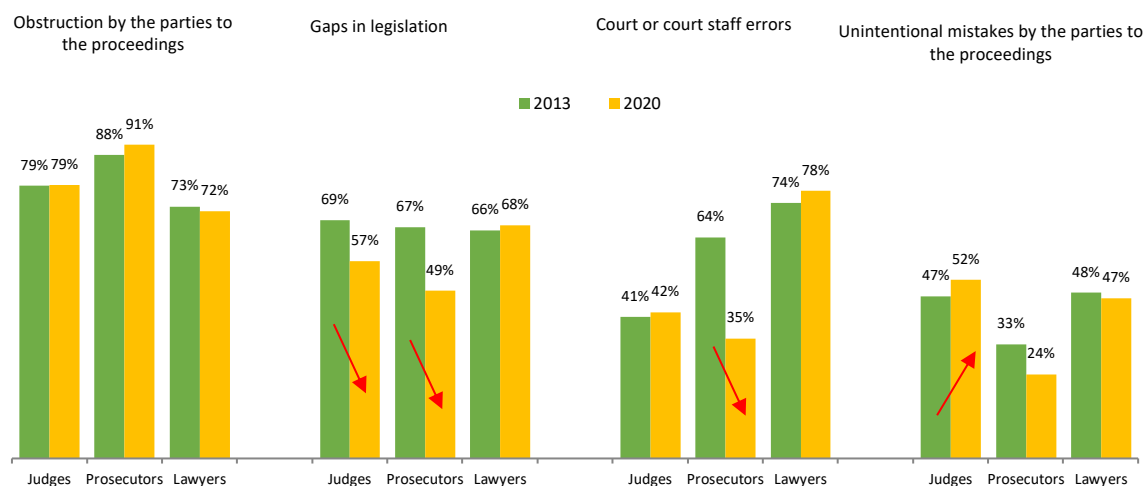
¹⁸⁵ Parties are allowed to object to public notaries decisions in the Basic Court. If the objection is rejected, parties may appeal to the Higher Court.

¹⁸⁶ 2014 Functional Review Recommendations 4, 6, 7 and 8, p. 14 and 15.

¹⁸⁷ Regional Justice Survey findings. Examples for court or court staff errors are lack of preparation for hearings and problems with service of process, while the examples for obstruction by the parties to the procedure are uncooperative expert witnesses and witnesses and attorneys' delay tactics.

in legislation appear to be a lesser problem according to judges and prosecutors, while prosecutors think that court of court staff errors that prolong the case duration has reduced significantly. See Figure 46 below for details.

Figure 46: Share of Judges, Prosecutors, and Lawyers who Report that the Listed Reasons are Occasional or Frequent on why Cases Last Longer than Expected in 2013 and 2020¹⁸⁸



Source: Regional Justice Survey

256. Repetitive cases keep flooding the system with no adequate procedural mechanism foreseen, other than ad hoc delegations, to deal with the burden placed on the courts by the complex demands of many litigants. Army reservist cases analyzed in this chapter are just one example. Many more of these repetitive cases are deriving from lawsuits against banks, pension beneficiaries against the Pension and Disability Insurance Fund, etc. The European Policy Centre analyzed the current state of play and offered recommendations for introducing the class action or class lawsuit mechanism, firstly in the consumer protection field and then, based on that experience, in other areas of law. This mechanism could be used in parallel with already discussed delegations and ‘pilot decisions’.

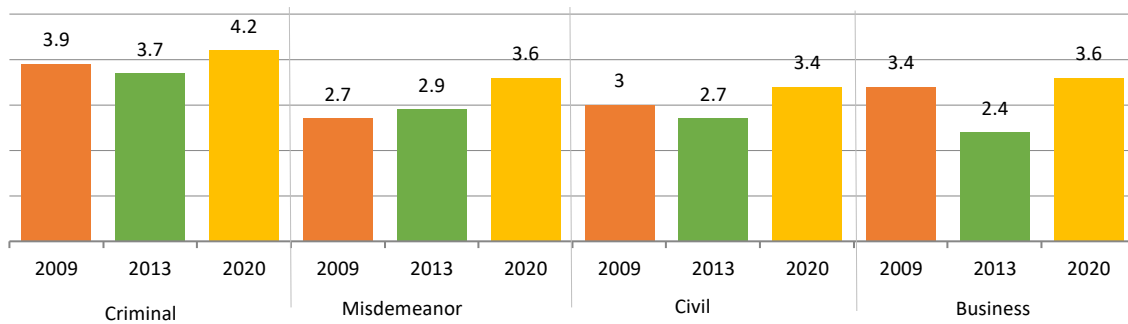
257. According to the procedural rules, the most significant number of lawsuits, especially the repetitive ones, are concentrated in Belgrade, thus contributing to Belgrade courts’ congestion. This problem was addressed by the draft amendments to the Civil Procedure Code in 2021, which have foreseen the transfer of the territorial jurisdiction of courts from the defendant’s seat to the plaintiff’s place of residence in consumer or financial services disputes or claims against the Republic of Serbia or the regional or local government. The respective amendments have not been adopted so far, although they would significantly contribute to better caseload distribution and thus more efficient work of courts with fewer congestions.

¹⁸⁸ Survey Question 2009, 2013, 2020: How often, if at all, each of these reasons was the cause of the longer duration of the cases? Population base: judges (2009, 2013 - other than appellate judges); prosecutors; lawyers. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

2.3.5.1. Scheduling and Holding Hearings

258. The time lag between case filings and first hearings identified by FR2014 (based on 2009 and 2013 data) increased even more in 2020 in all case types, according to the results of the Regional Justice Survey. In comparison to 2013, it took the courts about 15 days more to hold the first hearings in criminal, misdemeanor, and civil cases, while in business sector cases, over one month more was needed. For a detailed comparison, see Figure 47.

Figure 47: Average Number of Months Passed between Case Filing and First Hearing, as Reported by Court Users in 2009, 2013 and 2020¹⁸⁹

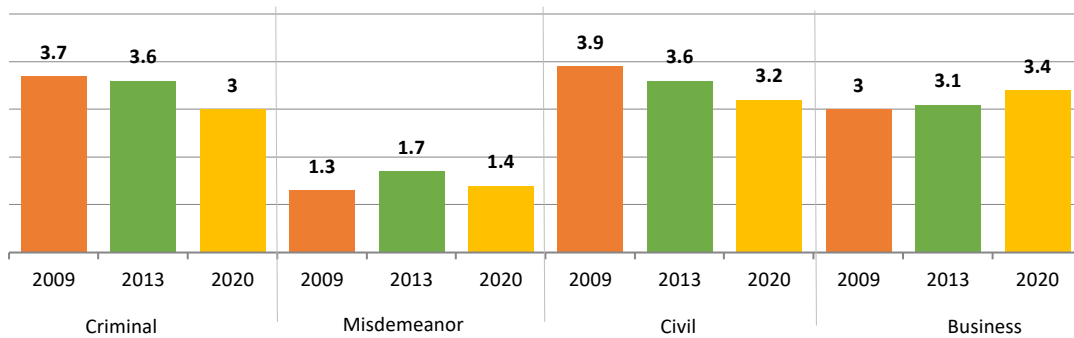


Source: Regional Justice Survey

259. The average number of hearings increased continually in business sector cases in 2009, 2013, and 2020, although it reduced continually in criminal and civil cases and varied in the misdemeanor cases. The calculated averages are displayed in Figure 48 below. In general, it took about three hearings to dispose of a first instance case in criminal, civil, and business sector matters and one in misdemeanor matters.

¹⁸⁹ Survey Question: *When was the case filed (month and year)? / When did one of the parties appear before a judge for the first time (month and year)?* Population base: public and the business sector with experience with court cases that reported data. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

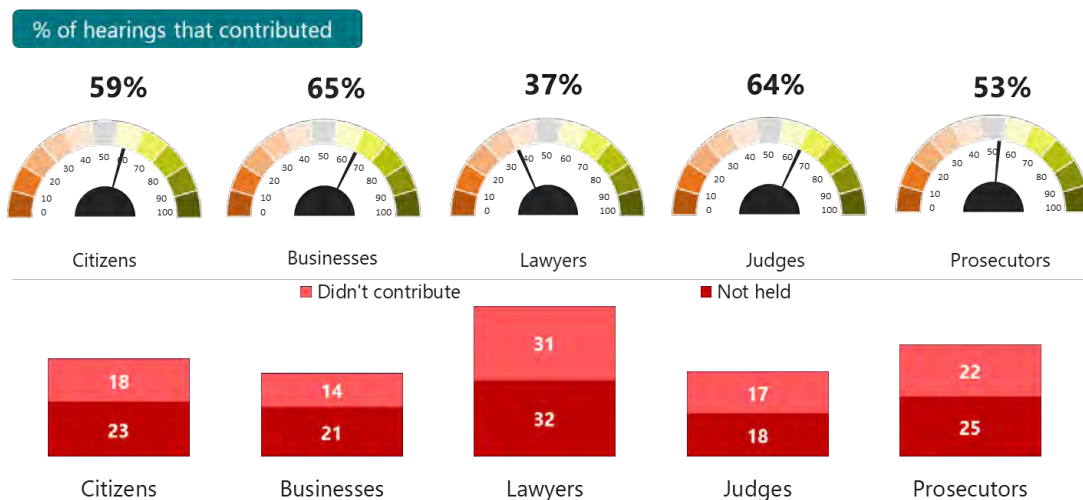
Figure 48: Average Number of Hearings Held, as Reported by Courts Users in 2009, 2013, 2020¹⁹⁰



Source: Regional Justice Survey

260. Almost any progress in streamlining court procedures has a realistic chance of reducing the relatively high levels of cynicism about court efficiency among lawyers and judges, given the number of problems identified in the Survey. Court users identified the key issues hampering court efficiency as including excessive numbers of hearings and adjournments, cancellations without simultaneous rescheduling, and the continuation of hearings over long periods. Lawyers responding to the Survey thought only 46 percent of scheduled hearings contributed to the resolution of cases they handled, while businesses thought 65 percent of hearings contributed. Judges, prosecutors and citizens were between those extremes; judges thought 58 percent of the hearings contributed, while prosecutors placed the number at 55 percent and citizens placed the number at 59 percent

Figure 49: Hearings that Contributed to Dispute Resolution¹⁹¹



¹⁹⁰ Survey Question 2009, 2013: How many total hearings were held in the first-instance court, not including those that were cancelled or adjourned?, Population base: public and the business sector with experience with court cases, Multi-Stakeholder Justice Survey, World Bank, 2014/ Survey Questions 2020: How many hearings were scheduled altogether in the first-instance, including those that were scheduled but not held?/ How many of the scheduled hearings were not held, that is, cancelled?, Population base: public and the business sector with experience with court cases, Regional Justice Survey, World Bank, 2020.

¹⁹¹ Survey question: How many questions were scheduled altogether in the first-instance, including those that were scheduled but not held? How many of scheduled hearings did not held, that is, cancelled? /Beside hearing that were not held, how many hearings would you assess as not having significantly contributed to progress in the resolution of the case? Out of total number of hearings that you worked on over the past 12 months, what were the shares of scheduled hearings that were not held, held, but didn't contribute much to resolving of the case and contributed significantly to resolving of the case.

261. Tightening scheduling practices for court hearings, as recommended in the 2014 Judicial Functional Review,¹⁹² was still a pressing need, although stakeholders disagreed about the reasons for inefficient hearings and the cancellation of hearings.¹⁹³ Citizens and businesses primarily blamed courts and opposing parties for inefficient and canceled hearings. Lawyers identified the court, other parties and their representatives (although not prosecutors), and other participants such as lay and expert witnesses as reasons for the waste of time. Courts and prosecutors agreed that parties and their representatives (again not including prosecutors) and other participants were the primary offenders.

2.3.5.2. Service of Process

262. There were no data indicating that the use by court staff of new tools to locate parties and witnesses significantly improved the service of process in Serbian courts.¹⁹⁴ After the 2014 Judicial Functional Review identified many of the issues regarding service,¹⁹⁵ there were amendments to the CPC and Civil Procedure Code and an agreement with the Postal Service was reached to improve the service of process. The CPC introduced much broader means of service, including several options for personal delivery.¹⁹⁶ The amendments to the Civil Procedure Code created new forms for delivery, imposed deadlines for procedural steps to be completed and penalties for dilatory practices by parties.¹⁹⁷

263. The 2017 agreement between the HJC and the Postal Service¹⁹⁸ may have made the service of the process more efficient, but the FR team could not verify that due to a lack of data. Judges interviewed by the FR team, however, thought technical instructions in the agreement had improved service of process effectiveness. Provisions in the agreement specified the rules of service by category and gave the courts access to electronic postal records, so they could track the delivery status of individual notices.

264. Access to electronic address records by the courts expedited the service of process, but there were still bottlenecks in the courts' internal processes for service. Courts obtained access to databases of addresses and municipal registries of births, deaths and marriages. Nevertheless, the FR team

¹⁹² Recommendation 7, page 15.

¹⁹³ Regional Justice Survey Serbia, World Bank, 2021.

¹⁹⁴ Procedural laws require that parties be notified via service of process at several stages in every case, and court decisions take effect on the date that the process is served, so efficient service of process is crucial for court efficiency, productivity and quality.

¹⁹⁵ I.e., difficulties in locating the address of the parties, a high percentage of failed attempts of service, easy avoidance of service, and the Postal Service's failure to make the delivery of notices a priority.

¹⁹⁶ Service may be made either at the recipient's residence or at his/her workplace. If the intended recipient or the legally defined alternative refuses service or declines to sign the receipt, service still is considered executed, and the server records this information on the delivery slip. The CPC also permits electronic delivery, which could be particularly effective in communicating with businesses, attorneys, and expert witnesses.

¹⁹⁷ The amendments to the Civil Procedure Code confirm to the opinion of Venice Commission on draft civil procedure code forms 26 July 2011 (DG-HL (2011) 10). The Venice Commission recommended that delivery of service be made to the specific person whenever possible. If personal delivery is not possible, the address from the official registry should be used.

¹⁹⁸ The text is available at <https://aks.org.rs/aks/wp-content/uploads/2017/08/TEHNOLOSKO-UPUTSTVO-JP-POSTE-SRBIJE-31-07-2017.pdf>. The first set of technical Instructions were adopted in April 2017, but they were amended in July 2017 due to intense criticism from lawyers and the general public.

encountered reports that the courts' administrative staff felt the excessive case numbers caused internal delays in the service of process, particularly in civil departments.

265. An analysis done by a USAID project¹⁹⁹ found service of process via the Postal Service still was the predominant method of service. The study, published in 2018, found it was rare for courts to use tracking of service by available electronic services, and that the CMS in courts were not connected to postal e-services. Courts also rarely used the available self-standing postal applications, such as the Electronic Register of Received Mail (EPK) application.

266. In 2020 ,a software for the automatic processing of parcels was developed for Serbian courts and it was being piloted in 2021 in the Basic Court in Nis and some other courts. Basically, the software covers the printing and bar coding of all documents, envelopes, and receipts, and addresses can be checked through the system in the postal registry. The activity is a part of the USAID Rule of Law Project.

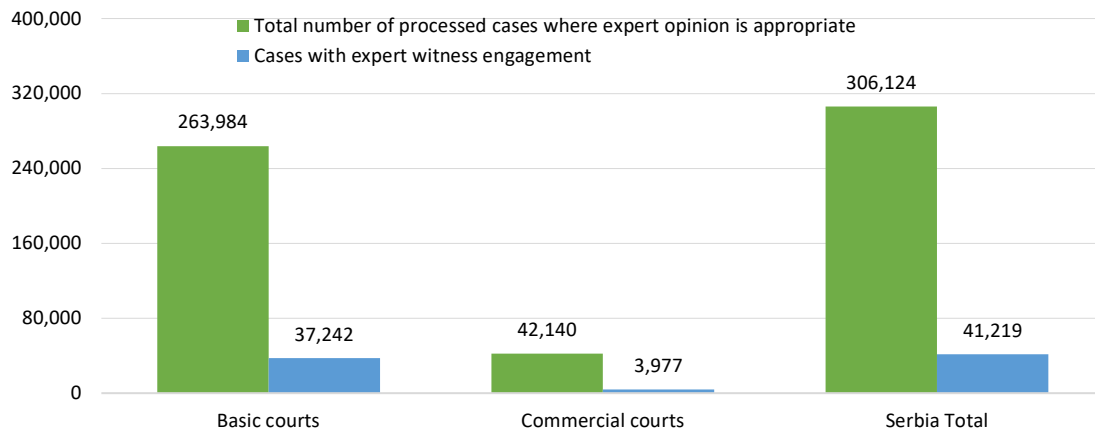
2.3.5.3. The Use of Expert Witnesses

267. Recent World Bank data²⁰⁰ provided no support for a common view that, in general, experts are used in too many cases. On average, expert witnesses in Serbia appeared in only 13.5 percent of civil and commercial litigation cases, criminal cases and commercial offenses, as displayed in Figure 50. Expert witnesses breached the deadline in more than 50 percent of all reviewed cases in Basic Courts and in more than 40 percent of all reviewed cases in Commercial Courts. However, statistics indicated that the time required for expert witnesses to produce their opinions did not contribute to lengthy trials. Comparing the time for experts to generate their opinions to total trial times, the work of expert witnesses took less than 10 percent of total trial time.

¹⁹⁹ USAID Rule of Law Project, Problems with Service of Process and Possible Solutions, 1st submission - June 6, 2018.

²⁰⁰ The World Bank, Examining the Experts The Role of Expert Witnesses in Serbia, and How Reform Could Improve Efficiency and Quality of Justice, <http://documents1.worldbank.org/curated/en/154501560835036002/pdf/Examining-the-Experts-The-Role-of-Expert-Witnesses-in-Serbia-and-How-Reform-Could-Improve-Efficiency-and-Quality-of-Justice.pdf>. The data was collected for 2015-2017.

Figure 50: Expert witness engagement (compared to the number of civil and commercial litigation cases, criminal cases and commercial offenses)



Source: *Examining the Experts*, WB

2.3.5.4. Case Management

268. Serbia's courts generally still failed to use standardized forms and templates as recommended by the 2014 Judicial Functional Review, although some judges reportedly created their own and shared with their peers, and some templates were produced as the result of specific projects. An electronic database of templates and forms sponsored by the SCC would facilitate quicker case processing, contribute to practice harmonization, reduce the number of procedural mistakes and could reduce the number of appeals based on purely procedural issues.

269. Inefficiencies are still created by a lack of joinder of similar cases. In the FR 2014, Serbian stakeholders noted that there are many cases handled separately that could have been joined thus benefiting the parties and the court. A recent example of such cases are 56,342 military reservists' claims lodged with the Higher Courts that were not joined. Productivity norms²⁰¹ still do not encourage judges to join cases, and lawyers are reluctant to request it since it reduces their revenue opportunities. Interviewed judges point out that joining of cases is less optional in criminal than in civil cases. A positive example of internal coordination was presented by the Higher Court in Belgrade where presidents of criminal panels meet and, together with the court president, discuss possible joinders. Legislative changes and guidance from higher instances could relieve the courts of this avoidable case duplication.

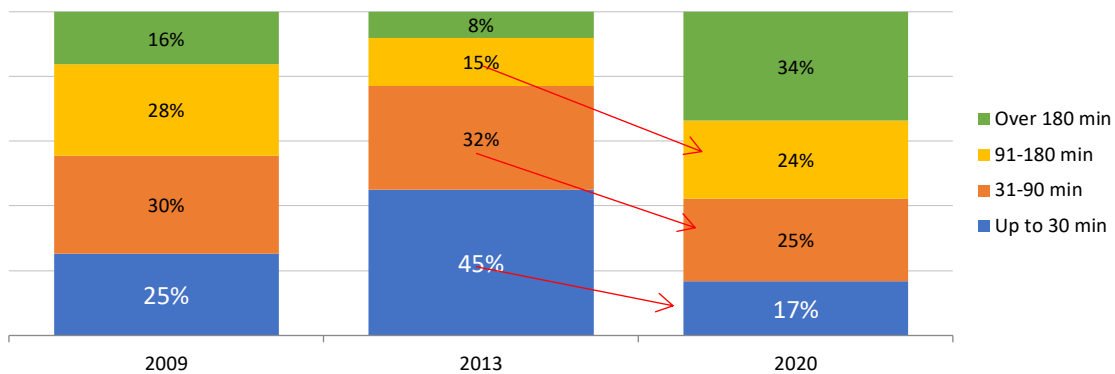
2.3.6. Efficiency in the Delivery of Administrative Services

270. The share of administrative services that were completed within 30 minutes reduced from 45 percent in 2013 to 17 percent in 2020, while the share of administrative services that took over 180 minutes increased by four times, from eight to 34 percent. Although there is no stated reason for these changes, it could be that the services that remained in courts²⁰² are more complex for the parties and the courts. See Figure 51 below.

²⁰¹ Official Gazette No. 81/2014, 142/2014, 41/2015 and 7/2016.

²⁰² Verification services have been transferred in 2015 from courts to private notaries.

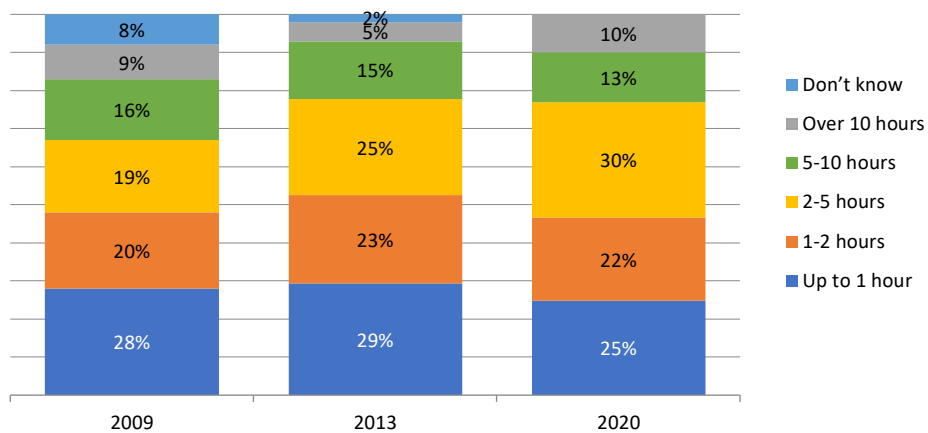
Figure 51: Citizens' Time Spent in Minutes to Complete an Administrative Task, 2009, 2013, 2020²⁰³



Source: Regional Justice Survey

271. Simultaneously, there were very few changes perceived by business users. One-quarter of the administrative services lasted up to one hour, while approximately one-third of the administrative services took two to five hours. Ten percent of administrative services, an increase of five percentage points compared to 2013, took more than 10 hours.

Figure 52: Businesses' Time Spent in Working Hours Complete an Administrative Task, 2009, 2013, 2020²⁰⁴



Source: Regional Justice Survey

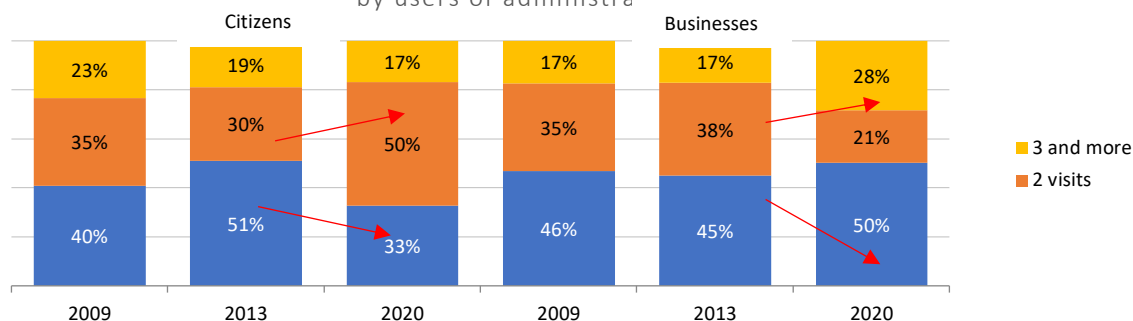
272. In 2020, 33 percent of the citizens needed to visit the courthouse only once to complete an administrative task, a decrease of 18 percentage points compared to 2013. However, an increased share of businesses (50 percent in 2020 compared to 45 percent in 2013) completed their task in one

²⁰³ Survey Question 2009, 2013: *How much total time did you spend completing this task? (Including paying tax in bank or post office related to this task.)* / 2020: *How many hours did it take you and other unpaid individuals to complete this administrative task?* Population base: general public with experience with court administrative services. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

²⁰⁴ Survey Question 2009, 2013: *Roughly estimate, how many total working hours your employees spent in completing this last administrative task?* / 2020: *How many total working hours did you and your employees spend to complete this administrative task?* Population base: business sector with experience with court administrative services. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

visit. The number of businesses that needed to visit the courthouse three times or more increased from 17 percent to 28 percent. A detailed comparison is illustrated by Figure 53 below.

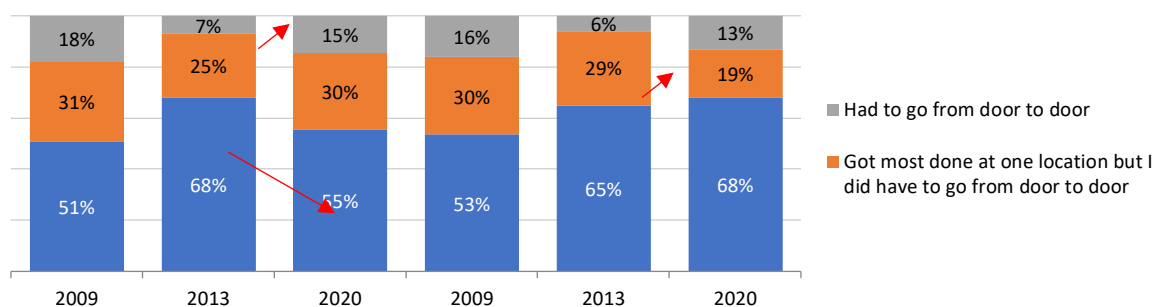
Figure 53: Number of Courthouse visits required to complete administrative task as reported by users of administrative services²⁰⁵



Source: Regional Justice Survey

273. The share of administrative tasks that the citizens could complete at one place dropped from 68 percent in 2013 to 55 percent in 2020, but increased for businesses by three percentage points from 65 percent to 68 percent. At the same time, the number of administrative tasks that required going from door-to-door doubled for both categories, from seven percent to 15 percent for citizens, and from six percent to 13 percent for businesses. Figure 54 lays out the details for 2009, 2013 and 2002.

Figure 54: Share of users of administrative services who did or did not go from door to door in 2009, 2013 and 2020²⁰⁶



Source: Regional Justice Survey

274. According to surveyed citizens, efficiency in the delivery of administrative services in 2020 declined, while for businesses, it improved slightly. One-half of the citizens in 2020 perceived that their administrative tasks could have been completed in a shorter time, compared to 38 percent in 2013. For businesses, 50 percent perceived that the services could have been faster in 2009, compared to 42 percent in 2013 and 40 percent in 2010. Surprisingly, some aspects of the services that were perceived less favorably than in the past, like the increase in the share of going from door to door.

²⁰⁵ Survey Question 2009, 2013, 2020: *How many times did you have to go to the courthouse to complete the task?* Population base: members of public and business sector with experience with court administrative services total target population. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

²⁰⁶ Survey Question 2009, 2013, 2020: *While you were completing your administrative task, did you have to go from door to door or were you able to complete the task at one location?* Population base: members of public and business sector with experience with court administrative services total target population. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020.

275. **The results of the Regional Justice Survey described in this section point out some of the weaknesses of court services that need to be addressed.** Although the administrative tasks remaining with the courts are among the more complex ones, the system can still improve more of its procedures to reduce the number of visits and the time needed to complete the tasks. Identifying reasons for the increases in waiting times and visiting multiple doors would be the first step towards increasing of courts' efficiency in administrative tasks.

2.4. Impact of the Covid-19 Pandemic on Court Efficiency

276. **Unsurprisingly, in 2020 Serbian courts received and resolved fewer cases than they did in 2019; however, the demand declined by 16 percent and dispositions declined by 11 percent.** In 2019, courts received 2,224,102 cases while 1,867,911 were received in 2020. The lower number of incoming cases in 2020 was due not only to the COVID-19 pandemic, but also to the transfer of more enforcement authority to public bailiffs at the beginning of the year. The Administrative Court was the only court that received more cases in the first half of 2020 compared to the same period in the previous year, due to the so-called electoral cases.²⁰⁷ The only three court types that managed to produce clearance rates that exceeded 100 percent in 2020 were the Appellate Courts, the Basic Courts, and the Commercial Courts. However, all three court types benefited from lower incoming cases as their dispositions also decreased in comparison to the previous year.

277. **Also, in 2020, courts disposed of a total of 2,013,829 cases, compared to 2,268,769 cases disposed of during 2019.** This difference was a direct result of the state of emergency declared by the National Assembly due to the pandemic. From March 15, 2020, until May 6, 2020 the courts could act only on urgent cases, while hearings in all other cases were postponed indefinitely.

278. **At this point, the pandemic did not cause direct bottlenecks since the fall in productivity was followed by the fall in demand but once the crisis is over, most probably the courts will be swamped with cases that were not filed earlier or were directly caused by the pandemic (bankruptcy, insolvency, labor, and unpaid debt disputes due to the economic crisis).** Presumably, the backlog will increase due to lower court activity in 2020 and the aforementioned higher incoming caseloads.

Box 16: Mitigating the Effects of Lockdowns on Court Procedures

Lessons learned during the COVID-19 pandemic should encourage Serbia to encourage e-Justice tools that would increase the efficiency of courts at any time. Once the National Assembly adopted its Decree on Time-limits in Court Proceedings, around March 26, the MoJ instructed the courts to conduct proceedings against persons who violated self-isolation measures via video link. During the State of Emergency declared on 15 March 2020, time limits for submitting legal briefs did not apply from 15 March 2020 until 7 May 2020.

These measures were criticized by the Serbian Bar Association and the Ombudsman -- the Bar Association argued an amendment to the CPC was required to allow the videolink hearings, and the Ombudsman argued the defendant and his or her counsel must have access to the necessary technology in a private room for confidential communications, without the presence of any third parties, and that their communication could not be limited to 30 minutes. Finally, the Government passed a Decree on the Manner of Participation of the

²⁰⁷ 2020 was an election year in Serbia, and an appeal may be lodged with the Administrative Court against any decision of the Republic Election Commission.

Defendant in the Main Trial in Criminal Proceedings Held during the State of Emergency Declared on 15 March 2020 (Official Gazette, No. 49/2020), which was in force until 7 May 2020. As of April 2021, there still was no determination of any possible legal or constitutional issues about decisions made in connection with online trials.

As of early 2021, Serbia still lacked clear, relevant legislation and rules, equipment to conduct video trials efficiently and fairly, as well as insufficient interest on the part of the judiciary in the issues presented by video trials. Yet considering the continuing challenges to court operations posed by COVID-19 around the world after more than a year of the pandemic, increased use of video hearings has been an important tool for maintaining some level of efficiency in court proceedings. Most, if not all of the EU Member States have promoted video hearings by adopting legislative amendments (Germany has had video trials in its procedural laws since 2001) or ad hoc decrees. While the Forum of Judges of Serbia started the implementation of a project "Online Trial - Advantages of Remote Trial" in December 2020 with the support of the Regional Partnership Fund of the Kingdom of the Netherlands (NFRP-MATRA), the Government was still silent on video trial issues as of April 2021.

There are e-Justice tools, other than online hearings, that help preserve court efficiency and uphold the rule of law, such as e-Filing, e-Service of Process, and various online tools for acquiring official documents like land registry excerpts. These all facilitate the delivery of judicial services without the need for physical presence. Some of these tools already exist and are regularly used in Serbia, such as the e-Bulletin Board and e-Auctions in enforcement execution.

2.5. Recommendations and Next Steps

The 2014 Functional Review provided eight actionable recommendations to improve court efficiency. Some of the recommendations have been implemented over time, either fully or partially, with varying degrees of success. However, some were left pending.

Recommendation 1: Upgrade statistical reporting on court efficiency.

Existing statistical reports, although detailed, lack specific dimensions recognized by the Functional Review as significant for successful monitoring of the judicial system. The SCC's portfolio of reports should be expanded.

- Establish a Working Group with representatives of the SCC, HJC, and MOJ. (SCC, HJC, MOJ - short-term)
- Revise existing reports and specify forms for:
 - o Aging list of resolved cases
 - o Tracking of delegated cases and reporting them in order to avoid duplication
 - o Tracking of probate cases in courts and assigned to public notaries (exclude cases disposed by public notaries from court dispositions)
 - o Average disposition times based on actual data (Working Group – short-term)
- Define data needed to facilitate generating of specified reports. (Working Group – short-term)
- As appropriate, develop a list of the data fields to be included in the courts' CMS (and relevant reporting/business intelligence tools if applicable) to facilitate report generation. (Working Group – medium-term)
- Prepare and disseminate materials to all staff responsible for data collection and reporting in the courts, the HJC, and the MOJ. (SCC, HJC, MOJ – medium-term)
- Inform the public about the upgrade of statistical reporting on court efficiency through the SCC's website and press release. (SCC – medium-term)
- Periodically disseminate reports to the public. (SCC – continuous)

Recommendation 2: Equalize caseloads in courts.

Caseloads and workloads are unevenly distributed among courts and within courts, with no clear pattern. The following activities aim to analyze unequal caseload distribution and review rules on the delegation of cases among courts. Within courts, they seek to review the distribution of tasks and responsibilities among judges, legal associates, court bailiffs, and clerks/typists, ensuring that administrative and procedural work is effectively delegated to non-judge staff.

- Analyze unequal caseload distribution in Serbia and review rules and practices on the delegation of cases. (SCC – medium-term)
- Analyze experience from comparator jurisdictions regarding optimal caseload distribution. An example is Croatia, which, instead of territorial jurisdiction of appeals, randomly assigns appeals through a CMS and permits second-instance County Courts to decide appeals from Municipal Courts in civil and criminal cases. This reduces the time to decide appeals and evens out the workload. This reform has also increasingly harmonized case law across the court system, improving Court Quality. (SCC – medium-term)
- Review the existing allocation of judges to cases. Analyze applicable rules and statistical data. (SCC – medium-term)
- Investigate the possibility of (temporary or permanent) relocation of judges to more burdened court locations. (SCC – medium-term)
- Consider changing the jurisdiction of the SCC relative to the Appellate Courts to direct fewer cases to it because cases should be heard at the lowest jurisdictional level possible. (SCC, MOJ – medium-term)
- Prepare a proposal for amendments of related laws and bylaws if appropriate. (SCC, MOJ – medium-term)
- Monitor implementation of the case-weighting formula. (SCC, MOJ – medium-term).
- Inform the public of carried-out activities through the SCC web page and press releases. (SCC – continuous)

Recommendation 3: Unify practices for the opening of a new case.

There is no agreed-upon definition of what constitutes a case or agreement on how cases are processed and reported. This, in turn, inflates the number of cases counted in court statistics. Existing practices relating to the opening of new court cases should be revised.

- Examine procedural rules and Rules of Court Procedure and analyze individual court practices to identify what constitutes a case. (SCC – medium-term)
- Adopt clear and stricter rules in the form of guidelines in defining a case. (SCC – medium-term)
- Disseminate prepared guidelines and organize workshops in regional centers. (SCC – medium-term)
- Implement newly adopted rules for CMS and automatically disable incompliant practices in the opening of a new case. (MOJ, SCC – medium-term)
- Monitor courts' compliance with newly adopted rules through regular inspections. (HJC, MOJ – medium-term)

Recommendation 4: Revise Commercial Courts' jurisdiction over commercial offenses.

A sudden surge of incoming commercial offenses, triggered by the implementation of the new Accounting Act, caused a bottleneck in the Commercial Courts. The jurisdiction of Commercial Courts

over commercial offenses should be revised in line with comparator jurisdictions to identify possibilities for legislative amendments that would decrease their burden.

- Establish a Working Group consisting of SCC, MOJ, and Commercial Courts representatives. (MOJ – short-term)
- Analyze the Commercial Court’s workload of commercial offenses over the last four years. (MOJ, Working Group – short-term).
- Identify examples from comparator jurisdictions concerning commercial offenses. (MOJ, Working Group – medium-term)
- Using these analyses and the examples identified, prepare amendments to related laws and bylaws to relieve the burden on Commercial Courts. (MOJ, Working Group – medium-term).

Recommendation 5: For multiple cases with identical or similar factual issues, consider consolidating cases or adjudicating a pilot case and applying the findings to closely related cases.

- Analyze current experience with multiple cases that have identical or similar factual issues. (SCC – short-term)
- Conduct comparative legal analysis of how other European countries approach multiple cases in light of the requirements of the Constitutional court decision form 2012.²⁰⁸ (SCC, MOJ – short-term)
- Explore the possibility of introducing a pilot case procedure for specific types of cases (e.g., consumer protection). (MOJ – medium-term)
- Evaluate the processing of cases under such a pilot case procedure; determine lessons learned, and consider expanding the process to other types of cases. (HJC, SCC – long-term)

Recommendation 6: Conduct further analysis to determine the reasons for low clearance rates in the Administrative Court in 2018 and an improvement in clearance and dispositions in 2019.

While other courts (of general and special jurisdiction) displayed efficiency variations between courts and over time, it can be easier to identify the factors that determine efficiency in a more limited setting, holding constant the type of cases.

- Determine the role of changes in resources and practices in both the challenging year of 2018 and the improved year of 2019. Infer lessons for the Administrative and other courts. (SCC – short-term)

Recommendation 7: Remove procedural obstacles for timely case resolution.

Long times to disposition and a significant backlog of ‘old’ cases remain the primary problems in Serbian courts. The activities suggested below are intended to identify procedural obstacles to timely case resolution. (HJC, SCC, professional associations – medium-term)

- Create joint Working Groups among judges and private attorneys to identify and develop means for addressing practices causing delays in processing cases. (MOJ – short-term)
- Using surveys and analysis of available data, develop statistical information on common bottlenecks to inform the Working Group discussion. (SCC, MOJ – continuous)

²⁰⁸ Constitutional Court decision, IUz no. 51/2012 from 23 May 2013, Official Gazette, no. 49/2013.

- Develop proposals to tackle factors that contribute to delay (e.g., non-appearance of witnesses, parties, prosecutor, or judge; unnecessary expert witnesses, issues in process service). (SCC, MOJ – short-term)
- Select four to six pilot courts of various sizes to test identified solutions. (SCC – medium-term)
- Roll out changes in procedure and practice, amend laws and bylaws and deliver training for courts. (MOJ, SCC, JA – medium-term)

Recommendation 8: Expand SCC’s competitive Court Rewards Program to recognize additional initiatives by lower courts. (SCC – short-term)

Recommendation 9: In evaluating the performance of judges, take into account the complexity of cases as well as the number of cases resolved to encourage judges to prioritize older and more complicated cases, rather than prioritizing the quick resolution of simpler cases. (HJC – medium-term)

- Establish a working group to amend the Rules on the evaluation of judges. (HJC– short-term)
- Draft amendments to the Rules on the evaluation of judges to take into account the complexity of cases. (HJC – medium-term)

Recommendation 10: Consider repealing the 2016 legislation that allows for the filing of complaints in connection with the protection of the right to a trial within a reasonable time.

- Explore other avenues for protection of the right to a fair trial within a reasonable time. (HJC, MOJ – medium-term).

Recommendation 11: Monitor the work of private notaries in probate cases (workloads, costs, quality, and integrity).

Limited data is available in Serbia on the efficiency or effectiveness of having public notaries handle probate cases. Lack of procedural proficiency, un-harmonized practices, and the absence of cooperation of the Chamber of Public Notaries with the courts was identified as critical problems in their performance.

- Analyze data on the use of private notaries to assess their effectiveness and impact on the court performance. For more refined data/reports, see Recommendation 1. (MOJ, SCC – short-term, ongoing)
- Identify and analyze courts’ practices, including which cases are given to public notaries and what criteria are used for such assignments, exclusions, and exemptions. (MOJ, SCC – short-term)
- Identify laws, bylaws and/or other documents that regulate the processing of probate cases, including the jurisdiction of public notaries over probate cases. (MOJ, SCC – short-term)
- Analyze examples from comparator jurisdictions and prepare amendments to identified regulations to streamline the assignment of probate cases to public notaries. Consider the transfer of jurisdiction over subsequently found assets to private notaries. (MOJ, SCC – short-term)
- Adopt legislative amendments and prepare implementation instructions for courts. (MOJ, SCC – medium-term)
- In cooperation with the Chamber of Public Notaries, provide mandatory practical training for public notaries on procedural matters. Provide certificates for attendees. (MOJ, Chamber of

Public Notaries – medium- term)

Recommendation 12: Prepare a database of templates and standardized forms.

Serbia’s courts generally still failed to use standardized forms and templates as recommended by the 2014 Judicial Functional Review, although some judges reportedly created their own and shared them with their peers, and some templates were produced as the result of specific projects. Templates and standardized forms in Serbian courts would facilitate a consistent approach to procedural decisions, contribute to practice harmonization, reduce the number of unintentional mistakes, fast-track daily decision-making and reduce the number of appeals.

- Form Working Groups among judges of all instances divided by case type, identify the most frequent routine decisions/documents and develop templates in a standard file format such as MS Word. (SCC – short-term)
- Create an internal national database and publish created templates. Disseminate access information among judges and associates and provide a contact for suggestions. (SCC – short-term)
- Maintain a permanent group of judges for regular updates of existing templates and for adding new ones. (SCC – continuous)

Recommendation 13: Streamline service of process in courts

The Serbian judicial system should continue reducing the requirements for service of process and reassessing arrangements for the delivery of service.²⁰⁹

- Analyze current administrative procedures for service of process as defined by the Rules of Court Procedure. Analyze practices in several courts of different sizes. (MOJ, SCC, Courts – short-term)
- Collect and monitor data on service of process, including attempts and costs, and identify sources of variations. (MOJ, SCC, Courts – short-term)
- Analyze the effects of the new contract signed with the Postal Service for the needs to increase training and raise awareness among postal officers of their requirements and the sanctions for abuse. Create a plan to monitor results and report on changes. (MOJ – short-term)
- Identify possibilities for simplification of administrative procedures by using available ICT solution models already piloted by USAID in some courts. Eliminate administrative bottlenecks and reorganize administrative procedures. Implement electronic printing and sorting of envelopes. (MOJ – short-term)
- Organize administrative services in courts more efficiently and effectively by employing faster and simpler working methods for service of process administration. (HJC, MOJ, SCC– short-term)
- Continue working with courts to build flexibility into their budgets so that they can innovate, for example, by contracting with private couriers or delivery people. (HJC, MOJ – medium-term)
- Provide training to courts on service of process rules and possibilities and encourage them to take a proactive approach to manage service of process. (SCC, JA – medium-term)
- Amend procedural laws to create a presumption of continuous service after the first service of process, with the party required to notify the court of any change of address and sanctions for non-compliance. (MOJ, HJC – medium-term)
- Create guidelines for the reorganization of service of process administration in courts,

²⁰⁹ Pertaining to Recommendation 8 from 2014 Functional Review, Efficiency in Justice Service Delivery chapter

disseminate these among courts, and support their implementation. As necessary, amend the Rules of Court Procedure. (MOJ, SCC – medium-term)

- Inform the public about the amendments and new procedures. (MOJ, SCC – continuously)

Recommendation 14: Improve the efficiency of court bailiffs' work.

- Consider replicating a practice adopted by the Basic Court in Krusevac requiring bailiffs to record their work in a specifically developed IT application, allowing the court to monitor bailiffs' work. This was acknowledged in the 2019 Court Rewards Program. (SCC – short-term)

Recommendation 15: Increase transparency of private bailiffs' work.

Private bailiffs took over a substantial share of enforcement cases in Serbia, but very little information is available about their performance. This recommendation is designed to increase the transparency of private bailiffs' work by publishing reports on their caseloads, workloads, case assignment,

efficiency, and timeliness.²¹⁰

- Analyze currently publicly available information on private bailiffs' work (efficiency, effectiveness, quality, transparency). (MOJ – short-term)
- Investigate practices in comparator jurisdictions. (MOJ – short-term)
- Prepare statistical and narrative reports. Determine the frequency of publication, at least annually and more frequently if necessary. (Chamber of Private Bailiffs, MOJ – short-term)
- Adopt or amend regulations to support these transparency measures. (Chamber of Private Bailiffs, MOJ – short-term)
- Inform the public about bailiffs' activities through the Chamber's web page and press releases. (Chamber of Private Bailiffs – short-term)

Recommendation 16: Improve public satisfaction with administrative services by identifying reasons for the increases in waiting times and for visiting multiple doors, or multiple times.

- Conduct a detailed workflow analysis to assess the efficiency of administrative services in courts. (HJC, MOJ – medium-term)
- Draft clear procedural instructions for the public and court staff and streamline procedural bylaws in order to decrease waiting times and multiple visits to the courts. (HJC, MOJ – medium-term)

Recommendation 17: Establish preparatory departments.

Judges, court staff, and practicing attorneys acknowledged that preparatory departments in all medium- and large-sized courts²¹¹ would be useful, particularly for ensuring that cases are ready for hearing. However, the absence of staff or commitment to the process has hindered implementation so far. Although envisaged by legislation, preparatory departments have not been consistently established among medium-sized and large courts in Serbia.

- Establish preparatory departments in those medium-sized and larger courts that lack them.

²¹⁰ Pertaining to Recommendation 3 from FR2014 Efficiency in Justice Service Delivery chapter.

²¹¹ Pertaining to Recommendation 3 from FR2014 Efficiency in Justice Service Delivery chapter.

Collect baseline data on time to disposition and procedural efficiency, and monitor results to continue monitoring the effects of the establishment of preparatory departments. (SCC, HJC – short-term)

- Disseminate information about results to all courts and recognize good performance. (SCC, HJC – medium-term)

Recommendation 18: Tighten hearing scheduling practices.

- Scheduling and holding hearings remain a weak spot of Serbian procedural efficiency. An increasing number of hearings in a single case, many canceled and adjourned hearings, and an increasing time lag between case filing and the first hearing continue to impede court efficiency and timeliness. There have been no noticeable efforts to implement changes since the 2014 Functional Review.
- To maximize the use of limited courtroom facilities, schedule hearings throughout the day, except in extraordinary circumstances. (SCC, HJC/Courts – short-term)
- Collect and analyze data on canceled and adjourned hearings and their reasons. (SCC/Courts – short-term)
- Require that judges set the next hearing date within a standardized timeframe at the close of each hearing, with only limited exceptions. (SCC/Courts – short-term)
- All courts must use existing case management software to schedule court hearings electronically. Provide training as necessary. (SCC, JA, MOJ – medium-term)
- Collecting, monitoring, and analyzing data on scheduling patterns, such as reasons for adjournment, could inform future reforms.²¹²

Recommendation 19: Consistently impose procedural discipline measures.

- Develop clear guidelines requiring judges across all courts to consistently apply measure of procedural discipline to expert witnesses, parties and attorneys consistently for missed deadlines (allowing for specific exceptions and documented reasons for leniency) and for abusive practices that delay case disposition. (SCC – short-term)

Recommendation 20: Expand on the use of e-Justice tools, such as video hearings, developed during the COVID-19 pandemic to increase the efficiency of courts.

- Implement due process taking into consideration rules, such as protection of attorney-client privilege, equal access to technology, principle of orality, in line with the practice of the European Court of Human Rights. (MOJ, SCC – medium-term)

²¹² Pertaining to Recommendation 3 from FR2014 Efficiency in Justice Service Delivery chapter

3. PUBLIC PROSECUTORS' OFFICES

Efficiency, Timeliness, and Productivity of Prosecutors' Offices

3.1. Main Findings

279. Serbia's system of prosecution has undergone substantial change since an adversarial system was introduced in 2013, but performance measurement for Serbia's prosecutors is too basic to evaluate the impact of these reforms or the overall performance of prosecutors' offices. Prosecutors still lack support on using performance measurement data to improve case management, develop successful funding requests, foster public support, and respond to criticism.

280. Available data for prosecutorial services still was far less extensive than it was for courts, and the data that was reported was of limited use because of the collection methods and formats. There was no unified electronic case management system for the prosecutorial system in place by the end of 2019. Thus, the preparation of those reports depended highly on manual data collection and individual interpretation, which made the reports prone to inconsistencies and inaccuracies.

281. Serbian PPOs generally processed cases in a more timely manner in 2018 and 2019 compared to previous years due to an increase of nearly 25 percent between 2016 and 2019 in the number of public prosecutors working on cases. As a result, caseloads per prosecutor decreased by 25 percent in Basic PPOs, by 33 percent in Higher PPOs, and by 18 percent in Appellate PPOs.

282. In 2017, the total number of PPO cases carried forward from one year to the next also started decreasing after three years of consistent increases. Cases carried forward from one year to the next are characterized as backlogs. Appellate PPOs had very few carried-forward cases. The number of carried-over cases in Basic PPOs grew until 2016-2017, then declined. However, the number of carried-forward cases in Higher PPOs grew every year between 2014 and 2019.

283. Related to backlogs, clearance rates consistently increased from 2014 through 2019.²¹³ The improvement in clearance rates for Basic PPOs was notable. The average clearance rates for Higher PPOs were over 90 percent, but there was an increasing trend of backlogs. The four Appellate PPOs each had clearance rates of 100 percent over the six years from 2014 through 2019.

284. Clearance rates do not indicate whether the oldest and/or most complicated cases were concluded within reasonable timeframes. The pressure to resolve more cases as quickly as possible may mean that older and more difficult cases continue to age. This result undercuts public confidence in prosecutors and the judicial system overall, especially considering the impending statute of limitations expiration.

²¹³ Clearance rates are defined by dividing the number of resolved cases by the number of incoming cases.

285. There is still no concrete data on the age structure of pending cases.²¹⁴ Also, the information on aging cases would be very different if ‘unknown perpetrators cases,’ also known as KTN cases, were included.

286. There is room for improvement in the congestion ratio, a measure of delay that addresses the ratio of resolved to unresolved cases at the end of a year. Although they were improving, Basic PPOs continued to have the highest congestion ratios among the three PPO categories, with results two to six times higher than those of Higher PPOs. There was no congestion in Appellate PPOs.

287. Time to disposition is not tracked by Serbian PPOs. Estimates suggest that disposition times vary greatly, from less than a month to more than a year, depending on the level and location of PPOs. Disposition times are longer in Basic PPOs, but some Higher PPOs need improvement as well.

288. Across all PPO types, average dispositions per prosecutor were very similar to the trends for caseloads per prosecutor. From 2014 to 2019, there was an increase of 10 percent for average dispositions per prosecutor in Basic PPOs, and decreases in Higher and Appellate PPOs by 29 and 17 percent, respectively.

289. Because the responsibility for investigation has been transferred from courts to PPOs, there is a concern among prosecutors as to whether they have sufficient resources to process cases efficiently. The increase in prosecutors’ responsibilities must be followed by adequate resource allocation, which was not the case in Serbia.

290. There are significant and unexplained differences in the performance of different PPOs at the same level. Appellate PPOs, overall, are the most efficient of the three levels of PPOs. This suggests that, on average, their resources are matched appropriately with the demands for their services. Others specialized PPOs and specialized departments in Serbia faced performance issues.

3.2. Introduction

291. Caseload numbers for Serbian PPOs generally were higher than caseload numbers for the corresponding courts since PPOs identify their cases by individual perpetrators²¹⁵ while courts, as a rule, identified their cases by the event, which forms the basis of the charges and which could have involved many defendants. The FR 2014 identified efficiency in the delivery of prosecution services as a concern, but a lack of data inhibited more detailed analysis. Despite the shortcomings in data availability that still exist, enhanced data availability in this FR provides much more insight to prosecution services than it was possible in FR 2014.²¹⁶

²¹⁴ As in the 2014 Judicial Functional Review, this report uses theoretical average time to disposition to analyze the age structures in the absence of any ‘real’ data.

²¹⁵ These defendants may be adults, juveniles, unknown persons or legal entities, and/or the responsible person within a legal entity. Legal entities may also be perpetrators.

²¹⁶ 2014 Serbia Judicial Functional Review, p. 12.

292. Due to the lack of more extensive data that covers all of 2014 to 2019, this report has focused on criminal complaints (adult, juvenile, and legal persons) and commercial offenses.²¹⁷ Criminal complaints against unknown perpetrators are shown separately due to a substantial pending stock accumulated over the years that would distort the overall figures. Other specific case types are also analyzed separately and excluded from the totals.

293. Appellate PPOs data for 2014 to 2019 were collected specifically for this report from the PPOs via the RRPO and the SPC. The data includes the following case types or case stages: second- and third-instance criminal complaints, “various criminal cases”, complaints by injured persons, indictments, “corruption criminal offenses” and other cases.²¹⁸

294. Due to the nature of their caseloads, the work of specialized PPOs has been analyzed separately in this FR. Although the Special Prosecutor’s Office for War Crimes and the Special Prosecutor’s Office for Organized Crime handle relatively few cases compared to other Higher PPOs, their cases generally are complex and generate significant public interest. The higher caseloads of the specialized department for high-tech crime and the specialized departments to combat corruption also are examined separately.

3.3. Caseloads and Workloads

3.3.1. Overall Demand for Prosecutors’ Services

295. As was true for the earlier FRs, overall demand for prosecutorial services is assessed through caseloads and workloads, with ‘caseload’ defined as the number of incoming cases for a given year and ‘workload’ as the sum of the number of incoming and pending cases for a given year.

296. According to the CEPEJ 2020 report, based on 2018 data, the incoming caseloads of prosecutors in Serbia were significantly higher than in the EU27, the EU11 Member States, and the Western Balkans.²¹⁹ Serbian prosecutors in 2018 received 5.70 cases per 100 inhabitants, while the average of EU27 was 3.48. The EU11 Member States and Serbia’s Western Balkans peers reported 2.06 and 2.43 received cases per 100 inhabitants, respectively.²²⁰ See Figure 55 below.

²¹⁷ The availability of data and the methodology used in this FR differ from what was available for the Prosecutorial FR published in January 2019, so some comparisons may be not be valid and others should be made only with caution, if at all. The Prosecutorial FR is available at

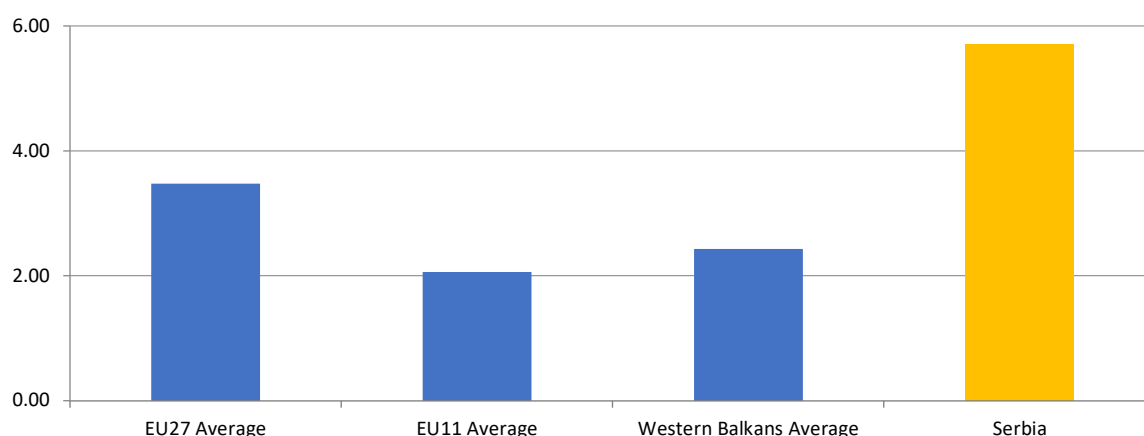
<https://www.mdtfjss.org.rs/archive/file/SRBpercent20Prosecutionpercent20FRpercent20Decemberpercent202018.pdf>.

²¹⁸ Registries KTŽ, KTR, KTR I, KTPO, KTPI, Kreh, corruption criminal offenses, other cases.

²¹⁹ CEPEJ reports data aggregated and disaggregated for 47 Member States. In this analysis, these data were used for calculation of European Union and Western Balkans averages. EU27 stands for all European Union Member States while EU11 is made up of the 11 newest Member States – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, Slovenia, and Croatia. The ‘Western Balkan’ countries are Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, and Serbia.

²²⁰ As was true for the CEPEJ analysis of Serbia’s 2018 data for dismissals and deferred prosecutions, the numbers for Serbia’s caseloads and workloads in the CEPEJ 2020 report included several types of cases that were not included in Serbia’s earlier data.

Figure 55: Number of Cases Received by Public Prosecutors per 100 Inhabitants



Source: CEPEJ 2020 report (2018 data)

297. The incoming caseloads of prosecutors in 2018, as calculated by CEPEJ, increased by three and a half times compared to 2016, primarily due to the changes in the reporting methodology, i.e., the addition of case types to Serbia's reported numbers. Previously, the number of received cases per 100 inhabitants had been decreasing; in 2014, it decreased from 3.15 to 2.77 and 1.61 in 2016. As described earlier in this analysis, unknown perpetrators and various other case types were introduced to cases reported to CEPEJ in Serbia's data for 2018. It also is not clear from the CEPEJ report what type of cases may be included in the statistics provided from every country – for instance, Croatia does not include unknown perpetrators in the reported number of cases handled by its prosecutors. Serbia's high figures also caused the Western Balkans average based on 2018 to rise, i.e., without Serbia's numbers, the Western Balkans average would have been 1.61 cases received by public prosecutors per 100 inhabitants.

3.3.2. Caseloads of PPOs

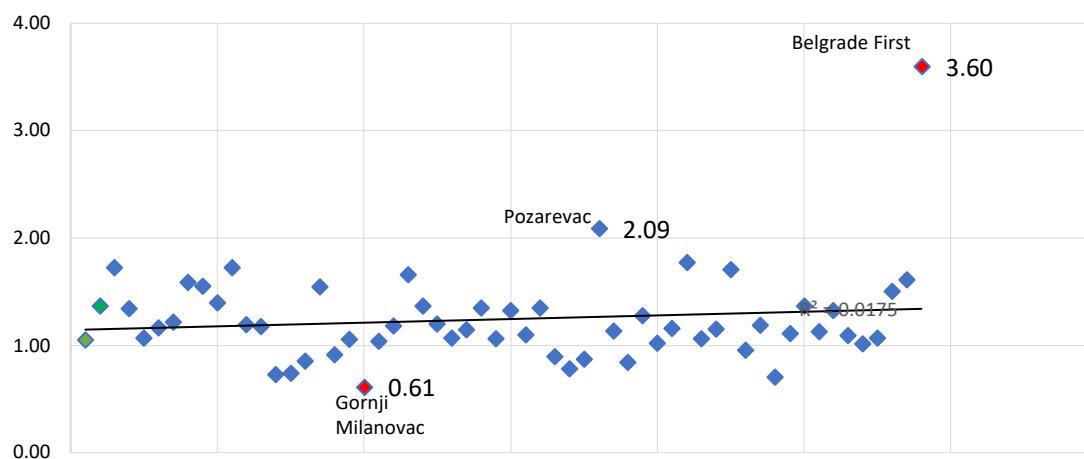
298. PPOs in the country's large urban areas did not always have the largest relative caseloads, and there also was no concentration of incoming cases in any particular region or for PPOs of any particular size. These conclusions are presented in Figure 56, below. For instance, in 2014, the small Basic PPO in Senta had the highest relative caseload, with 4.47 incoming cases per 100 inhabitants, while in 2015, the highest caseload of 2.51 cases per 100 inhabitants was recorded in the medium-sized Basic PPO in Vranje.²²¹ Serbia's largest Basic PPO, the First Basic PPO in Belgrade,²²² came in only sixth with 2.20 incoming cases per 100 inhabitants in 2014 and fifth with 2.21 in 2015, but it held first place in terms of incoming cases per 100 inhabitants from 2016 through 2019. Conversely, in 2019 the Second and Third Basic PPOs in Belgrade, each with an area of roughly 500,000 inhabitants, recorded only 2.12 and

²²¹ In terms of PPO size, the Basic PPO in Senta covers the population of 65,650 inhabitants and the area of 919 km² with two to three prosecutors, while the Basic PPO in Vranje covers the population of 109,762 inhabitants, the area of 1,995 km² with nine to 11 prosecutors.

²²² In absolute numbers, the First Basic PPO in Belgrade received the highest number of cases among Basic PPOs each year during the observed period. In 2019, the First Basic PPO received 16,888 cases, 5,620 cases were received in the Second Basic PPO in Belgrade, and 5,832 in the Third Basic PPO in Belgrade

2.33 incoming cases per 100 inhabitants, respectively. The Basic PPO in Novi Sad, Serbia's second-largest city, was 19th in 2019, with 1.34 received cases per 100 inhabitants.

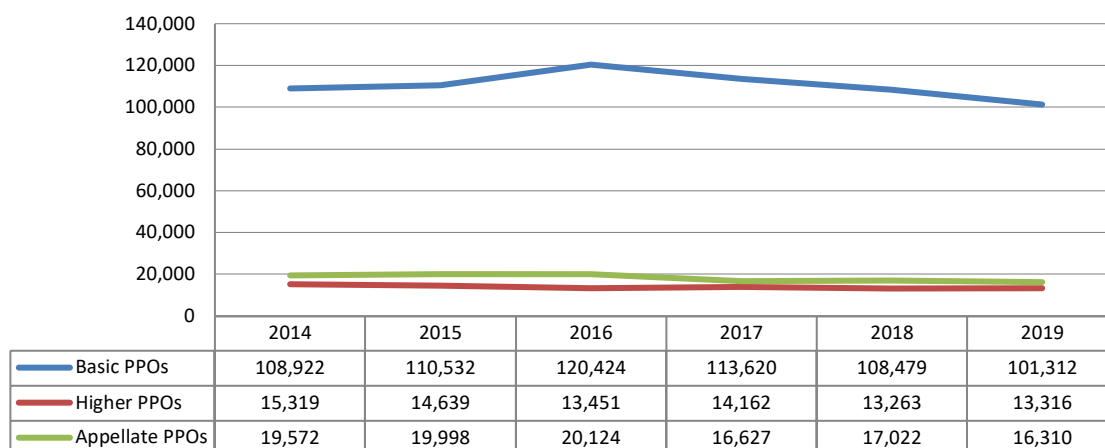
Figure 56: Incoming Caseloads of Prosecutors per 100 Inhabitants in Basic PPOs in 2019²²³



Source: RPPO Annual Report 2019 and Population Census 2011

299. In 2019, Basic, Higher, and Appellate PPOs received 130,938 new cases, which represented a seven percent increase in the caseload from 2014. Seventy-seven percent of the 2019 total, or 101,312 cases, were received by Basic PPOs. This compared to 76 percent in 2014. Higher PPOs received one-tenth or 13,316 cases in 2019, compared to 11 percent in 2014. Just over one-tenth of the total, or 16,310 cases, were received by the Appellate PPOs, compared to 14 percent in 2014. See Figure 57.

Figure 57: Received Cases in Basic, Higher and Appellate PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019 and Appellate PPOs Data

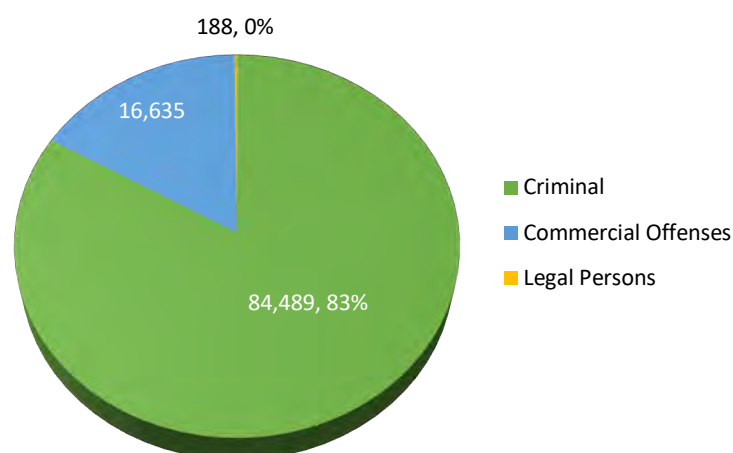
300. The seven percent increase for all PPOs from 2014 to 2016 was driven by the increased caseload received by Basic PPOs, which grew by 11 percent or 11,502 cases. In contrast, the caseloads

²²³ Red indicates Basic PPOs with the highest and lowest incoming caseload, and green are the Second and the Third Basic PPO in Belgrade.

of Higher PPOs decreased by 1,868 or 12 percent during the same period. The largest share of the cases received in 2016 were those involving adult and juvenile criminal cases in Basic and Higher PPOs (68 percent of the 153,999 cases), followed by commercial offenses (14 percent), and the 0.13 percent involving legal persons²²⁴ cases. Thirteen percent of the total incoming caseload was handled by the Appellate PPOs, which was an increase of three percent from 2014. From 2016 to 2019, the incoming caseload remained stable in Higher PPOs, while a decrease of 16 percent and 19 percent was witnessed in the Basic and Appellate PPOs, respectively. In 2020, Basic PPOs received 88,744 cases or 12 percent fewer cases than in 2019. Higher PPOs received 11,128 cases, a decline of 16 percent over the previous year. Both were caused by declines in the most significant case types: criminal cases and commercial offenses in Basic PPOs and criminal cases and juvenile cases in Higher PPOs. Legal persons cases continued to occupy a negligible portion of the PPOs caseloads in 2020.

301. The largest share of the incoming caseload in the Basic PPOs in 2019 were criminal complaints, 88,489 thousand or 83 percent. Commercial offenses represented 16 percent of these and the legal persons were 0,19 percent, as shown by Figure 58.

Figure 58: Received Cases in Basic PPOs by Case Type in 2019



Source: RPPO Annual Report 2019

Box 17: The continuing problems posed by the “various criminal cases,” included in the KTR registry

While ‘KTR’ cases made up a significant part of PPO received cases, they still represented a black hole as far as the efficiency of Serbia’s prosecutors were concerned. If ‘KTR’ cases were added to the total incoming caseload, they would comprise approximately 50 percent of all received cases in Basic and Higher PPOs, and 30 percent in Appellate PPOs from 2014 to 2019. In absolute numbers, Basic PPOs received 118,00 ‘KTR’ cases in 2018, Higher PPOs received 26,000, and Appellate PPOs received 5,000. From 2014 to 2018, more ‘KTR’ cases were received than resolved each year in Basic PPOs. The situation was somewhat better in Higher PPOs where, in 2016 and 2018, more ‘KTR’ cases were resolved than received.

²²⁴ Legal person cases are those involving legal entities such as corporations. They are tracked separately from the commercial offense cases which are brought against legal entities and/or natural persons for specific violations of regulations on economic or financial affairs.

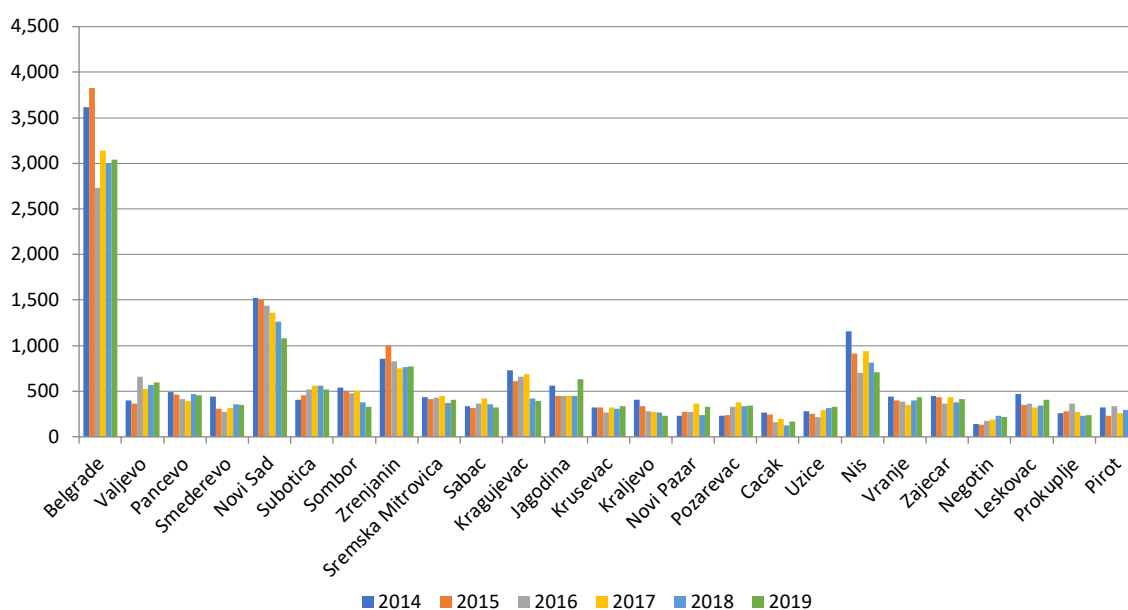
As of late 2020, there was no system in place to track the progress of different types of ‘KTR’ cases by all Serbian PPOs. Most cases in the KTR registry are based on requests, complaints, proposals, reports, and other acts of state bodies, legal entities and/or citizens, but once a prosecutor begins a formal investigation of the matter, the case is moved from the KTR registry to a different registry, e.g., ‘KT’

As the Prosecutorial FR noted, the failure of the reporting system to break down any details about the types of charges about the charge involved and or data about their handling made it impossible for the FR team to make a detailed assessment of their impact on prosecutorial performance. That was still true for this FR.

302. Available data did not explain the most significant caseload variations for individual Basic PPOs, and there was no analysis by the RRPO or the SPC made available to the FR team of the reasons for these differences. In general, the overall number of received cases increased each year for until 2016 and then stabilized, but there were exceptions. For example, the most significant yearly variation – an increase of 206 percent – was reported for the Basic PPO in Obrenovac in 2015 due to a jump in the number of criminal complaints. More specifically, that Basic PPO received 574 criminal complaints in 2014, 1,757 in 2015, 1,182 in 2016, 796 in 2017, 646 in 2018 and 798 in 2019.

303. The caseloads for Higher PPOs declined by 13 percent overall from 2014 to 2019, but the FR team also was not privy to any official analysis of the reasons for this phenomenon. In absolute numbers, 14 Higher PPOs saw an increase in their caseloads by a total of 354 cases, while the remaining 11 Higher PPO caseloads decreased by a total of 2,152 cases. As shown in Figure 59 below, 14 of 25 Higher PPOs received more cases in 2019 than in 2018. The highest increases were recorded in the Higher PPOs in Jagodina, Novi Pazar, Cacak, and Leskovac, by 41, 39, 29, and 18 percent, respectively. Conversely, the most significant decreases were more modest, by 16 percent in Kraljevo, 15 percent in Novi Sad, 13 percent in Nis, and 12 percent in Sombor.

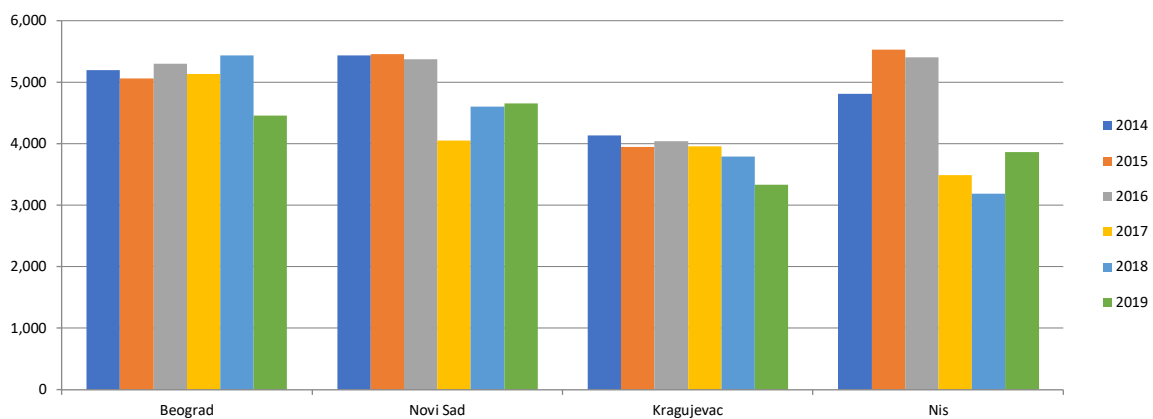
Figure 59: Received Cases in Higher PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019

304. From 2014 to 2019, the total appellate caseload fell by 17 percent and included most case types, but data did not reveal any specific reason(s) for this drop. The marked decline began in 2017 when all Appellate PPOs received fewer cases, but the most significant changes were recorded by the Appellate PPOs in Nis (with a 35 percent decline and 1,920 fewer cases) and Novi Sad (25 percent and 1,318 cases). By 2019, the Appellate PPOs in Belgrade and Kragujevac had joined the trend; Belgrade had 18 percent fewer cases than it had in 2018, and Kragujevac had 12 percent fewer. In Novi Sad, the incoming caseload remained stable from 2018 to 2019, while in Nis, it grew by 21 percent. See Figure 60 below.

Figure 60: Received Cases in Appellate PPOs from 2014 to 2019



Source: Appellate PPOs Data

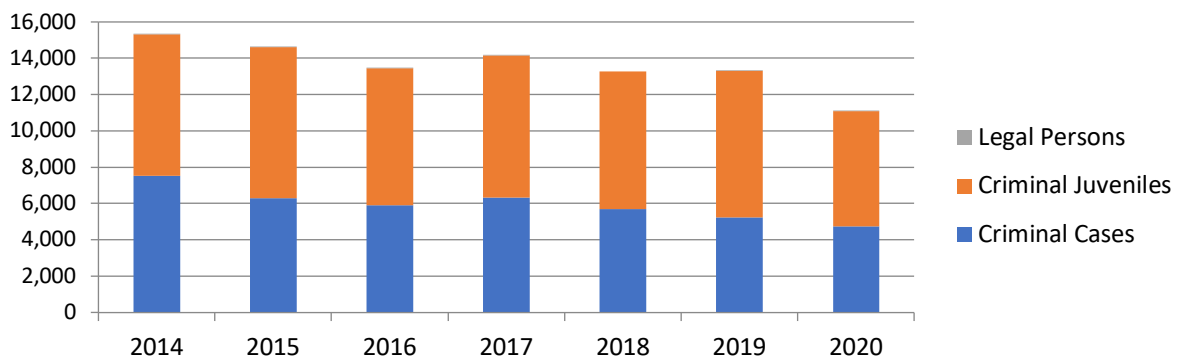
Box 18: Second and Third Instance Prosecution Cases

In 2019, 11,047 second-instance criminal complaints were received, 53 percent in Higher PPOs, 46 percent in the Appellate PPOs, and under one percent in the two specialized PPOs for organized crime and war crimes. There were 93 received third-instance criminal complaints, 30 in the Appellate PPO in Belgrade, 28 in Novi Sad and Nis, and zero in Kragujevac. Seven third instance cases were received in relation to specialized PPOs for organized crime and war crimes.

3.3.3. Prosecutors' Services by Case Type

305. In Higher PPOs, from 2014 to 2019, caseloads of criminal cases against adult defendants decreased by 30 percent while the criminal, and juvenile cases increased by three percent. There was an increase from seven to 18 received cases for the category of legal persons during the same period. In 2020, Higher PPOs received ten percent fewer criminal cases and 21 percent fewer juvenile cases than in the previous year, as shown in Figure 61 below. There were 43 newly received legal persons cases in 2020, exclusively due to Higher PPO in Belgrade incoming stock.

Figure 61: Received Cases in Higher PPOs by Case Type from 2014 to 2020



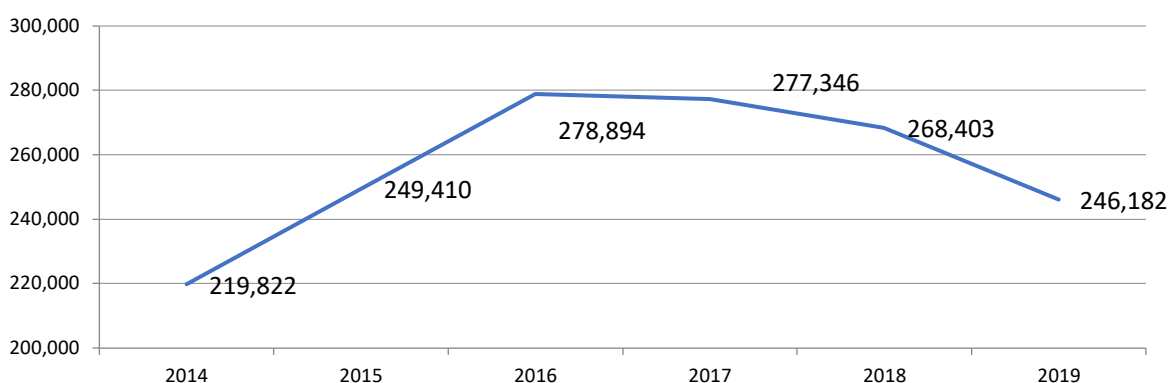
Source: RPPO Annual Reports 2014 – 2020

306. A 10-fold increase in the caseloads for commercial offenses from 2015 to 2016 was triggered by the implementation of the new Accounting Act²²⁵ and caused a bottleneck in PPOs that lasted through 2019. The Accounting Act was passed and took effect before prosecutors could develop procedures to handle these cases or seek the additional resources they needed to handle them. The number of received commercial offense cases jumped from 1,732 in 2015 to 21,178 in 2016 and still stood at 23,321 in 2017, 19,900 in 2018, and 16,635 cases and 2019. A new Accounting Act²²⁶ entered into force on 1 January 2020 but it did not contain any significant changes related to commercial offenses.

3.3.4. Workloads of PPOs

307. The total workloads of Basic, Higher, and Appellate PPOs, defined as the sum of received and cases carried over from previous years, increased by a total of 12 percent from 2014 to 2019, as shown in Figure 62. The workloads increased each year from 2014 to 2016 and then decreased gradually from 2017 to 2019, ending at a total of 246,182 cases.

Figure 62: Basic, Higher and Appellate PPOs Workload from 2014 to 2019



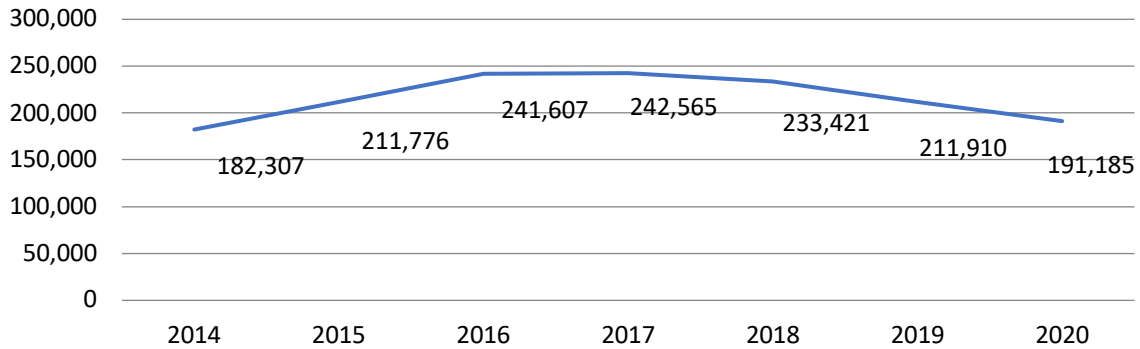
²²⁵ Official Gazette, No. 62/2013 and 30/2018. The Act requires the Business Register Agency to submit complaints for commercial offenses against all legal entities that do not submit annual financial statements or statements of inactivity. These cases are heard only in Serbia's 17 Commercial Courts and prosecuted by the corresponding PPOs.

²²⁶ Official Gazette, No. 73/2019.

Source: RPPO Annual Reports 2014 – 2019 and Appellate PPOs data

308. The greatest workload increase occurred in Basic PPOs from 2014 to 2017, a period which saw a 33 percent increase of approximately 60,000 cases. The described increase was connected to the new CPC and the transfer of investigation cases from courts to PPOs. However, Basic PPO workloads decreased by four percent in 2018 and nine percent in 2019. In 2020, Basic PPO workloads continued to decrease, by ten percent. See Figure 63.

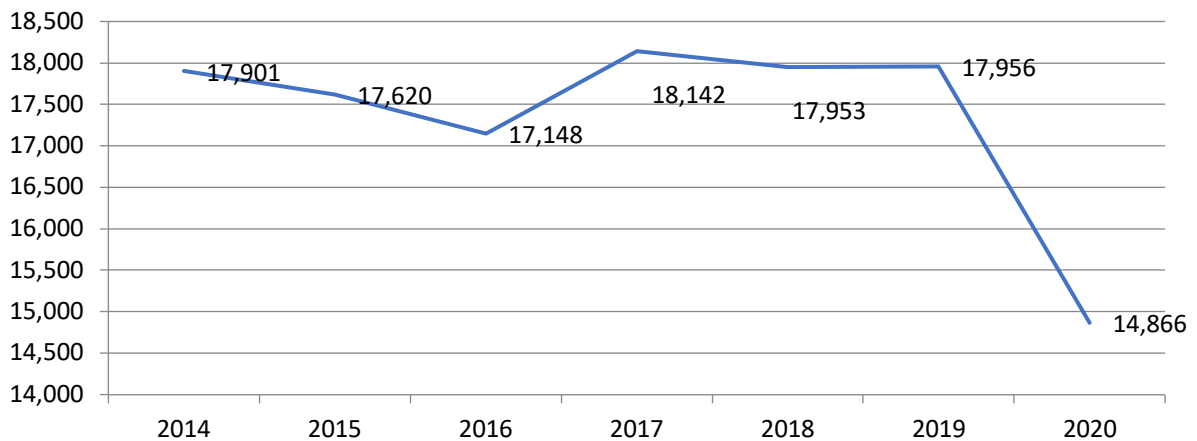
Figure 63: Basic PPOs Workload from 2014 to 2020



Source: RPPO Annual Reports 2014 – 2020

309. Higher PPOs workloads were relatively stable from 2014 to 2019, ranging between 17,000 and 18,000 cases. Since the clearance rates of Higher PPOs were between 93 and 96 percent (except for 2018, when 100 percent was reported), the fall in the workloads in 2015 and 2016, as illustrated in Figure 64, were caused exclusively by the lower numbers of incoming cases. With 14,866 cases in 2020, Higher PPOs workloads decreased by 17 percent.

Figure 64: Higher PPOs Workload from 2014 to 2020



Source: RPPO Annual Reports 2014 – 2020

310. The workloads of Appellate PPOs followed the same trends as their caseloads, growing by three percent from 2014 to 2016 and then dropping by 19 percent from 2016 to 2019

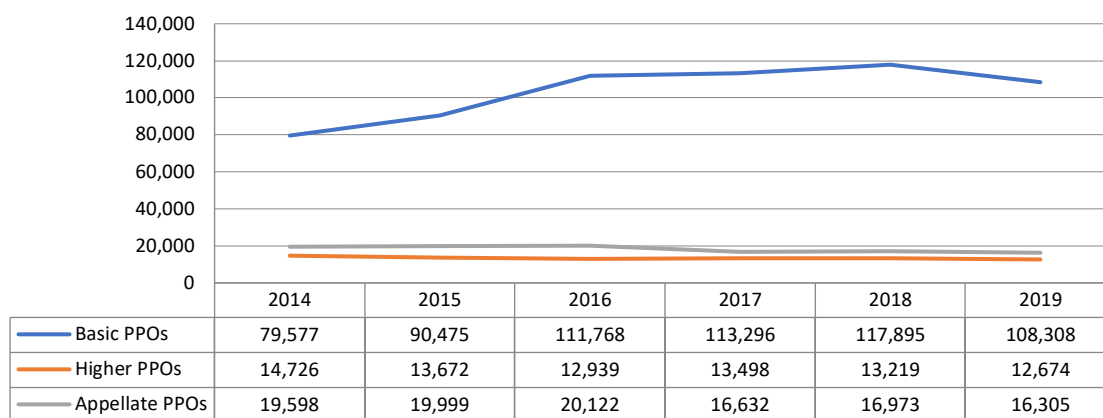
3.4. Efficacy and Efficiency

3.4.1. Case Dispositions

311. Improved disposition rates from 2014 to 2019 were the result of increased prosecutorial productivity overall, combined with the continuously rising numbers of operatively active²²⁷ prosecutors. Cases were disposed of by traditional dismissals, deferred prosecutions, or indictment and trial. While the absolute number of dispositions in a year is a measure of system productivity, a comparison of increasing and decreasing dispositions overall by PPO, or PPO type, can contribute to decisions about the distribution of resources and determine the impact of reforms. The comparisons also can help identify problems or bottlenecks within the system.

312. Overall dispositions tended to track the incoming caseloads and the workloads, i.e., increase and decrease correspondingly. From 2014 to 2019, the number of cases disposed of by all PPOs increased by 21 percent, including an increase by 36 percent in Basic PPOs and decreases by 14 percent in Higher PPOs and 17 percent in the Appellate PPOs. In Higher PPOs, the numbers of dispositions almost always were slightly below the number of incoming cases. In Appellate PPOs, however, the reduction was directly caused by a fall in their workloads, and the Appellate PPOs resolved as many cases as they received. See Figure 65. In 2020, both Basic and Higher PPOs reported lower dispositions, by eight percent and 11 percent, respectively.

Figure 65: Disposed Cases in Basic, Higher and Appellate PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019 and Appellate PPOs Data

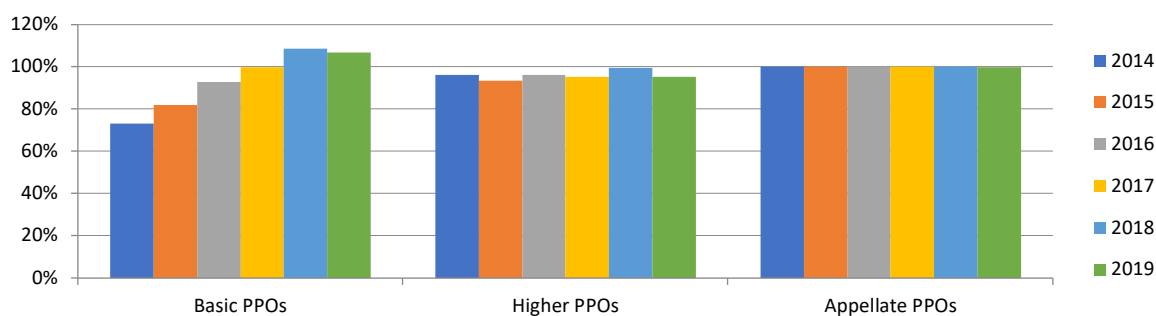
²²⁷ The number of incoming cases per prosecutor and dispositions per prosecutor indicators were calculated using numbers of operatively active prosecutors (i.e., prosecutors that actually worked on cases). There were 158 Higher PPO active prosecutors in 2014, 157 in 2015, 161 in 2016, 167 in 2017, 186 in 2018 and 206 in 2019. The FR team assumes the increases in 2018 and 2019 were due to the establishment of the four specialized departments to combat corruption, but the team could not obtain official confirmation of this assumption.

3.4.2. Clearance Rates

313. Average total clearance rates of Serbian PPOs consistently increased from 2014 through 2019, finally exceeding 100 percent in 2018 and 2019. Clearance rates are expressed as a percentage, obtained by dividing the number of resolved cases with the number of incoming cases. A clearance rate of more than 100 percent demonstrates that the PPO resolved more cases than it received. If the clearance rate was lower than 100 percent, the PPO disposed of fewer cases than it received, causing the total number of cases to increase.

314. As prosecutors became more experienced in working with the CPC that took effect in 2013, clearance rates grew consistently from 79 percent in 2014, to 86 percent in 2015, 94 percent in 2016, 99 percent in 2017, and finally to 107 percent in 2018 and 105 percent in 2019. Presumably, the increase in the number of operatively active prosecutors in 2018 and 2019 contributed to the results for those years, together with improved skills in the effective application of the CPC acquired through training and consultations and the increased use of deferred prosecution and plea bargaining.

Figure 66: Clearance Rates by PPO Type from 2014 to 2019



Source: WB Calculations

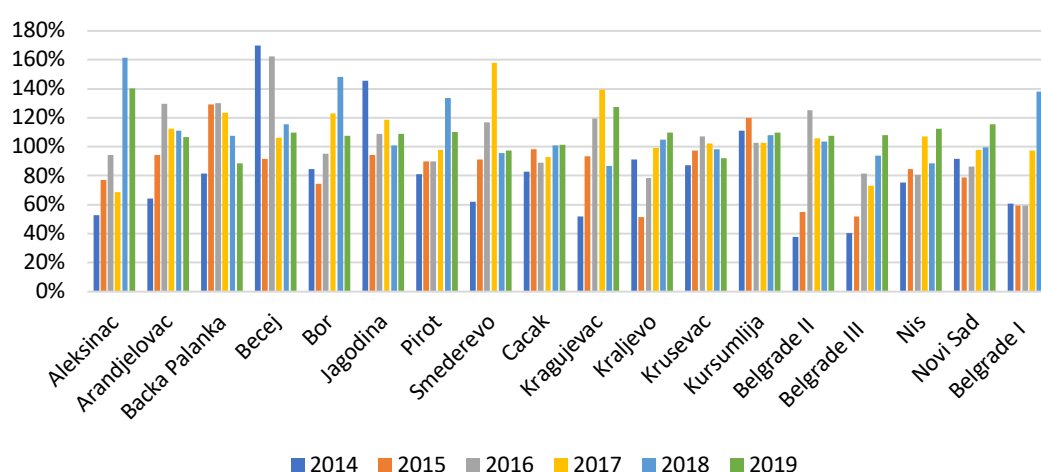
315. As a group, Basic PPOs improved their average clearance rates each year for an overall improvement of 34 percentage points from 2014 to 2019. The standout years were 2014, with a clearance rate of 73 percent, and 2019 with a clearance rate of 107 percent. The Basic PPO achievements in 2019, when three-quarters of the 58 Basic PPOs achieved 100 percent or higher clearance rates in 2019, were a significant improvement from 2014, when only one-fifth of the Basic PPOs produced had clearance rates of at least 100 percent. See Figure 67 and Figure 68, below. The 14 Basic PPOs making up the 24 percent were Basic PPOs that did not reach favorable clearance rates and were mostly small PPOs; the one exception was the First Basic PPO in Belgrade, with its clearance rate of 84 percent in 2019. The only Basic PPOs with less favorable clearance rates that year were the Basic PPO in Petrovac on Mlava (68 percent) and the Basic PPO in Prijepolje (78 percent). Despite lower dispositions in 2020, due to even lower incoming caseloads, Basic PPOs produced a clearance rate of 112 percent.

316. The average clearance rates for Basic PPOs as a whole improved despite remarkable variations among the clearance rates of individual Basic PPOs, a phenomenon not examined in any official analyses the FR team could locate. Only the Basic PPO in Kursumlija achieved clearance rates of over

100 percent each year,²²⁸ but PPO size was no guarantee of favorable clearance rates, as shown by the three Basic PPOs in Belgrade, three of the four the largest PPOs in Serbia (the second largest being Novi Sad). Belgrade’s First Basic PPO achieved a favorable clearance rate only once from 2014 to 2019, at 138 percent in 2018.²²⁹ Belgrade’s Third Basic PPOs also had only one year in which they resolved more than they received. In contrast, clearance rates for the Second Basic PPO in Belgrade were consistently above 100 percent from 2016 to 2019.

317. Belgrade’s Basic PPO results probably were due at least in part to their increased numbers of operatively active prosecutors. From 2014 to 2019, the increase was 53 percent for the First Basic PPO, 58 percent for the Second PPO, and 87 percent for the Third.²³⁰

Figure 67: Clearance Rates of Selected²³¹ Basic PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019 and WB Calculations

318. The overall average clearance rates for Higher PPOs reached 100 percent only once in 2018 and otherwise ranged from 93 percent in 2015 to 96 percent in 2017. The rate for 2016 was 96 percent and the rate for 2019 was 95 percent. Although these figures were relatively stable and relatively close to 100 percent, they show that the pending stock consistently increased, as shown in Figure 68 below. Apart from the performance of the Higher PPO in Belgrade, there were no other outliers among the Higher PPOs in Serbia. Another year in which the overall average clearance rate for Higher PPOs reached the favorable 101 percent was 2020, but as a direct consequence of the significant drop in the Higher PPOs' incoming caseload.

319. Twenty-three of Serbia’s 25 Higher PPOs achieved clearance rates of at least 100 percent at least once between 2014 and 2019, the outliers being the Higher PPOs in Belgrade and Zrenjanin. The rates for the Higher PPO in Zrenjanin ranged from 94 to 99 percent, but the variations were much more

²²⁸ It had clearance rates of 111 percent in 2014, 120 percent in 2015, 103 percent in 2016 and 2017, 108 percent in 2018, and 110 percent in 2019.

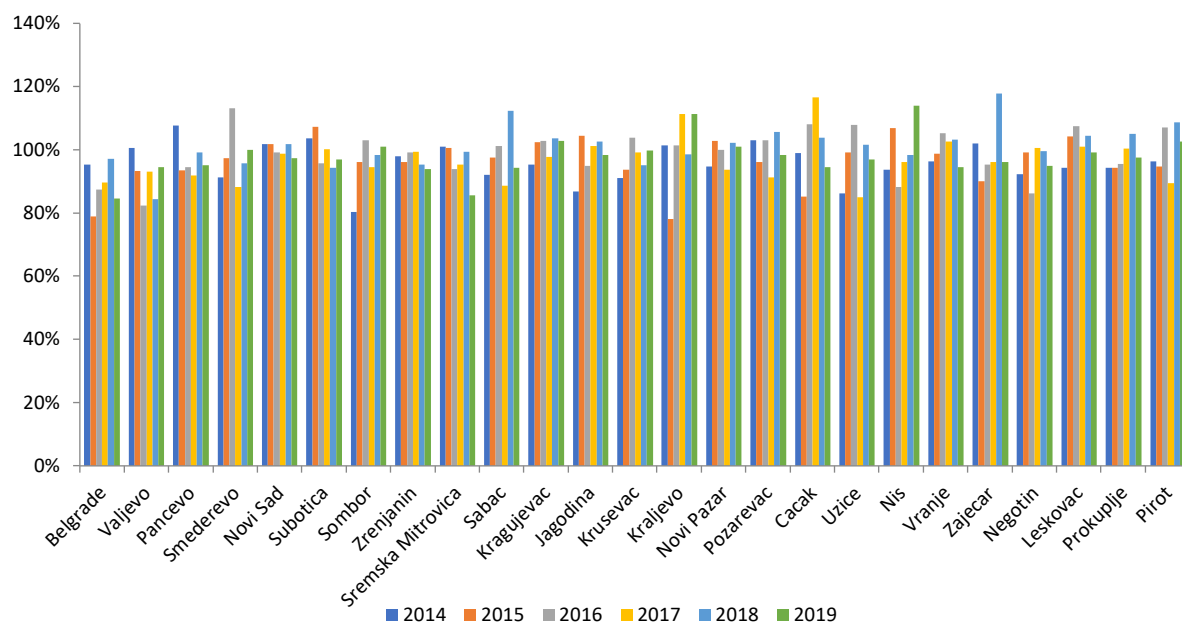
²²⁹ The 2018 rate was principally due to a 42 percent decrease in incoming commercial offenses and a nine percent increase in dispositions for the same commercial cases.

²³⁰ In the First Basic PPO in Belgrade there were 32 operatively active prosecutors in 2014 and 49 in 2019. There were 19 prosecutors in the Second PPO in 2014 compared to 30 in 2019, and 15 in the Third in 2014 compared to 28 in 2019.

²³¹ Basic PPOs from Figure 67 were selected to display PPOs of various sizes.

marked for the Higher PPO in Belgrade. That office had a rate of 95 percent in 2014, only 79 percent in 2015, 87 percent in 2016, 90 percent in 2017, 97 percent in 2018, and 84 percent in 2019.

Figure 68: Clearance Rates of Higher PPOs from 2014 to 2019 per Higher PPO



Source: RPPA Annual Reports 2014 – 2019

320. The four Appellate PPOs each had clearance rates of 100 percent over the six years from 2014 through 2019. As the other data reported in this FR show, Appellate PPOs were able to perform well with their approved levels of funding and personnel.

3.5. Timeliness in Case Processing

321. Even clearance rates exceeding 100 percent did not guarantee the oldest and/or most complicated cases were concluded within reasonable timeframes. As the Prosecutorial FR noted, the pressure to resolve cases as quickly as possible often means older and more difficult cases continue to age, in many if not all judicial systems, a result that undercuts public confidence in prosecutors and the courts.

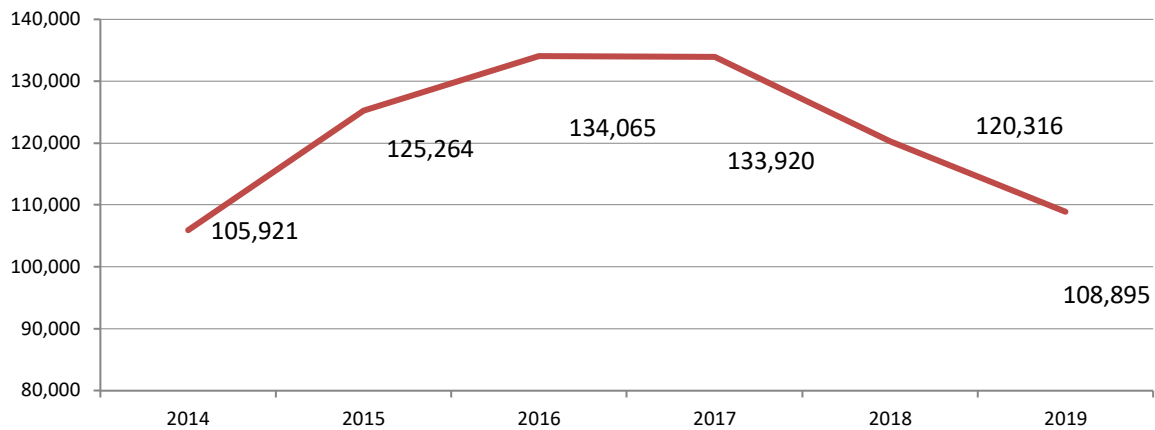
322. The available statistics for Serbian PPOs still did not provide for average times to disposition or age structure of the pending and resolved cases. As a result, timeliness is analyzed here using three sets of indicators: the number of carried-over cases, congestion ratios, and disposition times as defined by the CEPEJ.

3.5.1. Number of Carried-Over Cases

323. In 2017, the total number of PPO cases carried forward from one year to the next started decreasing after three years of consistent increases. The increase from 2014 to 2017 was 27 percent, while in the following years, the pending stock declined by a total of 19 percent and more than 25,000

cases, as shown by Figure 69. As expected given their share of the total number of cases in the system, the carried-over cases in Basic PPOs influenced the totals the most.

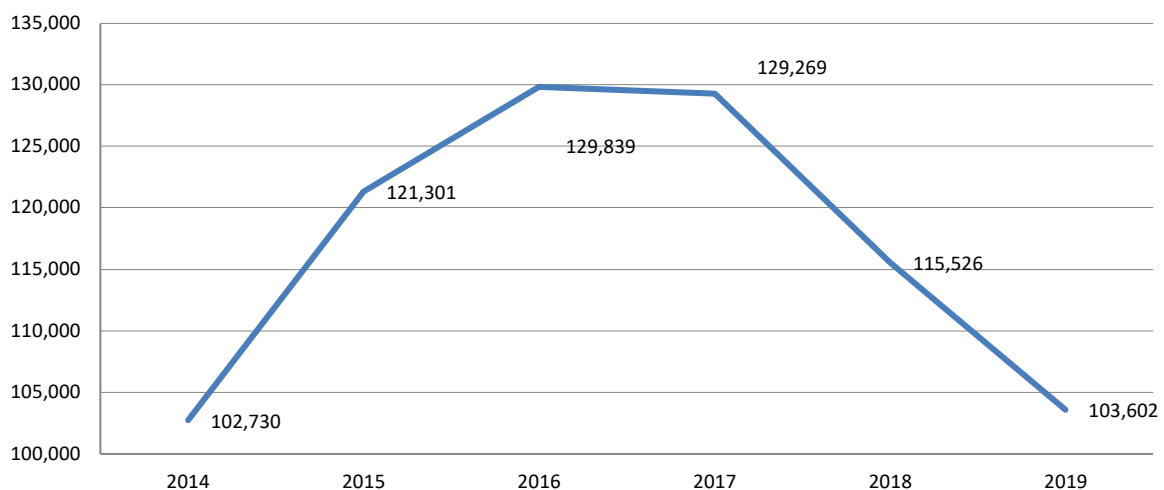
Figure 69: Carried-Over Cases in PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019

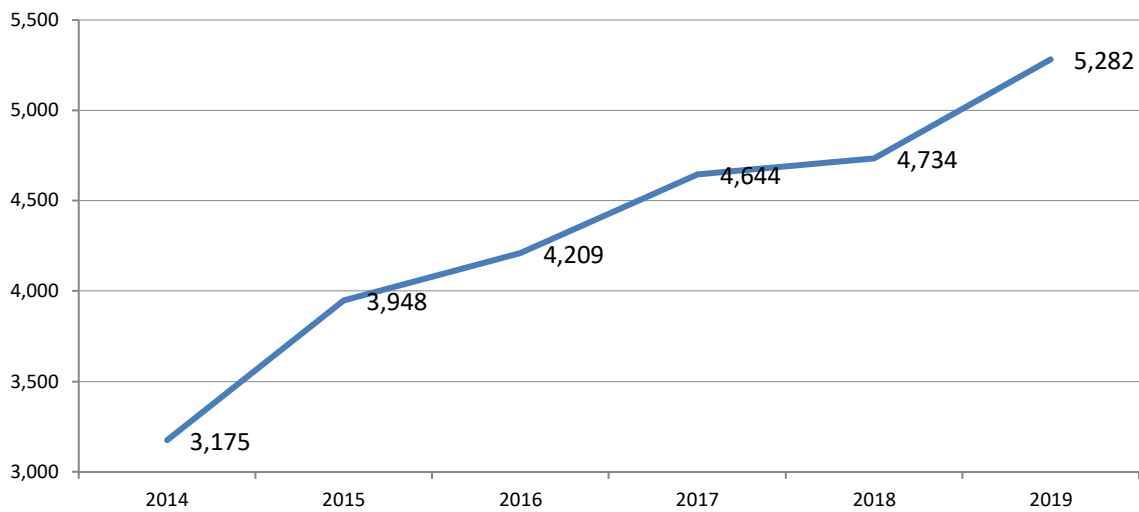
324. The number of carried-over cases in Basic PPOs grew until 2016-2017, but the numbers for Higher PPOs grew persistently every year between 2014 and 2019 for a total increase of 66 percent. The pending stock of Basic PPOs declined by 11 percent in 2018 and 10 percent in 2019. The contrast between Basic and Higher PPOs is shown by Figure 70 and Figure 71.

Figure 70: Carried-Over Cases in Basic PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019

Figure 71: Carried-Over Cases in Higher PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014 – 2019

325. These totals would be very different if ‘unknown perpetrators cases,’ also known as KTN cases, were included.²³² At the beginning of 2019, there were 472,802 KTN cases pending in Serbian PPOs, of which 92 percent were in Basic PPOs. The clearance rates for KTN cases in Basic PPOs was 64 percent in 2014, 48 percent in 2015, 79 percent in 2016, 128 percent in 2017, 93 percent in 2018, and 146 percent in 2019. Higher PPOs achieved a clearance rate of 32 percent for KTN cases in 2014, 119 percent in 2015, 159 percent in 2016, 687 percent in 2017, 151 percent in 2018, and 100 percent in 2019.

326. As noted in the discussion of clearance rates, from 2014 through 2019, Appellate PPOs had very few carried-over cases. The Appellate PPOs in Kragujevac and Novi Sad resolved all of their cases each year from 2014 to 2019, while the Appellate PPO in Nis carried over six to 17 cases each year. The Appellate PPO in Belgrade carried over 50 cases in 2018 and three cases in 2019. For both Nis and Belgrade PPOs, the number of cases carried forward was negligible, representing at most one percent of their workloads.

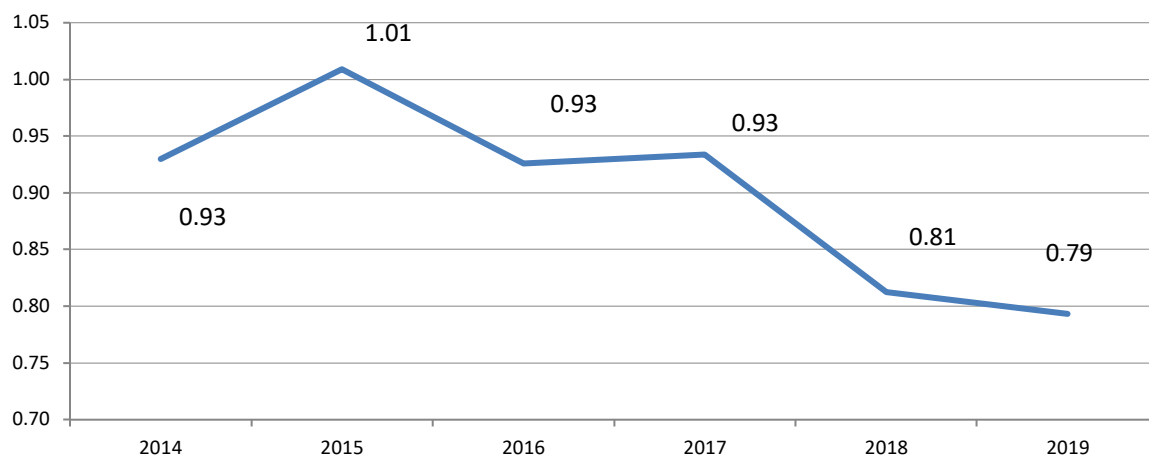
3.5.2. Congestion Ratios

327. Congestion ratios are calculated by dividing the total number of unresolved cases at the end of one year by the number of resolved cases during that same year. This ratio should indicate what effect the number of carried-over cases had on PPO performance. While there is no standard goal for prosecutorial congestion ratios, larger numbers indicate higher congestion levels and probable delays. A congestion ratio should be under 1.00 and ideally under 0.50, to ensure there are far fewer unresolved cases at the end of the year than the number of cases resolved during the year.

²³² Cases in the KTN registry are those in which no perpetrator has been identified. If the perpetrator is identified, the case is marked as resolved on the KTN registry and the case is assigned a new case number in another registry, so the same case has generated two different numbers in the system. If the perpetrator is not identified, the KTN case remains open until the statute of limitations expires.

328. Serbia’s overall prosecutorial congestion ratios from 2014 to 2019 ranged from 0.79 to 1.01, as shown in Figure 72 below, with the most recent ratios leaving room for progress. The congestion ratio in 2018 was 0.81, with 120,316 unresolved and 148,087 resolved cases at the end of the year. For 2019, the ratio was 0.79 based on 108,895 unresolved cases and 137,287 resolved cases.

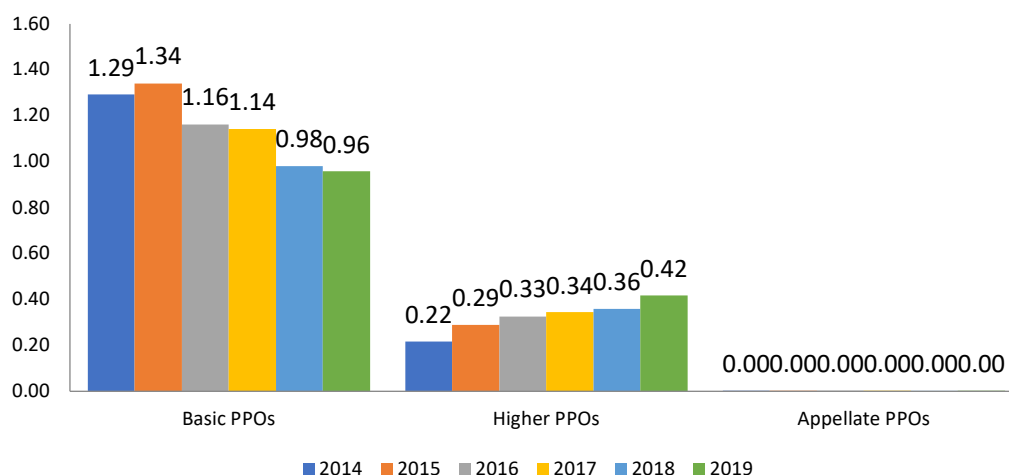
Figure 72: Overall Congestion Ratios of Basic, Higher and Appellate PPOs from 2014 to 2019



Source: WB Calculations

329. Although they were improving, Basic PPOs continued to have the highest congestion ratios among the three PPO categories, with results two to six times higher than those of Higher PPOs. There was no congestion in Appellate PPOs, as shown by Figure 73.

Figure 73: Congestion Ratios per PPO Type from 2014 to 2019

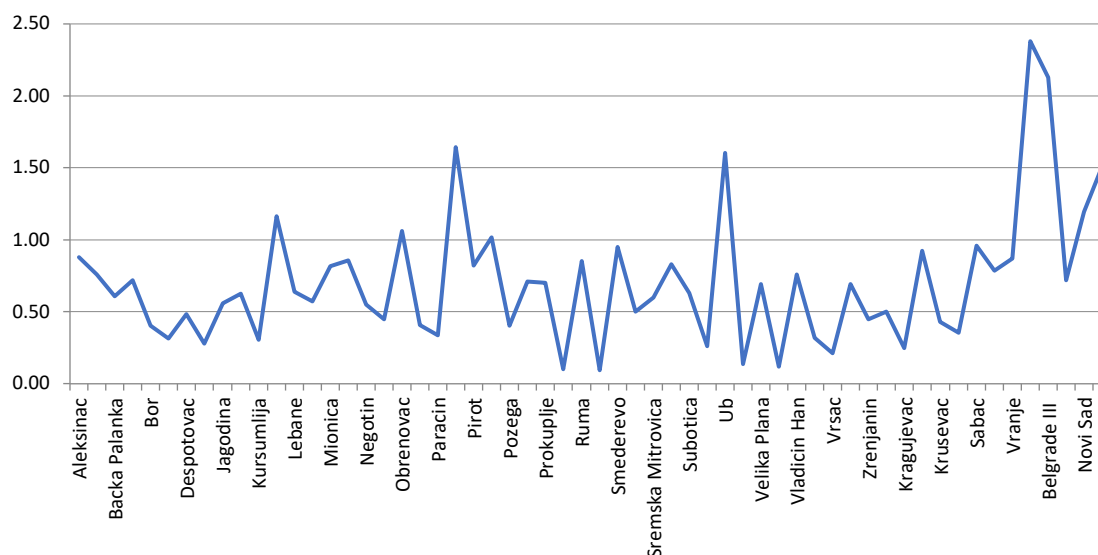


Source: WB Calculations

330. Congestion ratios for individual Basic PPOs in 2019 continued to vary widely as shown in Figure 74 below, with nine of them exceeding 1.00. The highest congestion ratios were recorded in the Second and the Third Basic PPOs in Belgrade, at 2.38 and 2.13, respectively. The PPO of Petrovac on Mlava followed with 1.64. In addition to the Second and Third Basic PPOs in Belgrade and the office in Petrovac on Mlava, the Basic PPOs with ratios exceeding 1.00 included the Basic PPOs in Ub (1.60), Belgrade’s

First (1.51), Novi Sad (1.19), Lazarevac (1.16), Obrenovac (1.06), and Pozarevac (1.02). Nevertheless, 22 of the 58 Basic PPOs, or 38 percent, reported ratios equal to or lower than 0.50 in 2019, showing that more efficient performance is possible, at least in small and medium PPOs. For example, the Basic PPO in Kragujevac had a congestion ratio of 0.25, the Basic PPO in Leskovac 0.36, and the Basic PPO in Senta 0.09.

Figure 74: Congestion Ratios of Selected²³³ Basic PPOs in 2019



Source: WB Calculations

331. The overall congestion ratios in Higher PPOs remained under 0.50 every year from 2014 to 2019, although they increased slightly each year. The overall ratios stayed within the desired range of less than 0.50, although they almost doubled from 2014 to 2019 due to extraordinarily high congestion in Belgrade’s Higher PPO. The ratio for Belgrade congestion deteriorated greatly after 2014, when it was 0.34 even though the number of prosecutors for that office increased from 43 in 2014 to 64 by 2019; the ratio was 0.73 in 2015, 1.00 in 2016, 0.96 in 2017, 1.12 in 2018, and 1.43 in 2019. In 2019, the highest congestion ratio after Belgrade was reported in Sremska Mitrovica, at 0.46. The greatest contrast to Belgrade and Sremska Mitrovica was found in Leskovac, where the congestion decreased from 0.20 in 2014 to 0.02 in 2018 and 2019

3.5.3. Time to Disposition

332. Since Serbian PPOs still were not tracking the duration of individual cases after the analyses done for the Prosecutorial FR, this review continues to use the CEPEJ methodology for the calculation of the theoretical time necessary for a pending case to be disposed of, taking into consideration the then-current pace of work of PPOs. The indicator is reached by dividing the number of pending cases at the end of a particular period by the number of resolved cases within that period, multiplied by 365 days.²³⁴ The resulting indicator is not an estimate of the average time needed to process a case but a

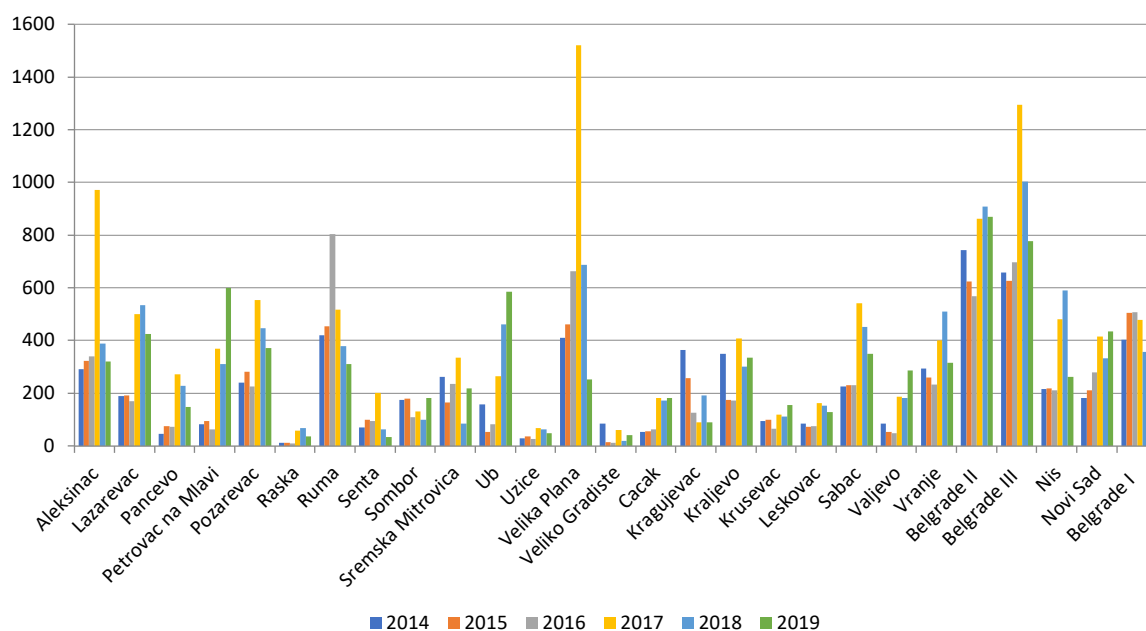
²³³ Basic PPOs from Figure 67 were selected to display PPOs of various sizes.

²³⁴ This indicator, together with others such as clearance rates and case turnover ratios, comprise the SATURN Methodology. SATURN stands for Study and Analysis of Judicial Time Use Research Network, see https://www.coe.int/t/dghl/cooperation/cepej/Delais/default_en.asp. However, the methodology’s assumption that judges

theoretical average of the duration of a case within a specific system (e.g., by individual PPO, types of PPOs, PPOs by region, or PPOs by country).

333. Disposition times of Serbian prosecutors decreased gradually from 2014 to 2019, although they continued to be two to six times higher in Basic than in Higher PPOs. Disposition times of Higher PPOs are expectedly lower than in Basic PPOs as their cases are mostly urgent since the defendants are in custody and their jurisdiction is narrower. The overall disposition time for the system decreased from 339 days in 2014 to 290 days in 2019. The decrease in Basic PPOs was from 471 to 349 days. The Third Basic PPO in Belgrade struggled the most in terms of disposition time and was the only Basic PPO that exceeded one thousand days for five years in a row from 2014 to 2018. Its disposition almost halved from 2014 (1,374 days) to 2019 (777 days). The Basic PPOs with the best disposition times in 2019 were those in Senta (34 days), Raska (36 days), and Veliko Gradiste (42 days). Moreover, Veliko Gradiste’s calculated disposition time of 20 days in 2018 was a 91 percent improvement over 2014. See Figure 75.

Figure 75: Disposition Times of Selected²³⁵ Basic PPOs from 2014 to 2019



Source: WB Calculation

334. The Higher PPO in Belgrade was responsible for the consistently increasing average disposition times for Higher PPOs overall, times that almost doubled from 2014 (79 days) to 2019 (152 days). There was no official analysis available to the FR team to explain the cause of the increase for Belgrade. While most other PPOs managed to keep their disposition times under 100 days,²³⁶ for Belgrade, the disposition time of 124 days in 2014 quadrupled to 523 days in 2019. The Higher PPO in Belgrade had a 25 percent drop in the number of resolved cases from 2014 to 2019, its clearance rate decreased

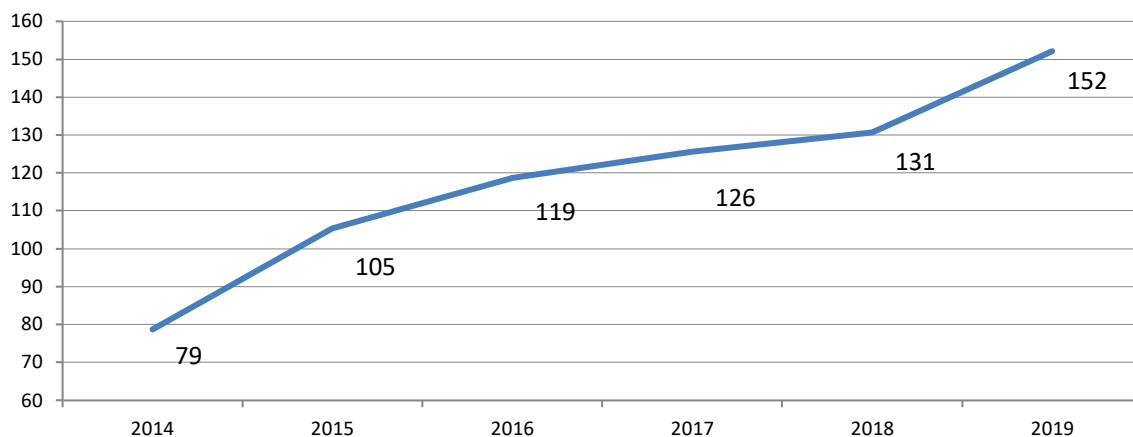
and prosecutors resolve their oldest cases first is not necessarily accurate, since judges and prosecutors may find it easier and faster to resolve newer cases rather than older ones.

²³⁵ Basic PPOs from Figure Figure 76 were selected to display PPOs of various sizes.

²³⁶ In 14 out of 25 Higher PPOs, the disposition time did not exceed 100 days during the observed six years. The lowest disposition time, of seven days, was registered in the Higher PPO in Leskovac in 2018.

from 95 to 84 percent, and its carried-over stock increased from 1,174 cases in 2014 to 3,685 in 2019. See Figure 76 below.

Figure 76: Disposition Times of Higher PPOs from 2014 to 2019



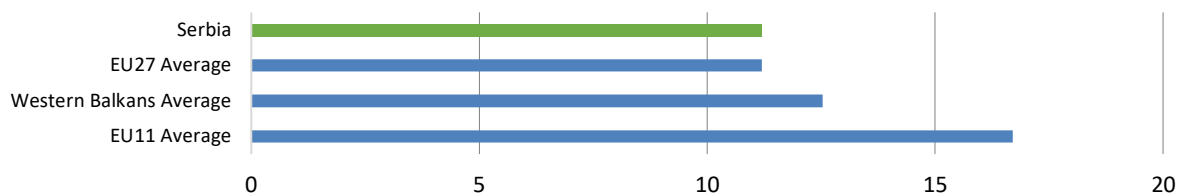
Source: WB Calculation

335. As with other efficiency indicators, disposition times of Appellate PPOs were excellent from 2014 to 2019, since these PPOs essentially resolved all of their incoming cases each year.

3.5.4. Efficiency per Prosecutor²³⁷

336. According to the CEPEJ 2020 report (2018 data), the number of Public Prosecutors per 100 thousand inhabitants in Serbia was 11.2, which was an increase of 2.4 prosecutors over the previous CEPEJ report that examined 2016 data, and in line with the EU27 average. The EU11 average for 2018 was 16.7, and the Western Balkans average was 12.52. When compared to individual regional peers from the EU11 and Western Balkans, only Bosnia and Herzegovina had a similar ratio of 10.7. See Figure 77 below.

Figure 77: Number of Public Prosecutors per 100,000 Inhabitants – CEPEJ 2020 Report



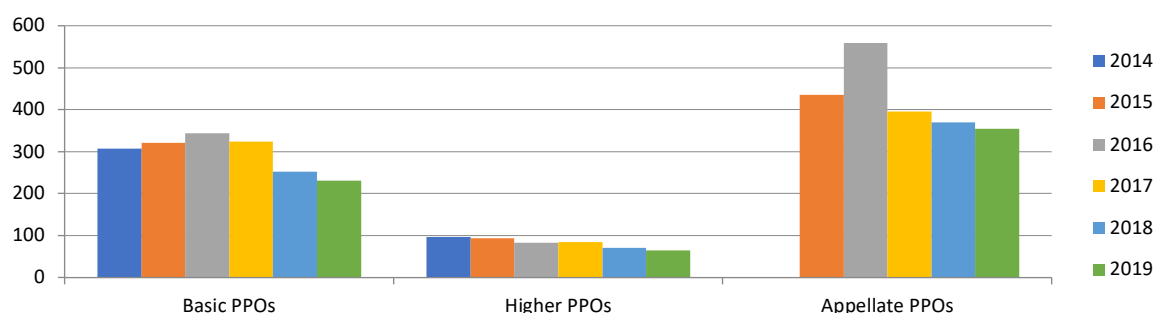
Source: CEPEJ Report 2020 (2018 data)

²³⁷ Calculations regarding the number of prosecutors in this portion of the FR, if not stated otherwise, were done by using actual numbers of operatively active Public Prosecutors and Deputy Public Prosecutors. This means that prosecutors who were not actively working on cases (e.g. Public Prosecutors in larger PPOs, first deputies, etc.) were not considered as operatively active since they did not contribute directly to productivity results. This topic is explored in more detail in the Human Resource chapter, below.

3.5.4.1. Caseloads per Prosecutor

337. The caseloads – meaning incoming cases -- for prosecutors within all PPO types decreased from 2014 to 2019. Caseloads per prosecutor decreased by 25 percent in Basic PPOs, by 33 percent in Higher PPOs, and by 18 percent in Appellate PPOs, as presented in Figure 78 below.

Figure 78: Caseload per Prosecutor in Basic, Higher and Appellate²³⁸ PPOs from 2014 to 2019



Source: WB Calculations

338. After three years of increases, the number of incoming cases in Basic PPOs started dropping in 2017, as the number of prosecutors working on cases increased by almost one quarter from 2014 to 2019. In Higher PPOs, the number of incoming cases varied between 13,000 and 15,000 thousand, while the number of prosecutors grew by 30 percent, causing the caseload per prosecutor to drop. However, the increase in the number of Higher PPOs prosecutors primarily was connected to the establishment of the four specialized anti-corruption departments. These prosecutors could not be excluded from the total for this calculation since it could not be determined how many of the prosecutors in the four PPOs were working in the anti-corruption departments versus other departments. See Table 13 below.

Table 13: Caseload and Prosecutors in Basic and Higher PPOs from 2014 to 2019

		2014	2015	2016	2017	2018	2019
Basic PPOs	Caseload	108,922	110,532	120,424	113,620	108,479	101,312
	Prosecutors	355	344	350	350	429	439
Higher PPOs	Caseload	15,319	14,639	13,451	14,162	13,263	13,316
	Prosecutors	158	157	161	167	186	206

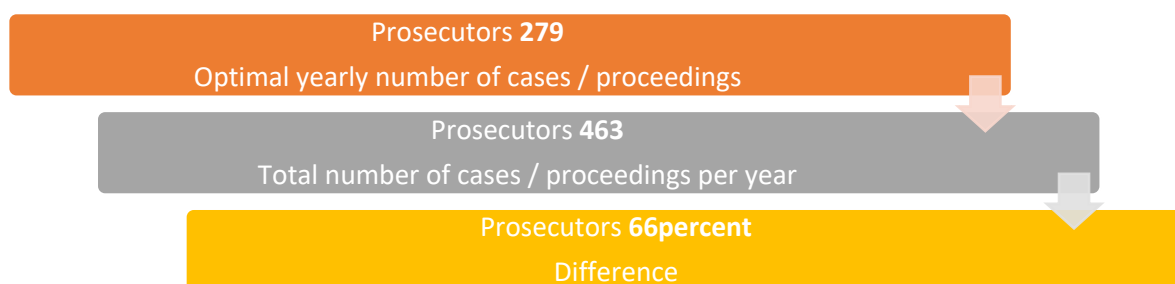
Source: RPPO Annual Reports 2014 – 2019

339. By 2019, each prosecutor in Basic PPOs had an average of 231 incoming cases, but the substantial caseload differences among prosecutors in Basic PPOs described in the Prosecutorial FR persisted. Prosecutors in Higher PPOs generally had lower numbers of incoming cases in 2019, ranging from a low of 23 cases in Kraljevo to a high of 194 cases in Zrenjanin. Of the 25 Higher PPOs, in 17 (68 percent) prosecutors had caseloads below the national average.

²³⁸ Data on the number of prosecutors in Appellate PPOs in 2014 was unavailable.

340. Caseload per prosecutor decreased in Appellate PPOs to 248 cases in 2019. While Appellate PPOs in Belgrade and Kragujevac reported a drop in incoming cases over the past two years, the number of these cases were up in Nis and Novi Sad.

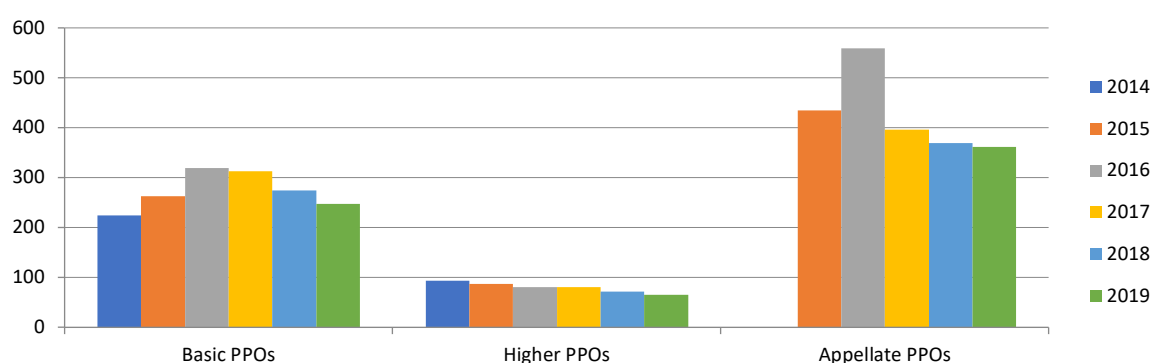
341. Although the number of prosecutors has increased over the last few years, the prosecutors evaluated that their annual caseload considerably exceeds the optimal one. The difference between the actual caseload and the caseload that prosecutors perceive as optimal is significant. According to prosecutors, the actual caseload exceeded the optimal one by 66percent on average. The perceived range of actual and optimal caseload varies among different types of courts and prosecutor offices. Prosecutors from basic prosecutor offices cite a higher number of cases they usually work on.



3.5.4.2. Dispositions per Prosecutor

342. Across all PPO types, average dispositions per prosecutor were very similar to the trends for caseloads per prosecutor. From 2014 to 2019, there was an increase of 10 percent for average dispositions per prosecutor in Basic PPOs, and decreases in Higher and Appellate PPOs by 29 and 17 percent, respectively. See Figure 79 below.

Figure 79: Dispositions per Prosecutor in Basic, Higher and Appellate²³⁹ PPOs from 2014 to 2019



Source: WB Calculations

343. Dispositions per prosecutor in Basic PPOs grew each year from 2014 to 2016 and then declined from 2017 to 2019, with stable or increasing dispositions per prosecutor for most, but not all, Basic PPOs from 2014 to 2019. Some PPOs, like the three Basic PPOs in Belgrade, increased their numbers of

²³⁹ Data was not available on the number of prosecutors in Appellate PPOs in 2014.

prosecutors while others lost prosecutors (e.g., the Basic PPOs in Leskovac, Pancevo, and Sabac). On the other hand, the Basic PPO in Novi Sad added four prosecutors in 2019 compared to 2014, its caseload of incoming cases decreased by six percent, and the number of disposed of cases per prosecutor fell by 18 percent.²⁴⁰

344. Average dispositions per prosecutor in Basic PPOs varied more than the caseloads per prosecutor by a factor of four. They ranged from 131 in Prijepolje to 562 in Kursumlija. More than one-half or 31 of the Basic PPOs achieved lower-than-average dispositions per prosecutor. In eight Basic PPOs, dispositions per prosecutor were average, and in one-third or 19 Basic PPOs, the dispositions per prosecutor were above average.

345. However, as was true for caseloads, disposition numbers per prosecutor in Basic PPOs still did not correlate to PPO size. Small PPOs reached some of the highest disposition rates per prosecutor, and PPOs with consistently above-average disposition rates were all small in size, with six or fewer prosecutors.

346. The decreasing disposition rates per prosecutor in Higher PPOs indicated that at least some of the Higher PPOs were receiving the additional staff they needed. Disposition rates for Higher PPOs overall were half those of Basic PPOs and Appellate PPOs, and reduced consistently over time. However, based on interviews conducted by the FR team, the decreased disposition times probably were due to the increased number of Higher PPO prosecutors assigned to specialized departments.

347. Appellate PPO prosecutors managed to dispose of the same number of cases they received.

3.5.5. Efficiency of Specialized PPOs and Specialized PPOs Departments in Higher PPOs

348. With the notable exception of the PPO for Organized Crime, Specialized PPOs and PPOs' specialized departments in Serbia were burdened by performance issues, unstable and low clearance rates, high congestion rates, and high disposition times.

349. Based on all the efficiency indicators discussed in this Chapter, procedures used by the PPO for Organized Crime to achieve its results from 2014 to 2019 should be adopted by other PPOs as often as possible. The organized crime PPO's relatively low caseload of 474 cases in 2019 was almost double its caseload for 2014 when 238 cases were received, but the office still moved its cases through the system well. The clearance rate reached 102 percent in 2014 and stood at 99 percent in 2015, 92 percent in 2016, 97 percent in 2017, 95 percent in 2018, and 98 percent in 2019. Disposition times varied from 50 days in 2017 to 111 days in 2016; in 2019, the time was 89 days. The congestion rates were in the ideal category, below 0.50 from 2014 to 2019.²⁴¹

350. Conversely, results for the PPO for War Crimes varied significantly from a clearance rate of 380 percent in 2015 to 25 percent in 2017. In 2018 and 2019, its clearance rate stabilized at 107 and 100

²⁴⁰ The Basic PPO in Novi Sad disposed of 311 cases per prosecutor in 2015 when it had 22 prosecutors, while in 2019 its 31 prosecutors disposed of 225 cases on average.

²⁴¹ The lowest congestion rate was 0.14 in 2017 and the highest 0.30 in 2016; in 2019 the reported congestion rate was 0.24.

percent, respectively. Congestion rates followed the erratic variations, but the congestion was regularly well over 1.00; in 2019, it was 1.58. Only in 2015 did this value drop to a satisfactory 0.37. Similarly, disposition times were high, 967 in 2014, 134 in 2015, 557 in 2016, 1,590 in 2017, 706 in 2018, and 576 in 2019. However, all these variations relate to very small workloads; 20 cases were received in 2014, 10 in 2015, 34 in 2016, 56 in 2017, 29 in 2018, and 28 in 2019

351. The Special Prosecution Office for High Tech Crime within the Belgrade Higher PPO more than quadrupled its pending stock/workload from 226 cases in 2015 to 952 cases in 2019, primarily due to low clearance rates.²⁴² Its clearance rate was 68 percent in 2015, 42 percent in 2016, 67 percent in 2017, 58 percent in 2018, and 67 percent in 2019. Low clearance rates (68 percent in 2015, 42 percent in 2016, 67 percent in 2017, 58 percent in 2018, and 67 percent in 2019) were accompanied by high congestion ratios and high disposition times. The congestion ratio jumped from 1.47 in 2015 to 4.96 in 2019, while the disposition times ranged from a low of 536 days in 2015 to a high of 1810 days in 2019. Although this could not be verified from the available data, the high congestion rates, high disposition times and low clearance rates well may have been due to the complex nature of many of the cases. The caseload for 2014 was illegible in that Annual Report; in 2015, the caseload was 226, 322 in 2016, 252 in 2017, 324 in 2018, and 287 in 2019.

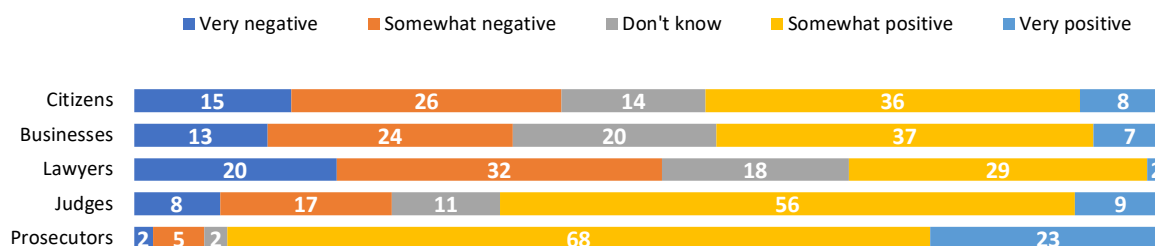
352. The specialized departments to combat corruption, established in 2018 in four Higher PPOs received 9,682 criminal complaints in their first year of operation, most of which had been started by Higher PPOs before 2018. The transfer of these cases from other Higher PPOs probably enhanced the workloads and disposition numbers of the original PPO. In total, 3,696 criminal complaints were resolved in 2018, of which 75 percent were dismissed. Also, during 2018, 465 days were needed to resolve a criminal complaint, while the clearance rate was only 44 percent. In 2019, the departments disposed of 5,146 more cases and raised their overall clearance rate to 78 percent. However, due to the increased workload, the average disposition time increased to 545 days.

3.6. Efficiency Perceived by Stakeholders

353. According to the Regional Justice Survey, the highest level of satisfaction with the efficiency of public prosecutors is present among prosecutors themselves and judges, while lawyers are the least satisfied. Court service users stand somewhere in between. Nine out of ten prosecutors believe that their institution efficiently performs designated tasks (91percent). Judges predominantly agree with them, with two-thirds of those satisfied with the public prosecution's efficiency (65percent). The general public and businesses have very similar views – 44percent of both populations positively evaluate prosecution's efficiency.

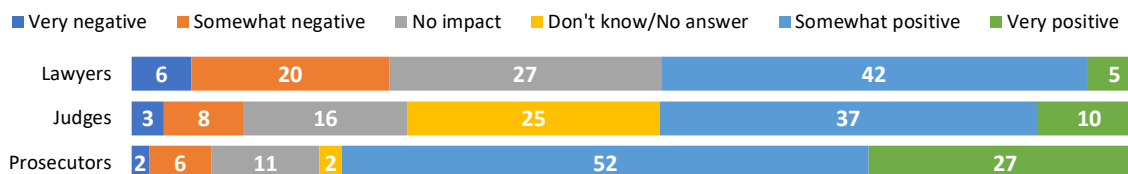
²⁴² Data for 2014 were illegible in the copy of the Annual Report available for the FR team's review.

Figure 80: CITIZENS, BUSINESSES, LAWYERS, JUDGES AND PROSECUTORS: GENERAL PERCEPTION OF PROSECUTION EFFICIENCY²⁴³



354. Cooperation with other investigative bodies is recognized by public prosecutors as the most important element that contributes to the efficiency of prosecution service. As many as 79 percent of prosecutors point out a positive impact of that collaboration, 11 percent do not consider it has any impact, while only 8 percent assess it as negative. Judges and lawyers do not perceive cooperation between prosecutors and other investigative bodies as relevant for the efficiency of prosecution service.

Figure 81: LAWYERS, JUDGES AND PROSECUTORS: IMPACT OF COOPERATION BETWEEN PUBLIC PROSECUTION AND OTHER INVESTIGATIVE BODIES²⁴⁴



355. Experience with prosecution makes citizens' perception of their efficiency more negative. 44 percent of citizens without experience with public prosecutors have a positive opinion of their efficiency, while only 37 percent of those with experience have the same opinion. Unlike citizens, business representatives with personal experience have at least a somewhat more positive view of the efficiency of all public prosecutors.

356. The majority of public prosecutors agreed that measures for improving of efficiency of their work are increased the number of prosecutors, investigators, and other staff, but also improvement of infrastructure and cooperation with investigative bodies. Prosecutors are almost completely uniform in the opinion that a larger number of employees in the prosecution's administration would primarily lead to the higher efficiency of their office (97percent). Most of them also underline an increase in the number of prosecutors themselves (88percent), improved infrastructure (86percent) and better cooperation with Police (84percent).

²⁴³ Survey question: *What is your general opinion about the efficiency of prosecution in Serbia over the past few years?*) Base: Total target population; Base: Total target population.

²⁴⁴ Survey question: *In your opinion, how does cooperation between Public Prosecution and other investigative bodies/individuals affect efficiency of prosecution's work.*

3.7. Impact of the Covid-19 Pandemic on PPOs Efficiency in 2020

357. The preliminary assessment of the impact of the pandemic on the efficiency of PPOs indicates that there were no immediate effects on Serbian PPOs, however, such impacts undoubtedly did occur and will reveal themselves in the upcoming years. The declared state of emergency from mid-March to mid-May 2020 halted prosecution proceedings that were not deemed urgent²⁴⁵ and caused caseloads and dispositions to decline. The overall clearance rates in 2020 remained favorable primarily due to the falling number of incoming cases.

358. The pandemic also forced changes in some of the prosecutors' work processes which may have affected both the quality and efficiency of their work. For instance, some hearings had to be held online, such as for violation of self-isolation measures. As of December 2021, it was still hard to predict the extent of additional congestion that would arise after the pandemic ends (or at least is under greater control). They may be many proceedings 'stuck' in the system in the meanwhile, and some new cases may appear as a direct influence of the pandemic.

3.8. Recommendations and Next Steps

Recommendation 1: Improve and extend prosecutors' use of automatic CMS.

Automatic CMS for PPOs should be fully developed and rolled out, including a detailed, flexible reporting module.²⁴⁶ The new CMS (SAPO II) should allow the generation and use of these recommended features:

- Perform gap analysis to identify which data, reports, alerts, and searches will be needed for sole reliance on the CMS. (SPC, RPPO – short-term)
- Specify which reports should be automatically and regularly produced by CMS, aligned with internal and external reporting needs. (SPC, RPPO – short-term)
- Specify which alerting mechanisms in the CMS would facilitate case processing and enable prosecutors to manage their workload more efficiently. (SPC, RPPO – short-term)
- Amend bylaws and rules accordingly. (SPC, RPPO – medium-term)
- Migrate all existing data to the system. When necessary, enter legacy data manually through simplified forms. Transfer all relevant hard copy data to the digital system. (MOJ, RPPO, SPC, and PPOs – medium-term)
- Eliminate paper registries in PPOs. (SPC, RPPO – long-term)

Recommendation 2: Establish specialized investigation departments.

The specialized investigation department established in the First Basic PPO in Belgrade has been beneficial, and its implementation in other Basic PPOs and in Higher PPOs is worth exploring.

- Conduct a study in the First Basic PPO in Belgrade to determine what aspects of that department should be established in other Basic and Higher PPOs, for what case types, and the

²⁴⁵ Urgent cases included those in which detention was ordered or requested; cases against juvenile offenders and cases where a juvenile had been injured; domestic violence cases; cases related to specific severe crimes; cases in which there was risk the statute of limitations would expire; cases for which a large number of criminal complaints had been received, and those alleging that crimes were committed during the state of emergency and in connection with the state of emergency.

²⁴⁶ Pertaining to Recommendation 5 from 2014 Functional Review, Efficiency in Justice Service Delivery chapter.

resources necessary to do so. (RPPO, SPC – short-term)

- Provide the necessary resources for the new departments to operate. (SPC, RPPO, MOJ – medium-term)

Recommendation 3: Improve monitoring of caseloads and performance.

Regularly monitor prosecutors' tasks to assess their caseload and performance. This addresses prosecutors' concerns that their work on cases that significantly increase their workload is not adequately taken into account during the distribution of cases and their performance assessments.

- Identify these tasks and analyze their impact on the performance of PPOs. (SPC, RPPO – short-term)
- Unify data entry and tracking of 'KTR' cases among PPOs and avoid double-registering cases (RPPO – short-term)
- Quantify how much work prosecutors are investing in 'KTR' cases. (SPC, RPPO – short-term)
- Consider using CMS for the classification of 'KTR' cases in order to evaluate their impact on performance. (RPPO, SPC – medium-term)
- Enter and manage data on 'KTR' cases in a way that will continue to identify them once a prosecutor has begun a formal investigation of the matter and moved the case to a different registry. (RPPO, SPC – medium-term)
- Track time to disposition in all case types. (RPPO, SPC – medium-term)

Recommendation 4: Improve processing of cases about unknown perpetrators.

- Regularly archive 'KTN' cases so they do not burden the system once their statutes of limitation expire. (RPPO – medium-term)

Recommendation 5: Develop a backlog reduction plan to reduce the significant number of carried-over cases, particularly cases that have been pending for over two years.

The judiciary should be included in most if not all of the following as needed. However, there may be policies or programs that prosecutors can pursue internally to monitor the timeliness and reduce backlogs in PPOs.

- Establish a permanent working group to draft and monitor the implementation of the backlog reduction plan. Membership of the group may change over time, but its function should not since backlogs are a permanent threat to the efficiency and quality of all prosecutorial systems. (RPPO – short-term)
- Develop and update a list of aging cases being handled by each PPO. The lists would contribute to the detailed design of a CMS and backlog reduction plans for all PPOs. These lists should be updated at least every six months. (RPPO short-term) Publicize results. (RPPO – medium-term)

Recommendation 6: Identify, disseminate, and incentivize sharing of good practices.

Conduct a detailed study of the investigation, case handling, management, and administrative practices of the most efficient PPOs in each size category. The study would identify processes or policies that could help other PPOs improve their case disposition times and numbers and reduce the age and number of cases carried over from one year to the next.

- Prepare a report detailing the most efficient practices and the preconditions for putting them into practice in other PPOs. (RPPO, SPC – short-term)
- Prepare relevant Rules and ‘bench books’ to record the steps necessary to implement the recommended practices. (SPC, RPPO – short-term)
- Roll out efficient practices to lower-performing PPOs through peer exchange programs, workshops, JA training, etc. (SPC, RPPO, JA – medium-term)
- Develop incentives for the highest performing and most improved prosecution offices. This could be modeled on the existing award program for the best-performing courts. (RPPO, SPC – medium-term)

Recommendation 7: Allocate prosecutorial resources based on demand for services rather than population to equalize the number of cases per prosecutor (RPPO, SPC – medium-term)

4. Quality of Justice Services Delivered

4.1. Key findings

359. The Serbian judicial system continues to struggle to fully comply with ECHR requirements, as evidenced by the large caseloads in Strasbourg. Non-compliance tends to be found in a significant number of case types, highlighting specific problems relating to non-enforcement of the final decisions, length of proceedings, protection of property, and lack of effective investigation. In addition, there are challenges in the enforcement of ECtHR judgments, and further actions are needed to establish organized coordination between all various state bodies.

360. Overall, judges and prosecutors think that judicial quality has improved since 2013, but lawyers see less improvement. Unreliable data quality and availability, inconsistency in jurisprudence, and fragmented administrative systems are overarching challenges in addressing court system quality. On the positive side, members of the public who have been involved in court cases are generally satisfied with court quality.

361. Citizens and the business sector are highly satisfied with the quality of notary work, while there has been a decrease in public satisfaction with court administrative services. While most members of the public remain satisfied with the quality of court administrative services, the downward trend in satisfaction should be compared with positive public opinion about notaries. Part of the courts' administrative responsibilities was transferred to notaries in 2014, and public satisfaction suggests that the reform was successful.

362. There are some concerns about impartiality. These include lawyers' perceptions of selective enforcement of laws. Prosecutors have complained the police do not cooperate with them during investigations. Conversely, lawyers complain that they do not have access to all the information that prosecutors and judges have. Further, there is a concern that wealthier people may obtain deferred prosecution by making monetary donations to good causes, and those decisions to drop prosecutions are sometimes politically motivated.

363. Because of gaps and ambiguities in legislation, laws are not applied consistently, and unwarranted appeals are filed, and, conversely, lower court decisions are reversed on appeal. Two related issues are the clarity of legislation and its application in the judicial systems. Regarding the first, about 40percent of judges, 37percent of prosecutors, and 46percent of lawyers believe that laws are ambiguous and inconsistent to a great extent or to some extent. While lawyers' perceptions have improved over time, there has been uneven progress in judges' and prosecutors' perceptions.

364. The proliferation of new legislation continues, often without analysis of the impact on or harmonization with existing laws. Ad hoc working groups are convened to consider and draft each new law, but there is sometimes an inadequate representation of stakeholders, working group members report inadequate guidance, and proposals are not necessarily subjected to formal analysis. Legislation continues to be routinely passed by the National Assembly under emergency procedures and without sufficient transparency.

365. 84 percent of judges cited that less frequent changes in laws could contribute to a better quality of justice services. Criminal prosecution provides an example of the impact of frequently changed legislation and the quality of judicial services. The Criminal Code was amended 10 times over the last 15 years. During this period of change, offenses can be charged as both criminal and misdemeanor offenses - or as both criminal and commercial offenses. The same incident burdens the courts twice: once for the misdemeanor offense, with its procedure and legal remedies, and again for a criminal offense with its procedure and legal remedies.

366. Following the enactment of new legislation, there have been challenges in implementation. These include limited outreach and training. A primary example is low awareness of the availability of free legal aid (see Access Chapter).

367. Inconsistent interpretation of laws and inconsistent jurisprudence remain challenges for the Serbian judiciary. 70 percent of judges and prosecutors and 90 percent of lawyers stated that inconsistent interpretation of laws and inconsistent jurisprudence happen at least from time to time, if not often. More than 80 percent of lawyers reported that selective implementation of laws and non-enforcement of laws occurs frequently, but only about one-third of judges and prosecutors shared this view. Judges' and prosecutors' perceptions have been slightly improved since 2013, but lawyers' perceptions have worsened over the time, especially in the area of selective enforcement of laws.

368. The judicial system still lacks a standardized approach to routine aspects of case processing. The quality of case processing has not improved significantly since the 2014 Judicial Functional Review. There are no checklists, standardized forms, or templates for routine aspects of case processing, nor is there a consistent approach to drafting routine documents, such as legal submissions, orders, or judgments.

369. There are few examples of specialized case processing for the types of cases that often warrant a tailored approach. The law on the prevention of family violence is an example of the potential for improved coordination in case processing. It envisages the establishment of a group for coordination and cooperation (Article 25) that consists of representatives of public prosecutors, police, center for social work, and, if there is a need representatives of other institutions (educational, employment services, etc.).

370. Lawyers who represent criminal defendants in particular point to shortcomings in information and communication technology. For instance, some databases are available only to judges and prosecutors. There is no comprehensive countrywide system to process and interlink cases across courts and prosecutorial networks.

371. There is a continuing lack of data about the reasons for dismissals by prosecutors. Since 2013, Serbian law has allowed the filing of complaints about the dismissal of criminal complaints, and Serbians have made extensive use of this process.

372. The number of cases concluded by plea bargaining decreased by eight percent in 2019 due to a 17 percent drop in plea bargains in the Belgrade appellate region.

373. The implementing legislation for deferred prosecution is incomplete and imprecise, prosecutors' decisions are not uniform, and guidelines and criteria for its use are missing. There is a

lack of consideration for the interests of the victims of the crimes involved. The conditions imposed in deferred prosecution measures seldom benefit the community at large through rehabilitation programs or community service. The most frequent condition is a cash donation to humanitarian causes. This can give the impression that defendants have bought their way out of the criminal justice system.

374. The lack of official guidelines and political will for cooperation between police and prosecutors continue to impede the effective investigation of criminal cases. Prosecutors have no practical means for compelling police to follow their directions. Prosecutors reported this problem arose particularly in cases that might have political implications. In addition, when police submit both misdemeanor and criminal charges for the same incident, they often do not inform the prosecutor, which leads to duplication in court proceedings, as noted above.

375. Serbia's prosecutorial system also remains highly hierarchical, with higher-instance Public Prosecutors authorized to control the work of lower-instance ones. Higher-instance prosecutors can take over any matter from a lower-instance Public Prosecutor within his or her jurisdiction and issue mandatory instructions to those lower-instance Public Prosecutors. On the one hand, such oversight could be useful in promoting consistent practices. On the other, it may allow selectivity in prosecution.

376. Standardized forms and templates used by PPOs are not being updated on a system-wide and regular basis, despite amendments to the criminal code. The use of up-to-date templates and standardized forms would facilitate consistency in routine prosecutorial tasks, reduce mistakes, and fast-track daily actions.

377. The 2014 Functional Review found the appeals system is at the heart of Serbia's problems in terms of quality of decision-making and remains high but has declined. The rate of appeals filed and the rate of reversals on appeal, are relevant to legislative quality, judicial quality, and public trust. A high rate of reversals can indicate that lower courts are struggling to interpret ambiguous laws. Lack of uniformity in the application of laws can encourage parties to hope for a more favorable result on appeal.

378. Trust in the appellate system among court users in Serbia has decreased in the past decade. However, Court users who received an unfavorable judgment filed an appeal in 84 percent of the cases if they considered the decision unfair, an increase by 21 percentage points over the 2014 Functional Review.

379. Serbian Basic PPOs appealed in 12 percent of cases in 2019 and were successful in only 21 percent of their appeals, indicating that prosecutors may be pursuing appeals that were not justified. Appellate success rates varied significantly among PPO types, among individual PPOs, and over the years. There were no written policies or guidelines governing the selection of cases to appeal. Appeal rates varied considerably among Basic PPOs, including those of similar size.

380. While appeal rates vary markedly across court types, case types, and court locations, the data management system is not adequate to compare performance. It is not possible to generate a report on lodged appeals or dismissed appeals. It is not possible to distinguish between cases appealed from Basic Courts and those appealed from Higher Courts, which are entered in the same registry.

381. It is possible that appeal and reversal rates will decline as the quality of judges' decisions improves. The clarity in written decisions may help the parties, and the reviewing courts better understand the reasoning of the first instance courts. Existing judicial training has improved the clarity of written decisions. The Supreme Court of Cassation has organized round tables to discuss criminal judgments and identify shortcomings and good practices in judgment writing.

382. As well as improving quality, specialization can result in more efficient use of limited resources. For example, the courts are burdened with many repetitive cases that derive from the same underlying issue. An example is over 56,000 military reservists' claims. Serbia has not adopted the practice used in some countries of consolidating cases to resolve similar or identical factual and legal claims.

4.2. Introduction

383. This chapter assesses the ability of the Serbian judicial system to deliver quality services to citizens and its progress since the 2014 Judicial Functional Review. Quality of justice services was assessed through a range of dimensions, including the uniform application of the law, user satisfaction with the justice services received, consistency with ECHR standards, and perceptions of integrity.²⁴⁷

384. The quality of the justice system is a significant part of effective justice, underpinning business confidence, job creation, and economic growth and providing protection from violations. However, according to the World Bank 2020 Regional Judicial Survey, more than 40percent of citizens and business representatives in Serbia believe that the quality of the judicial system has not changed over the course of the past three years, although many measures were implemented with the aim of improving the quality of work.

385. In comparison to general perceptions about the quality of judicial services, experience with court cases has a positive influence on citizens' assessment. Citizens with recent personal experience are noticeably more positive about court work quality in their own case (69percent) than is the general public (45percent). The outcome of the case does not seem to play a role in the perception of court work quality. At the same time, business representatives with recent experience in court cases are the most satisfied with court work quality. When court users do perceive low quality, they see bad laws, followed by poor work by the judge, as the main reasons for the low quality.

4.3. Quality of Laws and Law-Making

386. The need to have good quality laws is stipulated in the jurisprudence of the ECtHR. Therefore, the legislatures of Member States need to respect the principles of the rule of law and the minimum requirements of good law-making. This aspect includes accessibility to information about laws and policies and foreseeability about how they are applied.²⁴⁸ Otherwise, there can be concerns about arbitrary interference by the public authorities.²⁴⁹

²⁴⁷ This chapter does not assess the quality of individual laws, nor does it evaluate the work of individual judges. No legal review was undertaken of individual judgments, but rather the implementation of laws and the delivery of justice services in Serbia.

²⁴⁸ *Žaja v. Croatia*, ECtHR, App. no. 37462/09, 4 October 2016.

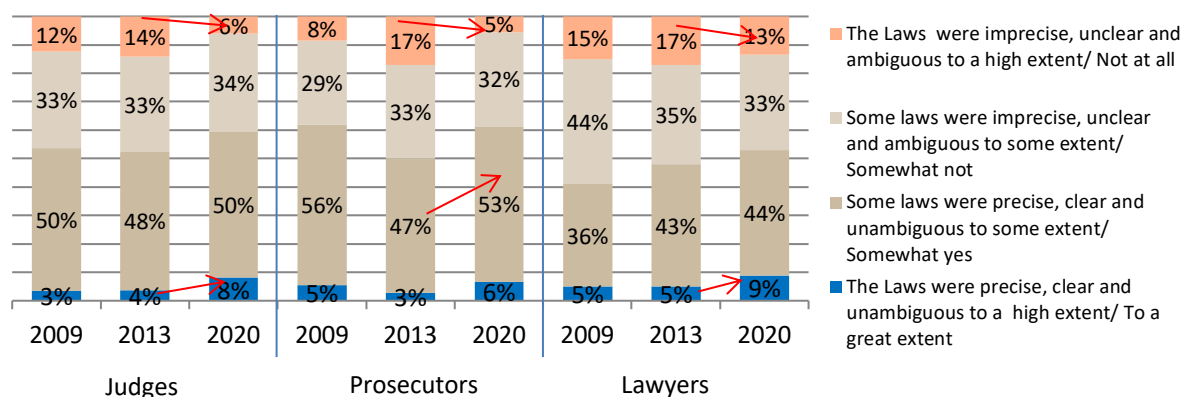
²⁴⁹ *Vasiliuskas v. Lithuania*, ECtHR (GC), App. no. 35343/05, 20 October 2015.

387. Clearly, the quality of justice depends on the quality of laws and the performance of the law-making system.²⁵⁰ This section looks at three dimensions of the quality of laws: perceptions of the quality of existing laws, the law-making process, and the rollout of recent law reforms.

4.3.1. Perceptions about the Quality of Existing laws

388. Justice system professionals are concerned about whether laws are clear and consistent. Among judges, 40percent believe that laws are unclear and ambiguous to a great extent or to some extent. Among prosecutors, 37percent share that view. Among lawyers, 46percent have that concern, although lawyers’ perceptions have improved over time. Judges’ perceptions of clarity of the laws fell between 2009 and 2013, then improved in 2019, but only back to the 2009 level. Prosecutors’ perceptions fell between 2009 and 2013, then improved in 2019, but are still below the level in 2009. (See Figure 82)

Figure 82: Extent to which Serbian Laws are Clear and Unambiguous, as Expressed by Judges, Lawyers and Prosecutors, 2009, 2013 and 2020²⁵¹



389. Further, professionals expressed reservations about the fairness of Serbia’s laws. Only 13 percent of judges and prosecutors considered the laws to be generally fair and objective, although these perceptions are an improvement in comparison to 2009. Again, most professionals reported somewhere in the middle.

390. The survey also highlights how imprecise and unclear laws can impact the quality of justice services. Lack of clarity and precision of the laws has a greater impact on the work of less experienced judges. Compared to their older peers, 55 percent of whom raise this issue, 69 percent of judges whose working experience does not exceed five years point out the need for greater precision of the laws. 19

²⁵⁰ If the quality of laws is poor, the judicial system will be unable to provide high-quality services to citizens. Poor-quality laws also create user dissatisfaction and can reduce trust and confidence in the judiciary. Ambiguous laws also create opportunities for undue influence and corruption. The quality of laws also affects efficiency and access. Poor quality laws can complicate case processing, which in turn lengthens the time it takes for courts to deal with those cases. Ambiguous laws also shift the burden of resolution to judges, leading to appealable decisions, which in turn increases appeal rates, placing a further burden on the court system.

²⁵¹ Survey Question 2009, 2013: *To what extent were Serbian laws precise, clear and unambiguous in the last 12 months?* Population base: legal professionals total target population. Multi-Stakeholder Justice Survey, World Bank, 2014/ Survey Question 2020: *In your opinion, to what extent are laws in Serbia precise, clear and unambiguous?* Scale: 1. Not at all, 2. Somewhat not, 3. Somewhat yes, 4. To a great extent; Population base: legal professionals total target population. Regional Justice Survey, World Bank, 2020.

percent of lawyers and 9 percent of prosecutors cited unclear laws as the main reason why the quality of judicial work is not higher.²⁵²

391. Improvement in the law-making process and less frequent changes in legislation could enhance quality. 84 percent of judges stated that less frequent changes in laws could contribute to a better quality of justice services. In addition, 84 percent of judges see a better quality of drafting legislation as a measure that would improve quality.

392. In interviews, stakeholders noted that overlapping and conflicting laws cause problems for the courts. Several stakeholders highlighted the need for greater harmonization of existing laws, as well as the need to consider existing laws when drafting new ones. Other stakeholders noted that there are gaps in the law, and that judges struggle to deal with these cases in the absence of clear guidance. Stakeholders in prosecution offices highlighted challenges in the application of environmental protection legislation and the use of ambiguous terms regarding wage laws, which causes problems in interpretation.

Environmental pollution is addressed in Article 260 of the Criminal Code. The basic form of the law applies when air, water or land are polluted to a greater extent or in a wider area, but it remains unclear what is considered a larger extent or wider area. The previous practice has interpreted these terms quite extensively and unevenly, which causes additional challenges. A more severe form of crime exists when large-scale destruction of animal or plant life has occurred or it takes a long time or large costs to eliminate the consequences. The meaning of the terms "large-scale", "long time" and "big costs" have to be interpreted in practice. Apart from uneven results, the interpretations are still not sufficient to crystallize these concepts.

4.3.2. Quality of the Law-Making Process

393. Unfortunately, the quality of the law-making process is still problematic in Serbia, despite the adoption of rules for the preparation and adoption of laws. There are several problems that lead to the adoption of laws of low quality. These include very frequent use of urgent procedures for the adoption of laws, which stifles democratic debate and lowers the quality of legislation; lack of transparent and genuine debate; lack of strict rules on the membership in working groups; and transposition of rules from other systems without adequate assessment of conditions and their implementation in Serbia.²⁵³ Furthermore, the National Assembly does not exercise its supervisory function, and changes in laws are not based on an assessment of the impact on the practice or pre-existing laws.

394. Several stakeholders identified poor drafting practices in recent years as contributing to unclear or ambiguous new laws, which have led to uncertainty about the application of laws by the courts. In addition, some changes to legislation were introduced to improve practice, but without assessment of the impact of previous laws and practice. For example, to address the risk of corruption in the public procurement area, a special crime was introduced in the Criminal Code – abuse in the public procurement procedure. However, an insignificant number of cases have been prosecuted under

²⁵² These figures reflect an improvement from 2009, but it is not clear whether this change is due to improved clarity of laws or whether other problems have since taken precedence as the ‘main reason’ holding back the quality of judicial work.

²⁵³ See Making better law: Improving the legislative process by better defined urgent procedures, Open Parliament, May 2015.

this law because public prosecutors have reported that it is more difficult to collect evidence for this crime than for abuse of office.

395. Organizational methods within working groups and representation in working groups have not always been clear. Stakeholders who are members of various groups expressed frustration that working groups often are not given clear direction about the goals to be achieved by the law and the specific mandate and methods for their work. Some working groups are guided by prior analytic studies, but others simply debate their views. Official working groups do not always include representatives from the populations or entities with the most expertise or those most directly affected by the legislation.

396. Although there is a requirement to assess the financial implications of proposed laws and institutional capacities to deliver reforms, working groups do not always conduct such analysis in detail. Lack of robust assessment of the financial implications of the 2011 Criminal Procedure law, which entered into force in 2013, led to significant financial arrears in public prosecutor's offices.²⁵⁴

397. Although there have been improvements in the regulation of consultation processes and public debates, there are still shortcomings. Amendments to the Law on Public Administration²⁵⁵ from 2018 brought some improvements in the rules on public debate, such as the possibility of opening a public hearing in the early stages of preparation of an act (article 77), prescription of information that must be published before a public hearing, and the obligation for public consultations during the preparation of laws. The Government's Rule of Procedure stipulates the obligation to prepare a report on the public debate and publish it on a webpage.²⁵⁶ In research on public debates held in 2019, Transparency Serbia found that state administrative bodies did not act the same way in similar situations and did not comply with the provision of the Law on Public Administration and the Government's Rules of Procedure.²⁵⁷

4.3.3. The Rollout of New Laws

398. Stakeholders still highlight concerns regarding the successive and continual reforms in the law over the last decade. Legislation is amended often without adequate awareness-raising campaigns among practitioners and users. For example, the Criminal Code was amended 10 times over the last 15 years, which could cause confusion among practitioners and challenges in practice. All that could lead to lack of trust and legal certainty, making it difficult for potential court users to follow all those amendments and to know what the law is.

399. There should be a greater focus on the dissemination and popularization of new laws, particularly given the pace of the reforms, the limited consultation, and the emergency passage of laws. Awareness of new laws is low among the public, court users, and even among legal professionals (see Access to Justice Chapter and discussion of awareness on Law on Free Legal Aid). Yet, they are the

²⁵⁴ Details are available in Functional Review of the Prosecution System in Serbia, World Bank, MDTF, 2019.

²⁵⁵ Official Gazette, No. 101/2007, 95/2010, 99/2014, 47/2018, 30/2018.

²⁵⁶ Official Gazette, No. 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011, 30/2013, 76/2014, 8/2019; Article 41.

²⁵⁷ Research on Public Debates, Transparency Serbia, 2019, available at:

www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_izvestaj_o_JR_u_2019.pdf

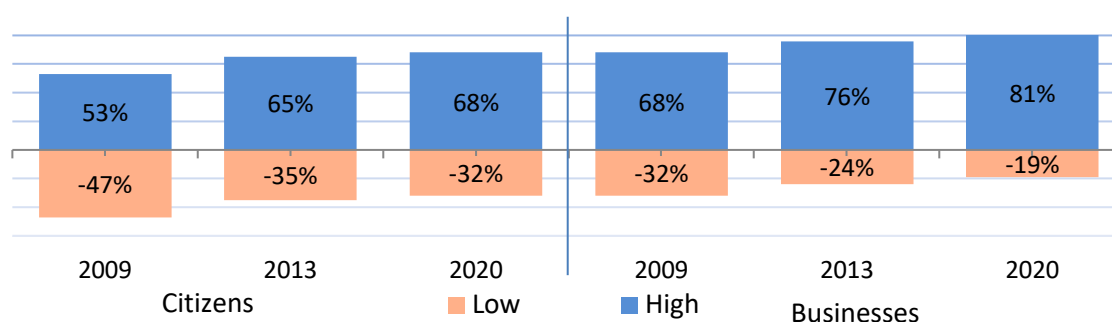
subjects and actors in the new laws, and their understanding is needed for laws to be implemented effectively.

4.4. Quality of Administrative Services within the Courts

400. The level of satisfaction with administrative court services is important from the perspective of court users because they directly rely on such services to conduct their everyday business. Administrative services to citizens and businesses comprise 24percent of all administrative tasks within the court. Basic Courts provide administrative services and issue certificates.²⁵⁸ Pending the appointment of notaries for some municipalities, some courts continue to verify signatures, manuscripts, and transcripts, including in probate proceedings.

401. According to the 2020 Regional Justice Survey, court users assess the overall quality of administrative services to be good²⁵⁹ (see Figure 83). Court users from the general population and the business sector which had to complete administrative tasks related to their court cases were more satisfied with the quality of the administrative services than with the quality of the court work related to their case.

Figure 83: Perceptions of Users of Court Administrative Service of the Quality of Work in that Specific Administrative Case, 2009, 2013 and 2020²⁶⁰



402. The image of the conduct and competence of service providers is worsening over time. Most users of administrative services are satisfied with the knowledge, efficiency, and pleasantness of staff. However, the number of dissatisfied users has increased over the last seven years. Satisfaction with

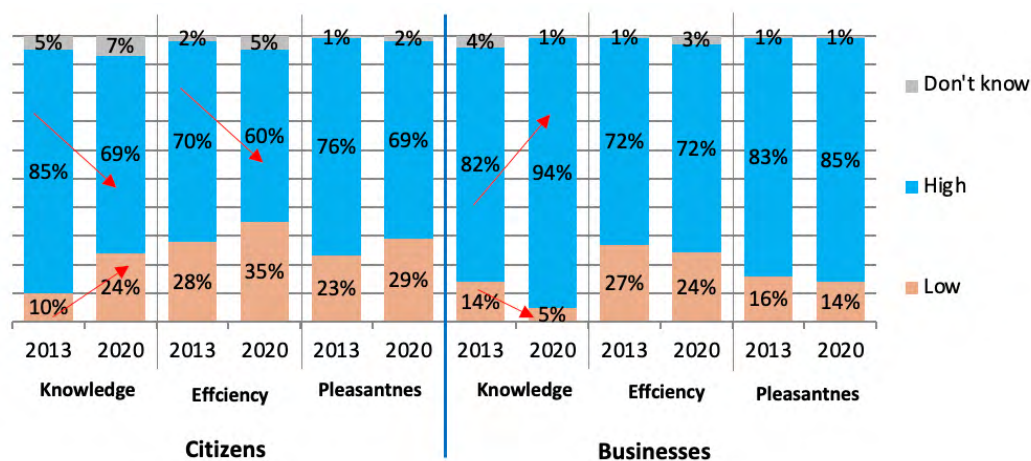
²⁵⁸ They issue the following certificates: 1) to confirm that no criminal or misdemeanor procedures are underway within the territorial jurisdiction of the court against the persons filing the requests; 2) whether the person was punished for misdemeanors or corporate crimes within a certain period within its territorial jurisdiction; 3) to confirm that a person has not been deprived of his/her parental right; 4) the type of procedure pending before the court; 5) to confirm that a person has not been deprived of his/her legal capacity; and 6) the verification of documents for use abroad.

²⁵⁹ For the purpose of the analysis, administrative services are categorized into two groups: verification of documents and contract, and other tasks, including access to the archive, registry desk, receptions, and expedition of documents.

²⁶⁰ Survey Question 2009, 2013: *What is your general impression of the quality of work of the judiciary in that specific administrative case? Scale: 1. Very low quality, 2. Low quality, 3. Average quality, 4. High quality, 5. Very high quality.* Population base: members of public and business sector with experience with court administrative services total target population. Multi-Stakeholder Justice Survey, World Bank, 2014/ Survey Question 2020: *What is your general impression of the quality of work of the judiciary in that specific administrative case? Scale: 1. Very unsatisfactory- very low quality, 2. Somewhat unsatisfactory, 3. Somewhat satisfactory, 4. Very satisfactory-very high quality.* Population base: members of public and business sector with experience with court administrative services total target population. Regional Justice Survey, World Bank, 2020.

court administrative services should be compared with satisfaction with the work of notaries to whom part of courts' administrative competencies were transferred in 2014. Citizens and the business sector are highly satisfied with the quality of notary work; 81 percent of citizens and 97 percent of businesses reported being satisfied with the quality of notary work in their specific case. Such high satisfaction confirms the success of that reform.

Figure 84: Court User Perceptions of Efficiency, Pleasantness, and Knowledge of Administrative Service Staff²⁶¹



4.5. Quality in Case Processing

403. The quality of case processing has not improved significantly since the 2014 Judicial Functional Review. This section reviews several indicators and European benchmarks relating to the quality of case processing, including standardized forms, consistency in the implementation of laws, use of specialized case processing for particular case types, and coordination in case processing.

4.5.1. Use of Standardized Forms, Templates, and Checklists

404. Consistency in case processing is still undermined by the absence of a consistent approach to routine documentation. There is no uniformity in the online availability of relevant templates that could support users' communication with the court and court administration.²⁶² There is no common approach, nor have any changes been made by the Appellate Courts, SCC, or HJC.

405. The RPPO took some measures in the direction of standardization to facilitate the application of the Criminal Procedure Code. The RPPO provided standardized forms and templates in an electronic

²⁶¹ Survey Question 2013: Please rate the staff in the court administrative services with respect to the following features. Please rate the level of ... of the staff you interacted with on a scale of 1 to 5, where 1 represents 'very low level' and 5 'very high level'. Survey Question 2020: Please rate the staff of the court administrative services with respect to the following features. To what extent were the following characteristics present among the staff that you interacted with? Please rate on the scale 1 to 4, where 1 means not present at all, and 4 means to a great extent. Population base: members of public and business sector with experience with court administrative services total target population. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank, 2020; Data are recalculated to allow comparison; Three features explored in both waves are compared.

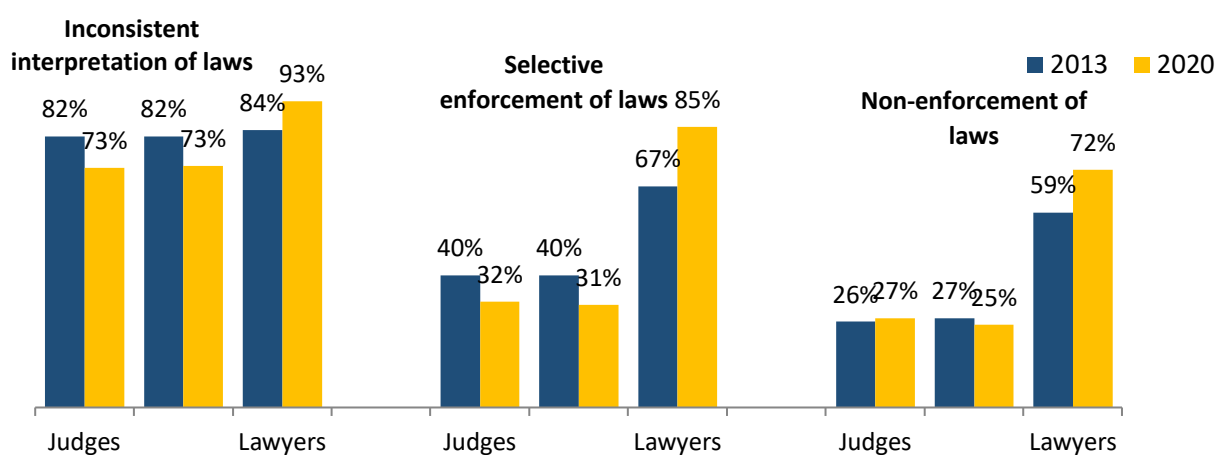
²⁶² Significantly higher number of templates are available at the website of the Basic court in Trstenik in comparison to the website of the Basic court in Nis and Basic court in Kraljevo.

format aligned with the new CPC in October 2013, but they would benefit from a system-wide update now, after five years of application. Prosecutors have altered some of the RPPO templates themselves already. In addition, the OSCE issued guidelines for different types of the prosecution to support prosecutors and provide interpretation of provisions.²⁶³ However, to ensure unified practice, it would be useful to issue a Guide by the RPPO as a mandatory general instruction.

4.5.2. Consistency in the Implementation of Law and Perceptions of the Quality of Judicial Work

406. Inconsistent interpretation of laws and inconsistent jurisprudence remain challenges for the Serbian judiciary. In the 2020 Regional Justice Survey, 70 percent of judges and prosecutors and 90 percent of lawyers stated that inconsistent interpretation of laws and inconsistent jurisprudence happen at least from time to time, if not often. More than 80 percent of lawyers reported that selective implementation of laws and non-enforcement of laws occur frequently. However, only about one-third of judges and prosecutors shared this view (see Figure 85). Judges’ and prosecutors’ perceptions have slightly improved since 2013, but lawyers’ perceptions have worsened over time, especially in the area of selective enforcement.

Figure 85: Share of Judges, Prosecutors, and Lawyers who Estimate that Listed Problems Occur from Time to Time or Frequently in the Enforcement of Laws, 2013 and 2020²⁶⁴



407. Despite improvement, lawyers are still mostly dissatisfied with the quality of work of judges.²⁶⁵ By contrast, 73 percent of prosecutors rated the quality of work of judges as high or very high in 2020, compared to 54 percent in 2014, and 67 percent in 2009.²⁶⁶ 87 percent of judges rated the quality of judges as high or very high in 2019, compared to 50 percent in 2014, and 61 percent of judges in 2009.

²⁶³ See: <https://www.osce.org/files/f/documents/8/a/437690.pdf>

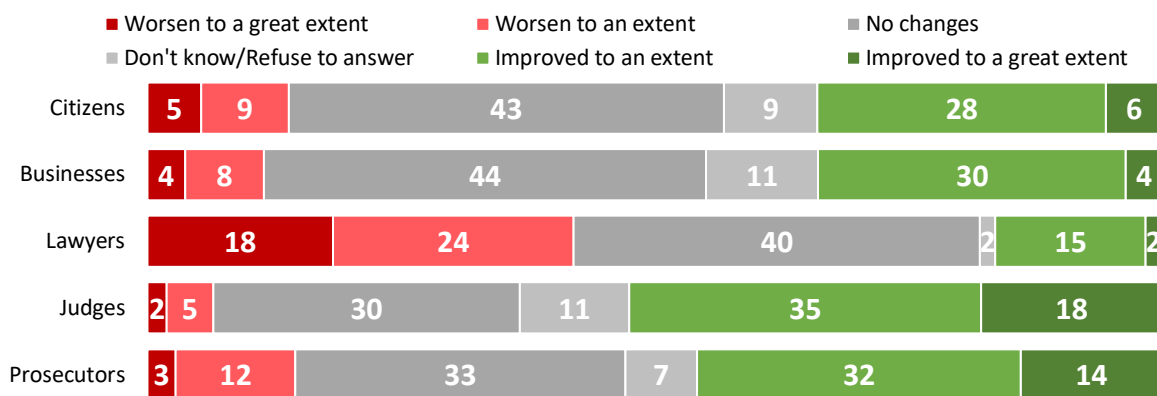
²⁶⁴ Survey Question 2009, 2013: *How often did the following problems occur in the enforcement of laws? Scale: 1. Never, 2. Rarely, 3. From time to time, 4. Frequently.* Population base: legal professionals total target population. *Multi-Stakeholder Justice Survey, World Bank, 2014/ Survey Question 2020: How often did the following problems occur in the enforcement of laws? Scale: 1. Never, 2. Rarely, 3. Occasionally, 4. Frequently.* Population base: legal professionals total target population. *Regional Justice Survey, World Bank, 2020.*

²⁶⁵ No lawyers rated the quality of judicial work as ‘very high’ in 2009 and 2013, and only 5 percent of lawyers in 2009 and 6 percent in 2014 rated the quality of judicial work as ‘high.’ 40 percent of lawyers found the quality to be ‘low’ or ‘very low’ in 2009, and 51 percent of lawyers expressed the same opinion in 2014. In 2020, 33 percent of lawyers evaluated the work of judges as high or very high, while 42 percent evaluated the work as somewhat negative and 22 percent as very negative.

²⁶⁶ Only 4 percent of prosecutors in 2009 and 7 percent in 2013 rated the quality of judicial work as ‘low’ or ‘very low.’

408. The evaluation of improved quality over time is substantially higher among judges and prosecutors (53percent of judges and 48percent of prosecutors), than among lawyers (only 17percent). 42percent of lawyers actually report that the quality has worsened over time, compared to only 7percent of judges and 15percent of prosecutors (see Figure 86 below). Lawyers’ opinions are influenced by personal experience with the shortcomings of the existing system, such as the lack of information and communication technology systems, the absence of a comprehensive countrywide system to process and link cases across courts and prosecutorial networks, and limits to some databases, which are available only to judges and prosecutors.

Figure 86: Quality of work over time²⁶⁷



4.5.3. Use of Specialized Case Processing for Particular Case Types

409. There are few examples of specialization in case processing in the Serbian judiciary. Commercial Courts have specialized their case processing somewhat. Misdemeanor Courts are a type of specialized court, but within their jurisdiction is a broad range of cases, from customs and tax offenses to traffic infringements, yet few mechanisms exist to tailor case processing to these very different types of cases. The Administrative Court has similar challenges, with a broad range of cases ranging from competition cases to cases related to election legislation.

410. Lack of specialization prevents prosecutors from developing special competencies and thus resolving cases with greater success. In addition to specialized PPOs and four specialized departments for corruption cases, only the larger PPOs have established specialized departments. The First Belgrade PPO has departments for commercial offenses and domestic violence, and the Belgrade Higher PPO has a department for combating high-tech crime. On the other hand, there is a specialization of case processing for juvenile cases in courts and prosecutor offices as required by law²⁶⁸.

4.5.4. Coordination in Case Processing

411. Coordination in case processing still presents challenges for the Serbian judiciary. Overlapping criminal and misdemeanor offenses still exist in the Serbian legal system. Elements of specific offenses can be charged as both criminal and misdemeanor offenses - or as both criminal and commercial

²⁶⁷ Survey Question 2020: Compared to the time three years ago, how would you evaluate quality of the judicial system now?; Base: Total target population.

²⁶⁸ Only judges and prosecutors who have finalized training organized by the Judicial Academy are allowed to participate in juvenile cases.

offenses.²⁶⁹ In Serbia, police often submit both misdemeanor and criminal charges for the same incident and do not inform the prosecutor of the duplication.

412. Overlapping offenses also cause inefficiency within the court system. The same incident burdens both the prosecution and the courts - once for the misdemeanor offense, with its procedures and legal remedies, and again for the criminal offense, with its procedures and legal remedies.

413. There are examples of the roll-out of good practices in coordination of case processing across all courts. A positive experience from inter-sectoral coordination in family violence cases from Zrenjanin has been incorporated in legislation. The law on the prevention of family violence²⁷⁰ envisages the establishment of group for coordination and cooperation (Article 25) that consists of representatives of public prosecutors, police, the center for social work, and representatives of other institutions (educational, employment services, etc.) if needed. The group is obliged to meet once every two weeks.

414. The great majority of prosecutors strongly believe that cooperation with other investigative bodies contributes to the quality of their institution, while judges and lawyers have more moderate opinions on this issue. It seems that the view of prosecutors is more accurate, and it is recommended that Serbia's political leaders implement an effective, no-tolerance policy for the unwillingness of police to follow prosecutors' instructions during all investigative phases of a case.²⁷¹ Otherwise, it will be impossible to produce consistent improvements in the quality and timing of case resolutions or increase public confidence in the judicial system.

415. Lack of political will, accompanied by the lack of official guidelines, generally impedes the effective investigation of cases.²⁷² On the other hand, there are some positive trends of cooperation that improve the quality of work. For example, a cooperation agreement between Eurojust and Serbia entered into force in December 2019, and in 2020 Serbia took part in three joint investigation teams.²⁷³ Also, the cooperation between the War Crimes Prosecutor's Office and the War Crime Investigation Service has been improved by forming joint investigation teams and introducing a new methodology.²⁷⁴ These positive examples of good cooperation resulted in greater optimism among prosecutors who took part in the Regional Justice Survey.

4.6. Quality of Decision-Making in Cases

4.6.1. Use of Standardized Judgment Writing Tools

416. Although there is no template or a common approach to judgment writing, some initiatives have been undertaken by the Supreme Court of Cassation and professional associations. The Supreme Court of Cassation has organized round tables to discuss criminal judgments and to identify

²⁶⁹ For example, family violence cases may involve elements of violence as well as obstructing an official in the performance of security or public order maintenance; tax criminal offenses and tax misdemeanors is another challenging area.

²⁷⁰ Official Gazette, No. 94/2016.

²⁷¹ World Bank, Functional Review of the Prosecution System in Serbia, 15 January 2019, p. 4.

²⁷² *Ibid*, p. 32.

²⁷³ The agreement prescribes sharing of information including personal data between Serbia and Eurojust in combating organized crime. A Serbian liaison prosecutor took office on 10 March 2020, while a regular cooperation with Eurojust continued through contact points in the Ministry of Justice and the Republic Public Prosecutor's Office.

²⁷⁴ Revised Action Plan for Chapter 23, 10 July 2020, p. 26.

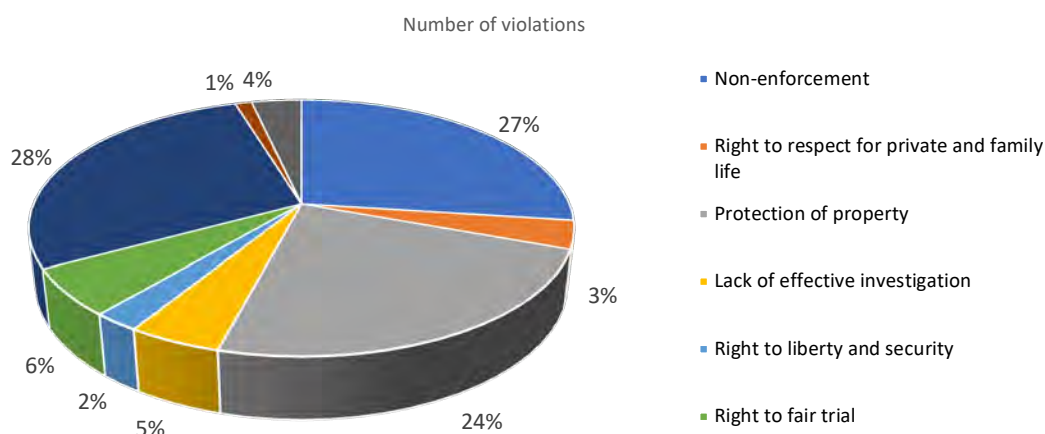
shortcomings and good practices in judgment writing. The Judicial Academy, in cooperation with the USAID ROL project, has organized training for judicial assistants on judgment writing technics.

417. Judicial training, both initial and continuous, includes a judgment writing module. A judgment-writing component was included in the Judicial Academy’s continuing training program for 2014, but the training is general and does not teach a standardized approach. As part of the initial training at the Judicial Academy, trainees receive compulsory training on the writing of various types of judgments and other court decisions in civil, non-litigious, enforcement, and criminal cases; in their final evaluation as trainees, they are evaluated on judgment-writing skills by their mentor judges.²⁷⁵

4.6.2. Consistency of Decision-Making with the ECHR

418. The statistics of the ECtHR in Strasbourg suggest that the Serbian justice system is still struggling to comply fully with the standards of the ECHR.²⁷⁶ Between 2017 and 2020, there has been an increasing number of cases where Serbia has been found in violation of the standards for non-enforcement and length of proceedings. Compared to 2010-2013, the number of violations related to the length of proceedings significantly increased, from 10 percent to 28 percent of overall violations, while violations concerning failures to enforce final court decisions and non-enforcement remain high.²⁷⁷ Out of a total of 63 judgments in 2017-2020 in which the ECtHR found Serbia in breach of the ECHR, 28 percent of violations related to an excessive length of proceedings and 27 percent of violations concerned failures to enforce final court and administrative decisions. Other violations were found for the right to protection of property and right to a fair trial. Serbia also has been cited for lack of effective investigation, inhuman or degrading treatment, and the right to respect for family and private life.

Figure 87: ECtHR Judgments against Serbia by Case Type (2017-2020)²⁷⁸



²⁷⁵ For example, in one of the JA trainee assessment report, trainee judgments were said to be ‘systematically written, clear, concise and well explained.’

²⁷⁶ Decisions of the ECtHR provide an indication of the quality of justice services in Serbia vis-à-vis the human rights standards outlined in the ECHR.

²⁷⁷ 2014 Judicial Functional Review, World Bank.

²⁷⁸ ECtHR official statistics, based on decisions finding at least one violation.

419. There also has been an increase in the overall number of Serbian cases pending before the ECtHR. Serbia is still among the countries with a significant number of pending cases at the ECtHR (2.8 percent of the pending applications at the end of 2020).²⁷⁹ This is only surpassed by far larger countries, such as Russia (22 percent), Turkey (19 percent), and Ukraine (16.8 percent). Almost 97 percent of the Serbian cases heard by the ECtHR have been declared inadmissible or stricken.²⁸⁰

420. Of applications decided by a judgment, a significant number have found at least one violation of articles of the ECHR (22 out of 24 in 2019; 4 out of 5 in 2020). Among these, it is common for the ECtHR also to find a violation of the length of proceedings and non-enforcement.

421. There has been a recent noticeable increase in the number of friendly settlements, an effective way in which Serbian authorities can resolve matters without the need for cases to go to hearings.²⁸¹ In 2017, there were 32 friendly settlements; by 2019, the number of settlements had risen to 103, but this is still significantly lower than 679 friendly settlements in 2013. The negotiation of friendly settlements is likely to be a useful litigation strategy for the state, given that awards for non-pecuniary damages can be quite high. Friendly settlements also are good for applicants because they prevent further delay in resolving their case and receiving compensation.

422. The Serbian authorities are taking measures, both legislative and non-legislative, to enforce ECtHR judgments, but certain challenges remain. Cooperation among different state authorities is the biggest challenge because enforcement of an ECtHR judgment may include the adoption of legislation and change of court practices and case law to come into line with the rulings of the ECtHR, as well as having budgetary implications.²⁸² Therefore, it is important to establish organized coordination between all relevant state bodies.²⁸³

4.7. Effectiveness of the Appeal System in Ensuring Quality of Decision-Making

423. The appeal system in Serbia remains one of the judicial system's impediments, with high appeal rates and deteriorating public perception of trust. The system still provides only unprecise data on lodged appeals, which hinders precise analysis and required the FR team to use estimated figures. Rates varied noticeably across court types, case types, and court locations. High appeal rates prolong the overall duration of cases and increase caseloads. On a more positive note, the reversal rates have declined and have been partially substituted by increased amendments, most likely due to the legislative obligation of the appellate court to decide on its own on the second appeal.

424. Ambiguity in laws and lack of uniformity in their application may contribute to high rates of appeals and reversals. Ambiguity may cause lower-court judges to make reversible errors, while lack of

²⁷⁹ See: https://www.echr.coe.int/Documents/Stats_pending_2021_BIL.pdf

²⁸⁰ From 2,595 application decided in 2019, 2,445 declared inadmissible or struck out, while 150 decided by judgement.

²⁸¹ Details concerning friendly settlements are confidential, so further analysis is not possible.

²⁸² Needs Assessment on the Execution of the Judgments of the European Court of Human Rights in Relation to Serbia, Council of Europe, 2020.

²⁸³ An attempt to establish cooperation among various state bodies was made for a short period when the government set up the Council for Relations with the ECtHR on 13 April 2013 (which included primarily representatives of the Ministry of Justice, Ministry of Finance, Ministry of Labour, and Employment and Social Affairs, as well as three university professors). The work of the council was chaired by the State Agent. Monitoring the execution of ECtHR judgments was only one of the tasks of the council.

consistency in lower courts may encourage parties to hope for a more favorable result on appeal. Other factors also may have encouraged parties to lodge appeals, such as the attorneys' interest in charging for more actions taken in a case and/or dilatory tactics to postpone enforcement in adverse decisions.

4.7.1. Using Data on Appeals to Evaluate the Quality of Judgments and of the Appeals System

425. Due to the lingering lack of more appropriate data, this FR, like the one from 2014, relies on an estimate of lodged appeals and appeal rates.²⁸⁴ That is, present-day reports still do not provide information on lodged appeals but only on decided appeals, which does not necessarily equate to appealed lower instance decisions made in the same reporting period. Also, as found in the FR 2014, Appellate Court statistics still do not distinguish between cases received from Basic Courts and cases received from Higher Courts. Instead, cases deriving from both Basic and Higher Courts are entered into the same registries.²⁸⁵

426. To calculate appeal rates²⁸⁶, the FR team used the number of resolved appeals adjusted by clearance rates of higher instance courts. Since the clearance rates of all higher instance courts examined here were close to 100 percent, the number of resolved appeals should be reasonably similar to the number of lodged appeals.²⁸⁷ This calculation is rather straightforward for all court types except for Basic Courts, for which the team needed to include an additional estimate to distinguish the appeals disposed of by the Higher Courts from the ones disposed of by the Appellate Courts.

427. Serbian data on resolved appeals lacks one more dimension – dismissed cases. The SCC's reports disaggregate resolved appeals by the following categories; confirmed, remanded²⁸⁸, amended, and partially amended or remanded. Dismissed appeals are left out, although they should be reported as a separate category. Therefore, the FR team could not include dismissals in its estimates. If dismissals were included, the appeal rates would have been somewhat higher than estimated.

428. Confirmation and reversal rates, without the appeal rate, do not mean much individually, but they mean a lot combined. High appeal and high confirmation rates in combination indicate stalling or other abusive tactics by parties. High appeal and low confirmation rates indicate quality and case law harmonization problems. The ideal situation would be a low appeal rate and a 50 percent confirmation rate, suggesting that only cases where even the judge may be uncertain of the right outcome go to higher instances.

²⁸⁴ This shortage of the SCC's statistical reports has still not been eliminated despite the recommendations given in 2014. See Recommendation 13, p. 20., FR 2014.

²⁸⁵ Recording in the registry depends on whether the appeal was lodged against the first or the second instance decision, lodged against a procedural decision, tried as a juvenile case, etc. The SCC has provided *ad hoc* data to the FR team concerning the number of received cases in Appellate Courts from Basic and from Higher Courts. See chapter 2.3.2.

²⁸⁶ Due to lack of data, appeal rates are frequently calculated (in this FR also) as the number of lodged appeals divided by the number of resolved cases. This is not completely precise. Ideally this formula would calculate the number of lodged appeals divided by the number of decisions that could have been appealed. This is because there are some procedural decisions that do not end the case but are eligible for appeal. This type of appeal will also open a new appellate case in the higher instance, frequently even under the same registry code (e.g. Gž or Kž).

²⁸⁷ 102 percent in Higher Courts, 103 percent in Appellate Courts, 99 percent in Appellate Misdemeanor Court, 100 percent in Appellate Commercial Court, and 102 percent in the Administrative Department of the SCC.

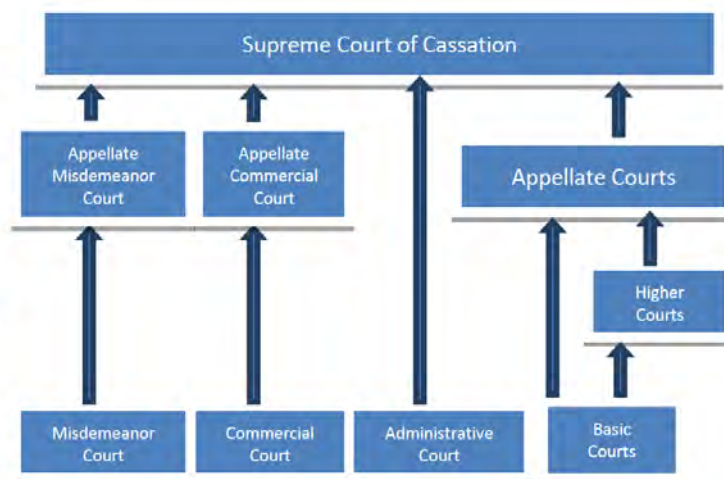
²⁸⁸ The terms remanded and reversed are used interchangeably in this chapter for a higher instance decision that orders a retrial.

429. Appeals are crucial not only as an indication of quality in decision-making but also as a factor in efficiency and timeliness. High appeal rates prolong the overall duration of cases and increase caseloads. Reversal causes a case re-opening in the lower instance court, after which the same case probably will be appealed again. This could happen several times in a single legal matter. However, procedural reforms have removed some of these procedural loopholes. For instance, appellate tiers are required to substitute the reversed decisions by their own judgments on the second appeal.

4.7.2. Appeals by Court Type and Case Type

430. There are four court types with appellate jurisdiction in Serbia: the Higher Courts, the Appellate Courts, the Appellate Commercial Court, and the Appellate Misdemeanor Court, in addition, appeals may be made to the Supreme Court of Cassation (see Figure 88, below). The ensuing analysis tracks appeals by court type and offers views on the current state of the appellate system in Serbia.

Figure 88: Court Appellate Jurisdiction in Serbia



Source: WB Team Illustration

4.7.2.1. Appeals from Basic Court Decisions

431. As a rule, appeals from Basic Courts go directly to the Appellate Courts for review (so-called ‘big appellation’), but some, usually concerning simple matters, are reviewed by Higher Courts (so-called ‘small appellation’).²⁸⁹ According to the data collected by the SCC for this FR, on a national level, appeals against Basic Court decisions comprised 62 percent of the Appellate Courts’ caseload in 2019, and 66 percent in the first half of 2020. Table 14 below displays ratios of received cases from Basic and Higher Courts per Appellate Court in 2019.

²⁸⁹ The Higher Courts decide on appeals against procedural decisions in civil disputes, judgments in small claims, decisions in non-litigation and enforcement proceedings, and security proceedings. In criminal proceedings, Higher Courts in the second instance decide on appeals against decisions of Basic Courts on measures to ensure the presence of defendants and on verdicts for criminal offenses punishable by a fine and imprisonment for up to five years. In other cases, the appellate courts have jurisdiction over the decisions of the basic courts in the second instance.

Table 14: Received Cases in Appellate Courts from Basic and Higher Courts in 2019

Appellate Court	From Basic Courts	percent	From Higher Courts	percent	Total in Appellate Court(s)
Belgrade	11,010	54percent	9,558	46percent	20,568
Kragujevac	8,764	66percent	4,541	34percent	13,305
Nis	8,313	67percent	4,092	33percent	12,405
Novi Sad	9,772	68percent	4,704	32percent	14,476
TOTAL	37,859	62percent	22,895	38percent	60,754

Source: SCC Data and WB Calculations

432. The cumulative appeal rate of Basic Courts in 2019 was nine percent – one percent higher than in 2013. This appeal rate was calculated by dividing 105,464 resolved appeals in Higher and Appellate Courts by 1,110,393 resolved cases in Basic Courts. 72.40 percent of the decisions or 76,356 were confirmed, 13.64 percent or 14,381 decisions were remanded, 8.18 percent or 8,622 decisions were amended, and 5.79 percent or 6,105 decisions were partially amended or remanded.

433. Appeals against Basic Court decisions in civil litigious cases²⁹⁰ in 2019 were high, with an appeal rate of 30 percent or approximately seven percentage points more than in FR 2014.²⁹¹ Almost three-quarters of the appeals pertain to general civil litigation ('P' registry) where the appeal rate in 2019 was estimated to be around 33 percent and the confirmation rate 72.64 percent. Labor civil litigious cases ('P1' registry) occupied just under one-quarter of civil litigious appeals, with an appeal rate of 43 percent and a confirmation rate of 71.72 percent. Family civil litigious cases ('P2' registry) comprised three percent of the civil litigation appeals, with an appeal rate of six percent and a confirmation rate of 59.10 percent.

434. Appeals rates against Basic Court decisions in criminal matters were also high at 24 percent.²⁹² Interestingly, the appeal rate in criminal matters appears to be stable over time, as it was only one percent higher in 2019 than in 2013, as reported by FR 2014. Of appeal decisions made in 2019, 68.79 percent were confirmed, 18.27 percent were remanded, 10.50 percent were amended, and 2.45 percent were partially amended or remanded. There were another two noteworthy categories of criminal cases, so-called criminal panels ('KV' registry)²⁹³ and parole cases ('KUO' cases), with appeal rates of 17 and 10 percent, respectively. In both categories, the confirmation rates were almost 100 percent: 97.78 percent in criminal panels cases and 98.58 percent in parole cases.

435. Appeals against civil non-litigious cases remained low, under five percent, and varied significantly among case types. This is because non-litigious cases essentially do not involve a dispute between the parties and because not all non-litigious decisions of the Basic Courts can be appealed. On one side of the spectrum, the appeal rate in probate cases in 2019 was 0.3 percent, and the confirmation rate was 99.85 percent. On the other side, a 38 percent appeal rate was reported in cases concerning requests for monetary compensation for immaterial (non-pecuniary) damages due to

²⁹⁰ Comprising registries 'P' (general civil litigious cases), 'P1' (labor civil litigious cases), and 'P2' (family civil litigious cases).

²⁹¹ In 2019, there were 217,133 Basic Court civil litigious decisions and 66,035 resolved appeals in the Higher Courts and Appellate Courts.

²⁹² Out of 38,435 criminal cases decisions in 'K' registry, 9,079 appeals were resolved in higher instances.

²⁹³ These are peripheral matters in which judges or panels of judges decide on different procedural questions outside of trial, e.g., on a defendant's appeal during investigation.

violation of the right to a trial within a reasonable time, while 94.49 percent of these cases were confirmed.

436. Appeals against enforcement decisions stayed very low at approximately three percent.²⁹⁴ Out of this percentage, 69.93 percent were confirmed, 12.64 percent were remanded to the lower court, 11.98 percent were amended, and 5.45 percent were partially amended or remanded. Compared to 2014 data, the number of amended and partially amended or remanded decisions increased by multiple times, meaning that the higher instance courts now opt for resolving the case by themselves more, rather than returning the cases for retrial and prolonging their duration.²⁹⁵

4.7.2.2. Appeals from Higher Court Decisions to the Appellate Court

437. In Higher Courts, a total of six percent of all decided cases were appealed in 2019, approximately as many as in 2013.²⁹⁶ 77.33 percent were confirmed, 11.21 percent remanded, 8.42 percent amended, and 3.03 partially amended or remanded. In comparison to 2013 figures, the confirmations have increased by 11 percentage points, the remands have decreased by 3.5 percentage points, while the amendments and the partial amendments or remands varied only slightly, up to one percentage point.

438. Appeal rates among major case types in Higher Courts varied significantly, primarily due to the ease of appeal. In the first instance civil litigious cases²⁹⁷, the estimated appeal rate was 20 percent,²⁹⁸ and the confirmation rate was 72 percent. Conversely, in the second instance civil cases²⁹⁹, where there are very few legislative options for appeal, the appeal rate was three percent³⁰⁰, and the confirmation rate was 95.80 percent. By contrast, in criminal cases,³⁰¹ the parties appealed in 14 percent³⁰² of the decided cases, and the confirmation rate was 61.82 percent.

439. In other case types in Higher Courts, appeal and confirmation rates varied considerably. The lowest individual appeal rate was 0.1 percent in cases concerning measures to ensure the presence of the accused in the preliminary proceedings. The confirmation rate for the same case type was 100 percent. In criminal panels cases, the appeal rate was 28 percent, while the confirmation rate was 85.86 percent.

4.7.2.3. Appeals of Commercial Court Decisions

440. In 2019, the Commercial Courts, aggregate appeal rates and confirmation rates were both moderate. Of the total of 140,082 Commercial Court decisions made, 15,242 were appealed to the Appellate Commercial Court, representing around 11 percent of the Commercial Courts' decisions for

²⁹⁴ 12,137 decided appeals divided by 422,539 resolved cases reported under the following registries: 'lv', 'l', 'li', 'liv', 'lnk', 'loi', 'lon', 'lpi', 'lpvl', 'lpvlv', 'lpvlvk'.

²⁹⁵ In 2014, 2.5 percent were amended, and 0.7 percent were partially amended. See p. 149, FR 2014.

²⁹⁶ 15,988 decided appeals divided by 254,759 resolved cases.

²⁹⁷ Registered under 'P', 'P1', 'P2' registries.

²⁹⁸ 6,154 decided appeals divided by 30,359 resolved cases.

²⁹⁹ Registered under 'Gz', 'Gz1', 'Gz2' registries.

³⁰⁰ 1,882 decided appeals divided by 71,309 resolved cases.

³⁰¹ Both first and second instance and comprising adults and juveniles, registered under 'K', 'K-Po1', 'K-Po2', 'K-Po3', 'K-Po4', 'Kz1', 'Kim', 'Km'.

³⁰² 2,027 decided appeals divided by 14,534 resolved cases.

that year. 75.37 percent of the appealed decisions were confirmed, 11.30 percent were remanded to the lower court, 9.24 percent were amended, and 4.09 percent were partially amended or remanded.

441. The Appellate Commercial Court displayed a greater inclination to substitute the lower court decisions with its own, i.e., the remanded decisions decreased, while the amended and partially amended or remanded decisions increased. In 2013 19.5 percent of the decisions were remanded, which is 8.2 percentage points more than in 2019. Conversely, the amendments increased by 3.44 percentage points and the partial amendments or remand by 3.39 percentage points.

442. Civil litigious cases in Commercial Courts reported very high appeal rates of 39 percent, while their corresponding confirmation rate was 73.71 percent. Out of 14,483 resolved cases, 5,721 were decided in the Appellate Commercial Court, and 4,217 were confirmed. Similarly, high appeal rates were reported in Commercial Courts in some case types involving bankruptcy proceedings (reorganization plans) and in enforcement proceedings regarding the right to a trial within a reasonable time.

4.7.2.4. Appeals of Administrative Court Decisions

443. In the Administrative Court, appeal and remand rates remained low. In 2019, Administrative Court decisions were appealed to the SCC in 1.5 percent of all Administrative Court decisions for that year. This was a reduction by 2.3 percentage points compared to FR 2014. Of the 329 appeals decided by the SCC in 2019, 91.08 percent of the decisions were confirmed. This is almost exactly the same as in 2013, according to the FR 2014 data, when the estimated confirmation rate was 91.11 percent. The latest data confirm the previous FR 2014 finding that there is a higher level of uniformity and consistency in administrative law than in other fields and that a large number of appeals are lodged without merit. However, this analysis is not able to distinguish if the appeal rates were low, and the confirmation rates high because the parties find it hopeless to go against the state in administrative matters.

444. Among individual case types in the Administrative Court, the appeal rate is high (38 percent) only in cases concerning the right to a trial within a reasonable time. Even in those cases, the confirmation rate is also high, at 91.08 percent.

4.7.2.5. Appeals of Misdemeanor Court Decisions

445. In the Misdemeanor Courts, the aggregate appeal rate in 2019 was low, at four percent, while the remand and the amendment rates were fairly high. In 2019, out of 614,246 decided cases, 25,539 decisions of the Misdemeanor Court were appealed to the Appellate Misdemeanor Court. Of these, 58.78 percent were confirmed, 19.50 percent were amended, 21.48 percent were remanded to the lower court, and 0.24 percent were partially amended or remanded.

446. In comparison to the 2013 data analyzed in FR 2014, the Appellate Misdemeanour Court doubled the number of amendments and reduced the number of remands by roughly one-third. Almost eight percentage points fewer decisions were remanded in 2019 than in 2013 (when 27.73 percent of decisions were remanded to the lower court). At the same time, the percentage of amendments in 2013 (9.66 percent) doubled to about 20 percent in 2019. Other categories are roughly comparable to the 2013 data.

447. The increase in the amendments and the decrease in remands is an improvement in line with the FR 2014 recommendations. The FR 2014 argued that misdemeanor cases should be relatively straightforward and the Appellate Misdemeanor Court would be well placed to amend the decision and save the parties and the Misdemeanor Courts the necessity of a retrial. The latest data indicate that the Misdemeanor Courts complied successfully with the given recommendation.

4.7.3. Appeals by Location

448. Outcomes of appeals varied among Serbian Basic Courts without any clear pattern. The average reported confirmation rate was 68 percent. The Basic Court in Subotica reported the highest confirmation rate in 2019 of 88.87 percent, while the lowest rate, of 34.18 percent, was reported in the Basic Court in Vrsac.³⁰³ Simultaneously, the Basic Court in Vrsac also reported an unusually high percentage of amended decisions – 57.02, primarily due to a very high number of amendments of civil litigious cases registered under ‘P’. Amendments were also high in Basic Courts in Sremska Mitrovica and Backa Palanka, at 20.63 percent and 19.86 percent, respectively. By contrast, the highest remand rate of 27.49 percent was reported in the Basic Court in Bor, followed by the Basic Court in Velika Plana, Trstenik, and Senta, in which over one-quarter of decisions were remanded.

³⁰³ It appears that the figures in Vrsac were heavily influenced in 2019 by a specific situation that remained unknown to the FR team. In 2018, the confirmation rate of the Basic Court in Vrsac was 70.59 percent, the remand rate was 16.54 percent, the amendment rate was 7.46 percent, and the partial amendment rate was 5.41 percent.

Figure 89: Appeals Outcomes in Selected³⁰⁴ Basic Courts in 2019

Basic Court	%			
	Confirmed	Amended	Remanded	Partially Amended
Aleksinac	65.71	6.22	21.31	6.75
Arandjelovac	71.31	11.15	12.07	5.42
Backa Palanka	60.82	19.86	14.85	4.47
Becej	72.41	6.38	15.01	6.19
Bor	61.30	5.69	27.49	5.53
Brus	69.26	6.49	22.08	2.16
Bujanovac	56.00	11.65	21.88	10.46
Cacak	77.62	4.25	12.34	5.79
First Belgrade	77.38	5.53	12.56	4.53
Gornji Milanovac	70.47	7.61	19.46	2.46
Leskovac	76.09	6.17	9.83	7.90
Nis	74.72	4.48	16.14	4.65
Novi Sad	80.89	3.59	12.33	3.19
Pancevo	71.57	11.33	12.80	4.30
Pozega	62.70	3.45	17.87	15.99
Priboj	68.91	4.66	8.29	18.13
Prijepolje	73.47	5.44	13.83	7.26
Sabac	68.14	9.76	17.24	4.85
Second Belgrade	69.53	4.25	23.80	2.42
Smederevo	62.29	8.11	20.80	8.80
Sombor	76.77	3.11	9.52	10.60
Sremska Mitrovica	63.33	20.63	11.75	4.29
Stara Pazova	66.11	11.85	14.64	7.39
Subotica	88.87	2.45	4.02	4.66
Surdulica	52.77	11.95	13.51	21.76
Third Belgrade	66.88	5.35	20.85	7.19
Trstenik	58.81	5.51	26.56	9.49
Ub	56.05	6.84	23.42	13.68
Valjevo	63.47	7.70	17.74	11.09
Velika Plana	57.99	3.72	27.00	11.29
Veliko Gradiste	74.74	5.67	17.01	2.85
Vrsac	34.18	57.02	6.87	1.94
Zajecar	66.33	5.09	18.62	9.96

Source: SCC Data

449. Appeal outcomes varied also among Higher Courts but to a lesser extent than in Basic Courts. The majority of Higher Courts remained close to the average confirmation rate of 75 percent. The only two true outliers were the Higher Court in Kraljevo, with a confirmation rate of 34.64 percent, and the Higher Court in Prokuplje, with a confirmation rate of 41.24 percent. In Kraljevo, the low confirmation rate was caused directly by 59.75 percent of amendments of 406 labor civil litigious cases, most probably identical or very similar disputes that could have been resolved uniformly. In Prokuplje, 36.60 percent of the decisions were remanded due to 47.90 percent or 57 remanded civil litigious decisions.

³⁰⁴ 'Selected' courts of various sizes were selected for this figure as well as for the other figures in this FR.

Figure 90: Appeals Outcomes in Higher Courts in 2019

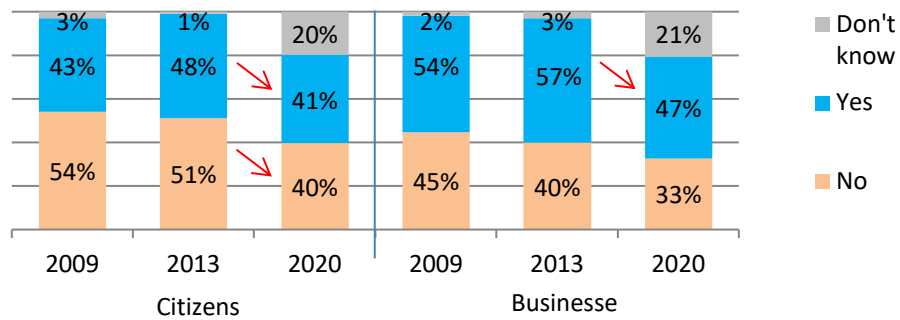
Higher Court	%			
	Confirmed	Amended	Remanded	Partially Amended
Belgrade	72.44	6.39	15.48	5.69
Valjevo	77.53	5.06	15.73	1.69
Vranje	78.28	8.84	10.86	2.02
Zajecar	72.60	11.06	11.54	4.81
Zrenjanin	75.94	8.72	15.04	0.30
Jagodina	74.62	6.95	16.92	1.50
Kragujevac	77.08	7.02	15.33	0.57
Kraljevo	34.64	59.75	5.47	0.14
Krusevac	75.14	8.65	15.68	0.54
Leskovac	77.73	3.06	15.28	3.93
Negotin	72.00	9.60	15.20	3.20
Nis	94.05	2.36	3.30	0.29
Novi Pazar	75.31	6.17	18.52	
Novi Sad	82.98	5.38	7.85	3.78
Pancevo	85.65	4.64	8.02	1.69
Pirot	84.50	5.90	9.59	
Pozarevac	75.15	4.85	13.94	6.06
Prokuplje	41.24	8.25	36.60	13.92
Smederevo	80.49	5.28	11.79	2.44
Sombor	83.66	8.95	5.64	1.75
Sremska Mitrovica	79.16	8.57	11.26	1.01
Subotica	74.31	10.67	13.04	1.98
Uzice	80.60	5.22	10.45	3.73
Cacak	75.76	7.99	9.64	6.61
Sabac	72.75	2.72	11.17	13.35

Source: SCC Data

4.7.4. User Perceptions of Appeals

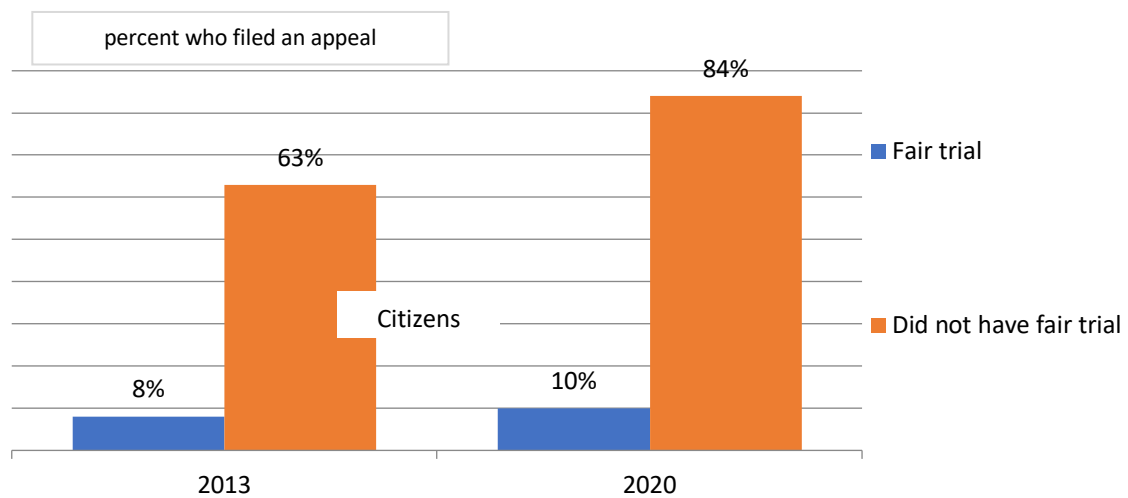
450. Trust in the appellate system among court users in Serbia decreased from 2013 to 2020, and fell below 2009 values, as demonstrated in Figure 91. In 2020, under one-half (41 percent) of the citizens with recent experience in court cases stated that they trust the appellate system. Meanwhile, a slightly higher percentage (47 percent) of business sector representatives with court case experience stated that they trust the appellate system. Interestingly, both the number of people who stated that they trust the appellate system and the number of people who responded that they do not trust the appellate system decreased in comparison to both 2009 and 2013. The number of indecisive respondents grew by seven to twenty times. It is unclear whether this lack of trust in combination with indecisiveness, encourages or discourages court users from lodging appeals.

Figure 91: Perceptions of Trust in the Appellate System, as Reported by Court Users, 2009, 2013, and 2020³⁰⁵



451. The decision of a party to file an appeal remains strongly related to the party’s perception of the fairness of the first-instance trial, even more so in 2020 than in 2013. Court users who received a judgment that was not in their favor filed an appeal in 84 percent of the cases if they considered the decision to be not fully fair, an increase by 21 percentage points over 2013. In contrast, court users who received a judgment that was not in their favor but who considered the decision to be fair appealed in only 10 percent of cases, an increase by two percentage points over 2013.

Figure 92: Relationship between Perceived Fairness and Decision to Lodge Appeal among Court Users who Received a Judgment Not in their Favor, 2013, 2020³⁰⁶

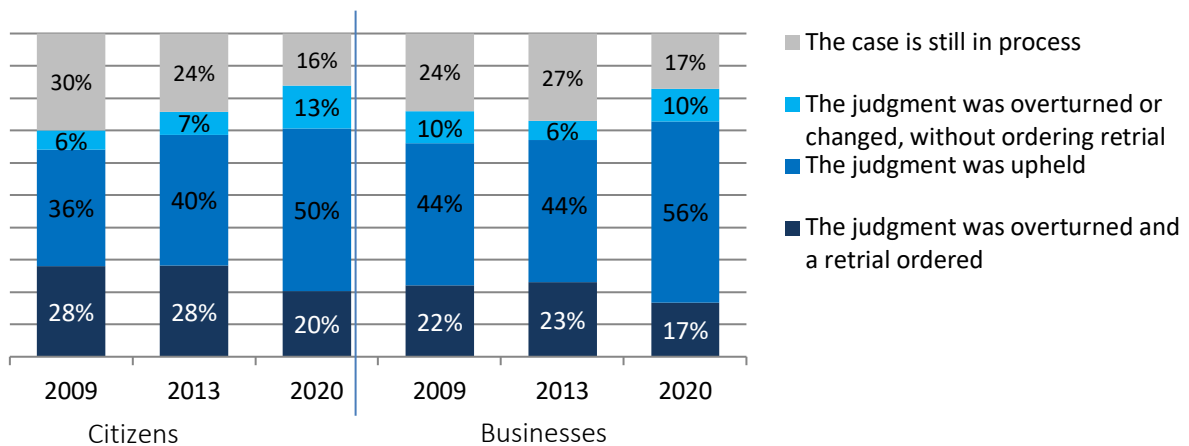


452. In 2020, in over fifty percent of the cases, court users reported that the higher instance court upheld the judgment. However, in 20 percent of cases involving the public, the judgment was overturned and a retrial was ordered. In 17 percent of cases involving the business sector, the judgment was overturned and a retrial was ordered. Simultaneously, the number of amendments increased from 2013 to 2020 in both citizens’ and businesses’ cases by six and four percentage points, respectively.

³⁰⁵ Survey Question 2009, 2013, 2020: *Do you trust the appellate system?* Population base: public and business sector with experience with court cases. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank 2020.

³⁰⁶ Survey Question 2013, 2020: *Notwithstanding the outcome of the court proceedings, what do you think of the first-instance proceedings themselves? Did you have a fair trial?* Population base: public who received a judgment not in their favor and filed an appeal. Multi-Stakeholder Justice Survey, World Bank, 2014; Regional Justice Survey, World Bank 2020.

Figure 93: Outcome of Appeals as Reported by Court Users, 2009 and 2013³⁰⁷



4.7.5. High Appeal Rates and High Variation in Appeals

453. High appeal rates in Serbia, particularly in specific case types, and deteriorated perception of the appeal system suggest the systemic presence of quality-related difficulties. Lack of uniformity in the application of law may encourage parties to hope for a more favorable result on appeal. Furthermore, it has been frequently reported that attorneys also may play a role in driving up appeals, since their expenses are predominantly calculated per each action they take in a case. They also may instruct their clients about the likelihood of success on appeal and the tactical advantages appeals may offer, such as the delayed enforcement of an adverse judgment.

454. Reasons for geographic variations remain inexplicable in any way other than lack of uniformity in the application of the law. Although one-time effects of specific circumstances in courts, such as remands of many uniform labor cases, may cause sudden variations, it is not likely that this could be the case in all of Serbia, especially since the variations are persistent in 2013 (2014 Functional Review findings) as well.

455. The FR 2014 found the appeals system is at the heart of Serbia’s problems in terms of quality of decision-making. Appeal rates were found very high on average, as were reversal rates. Rates also varied markedly across court types, case types, and court locations. Appeals were poorly monitored. The perceived unfairness of the system, combined with its lack of uniformity and consistency, encouraged court users to appeal. Attorney incentives were also identified as one of the factors driving up appeals. At the same time, levels of trust in the appellate system among court users were low. Procedural amendments to reduce successive appeals (known as the ‘recycling’ of cases) were found effective. Nonetheless, appellate judges (notwithstanding their lighter caseloads) continued to remand cases back to the lower jurisdiction for retrial more often than they were required to.

³⁰⁷ Survey Question 2009, 2013: *What was the decision of the higher court after the first appeal was submitted following the first instance court judgment? (answers are adjusted to those from 2020 to be comparable)* Population base: public and business sector in whose case and appeal was filed either by the respondent or other party in the proceeding. Multi-Stakeholder Justice Survey, World Bank, 2014; Survey Question 2020: *What was the decision of the higher court after the appeal(s) which were submitted following the first instance court judgment?* Population base: public and business sector in whose case and appeal was filed either by the respondent or other party in the proceeding. Regional Justice Survey, World Bank, 2020;

456. On a more positive note, the higher instance courts more often replaced the lower instance decisions with their own, as supported by data earlier in this section. In FR 2014, only a small percentage of cases were higher instance courts amending the decisions of lower courts, although the benefits of such amendments are numerous. They save the parties the trouble of re-litigating in the lower instance court, ease the workloads of judges and courts, shorten the trial, and increase uniformity in the application of the law over time. Legislative changes obliged the higher instance court to replace the decisions with their own on the second appeal. Higher instance judges should work toward, whenever possible, replacing the decision of the lower court in instances other than a second appeal in the same matter. Higher instance decisions in which a reversal is issued should contain precise reasoning and instructions to be followed by the lower court in subsequent proceedings.

457. A range of other measures are available to improve the quality of decision-making. Some of them were already suggested in the FR 2014. These comprise education of judges, better use of existing case law harmonization tools, and implementation of new ones (e.g., meetings of judges in the same department to discuss legal issues).

4.8. Quality of prosecution

4.8.1. Introduction

458. This chapter builds on the analysis of Serbia’s prosecutorial system (Prosecutorial FR) by the World Bank and the Multi-Donor Trust Fund for Justice Support in Serbia³⁰⁸, by examining data from 2017 through 2019. The Governance and Management Chapter of this report covers those functions for the prosecution as well as for the courts, but readers should consult the Prosecutorial FR for more details about the structure and hierarchical nature of the prosecutorial system overall. The Prosecutorial FR also covered the functions of the SPC, the RRPO, and the different types and jurisdictions of PPOs.

459. The Prosecutorial FR, formally published in January 2019, focused primarily on 2014 through 2016, when Serbia’s prosecutors were adjusting to extensive changes in the nation’s Criminal Procedure Code (CPC), adopted in 2013. These changes included the introduction of adversarial proceedings, which challenged many prosecutors as they adjusted to their new, more active roles.

460. At the same time, leaders of Serbia’s political and judicial systems were under continuous pressure to make major additional structural changes to the governance and management of the country’s prosecutorial functions as part of Serbia’s planned accession to the EU. That pressure has continued to the publication of the present FR, as discussed in the various EU reports related to the EU’s Enlargement Policy.³⁰⁹

461. The official data on which many of the statistics in this Chapter rely were not always consistent and could not always be reconciled. Data in this study came from statistics in RPPO Annual Reports

³⁰⁸ Available at

<https://www.mdtfjss.org.rs/archive/file/SRBpercent20Prosecutionpercent20FRpercent20Decemberpercent202018.pdf>.

³⁰⁹ See, e.g., the October 2020 Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions at https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf.

from 2014 through 2019 and from the SPC, but other data was derived from interviews and published analytical reports such as those produced by CEPEJ.

462. The available data for prosecutorial services still was far less extensive than it was for courts, and the data that was reported was of limited use because of the collection methods and formats. There was no unified electronic case management system for the prosecutorial system in place by the end of 2019. The available RPPO Annual Reports were published in a format³¹⁰ that was not suitable for computer processing. Preparation of those reports depended highly on manual data collection and individual interpretation, which made the reports prone to inconsistencies and inaccuracies.

4.8.2. Quality in Case Processing

463. There were no significant advancements in modernizing performance measuring for prosecutors or PPOs. Prosecutors still lacked support in measuring their performance and how to use this information to their advantage to improve case management, support funding requests, foster public support, and respond to criticism clearly and precisely. The prosecution system would undoubtedly benefit from such modernization.

464. Regular system-wide updates of the standardized forms and templates provided by the RPPO in 2013 were still required, especially since there had been several amendments to the CPC since 2013. Individual prosecutors reportedly altered some of the RPPO templates for their own use, but there was no centralized revision of the official forms. As noted in the Prosecutorial FR, the use of templates and standardized forms facilitates a consistent approach to routine prosecutorial tasks, reduces the number of mistakes in documents, and fast-tracks regular daily actions.

4.8.3. Conviction rates

465. As important as they are for assessing the quality of prosecution, conviction rates alone do not provide a complete picture of how well any prosecutorial system has performed.³¹¹ In addition to conviction rates, factors such as the timing and reasons for dismissals and deferred prosecutions can be used to examine both the quality of decision-making and the skills of professionals within a judicial system.

466. The types of cases included in Serbia's conviction rate statistics did not change between the publication of the Prosecutorial Functional Review and 2019, so they included only cases in which a court entered a decision of guilty or innocent. As a result, the statistics about convictions included cases concluded through plea bargains³¹² but did not include deferred prosecutions, which involve the

³¹⁰ Example of the RPPO's report; <http://www.rjt.gov.rs/docs/RADJAVNIHTUZILASTAVA-3.pdf>. Only 2019 data were available for the WB team in MS Excel.

³¹¹ Standing alone, high conviction rates may indicate that prosecutors are trying only cases in which success is guaranteed instead of letting the court decide. On the other hand, low rates may indicate that prosecutors are not making realistic appraisals of whether deferred prosecution or dismissal is an appropriate disposition for a given case. Variations among individual PPOs within PPO types may indicate a lack of consensus about the factors that should govern the decision on whether to take a particular case to trial.

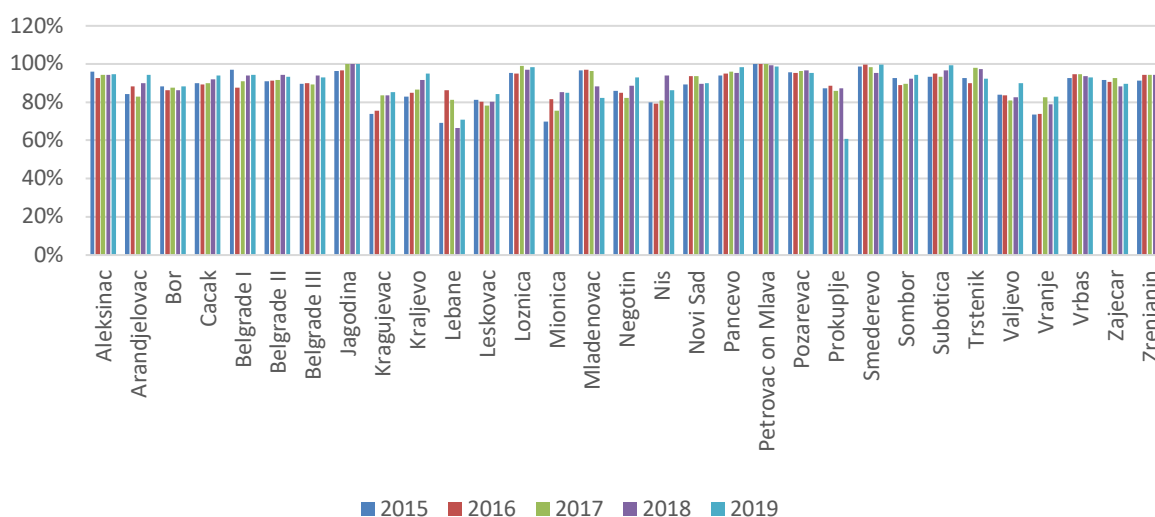
³¹² Cases concluded by plea bargains are included in conviction rates since they include a formal court decision as to the defendant's guilt.

dismissal of charges by a prosecutor without a court finding of guilt or innocence, while imposing a sanction on the defendant.

467. The overall conviction rates of Basic and Higher PPOs held steady or improved during 2018 and 2019, compared to the rates for 2015-2017. The average for Basic Courts was 91 percent for 2018 and 2019, compared to 90 percent for 2015-2017, while the average for Higher Courts increased from 86 percent in 2015 and 2016 to 89 percent in 2017 and 2018, and 91 percent in 2019.

468. However, there were wide variations in conviction rates among even PPOs of the same size and jurisdictional levels and sometimes by year within the same PPO from 2015 through 2019. See Figure 94 and Figure 95 below. The FR team was not able to obtain any analyses of the reasons for the variations that may have been completed by the SPC or the RRPO. The Basic PPO in Petrovac on Mlava had a 100 percent conviction rate from 2015 to 2017 and a 99 percent conviction rate in 2018 and 2019. Similarly, high conviction rates throughout the period were reported in Basic PPOs in Jagodina and Smederevo. The Basic PPOs in Belgrade had rates that were roughly at the national average. Conversely, similarly-sized Basic PPOs in Lebane and Mionica reported much lower conviction rates and/or higher variations.³¹³ The medium-sized Basic PPOs in Vranje had lower conviction rates than the average, ranging from 74 percent in 2015 to 83 percent in 2017 and 2019. The Basic PPO in Nis improved its conviction rate significantly in 2018 to 94 percent, which was approximately 14 percentage points higher than in previous years, but the rate fell again in 2019 to 86 percent. In 2019, the lowest conviction rate (61 percent) and a drop of 27 percentage points compared to the previous year was reported in the Basic PPO in Prokuplje. This sudden drop in Basic PPO in Prokuplje was caused primarily by a 400 percent increase in the number of acquittals.³¹⁴

Figure 94: Convictions for Selected³¹⁵ Basic PPO from 2015 to 2019



Source: RPPA Annual Reports 2015-2019

³¹³ Lebane’s rate was 69 percent in 2015, 86 percent in 2016, 81 percent in 2017, 67 percent in 2018, and 71 percent in 2019. Mionica’s conviction rates were 70 percent in 2015, 82 percent in 2016, 76 percent in 2017 and 85 percent in 2018 and 2019.

³¹⁴ In 2018, there were 37 dismissals and 39 acquittals in Prijepolje; in 2019, 61 dismissals were reported and 213 acquittals. The reasons behind this phenomenon remained unknown for this study. The FR team could not locate any analyses accounting for the extreme rise in the number of acquittals.

³¹⁵ Basic PPOs were selected for inclusion in Figure 94 to display examples of PPOs of various sizes.

469. The conviction rates of Higher PPOs also had similar variations, but the FR team could not locate any analyses of the possible causes of the variations. For instance, the conviction rate for the Higher PPO in Vranje dropped from 84 percent in 2017 to 58 percent in 2018. The rate for the Higher PPO in Belgrade increased each year by a total of 18 percentage points from 2015 to 2019. The three Higher PPOs with the lowest rates in 2019 were Vranje (72 percent), Jagodina (81 percent), and Kraljevo (82 percent). In contrast, the rate for the Higher PPO in Leskovac rose from 64 to 97 percent in 2019. Only two Higher PPOs, in Novi Pazar and Uzice, managed to maintain conviction rates of 90 percent or higher over the five observed years (there was no data available for Uzice for 2017).

Figure 95: Convictions per Higher PPO from 2015 to 2019³¹⁶

Higher PPO	2015	2016	2017	2018	2019
Beograd	71percent	76percent	79percent	79percent	89percent
Cacak	80percent	83percent	70percent	94percent	98percent
Jagodina	90percent	81percent	75percent	82percent	81percent
Kragujevac	93percent	60percent	88percent	86percent	84percent
Kraljevo	93percent	91percent	97percent	100percent	82percent
Krusevac	74percent	67percent	100percent	97percent	97percent
Leskovac	64percent	68percent	94percent	91percent	97percent
Negotin	67percent	100percent	95percent	86percent	100percent
Nis	85percent	88percent	91percent	87percent	91percent
Novi Pazar	100percent	92percent	98percent	100percent	98percent
Novi Sad	97percent	96percent	89percent	95percent	93percent
Pancevo	94percent	80percent	80percent	87percent	99percent
Pirot	94percent	64percent	94percent	93percent	87percent
Pozarevac	83percent	98percent	100percent	98percent	89percent
Prokuplje	87percent	96percent	89percent	92percent	89percent
Sabac	82percent	92percent	98percent	88percent	90percent
Smederevo	85percent	93percent	79percent	80percent	96percent
Sombor	83percent	90percent	80percent	85percent	96percent
Sremska Mitrovica	97percent	87percent	88percent	91percent	97percent
Subotica	91percent	88percent	92percent	90percent	98percent
Uzice	93percent	100percent	n/a	100percent	95percent
Valjevo	90percent	97percent	97percent	97percent	84percent
Vranje	73percent	79percent	84percent	58percent	72percent
Zajecar	90percent	90percent	84percent	86percent	83percent
Zrenjanin	87percent	96percent	95percent	87percent	98percent

Source: RPPO Annual Reports 2015-2019

470. Conviction rates of Specialized PPOs and specialized departments in select Higher PPOs also varied significantly. The Special Prosecutor’s Office for Organized Crime reported conviction rates from 75 to 91 percent from 2015 to 2019³¹⁷ while conviction rates of the Special Prosecutor’s Office for War

³¹⁶ The table is color coded so that the minimum value is red, the median is white, and the maximum value is green. All other cells are colored proportionally.

³¹⁷ There were 202 convictions of 221 decisions in 2015, 195 of 260 in 2016, 223 of 245 in 2017, 180 of 235 in 2018, and 212 of 240 in 2019.

Crimes ranged from zero to 83 percent.³¹⁸ Conviction rates for the Special Prosecution Office for High Tech Crime within the Belgrade Higher PPO improved from 37 percent in 2015 to 91 percent in 2019.³¹⁹ The specialized departments to combat corruption, established in 2018 in four Higher PPOs, produced a 100 percent conviction rate that year and a rate of 96 percent in 2019.³²⁰

4.8.4. Quality in Decision-Making

4.8.4.1. Control Mechanisms and Coordination in Case Processing

471. There were no changes to the highly hierarchical structure of Serbia’s prosecutorial system between the publication of the Prosecutorial FR and the end of 2019. Higher-instance Public Prosecutors still had the right to control the work of lower-instance ones; the higher-instance prosecutors could take over any matters of lower-instance Public Prosecutors within his or her jurisdiction and issue mandatory instructions to those lower-instance Public Prosecutors.

472. By the end of 2019, there still were no effective means prosecutors could use to force police to follow their instructions.. Prosecutors interviewed for the FR reported it still was common for police to ignore or to vary from prosecutorial instructions about steps to be taken during the investigations. Prosecutors reported this problem arose particularly in cases that might have political implications because of political issues or the political roles of persons involved in a case, which also was true when the Prosecutorial FR was published in 2018.

473. To ensure better quality and control of prosecutors’ work, starting in 2013, the CPC has allowed the filing of complaints about the dismissal, suspension, or abolition of a criminal complaint, and Serbians have made extensive use of this process.³²¹ An alleged victim or the person who submitted a criminal complaint may request that a higher-instance PPO reconsider a dismissal.

474. The complaints mechanism was applied in eight percent of the dismissals in Basic PPOs (4,749 complaints) and 43 percent in the Higher PPOs (2,122 complaints) in 2019. In the absence of any data to explain the difference of 35 percentage points, the FR team presumes persons affected by the more serious crimes handled by Higher PPOs were more apt to feel they had significant interests in the outcome of those cases.

475. In 2019, 12 percent of the 4,749 complaints against Basic PPO dismissals were adopted by the Higher PPOs while 75 percent were rejected, and 12 percent were carried over to 2020. Since the time

³¹⁸ There were seven convictions of 19 decisions in 2015, four of five in 2016, zero of three in 2017, two of four in 2018, and 15 convictions of 18 in 2019.

³¹⁹ There were 15 convictions of 41 decisions in 2015, 23 of 33 in 2016, 23 of 37 in 2017, 44 of 52 in 2018, and 49 of 54 in 2019.

³²⁰ There were convictions in all of the 317 decisions in 2013, and the 317 decisions in 2018. There were 670 convictions of 697 decisions in 2019.

³²¹ Article 51 of the CPC. The request must be filed within eight days of notification of the dismissal. The higher-instance PPO must respond within 15 days. The alleged victim or person who submitted the complaint also may complain if a prosecutor dismisses, suspends or abolishes a prosecution or withdraws from pursuing a case. Prosecutors unilaterally can dismiss a criminal case before there has been an investigation of trial, suspend a case if it has reached the investigation phase, and abandon the criminal prosecution until the indictment is confirmed.

limits for this type of complaint against any dismissal are quite strict, presumably, the carried-over cases were those received at the end of the year.

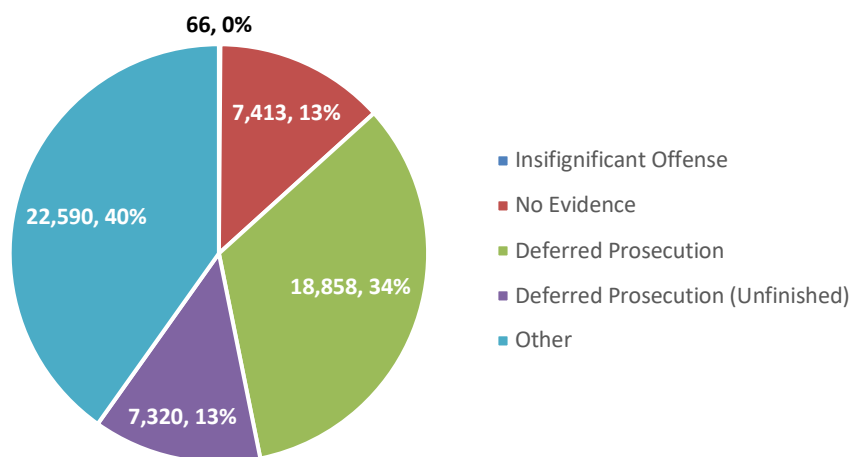
476. In 2019, eight percent of the 2,122 complaints against Higher PPO dismissals or 166 were adopted by the applicable Appellate PPOs, while 1,739 were rejected, and 217 were carried over.

477. In both Basic and Higher PPOs, the figures related to injured person complaints varied to some extent from 2014 through 2019 but without a distinct pattern. Approximately 3,500 to 4,500 complaints were submitted against Basic PPOs dismissals, and 1,000 to 2,500 against Higher PPOs dismissals. Roughly 75 to 85 percent of complaints against both Higher and Basic PPOs were not accepted, with the exception of 2017, when 93 percent of the complaints submitted against Higher PPOs were rejected.

4.8.4.2. Dismissals

478. Due to the continuing lack of detail collected about the reasons for dismissals, the system was still missing a significant amount of critical data about the quality of this process. Dismissals in the RRPO’s Annual Reports were broken down into only five categories, namely ‘insignificant offenses’,³²² cases dismissed for lack of evidence, deferred prosecutions, unfinished deferred prosecutions and “other”. It was not even possible to determine, for instance, how many of the “other” cases had to be dismissed against adult defendants because the applicable statute of limitations had expired. In 2019, 40 percent of the dismissals of criminal complaints against adult defendants were handled by Basic PPO, as shown by, and Figure 96, 87 percent of the same set of cases handled by Higher PPOs fell in the “other” category.

Figure 96: Dismissals in Basic PPOs by Type in 2019³²³



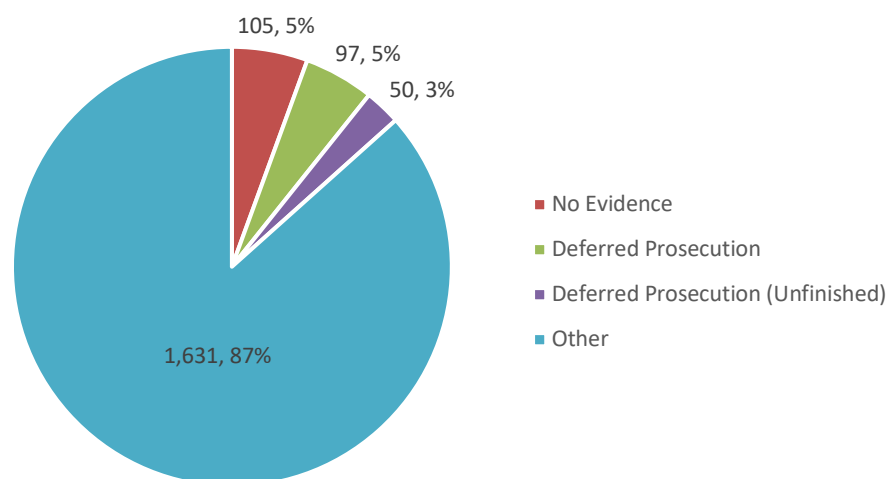
Source: RPPO Annual Report 2019

³²² Article 18 paragraph 1 of the Serbian Criminal Code prescribes that an act or a behavior should not be treated as a criminal offense if it would be ‘insignificant’ for society. One example would be the theft of something of very low value like a package of chewing gum.

³²³ So called ‘unfinished’ deferred prosecutions can still be revoked if the defendant does not fulfill the requirements s/he agreed to.

479. From 2014 to 2019, Basic PPOs dismissed a higher share of cases than Higher PPOs due to the number of cases for which there was insufficient evidence. In 2019, only five percent of dismissals in Higher PPOs were for lack of evidence, compared to 13 percent of the dismissals of the same type in Basic PPOs. See Figure 97.

Figure 97: Dismissals in Higher PPOs by Type in 2019 (Adult Perpetrators)



Source: RPPO Annual Report 2019

480. Comparison of earlier figures to the share of cases shown as “discontinued” in the CEPEJ 2020 report,³²⁴ which was based on 2018 data, should be done with caution. Serbia’s statistics show the share of dismissals in the number of disposed of cases ranged from 47 to 58 percent of the cases disposed of for Basic PPOs and 39 to 47 percent for Higher PPOs.³²⁵ The CEPEJ 2020 report found that Serbian prosecutors discontinued 3.28 cases per 100 inhabitants, which was higher than the averages for the EU (1.91) and EU11³²⁶ (1.10), and the Western Balkans³²⁷ (1.33) average. While these numbers could be read to show a tripling of the cases discontinued by Serbian prosecutors compared to the previous CEPEJ report based on 2016 data, between the two reports Serbia changed its definition of what counted as a case against adult defendants processed by a public prosecutor.³²⁸ Therefore, the differences from the earlier numbers probably are not as high as they appear in the CEPEJ report. See Figure 98.

³²⁴ CEPEJ Report on ‘European judicial systems CEPEJ Evaluation Report – Edition 2020 (2018 data): 2020 Evaluation cycle (2018 data)’, <https://rm.coe.int/evaluation-report-part-1-english/16809fc058> and CEPEJ-STAT Dynamic database of European judicial systems, <https://www.coe.int/web/cepej/dynamic-database-of-european-judicial-systems>.

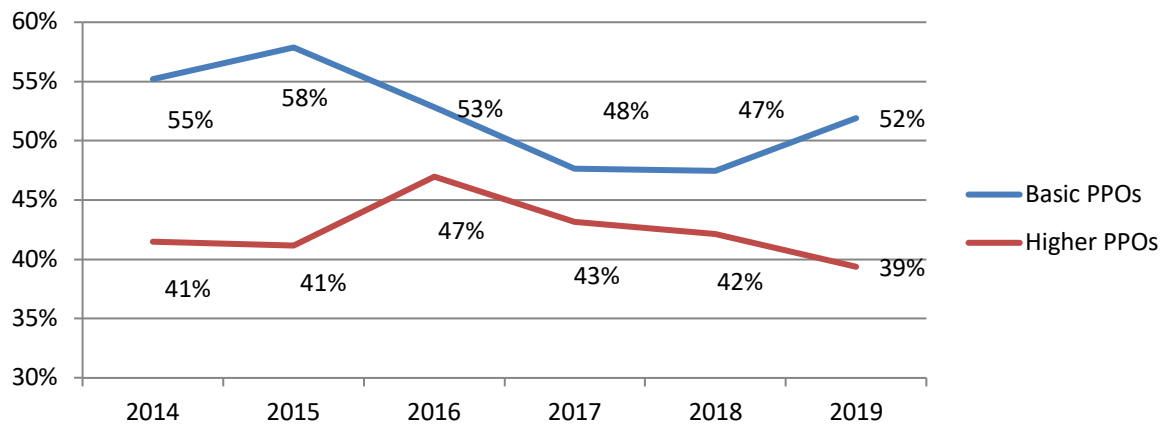
³²⁵ The FR team could not obtain any dismissal data for Appellate PPOs from 2014-2019.

³²⁶ The EU11 countries are Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia and the Slovak Republic.

³²⁷ The Western Balkan states are Albania, Bosnia and Herzegovina, Montenegro, the Republic of North Macedonia and Serbia.

³²⁸ In the pre-2020 CEPEJ evaluation cycles, Serbia reported criminal complaints against known adult and juvenile perpetrators as cases processed by public prosecutors. For the 2020 cycle, this stock was expanded by cases against unknown perpetrators and various other case types tracked in the KTR registry. According to the CEPEJ 2018 report (2016 data), the prosecutors discontinued 0.95 cases per 100 inhabitants.

Figure 98: Percentage of Dismissed Cases in Basic and Higher PPOs from 2014 to 2019



Source: RPPO Annual Reports 2014-2019

481. Also in 2019, of the dismissals of juvenile justice complaints handled by Higher PPOs, 44 percent were dismissed because the defendant was too young to be prosecuted for the crime charged and deferred prosecution was applied in 23 percent of the dismissals. The bases for the remaining 33 percent of dismissals were not specified; for instance, dismissal statistics for juveniles did not contain separate categories for lack of evidence or insignificant offenses.

4.8.4.3. Deferred Prosecution³²⁹

482. According to the CEPEJ 2020 report (2018 data), with a score of 0.27 Serbia reduced the number of cases ‘concluded by a penalty or a measure imposed or negotiated by the prosecutor’, including deferred prosecutions, for the second time in a row. As opposed to the previous two evaluation cycles, when the reported ratio was one of the highest among covered countries,³³⁰ the latest figures are more modest and well under the CoE average of 0.45. However, they still were more than double than the EU11 average of 0.10. In the CEPEJ 2016 report (2014 data), Serbia’s reported ratio was 0.53, and in the 2018 report (2016 data) 0.36. Many of these differences probably were affected by Serbia’s decision to expand its definition of cases against adult defendants processed by prosecutors between 2016 and 2018.

483. Compared to 2018, in 2019 Basic PPOs increased the number of deferred prosecutions by 6 percent, while the Higher PPOs reduced the number of deferred prosecutions by 74 percent.³³¹ The reasons behind the decline among the Higher PPOs were not documented; presumably, at least part of

³²⁹ For criminal offenses punishable by fines or imprisonment of fewer than five years, prosecutors have been allowed to use deferred prosecutions since 2011. As part of a deferred prosecution, the defendant must accept one or more obligations (e.g., payment of a certain amount of money to a humanitarian cause, performing socially beneficial work, or fulfilling other conditions). If the defendant fulfills these conditions, s/he will not have a criminal record and the charges are dismissed. If the defendant does not meet the conditions, the prosecution will proceed.

³³⁰ Of the 45 countries covered by the 2018 CEPEJ report (2016 data), only 10 had more cases than Serbia. These were Switzerland (5.57), Norway (1.39), Scotland (0.96), France (0.87), Denmark (0.86), Sweden (0.58), Romania (0.46), Bosnia and Herzegovina (0.41), Poland (0.38) and Monaco (0.37). All numbers refer to cases per 100 inhabitants. For more details see CEPEJ 2018 Report, p. 140 and CEPEJ-STAT at <https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems>.

³³¹ These figures apply to criminal cases against adult perpetrators.

the decline was due to concerns about possible overuse of the procedure, as discussed at page 41 of the Prosecutorial FR.³³²

484. Deferred prosecution was applied in 707 juvenile criminal cases in Higher PPOs in 2019, which represented 23 percent of the dismissals of juvenile criminal cases. In preceding years, deferred prosecution attained a similar share in dismissals of juvenile criminal complaints. There were 619 deferred prosecutions (22 percent) in 2014, 689 (26 percent) in 2015, 875 (28 percent) in 2016, 834 (24 percent) in 2017, and 468 (14 percent) in 2018.

485. Some deferred prosecutions were classified as ‘unfinished’ because the defendant still had time to meet his or her obligations. Although there still were no statistics available by the end of 2019 for the number of cases in which the deferred prosecution was revoked because the conditions of deferral had not been met, the Prosecutorial FR estimated defendants had failed to comply with the terms of the deferred prosecution in up to 10 percent of the deferred prosecution cases.

Table 15: Deferred Prosecution per PPO Type from 2014 to 2019 (Adult Perpetrators)

		2014	2015	2016	2017	2018	2019
Basic PPOs	Deferred Prosecution	17,447	21,074	20,083	16,706	17,802	18,858
	Deferred Prosecution (Unfinished)	15,706	14,216	9,011	8,787	7,874	7,320
Higher PPOs	Deferred Prosecution	132	159	161	229	371	97
	Deferred Prosecution (Unfinished)	48	173	46	66	309	50
TOTAL		33,333	35,622	29,301	25,788	26,356	26,325

Source: RPPO Annual Reports 2014 – 2019

486. Deferred prosecution sanctions that could benefit the community at large, such as rehabilitation programs or community service, were still of only limited availability by the end of 2019, since the legislative or regulatory measures needed to implement those types of programs still were not in place. There were no official figures available about the number of defendants participating in rehabilitation programs or community service. The most frequently reported sanction imposed on deferred prosecution defendants remained a cash donation to humanitarian causes, a sanction that can be relatively easily monitored. As the Prosecutorial FR noted, the widespread use of cash donations can give the impression that defendants have bought their way out of the criminal justice system.

487. By the end of 2019, Serbia also had failed to take any steps to resolve other issues about deferred prosecutions noted in the Prosecutorial FR. These issues included concerns that (1) implementing legislation was incomplete and imprecise; (2) there was a lack of clear guidelines or criteria for the use of deferred prosecution and inconsistent use of it by prosecutors, and (3) there was a lack of consideration for the interests of the victims of the crimes involved, as prosecutors decided whether deferred prosecution should be offered and/or what its terms should be.

³³² Available at

<https://www.mdtfjss.org.rs/archive/file/SRBpercent20Prosecutionpercent20FRpercent20Decemberpercent202018.pdf>.

4.8.4.4. Plea Bargaining³³³

The use of plea agreements needs to be carefully balanced against the need for justice being seen to be done and avoiding any impression of impunity in cases of serious and organized crime.

Source: EU 2020 Report³³⁴

488. The most common types of plea bargains in 2019 resulted in suspended sentences (about one-half) and imprisonment (about two-fifths). Other measures such as fines, precautions (e.g., restraining orders and home detentions), and community service made up the rest. The RPPO Annual Report for 2019 indicated the sanctions awarded totaled more than 3,208 years of imprisonment and almost RSD 85 million³³⁵ in fines.

489. After five years of consistent increases, the number of cases concluded by plea bargaining in Basic and Higher Courts decreased by eight percent in 2019, due to a 17 percent drop in the Belgrade appellate region. However, even with the 2019 decrease, there was a 190 percent increase in the number of plea bargains throughout Serbia in 2019 compared to 2014. Of the 5,971³³⁶ plea bargains proposed to courts in 2019, courts accepted 90 percent (5,363) were accepted. This percentage was very close to the percentages accepted in 2017 and 2018, and nine percent higher than the number of proposals accepted in 2014. Of the other 608 proposed plea bargains in 2019, the RPPO reported that more than 169 were not accepted by the courts, while roughly 783 requests were still pending in the courts. The RRPO Annual Report also indicated that defendants initiated around one-half of the proposed agreements, and prosecutors were more likely to initiate an agreement during the pre-indictment period than later in the case; of 4,612 plea bargains initiated before indictment, prosecutors initiated 2,680 of them.

490. The highest combined number of plea bargains for Basic and Higher PPOs in 2019 occurred in the jurisdiction of the Appellate PPO in Belgrade, with a total of 2,490. This was 204 percent more than the 820 plea bargains for the same PPOs in 2014, and, as mentioned, 17 percent fewer than the 2,994 plea bargains in the previous year.

4.8.5. Effectiveness of Appeals in Promoting Quality

491. The decision to appeal for every case lies with the prosecutor handling a case and the higher-instance PPO. Prosecutors may appeal when the court has acquitted the defendant or when the prosecutor is not satisfied with the defendant's sentence.

³³³ Plea bargains are agreements in which the defendant admits his or her guilt regarding the criminal offense charged, and the prosecution and defense agree on a sentence or other sanction. The agreement, which usually includes a sanction less than the maximum the defendant might incur, is presented to the court for approval.

³³⁴ See page 43 of the report at https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf.

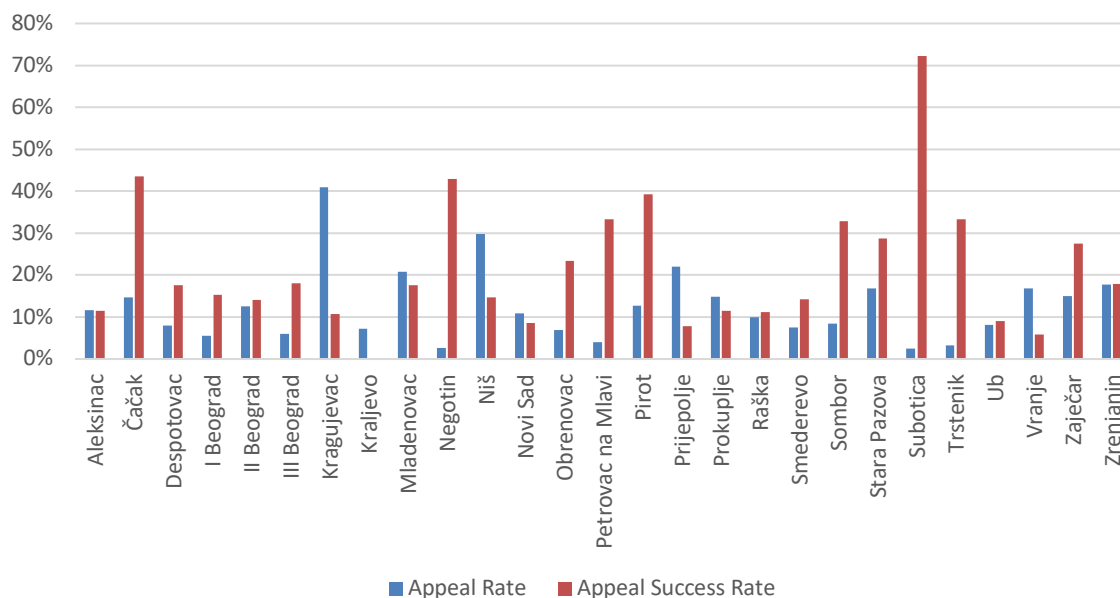
³³⁵ Approximately EUR 715,000.

³³⁶ This included plea bargains concluded by the specialized PPOs for organized crime (109) and war crimes (1).

492. On average, Serbian Basic PPOs appealed in 12 percent of cases in 2019 and were successful in only 21 percent of their appeals,³³⁷ indicating prosecutors should have realized at the outset that many of the appeals would not succeed.³³⁸ In the preceding year, Basic PPOs appealed at the same rate of 12 percent of the cases but had a slightly higher success rate of 27 percent.³³⁹ However, since the resolution of an appeal often occurs one or more years after the appeal is filed, the success rates reported in a certain year generally covered appeals filed at least a year earlier.

493. Appeal rates varied considerably among Basic PPOs, including those of similar size. The lowest appeal rate of two percent was recorded in Basic PPOs in Pancevo, Ruma, Senta, Pozega and Subotica, while the highest appeal rates appeared in Basic PPO in Kragujevac (41 percent), Mionica (35 percent), Leskovac (33 percent), and Lazarevac and Arandjelovac (both 31 percent). The success rates varied even more, from zero to 72 percent. Zero percent was recorded in Basic PPOs in Kraljevo, Bor, Backa Palanka, and Novi Pazar, while 72 percent was recorded in Subotica. The wide variation in appeal rates for 2019 is displayed in Figure 99 below.

Figure 99: Ratio of Submitted Appeals and Successful Appeals in Selected³⁴⁰ Basic PPOs in 2019



Source: RPPO Annual Reports 2019

494. There were no clear correlations between the Basic PPO appeal rate and success rates throughout the observed period. For example, in 2019, the Basic PPO in Mionica reported an appeal rate of 35 percent and succeeded in only two per cent of its appeals. In contrast, for the PPO in Leskovac, the appeal rate for 2019 was 33 percent and 23 percent of its appeals were successful. (As noted above, most if not all of the cases reported in the success rates probably were cases in which the appeals had been filed at least a year earlier.)

³³⁷ The annual RPPO reports display both unavailable data and the value of zero as blank entries. For the calculations in this analysis, all blank fields have been assumed to represent zero values.

³³⁸ There were no data available through 2019 regarding appeals taken by defendants.

³³⁹ Annual RPPO reports show unavailable data and value zero as empty entries.

³⁴⁰ The Basic PPOs in Figure 98 include PPOs of various sizes.

495. Over time, appeal rates for most Basic PPOs were essentially stable, even when success rates varied widely. For instance, the Basic PPO in Sabac had an appeal rate of 23 percent in 2015 and 2016, 20 percent in 2017, 21 percent in 2018, and 22 percent in 2019, while its success rates ranged from three to 28 percent. There was a similar pattern for the Basic PPOs of Kragujevac and Nis.

496. Compared to Basic PPOs, Higher PPOs filed appeals more frequently and succeeded in more cases. The average appeal rate of Higher PPOs was 49 percent in 2015, 50 percent in 2016, 39 percent in 2017, 36 percent in 2018, and 41 percent in 2019. The success rates were 30 percent, 26 percent, 30 percent, 29 percent, and 25 percent, respectively.

497. However, very few Higher PPOs had consistently high or low appeal or success rates from 2015 to 2019. The Higher PPO in Belgrade has some of the most consistent showings; its appeal rate varied between 64 and 82 percent, while the success rate ranged between 12 and 18 percent. Similarly, in Zrenjanin, the appeal rates were between 59 and 82 percent, while the success rates varied between four and 16 percent. In contrast, the Higher PPO prosecution office in Prokuplje had appeal rates from 117 to 164 percent³⁴¹ and success rates from 44 to 95 percent.

498. The appeal and success rates for specialized PPOs were in line with the rates for other Higher PPO offices. The Special Prosecutor's Office for Organized Crime appealed in 63 percent of the cases in 2019 with a success rate of 16 percent, and the Special Prosecutor's Office for War Crimes appealed in 67 percent of the cases in 2019 with a success rate of 25 percent. The Special Prosecution Office for High Tech Crime within the Belgrade Higher PPO appealed in 33 percent of the cases and succeeded in 28 percent. During 2018, which was their first year of operation, the four anti-corruption Higher PPO specialized departments had an average appeal rate of 13 percent and their reported average success rate was nine percent (note, however, that the successful cases probably were ones that started by other offices, because the anti-corruption departments opened in 2018). In 2019 the average rate of appeal for the four PPOs was seven percent of their concluded cases and the average success rate was 27 percent.

4.9. Recommendations and Next Steps

The 2014 Functional Review provided seven detailed recommendations and next steps for improving the quality of court services in Serbia. Although some recommendations have been implemented over time, with more or less success, some are still unattended.

Recommendation 1: Improve the clarity and consistency of legislation.

- Develop consistent standards for representation of stakeholders in working groups considering new legislation. Provide guidance as to the tasks expected of such groups. Ensure that they have access to factual and analytical resources, including information on existing laws and relevant statistics. (MOJ, HJC, SPC – short-term)
- Encourage legislative groups to think ahead to implementation of new legislation, including which stakeholders might take the lead in implementation, what are the budgetary limitations,

³⁴¹ Appeal rates higher than 100 percent meant that some appeals were filed to contest the decisions from the previous year and/or more than one appeal was filed against a single decision.

etc. (MOJ, HJC, SPC – short-term)

- Subject all proposed legislation to a review of consistency with existing laws. Develop a procedure to conform to older and new laws. (MOJ, HJC, SPC – short-term)
- Adopt clear standards and limit circumstances in which emergency procedures are used for enacting legislation. (Parliament, MOJ – medium-term)
- Conduct a legislative review to determine whether certain offenses should be uniformly charged as misdemeanors, criminal cases, or commercial offenses, and which should remain subject to the discretion of prosecutors' offices. (RPPO – medium-term)

Recommendation 2: Improve the consistency of application of laws by courts.

- Standardize training in judicial writing (JA, HJC – short-term).
- Adopt templates for drafting routine documents, such as legal submissions, orders, or judgments. Adopt system-wide procedures for routinely updating all such documents (SCC, HJC, MOJ – short-term).
- Evaluate judicial quality along with both quantitative metrics (such as remand rates) and qualitative criteria (such as quality of writing in judicial decisions) (SCC, HJC – short-term).
- Establish regular exchange of data on human resources and quality of decision-making between the SCC and the HJC to inform both bodies in performing duties. (SCC, HJC – medium-term).
- Harmonize judges' interpretation of statutes and case law using tools such as departmental meetings, issuing legal opinions, establishing case law departments in higher instance courts, and developing an easily searchable case law database. (SCC – continuous)
- Regularly monitor and analyze reports, and discuss potential improvements in workshops, meetings, and colloquia. (SCC, court presidents, HJC, MOJ – continuous)

Recommendation 3: Unify and streamline court practices.

- Adopt checklists and standardized forms for both routine and specialized cases. Adopt system-wide procedures for routinely updating all such documents. (SCC, HJC, MOJ – short-term)
- Implement a standardized approach to routine aspects of case processing. (SCC, HJC – short-term)

Recommendation 4: Improvement of work of public prosecutors' offices.

- Monitor the reasons for dismissals of cases by prosecutors. (RPPO – short-term)
- Develop uniform standards for the conditions associated with the deferred prosecution (principle of opportunity). (RPPO – short-term)
- Develop uniform standards for prosecutors' decisions to dismiss criminal complaints, appeal decisions and impose sanctions, and enter into plea bargains. (RPPO – medium-term)
- Develop standardized guidelines for the decision of whether to charge an offense as criminal, misdemeanor, or commercial. Require police to inform prosecutors of the nature of charges. (RPPO medium-term)
- Develop uniform standards for police-prosecutor cooperation. (MOJ, RPPO, MOI – medium-term)
- Develop standards for prosecutors to decide which cases to appeal. (RPPO – medium-term)

Recommendation 5: Improve the functioning of the appeals system.

- Set up a permanent body (working group or unit) in the SCC accountable for monitoring quality indicators in courts, i.e., confirmation rates, remand rates, and amendment rates. Monitor the

quality of lower-instance courts' decisions and the appellate judgments to identify whether the appellate courts are appropriately using the possibility of amending first-instance decisions. (SCC - short-term/continuous)

- Separately record Appellate Court statistics for cases received from Basic Courts and cases received from Higher Courts. (SCC – short-term)
- Align statistical data on appeals of Basic Courts decisions to enable tracking of so-called ‘small appellation’ and ‘big appellation’. (SCC – short-term)
- Enable tracking of lodged (not only resolved) appeals through the existing case management systems. (SCC, MOJ – medium-term)
- Statistically monitor dismissed appeals as a separate category. (SCC, MOJ – medium-term)
- Adopt policies that higher-instance judges should avoid reversals and replace the lower court's decision with their own. Ensure that remands contain precise reasoning and instructions to be followed by the lower court in subsequent proceedings. (SCC, HJC – medium-term)
- Design and develop appropriate aggregated and disaggregated reports for monitoring appeals and corresponding higher-instance decisions (including information on confirmations, amendments, and remands). Reports should include data on court type, court, and case type, to enable evaluations to identify court types, individual courts and/or case types with adverse quality indicators (e.g., high remand rates) and identify reasons for poor results. (SCC – medium-term/continuous)
- Identify causes of appeals (case law harmonization problems, loopholes in procedural laws, dilatory tactics, or other abuses by court users). (SCC, MOJ - medium-term)
- Analyze the extent of appeals abuses in the Serbian judicial system, particularly in those court types and case types with the highest appeal rates. (SCC, MOJ – medium-term)
- Develop possible sanctions for the abusing parties in line with COE recommendations, amend procedural laws, and issue instructions to stakeholders as appropriate. (SCC, MOJ – medium-term)
- Develop standards for prosecutors to decide which cases to appeal. (SCC, MOJ – medium-term)

Recommendation 6: Regarding the ECtHR judgments, coordinate various state bodies to improve investigations, protection of property, length of proceedings, and enforcement of final decisions. (MOJ – medium-term)

Recommendation 7: Increase the use of specialized courts and case processing systems.

- Analyze options for using specialized case processing systems in cases of general and specialized jurisdiction, with specific emphasis on Misdemeanor Courts and Administrative Courts. (SCC, MOJ – medium-term)

5. Access to Justice Services

5.1. Main findings

499. While Serbia lags behind other European countries in access to justice, it has improved since 2013. Key improvements include the Law on Free Legal Aid, the Central Application for Court Fees (to facilitate application for fee waivers),³⁴² online databases of law and case status, and incentives for mediation. There remains room to improve affordability, information, management, and evaluation of access to legal services.

500. Affordability remained the most serious barrier to access to justice in Serbia for citizens and businesses. Court and attorney costs represent a significant proportion of average income in Serbia, even for a simple case. Businesses report that the courts are becoming increasingly inaccessible due to court and attorney costs. Small businesses are the most affected.

501. The application of court fee waivers is still not unified, resulting in inconsistent access to justice services for the indigent. Rules on court fee waivers are not comprehensive, lacking deadlines for submitting a request for exemption and deadlines for the court to decide on the request. There is very limited understanding among members of the public of the court fee waiver program.³⁴³ There are no guidelines or standardized forms for judges who grant a waiver, and decisions go largely unmonitored. Except for the amount of court fees, the parties often point to unequal treatment by the courts and the lack of information as the key problems experienced in waiving fees.³⁴⁴ Waivers may improve access to justice in some areas, but without data their impact cannot be monitored.

502. Attorney fees are more highly prescribed than in many EU member states. Attorneys are paid per hearing or motion. This encourages protracted litigation and reduces the ability of low-income citizens to pay for legal services.

503. Ex officio attorneys may be appointed for indigent clients, but there are concerns regarding their quality control and impartiality. To enable equal distribution of cases among ex officio attorneys, the Bar Association of Serbia introduced a call center and software for tracking.

504. In accordance with the Serbian Constitution and European principles of justice, a legal aid system was established in October 2019. The Law on Free Legal Aid provides two distinct categories – legal aid and legal support. Legal aid is provided by lawyers and municipal legal aid services and by civil society organizations in cases of asylum and discrimination.

505. Municipal legal aid services receive citizens' requests for free legal aid and decide on their eligibility based on their financial situation. Legal aid is provided for all case types except commercial and misdemeanor cases where a prison sentence is not envisaged. Persons eligible to receive legal aid

³⁴² The Central Application for Court Fees was developed in 2020 and has to be seen how it will contribute to accessibility.

³⁴³ Court practice assessment – application of court fee waivers rules, YUCOM, MDTF-JSS, 2018, available at: <https://www.mdtfjss.org.rs/archive/file/Analizapercent20sudskepercent20praksepercent20oslobadjepercent20odpercent20troskova.pdf>

³⁴⁴ Analysis – Court Fee Waiver System in the Republic of Serbia, MDTF-JSS, 2016, available at: <http://www.mdtfjss.org.rs/archive/file/Serbiapercent20Courtpercent20Feepercent20Waiverpercent20Engpercent20percent20Finalpercent208percent20Sepppercent202016percent20WITHpercent20LOGO.pdf>

are those who already receive social benefits, children receiving child benefits and members of certain vulnerable groups. In addition, individuals who do not currently receive social or child benefits are eligible if payment of legal aid from their own resources would render them qualified for social benefits.

506. The Ministry of Justice has limited resources to monitor the new legal aid programs. The Ministry maintains a registry of legal aid providers and decides on appeals against the denial of municipal legal aid services. Only one employee is responsible for implementing the new programs. Not all providers are submitting data to the Ministry, and satisfaction with services is not tracked or assessed at a central level.

507. Effective implementation of the Free Legal Aid Law is hindered by lack of proper budget planning and a shortage of funds in municipalities' annual budgets. In addition, some municipalities do not keep a registry of free legal aid, which impacts the monitoring of implementation. Furthermore, the Ministry of Justice has recognized the challenge of unifying the practice of municipal legal aid services to ensure equal access to justice for all citizens.

508. More outreach is necessary to inform citizens about legal aid and legal support. Most citizens are unaware of any free legal services that might be provided in their municipality. To improve cost-effectiveness, the participation of CSOs, legal aid centers and law faculties should be encouraged.

509. Awareness of law and practice has improved significantly in the last five years, especially among professionals. Judges, prosecutors, and lawyers can access the Official Gazette online database of laws, bylaws and caselaw. The special website on court practice was established in 2020, including a selected number of court decisions of the Supreme Court of Cassation, appellate courts, the Administrative Court, the Commercial Appellate Court and the Misdemeanour Appellate Court, which significantly increases access to these among professionals. These improvements in the accessibility of legislation and jurisprudence contribute to the increasing quality and consistency of court practice.

510. The system for access to information by court users about the courts in general and their own cases has improved. Portal Pravosudje now enables access to information on the status of ongoing procedures in all courts (all types and all instances), including information on the status of cases handled by private bailiffs. In addition, the development of e-court improved contact with the court and enabled electronic communication. On the one hand, compared with 2009 and 2014, a lower percentage of citizens and business representatives report that specific court and case information is accessible. On the other hand, users directly involved in court cases reported a high level of satisfaction in this respect, suggesting that those with immediate experience have benefited from an updated system.

511. Application of mediation is still limited, as well as awareness of it by citizens and businesses. Additional outreach initiatives to potential court users will be required, along with intensive training for judges, prosecutors, lawyers, and court staff. Further incentives should be built into the institutional framework to encourage its use and integrate it into the court system, such as the development of a special registry for mediation cases which will allow the inclusion of these cases in the results of judges' evaluation and promotion.

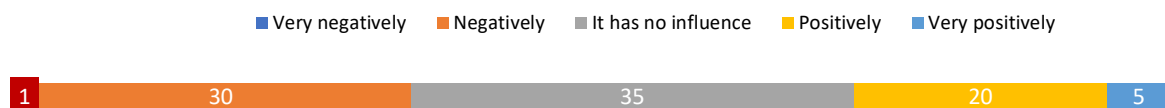
512. Equality of access for vulnerable groups continues to pose challenges. The majority of citizens surveyed reported that the judiciary is not equally accessible to all citizens. Perceived unequal treatment of citizens is primarily based on economic status and party membership. Equal access to justice is also seen to be denied to citizens who have less education and also based on ethnicity, sexual orientation and gender.

5.2. Introduction

513. Access to justice is a basic principle of the rule of law and includes several dimensions: individuals' access to courts, legal representation for those who cannot afford it, and equality of outcomes. There is no access to justice where citizens, especially marginalized groups, fear the system and so do not use it, where the justice system is financially inaccessible, where individuals lack legal representation, or where they do not have information or knowledge of their rights. The EC emphasizes the importance of enhanced access in justice system reform and relevant parts are included in the Action plan for Chapter 23.

514. Access to justice is also an economic development concern, as constraints on access to justice appear to create a drag on businesses. As in 2013, the judicial system remains an obstacle for the business environment. Around one-third of business sector representatives reported that the situation in the justice system negatively impacts the business environment in Serbia.³⁴⁵ However, another 35 percent of respondents reported that the justice system has no influence or impact on the business environment and 25 percent believed it had a positive or very positive impact on the business climate. (see Figure 100). However, the size of the company and sector have an impact on the perception. Bigger companies perceive the positive impact as greater, 49.3 percent of enterprises with more than 50 employees believe that the justice system has a positive impact on the business environment, compared to 17 percent of enterprises with up to 9 employees. Enterprises in the services and trade sectors (25 percent) perceive a positive impact more than those in the manufacturing sector (11.6 percent).

Figure 100: In your opinion, how does the current situation in the justice system affect the business environment in your country?



Source: *Understanding Barriers to Doing Business:*

Survey Results of How the Justice System Impacts the Business Climate in South East Europe, World Bank, 2019

515. In comparison with the rest of Europe, Serbia lags behind in access to justice. According to the World Justice Project's Rule of Law Index 2020, Serbia ranks the low among the EU countries in terms of accessibility and affordability of the civil justice system (see graphs below). However, Serbia's ranking

³⁴⁵ *Understanding Barriers to Doing Business: Survey Results of How the Justice System Impacts the Business Climate in South East Europe, World Bank, 2019.*

improved from 2014 to 2020 from 0.48 to 0.59.³⁴⁶ Additionally, Serbia’s ranking improved in comparison to non-EU neighboring countries and according to 2020 data, access to justice is better than in Albania and Bosnia and Herzegovina.

Figure 101: Access and Affordability of Civil Justice, EU and Serbia, WJP Rule of Law Index 2020

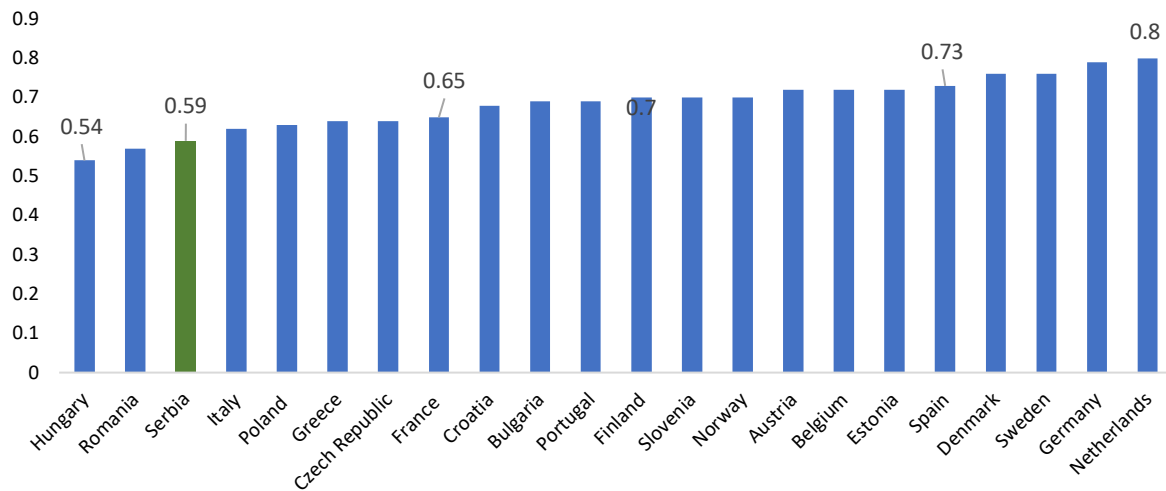
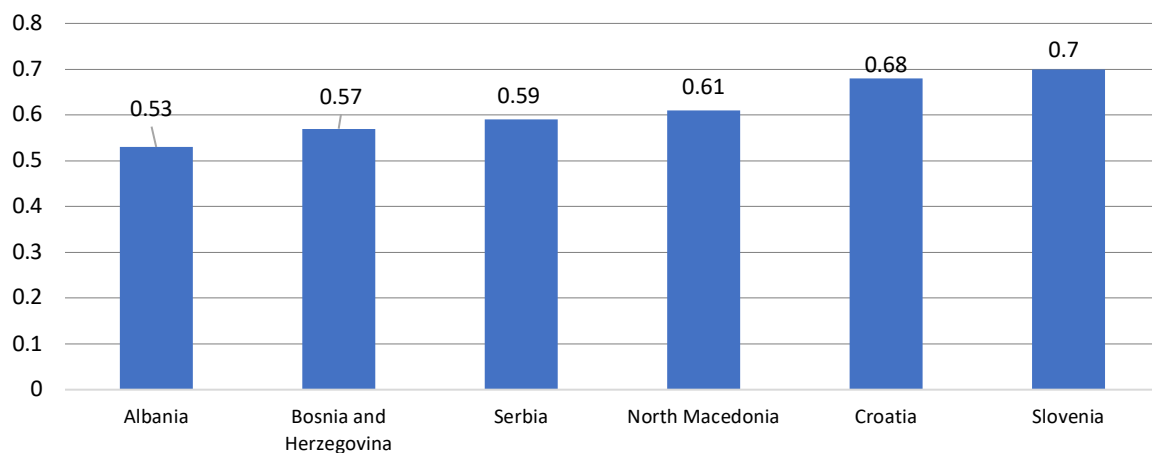


Figure 102: Access and Affordability of Civil Justice, Regional Countries and Serbia, WJP Rule of Law Index 2020

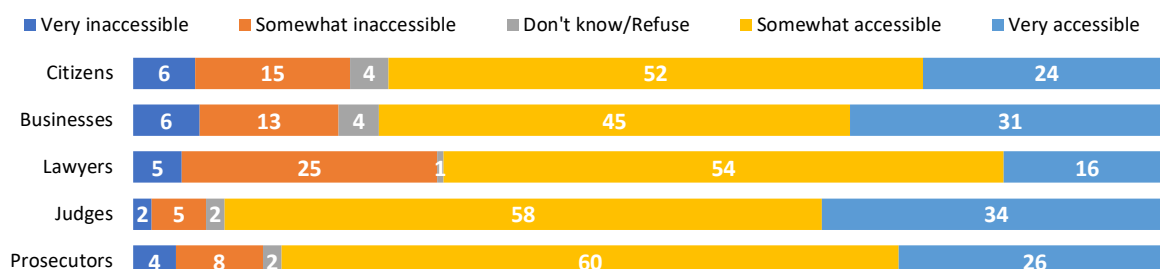


516. According to the 2020 Regional Justice Survey, the perception of courts accessibility is high, however, it differs among individuals inside the system, those working with the system, and those outside it. For example, the Survey found that judges and prosecutors perceive the system as most accessible; in excess of 85 percent rated the system as accessible, and 76 percent of the general public rated the system as accessible. Individuals within the system, particularly judges and prosecutors, and those without frequent interactions with the system may not be well placed to assess access to justice.

³⁴⁶ The 2020 WJP Rule of Law Index measures the accessibility and affordability of civil courts, including whether people are aware of available remedies; can access and afford legal advice and representation; and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers. The Survey covers 128 countries and jurisdictions, the Index relies on national surveys of more than 130,000 households and 4,000 legal practitioners and experts worldwide. Scale is from 0 to 1, and 1 is the best.

The negative perception of accessibility is the highest among lawyers, among whom 30 percent rated the system as inaccessible.

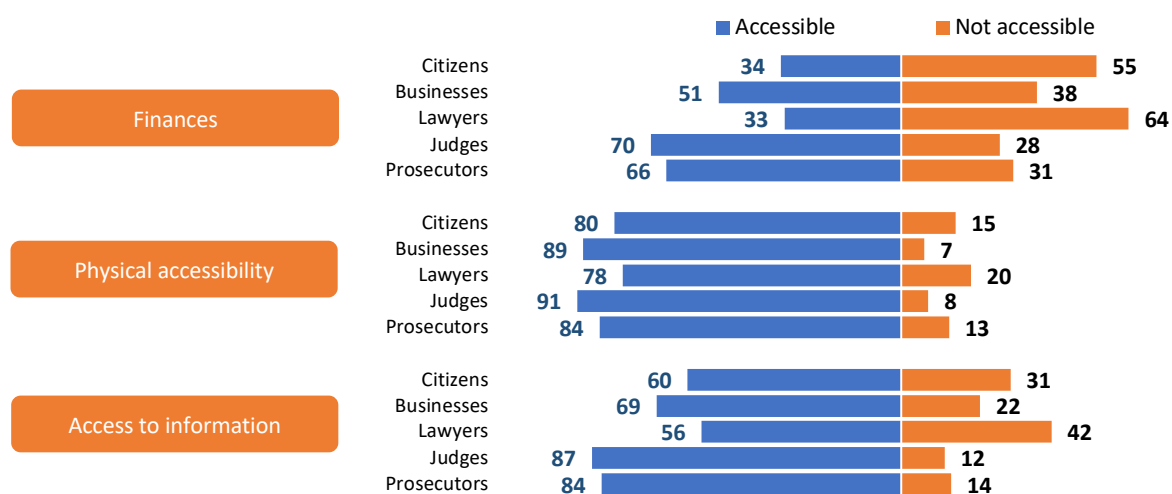
Figure 103: General Perception of Court Accessibility³⁴⁷



5.3. Affordability of Justice Services (Financial Access to Justice)

517. Financial access to the court system remains the largest barrier to access to justice for most Serbian citizens and business representatives. More than half of citizens perceive affordability as the biggest challenge to accessing the justice system, while physical accessibility is recognized as a barrier only by 15 percent of citizens and 7 percent of the businesses.

Figure 104: General Perception of Three Specific Aspects of Accessibility³⁴⁸



518. Costs of court cases increased from 2013 to 2020, especially in civil cases, where costs are now three times higher. On average, the cost of citizens' first instance proceedings was over 600EUR, which is higher than the average monthly salary in Serbia. The increase of court costs contributes to further court inaccessibility; already in 2013, when costs were significantly lower, citizens perceived finances

³⁴⁷ Survey Question: *To what extent are the FOLLOWING institutions accessible to all citizens/ legal entities? - Courts*); Base: Total target population, Regional Justice Survey, World Bank, 2020.

³⁴⁸ Survey Questions: *How accessible is the judicial system to citizens of Serbia in terms of...?*); Base: Total target population, Regional Justice Survey, World Bank, 2020.

as deterrent in 2013. Box 19 below gives an indication of average total costs for court users in 2013 and 2020.

Box 19: How Much on Average Do Court Users Pay?

	2013	2020
Misdemeanor Cases	150EUR	189EUR
Civil Cases	550EUR	1,588EUR
Criminal Cases	550EUR	634EUR
Cases involving business representatives	1,800EUR	2,293EUR

Average total costs as reported by court users in the Multi-Stakeholder Justice Survey 2013 and 2020 Regional Justice Survey including all court fees, lawyers' fees, and travel costs, but not including fines. Population base: total target population.

519. Justice services entail many individual costs to the user. The section below examines court-related costs, lawyer-related costs, and specific financial access issues facing lower-income Serbians, including court fee waivers, court-appointed attorneys, and legal aid.

5.3.1. Affordability of Court Fees

520. The system of calculating court fees, as well as a method of taxing and collecting them, set out in the Law on Court Fees, has not been changed since 2013.³⁴⁹ Fees are based on the stated value of the claim; in the litigation cases, it ranges from 1,900 RSD to 97,000 RSD, and in commercial cases, from 3,900 RSD to 390,000 RSD.³⁵⁰ Fees are paid on every motion submitted,³⁵¹ impacting how assertively claims can be pursued, as well as on every decision rendered³⁵² and every court settlement reached in all litigious processes and commercial disputes. In uncontested proceedings, a nominal fee of 390RSD applies in some instances, though higher fees apply for uncontested processes involving property, such as inheritance procedures or division of property. In administrative proceedings, a nominal fee of 390RSD applies for initiation of the process, as well as for every motion submitted (e.g., appeal, claim for repetition of proceedings).

521. Court users cite that court-related costs present more than 60 percent of total case costs and present a considerable obstacle to access to the judicial system in Serbia. In the 2020 Regional Justice Surveys, the public with experience in court proceedings identified court costs as the most significant constraint as well. Businesses also identified attorney costs as a significant barrier.

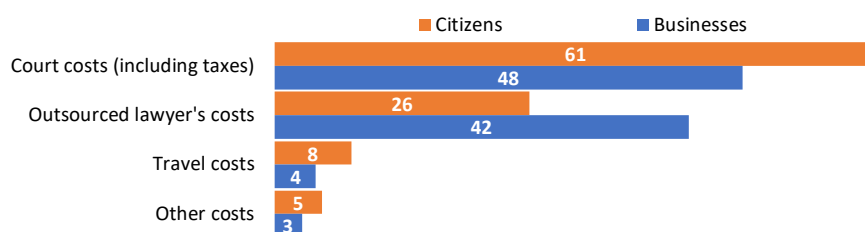
³⁴⁹ Law on Court Fees (*Official Gazette of the Republic of Serbia No. 28/94, 53/95, 16/97, 34/2001, 9/2002, 29/2004, 61/2005, 116/2008, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015, 95/2018*).

³⁵⁰ Criminal proceedings not initiated by the Prosecutor also incur fees, though these are below 1,000 RSD.

³⁵¹ E.g., initial claim, answer to the claim, counter charges in litigious cases and in commercial disputes, motion for execution, securing of a debt, appeal, appeal for revision, and appeal for retrial.

³⁵² E.g., first instance judgment, decision in trespass cases, decision on the dismissal of the claim or motion for execution, decision of the first instance court on the dismissal of the appeal.

Figure 105: Citizens and Businesses: Types of Costs of First Instance Proceedings³⁵³



522. However, court fees represent a smaller portion of total court case costs than attorneys’ fees, even when those are discounted and vary widely by region. The financial burden of court cases is especially high for users coming from less wealthy parts of the country. As seen in Table 16 below, court and attorney fees for a divorce case would require the average person in Novi Pazar to pay 80 percent of their monthly net income, even at the commonly discounted attorney rate. The Novi Pazar resident would be required to pay nearly 150 percent of their monthly net income to cover the total costs of the case if discounts were not applied. Court and attorney fees for a divorce case in Belgrade, once discounted, would exceed 43percent percent of the average Belgrade resident’s monthly net income.

Table 16: Divorce Costs as a Share of Average Income

Region	Net Monthly Income per Capita	Court Fees ³⁵⁴	Attorney Fees ³⁵⁵	Total Fees	Court Fees as share of Income	Attorney Fees as a share of Income	Total Fees as share of Income	Total Fees (incl. only 50percent Attorney Fees) as share of Income
Novi Pazar	45,475	5,320	62,250	67,570	11.6percent	136.8percent	148percent	80.1percent
Belgrade First	84,327	5,320	62,250	67,570	6.3percent	73.8percent	80.1percent	43.2percent

Source: Calculation of the World Bank

523. The cap on court fees remained since 2014, so the high-value civil cases continue to be relatively inexpensive compared with lower-value cases.³⁵⁶ The stakeholders reported that the cap distorts incentives when the cost of the claim is high by encouraging very wealthy individuals or large companies to pursue unmeritorious claims, exploit procedural inefficiencies or mount frivolous appeals.

524. The Law on Civil Procedure envisages that each party pays court fees before they submit an initial claim or answer, but the court will not suspend litigation for failure to pay fees. However, many potential or unseasoned court users may not be aware of the rule.

525. The courts lack an online fee calculator that enables potential litigants to estimate their court fees before filing a case. The unified online fee calculator should be available on all court websites, including explanations as to when a specific fee has to be paid and whether it should be paid by a

³⁵³ Survey Question: *Of the total cost that you had in this case in the first instance proceedings, which percentage of total cost can be attributed to;* Base: Those who had experience with court case in the past three years and have a first instance judgement rendered; Regional Justice Survey, World Bank, 2020.

³⁵⁴ Fees assuming one filing fee and one first instance judgment fee.

³⁵⁵ Attorney Fee assumes filing fee, two hearing fees, one postponed/adjourned hearing fee.

³⁵⁶ 97,000 RSD is the maximum fee for cases involving claims 1 million RSD or more.

plaintiff, a defendant, or both parties. Some courts have calculators that are not in compliance with the last amendments of the Law on Court Fees, or some courts present only the text of the Law. The fee-based user-friendly calculator is available, but that should be provided by courts free of charge.

5.3.2. Accessibility of Court Fee Waivers

526. Fee waivers may be critical to achieving equality in practice and enable access by lower-income individuals who are deterred from court use because of costs.³⁵⁷ The Law on Court Fees and the Civil Procedure Code allows court fee and cost waivers for parties who are financially unable to cover court-related costs. However, there is very limited understanding of the court fee waiver option among the public; therefore, many potential users who would be deterred from accessing the courts are unaware they could use this benefit.

527. Although the legislative framework provides various possibilities for exemption from court fees, there are a number of problems in practice. Both Law on Court Fees and Civil Procedure Code do not include a deadline for submitting a request for exemption of court fees nor a deadline for the court to decide on the request.³⁵⁸ Also, the absence of regulation often creates problems regarding the form of the decision, whether it should be in the form of a special decision or it should be part of the judgment.

528. The lack of consolidated data on the implementation of the court fee waiver rules further complicates the assessment of this mechanism in practice.

529. To overcome the problem of undocumented fees and inconsistent application of the fee waiver program, the Central Application for Court Fees (CSST) was developed in 2020. It has yet to be seen if all functionalities of the application will be used and if the judicial system will track all payments of the court fees, including information about fee waivers.³⁵⁹

530. Though practice varies, stakeholders report that courts primarily take into consideration the party's property, income, and the number of family members. Courts may also consider the party's financial dependents as well as the value of the claim.³⁶⁰ In practice, interviewees indicated that judges would usually grant a waiver if the party submits an official statement to show they are unemployed and own no real estate. Recipients of social welfare may also be free from the duty of pay related costs of the procedure, but again this is applied inconsistently.

5.3.3. Affordability of Attorneys

531. Parties very often choose to hire a private attorney for representation in civil and criminal cases even when not required. The law requires only in some procedures that a party be represented by an

³⁵⁷ The court also has discretion to allow only a partial waiver under which only court fees are waived and the party pays other expenses.

³⁵⁸ Court practice assessment – application of court fee waivers rules, YUCOM, MDTF-JSS, 2018, available at: <https://www.mdtfjss.org.rs/archive//file/Analizapercent20sudskepercent20praksepercent20oslobadjepercent20odpercent20troskova.pdf>

³⁵⁹ Details on CSST application are available ICT Management Chapter.

³⁶⁰ For example, if the value of the claim is very high, the fee would therefore be high. A waiver (a partial waiver) may be granted to a person who would not normally qualify, particularly if they are responding to a lawsuit.

attorney,³⁶¹ but in civil cases, 57 percent of court users reported hiring an attorney, while 65 percent did so in criminal cases. However, in misdemeanor cases, only 10 percent of citizens hired a private attorney.³⁶²

532. In most jurisdictions, lawyers are free to negotiate their fees through agreement with their clients.³⁶³ Most countries have basic principles regarding the fee structure and require that the fees are adequate and proportionate depending on the value and complexity of the case. In contrast, in Serbia, attorney fees and costs are highly regulated, unlike in most EU Member States.³⁶⁴ The Attorney Tariff on Costs and Fee Rates³⁶⁵ specifies fees for each type of proceeding and each legal action or motion. Parties can negotiate, but fees must not be greater than 500 percent nor less than 50 percent of the tariff rate.

533. Attorneys are paid per hearing or motion, which is in conflict with CCJE's opinion that 'the remuneration of lawyers and court officers should be fixed in such a way as not to encourage needless procedural steps.'³⁶⁶ Attorneys who accept payment by the case are rare.

5.3.4. Mandatory Defense

534. Although the law requires the ex-officio appointment of attorneys in some cases,³⁶⁷ no official data are collected on the number of appointments or the types of cases where the ex-officio appointment is most common.

535. To overcome concerns regarding the integrity of the process for identifying ex-officio attorneys, the Bar Association of Serbia introduced a call center accompanied by software to track information on mandatory defense.³⁶⁸ The police, courts, or prosecutors can call and be directed to an attorney while the call center officer uploads information on the ex officio attorney to the software. This practice, introduced in February 2019, was perceived positively by stakeholders. The daily report on called and engaged ex officio attorneys is published on the website of the Bar Association. The software enables the production of the report, but also as well as searches by the attorney or by the prosecutor (police officer or judge) who requested the attorney, whether the attorney refused to accept mandatory defense and their reasons for rejection. The call center removed the burden from prosecutors who previously reported challenges in ensuring attorneys were present during the investigation.

³⁶¹ The Civil Procedure Code requires representation by an attorney in proceedings initiated by extraordinary remedial appeals. The Criminal Procedure Code also prescribes a number of specific circumstances (e.g., the defendant is tried in absentia, is hearing impaired) in which counsel is mandated. Finally, all minor defendants must have defense counsel. Applicants do not have to be represented by an attorney in proceedings before the Constitutional Court and the Administrative Court.

³⁶² Regional Justice Survey, World Bank, 2020.

³⁶³ Comparative Analysis of Bar Associations and Law Societies in Selected European Jurisdictions, 2017, World Bank.

³⁶⁴ *CEPEJ 2012, based on 2010 data*. In around 41 or EU Member States, remuneration between private parties is freely negotiated.

³⁶⁵ Official Gazette, No. 121/2012, 99/2020.

³⁶⁶ CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

³⁶⁷ Mandatory criminal defense is regulated by the Criminal Procedure Code. Article 74 of the Code defines that criminal defense is mandatory in cases where the defendant is detained or where the offence is punishable by eight years imprisonment or more. Where the defendant is indigent, defense counsel may be appointed by the court in cases punishable by imprisonment of three years or more, or where reasons of fairness so require..

³⁶⁸ See: <https://aks.org.rs/aks/wp-content/uploads/2019/02/SAJT-POČETAK-RADA-KOL-CENTRA-AKS.pdf>

536. Stakeholders expressed concerns regarding undue influence in the appointment of attorneys and the performance of ex officio lawyers. The same concern has been expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on several occasions. In 2018, it reported that: *“ex officio lawyers only met their clients in the court and that in several cases they did not show any interest in having a confidential conversation with their clients...Allegations were also made about certain ex officio lawyers being more interested in maintaining good relations with police officers than representing their clients”*.³⁶⁹

537. The work of ex-officio attorneys is not monitored to ensure quality control. Information regarding appointments is not entered into AVP, or if entered, it is as a ‘general remark’ not suitable for running analytical reports. Some stakeholders report that the quality of work by ex-officio attorneys is lower than party-funded attorneys due to their limited accountability. Several stakeholders allege that ex-officio attorneys are more likely to pursue unmeritorious claims and appeals to increase their billings. In the absence of data or quality control mechanisms, the Review team is unable to substantiate these claims.

5.3.5. Legal Aid Programs

538. The right to an attorney provided at state cost when a party to a non-criminal dispute cannot afford an attorney is outlined in the EU’s Charter of Fundamental Rights,³⁷⁰ the ECHR³⁷¹, and the United Nation’s Principles on Access to Legal Aid in Criminal Justice Systems. In Serbia, the Constitution guarantees the right to legal aid. In recognition of the principle, Serbia, after years of preparation, adopted the Law on Free Legal Aid in 2018.³⁷² The application of the Law started on October 1, 2019.

539. The Law on Free Legal Aid lays out two distinct types of assistance: legal aid and legal support. Legal aid is provided by lawyers and municipal legal aid services and by civil society organizations in cases of asylum and discrimination. Municipal legal aid services receive citizens’ requests for free legal aid and decide on their eligibility based on their financial situation (see Box 20 below). Legal support, which includes general legal advice, filling forms, preparation of documents for notaries, and representation in mediation, is provided by civil society organizations, mediators, and notaries.

540. The Ministry of Justice is responsible for maintaining a registry of legal aid providers and decides on appeals against decisions of municipal legal aid services. The bar chambers submitted a list of 3,213 lawyers as legal aid providers to the registry, and 155 municipalities registered legal aid providers. In addition, two civil society organizations are registered as free legal aid providers. In the group of providers of legal support, there are mediators (45), notaries (17), and civil society organizations (30).³⁷³ The municipal legal aid services are responsible for the call center used for refereeing citizens to lawyers and ensuring equal distribution of cases among lawyers. In 2020 the

³⁶⁹ Report to the Government of Serbia on the visit to Serbia carried out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2018) 21, p. 23.

³⁷⁰ Title VI Art. 47 paragraph 3 ‘Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’

³⁷¹ ECHR Art. 6 paragraph 3 ‘... to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.’

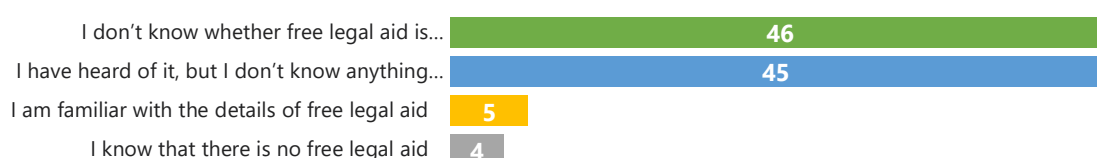
³⁷² Official Gazette, No. 87/2018.

³⁷³ Annual report on free legal aid, Ministry of Justice, March 2021.

Ministry of Justice ruled on 116 appeals against decisions of municipal legal aid services, and most of them were for non-response from a municipal legal aid service (78) and rejection of a request for free legal aid (31).

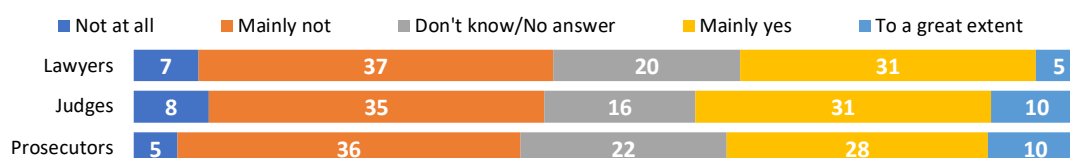
541. Public awareness and knowledge about free legal aid is limited, and most citizens are unaware of any free legal services that might be provided. Only five percent of the general population is familiar with the details related to free legal aid. In the 2020 Regional Justice Survey, 46 percent of respondents indicated that they do not know whether free legal aid is available or not, while a similar percentage knew that free legal aid exists but have no specific information regarding it. Citizens who have had recent court experiences are more likely to be familiar with free legal aid (12percent), compared to those without any experience with courts (4percent).

Figure 106: Citizens Knowledge about Free Legal Aid³⁷⁴



542. Judges, prosecutors, and lawyers believe that legal aid is not available to those in need. More than forty percent of judges, prosecutors, and lawyers perceived that free legal aid does not adequately reach the categories in need, while a significant percentage of service providers claim to be unable to evaluate the accessibility of free legal aid because of a lack of information.

Figure 107: Judges, Prosecutors and Lawyers: Availability of Free Legal Aid³⁷⁵



543. Based on the Ministry of Justice's annual report on the implementation of the Law on Free Legal Aid in 2020, advisory services were provided 19,395 times, general legal information was given in 9,745 instances and 1,913 written submissions were provided. In 2020 there were 6,883 requests for free legal aid, from which 5,367 were approved, and in 954 cases, users were referred to a lawyer.

544. Not all providers are submitting data to the Ministry of Justice, which collates rates of use of free legal aid and types of services, and the Ministry lacks resources to evaluate the programs. Only one employee in the Ministry of Justice is responsible for oversight of free legal aid implementation, including field visits to the municipal legal aid services. Satisfaction with services provided is not tracked

³⁷⁴ Survey Question: *Which of the following describes your knowledge about free legal aid (not including public defender and pro bono private lawyer) in Serbia best?*; Base: Total target population, Regional Justice Survey, World Bank, 2020.

³⁷⁵ Survey Question: *In your opinion, to what extent is free legal aid (not including public defender and pro bono private lawyer) available to those who need it in this country?*; Base: Total target population; Regional Justice Survey, World Bank, 2020.

or assessed at a central level. The only instrument for measuring users' satisfaction is a complaint submitted against a lawyer.³⁷⁶

Box 20 Law on Free Legal Aid:

The key features of the Law on Free Legal Aid are:

- Legal aid includes legal advice, drafting documents, representation in court and before other public bodies, and defense of suspects and accused in investigative and criminal proceedings. Legal aid is provided for all case types except commercial cases and misdemeanor cases where a prison sentence is not envisaged. Legal support includes general legal advice, filling forms, preparing documents for notaries, and representation in mediation.
- Legal aid is provided by lawyers, municipal legal aid services, and civil society organizations for asylum and discrimination cases. Legal aid supporters are civil society organizations, mediators, and notaries.
- Persons eligible to receive legal aid are those who already receive social benefits, children receiving child benefits, and members of certain vulnerable groups. In addition, individuals who do not currently receive social or child benefits but for whom payment of legal aid from their own resources would render them qualified for social benefits are eligible.
- Municipal legal aid services determine eligibility and deliver legal aid services and serve as a referral point to legal aid service providers.
- Payment to lawyers, notaries, and mediators is subject to a new and less costly Tariff Schedule adopted by the Government in October 2019.

545. The Tariff Schedule for free legal aid introduced significantly lower fees for lawyers than paid in other cases. For example, under the free legal aid Tariff Schedule,³⁷⁷ the cap a first-instance criminal proceeding for crimes up to 5 years of imprisonment is 60,000RSD while under the general Tariff schedule lawyers' fee³⁷⁸ is 22,500RSD for a motion in criminal proceedings.

546. Funding for legal aid is provided by the state budget.³⁷⁹ The costs of the legal aid provided by municipal legal aid services are covered by the local self-government budget, while costs for services provided by lawyers, notaries, and mediators are covered 50 percent of the local self-government budget and 50 percent of the budget of the Republic of Serbia.

547. Effective implementation of the Free Legal Aid Law is hindered by a lack of proper budget planning and a shortage of funds in municipalities' annual budgets. In addition, some municipalities do not keep a registry of free legal aid, which impacts the monitoring of implementation. Furthermore, the Ministry of Justice has recognized the challenge of unifying the practice of municipal legal aid services to ensure equal access to justice for all citizens.

³⁷⁶ In 2020, 7 complaints were submitted against lawyers and the Bar Chamber will decide.

³⁷⁷ Official Gazette, No. 74/2019.

³⁷⁸ Official Gazette, No. 121/2012, 99/2020.

³⁷⁹ Article 30 of the Law on Free Legal Aid.

5.4. Access to Information

5.4.1. Access to and Awareness of Laws

548. Access to and awareness of laws, a pre-requisite to access to justice, is still limited in Serbia. Prior to 2014, the only legal databases where statutes in their complete form were available were those established and maintained by private companies for an annual membership of approximately 500EUR.³⁸⁰ On January 1, 2014, the Official Gazette (Sluzbeni Glasnik) launched its online database where all legislation, including regulations adopted by bodies other than the National Assembly, are available. This database is partially publicly available for free (only selected laws and bylaws), while full access requires payment of annual membership of approximately 340EUR.³⁸¹ The National Assembly publishes legislation only as adopted without inserting changes in existing statutes. Ministries and other institutions that can adopt regulations do not always publish them.

549. 2020 Regional Justice Survey results suggested that one-third of citizens perceived access to information, including access to laws, as a challenge.³⁸² People often do not know where to find regulations and miss practical information concerning their rights or procedures for their protection.

550. Frequent changes in legislation undermine individuals' access to justice, an issue recognized by lawyers as a significant challenge. More than 40 percent of lawyers claimed that access to information is limited.³⁸³ Judges and prosecutors acknowledged to the Review team that they, too, struggle to be up to date with the constant amendments.

551. Free access to practical guidelines, authoritative interpretations, and commentaries following new legislation is still limited. Where they exist, useful commentaries on legislation by relevant experts are not available to free of charge.

5.4.2. Access to Court and Case Information

552. In the 2020 Regional Justice Survey, compared to 2009 and 2014, a lower percentage of citizens and business representatives report that specific court and case information is accessible (see Figure 108 below). 60 percent of the public and 69 percent of business sector respondents reported that the judicial system is accessible in terms of general access to information, compared with 64percent and 76percent, respectively, in 2013.

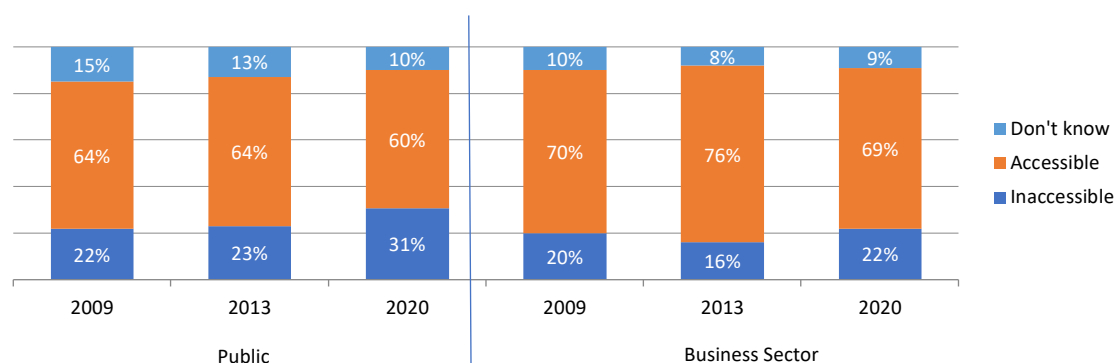
³⁸⁰ See <https://www.paragraf.rs/strane/pretplata-na-pravnu-bazu-i-strucne-casopise.html>

³⁸¹ See <http://www.slglasnik.com/pretplata-cenovnik/pretplata>

³⁸² See: Chart General Perception of Three Specific Aspects of Accessibility.

³⁸³ See: Chart General Perception of Three Specific Aspects of Accessibility.

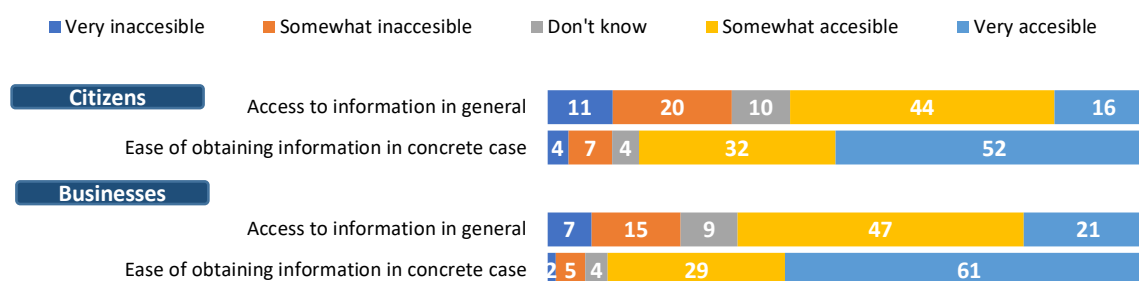
Figure 108: Perceptions of Accessibility of Information among Public and Business Sector 2009, 2014, 2020³⁸⁴



553. Access to information is perceived as more challenging by highly-educated citizens than lesser-educated citizens.³⁸⁵ In the 2020 Regional Justice Survey, 38 percent of highly-educated citizens expressed difficulty in finding necessary information, compared to 24.8 percent of the least educated. These results mean that highly-educated citizens have more expectations related to the volume, type, and quality of available information, while the less-educated citizens lack the computerization to access needed information or that information is not provided at an appropriate reading level. These possible interpretations should be borne in mind when planning how to make information on procedures more accessible.

554. Experience with court cases reflects positively on access to information. Both citizens and businesses who had experience with court cases reported higher satisfaction with access to information in their specific case. 84 percent of citizens perceived access to information in specific cases as positive, in comparison to 60 percent of citizens who reported general satisfaction with access to information from the justice sector. Businesses show similar patterns: nine out of ten businesses who were involved in a specific case see accessibility positively, compared to seven out of ten who did not have direct experience.

Figure 109: Citizens and Business: Access to Information in General vs Ease to Obtaining Information in Concrete Case³⁸⁶



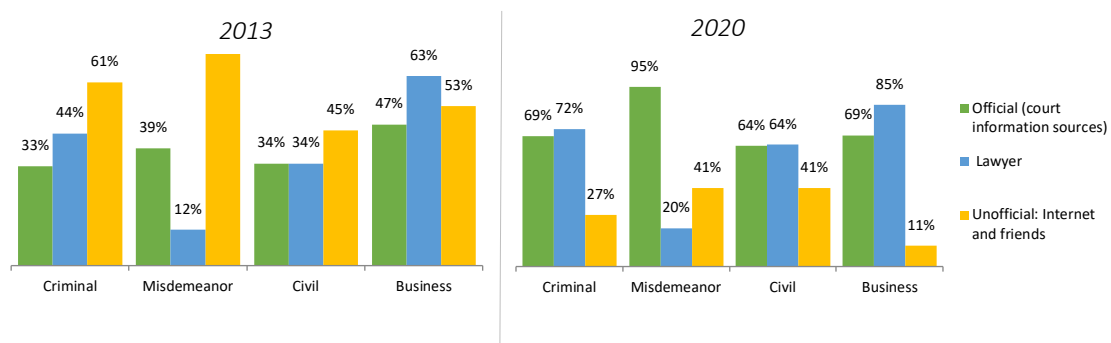
³⁸⁴ Regional Justice Survey, World Bank, 2020.

³⁸⁵ Regional Judicial Survey, World Bank, 2020.

³⁸⁶ Survey Question: *How accessible is the judicial system to citizens of Serbia in terms of...? / To what extent was the general information about the course and requirements of the process (time of hearing, place, etc.) accessible to you or your legal representative?*; Base: Total target population; Those who had experience with a court case in the past three years and have a first instance judgement rendered.

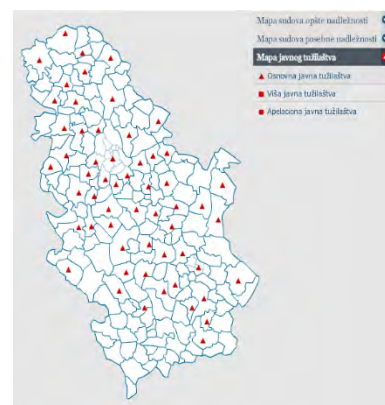
555. Respondents use several sources of information when looking for information about their case; in comparison to 2013, users rely more on lawyers and official sources of information. This varies in frequency depending on the type of case. In commercial cases, lawyers are the most common source of information at 85 percent, followed by official court information and then unofficial sources such as friends, media, and the internet. A similar pattern holds true in criminal cases, where lawyers are the prevailing source of information (72 percent). In civil cases, lawyers and official court sources of information are used most frequently (64 percent). Official sources of information prevail in misdemeanor cases (95 percent), followed by unofficial sources (41 percent).

Figure 110: Sources of Information Used for Case-Specific Information³⁸⁷



556. Although there is progress in providing information online, there is still room for improvement, which would enhance both access and efficiency. All courts and prosecutor's offices have websites. While prosecutor office websites are unified in visual design and type of information provided, court websites still vary greatly. Some courts have rich websites (for instance, the First Belgrade Basic Court), while others do not have a website at all. Some NGOs also offer useful, practical information.³⁸⁸ Providing online information enables potential users to conduct research without assistance, prevents unnecessary travel to the courthouse, and can improve the efficiency of court processes. In 2020, internet penetration in Serbia was approximately 80 percent,³⁸⁹ and the Serbian judiciary should adjust to this.

557. Availability of court information and two-way communication with the courts both saw significant progress with the introduction of a web portal Pravosudje Srbije.³⁹⁰ The portal provides information on the map of the courts with all relevant contact information,³⁹¹ the status of ongoing procedures by type of courts (basic, higher, appeal, commercial, misdemeanor, supreme), including the status of cases managed by private



³⁸⁷ Regional Justice Survey, World Bank, 2020

³⁸⁸ See: <https://otvorenavratapravosudja.rs/bukleti/>

³⁸⁹ Digital economy and society statistics – households and individuals, (2020) Eurostat, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Digital_economy_and_society_statistics_-_households_and_individuals#Internet_access

³⁹⁰ See: <https://portal.sud.rs/sr>

³⁹¹ See: <https://portal.sud.rs/sr/interaktivna-mapa-sudova>

bailiffs³⁹². Due to privacy constraints, the portal can only be accessed by those who know the case number. Other significant reforms included the development of the e-court, which enables electronic communication with the court.³⁹³ In addition, the Ministry of Justice developed eBoard, an electronic notice board that became operational in January 2020³⁹⁴ and replaced the previous physical notice boards in the courts in the enforcement procedure.³⁹⁵ The web portal Pravosudje Srbije includes a knowledge database³⁹⁶ that provides general information on the jurisdiction of courts and prosecutors' offices, the obligation to testify, and family and inheritance law. However, this information is not in a user-friendly format and instead presents quotes from the legislation.

5.4.3. Access to Court Decisions

558. The SCC is still the only court that regularly publishes all its decisions. However, the number of decisions available online remains limited. Websites of the Appellate court in Novi Sad³⁹⁷ and Appellate court in Nis³⁹⁸ include a search engine that enables easier access to the selected topic. The Constitutional Court has made many of its decisions available online for the public. Other courts do not regularly publish their judgments, although some, in particular appellate courts, make some particularly important decisions or excerpts from decisions available on their websites.

559. The special website on court practice was developed in 2020.³⁹⁹ The website includes more than 12,000 decisions from the Supreme Court of Cassation, 45,000 from the appellate courts, 5,000 from the Misdemeanor Appellate Court, 5,000 decisions from the Commercial Appellate Court, and 140,000 decisions from the Administrative Court. The website includes a sophisticated search engine that enables searching decisions by the court, year, substance, registry, case number, president of the chamber, type of a decision, etc. The decision of which cases to list on the court practice website are made by court practice departments of the relevant courts. The website was developed through project support and it needs to be regularly updated with new decisions.

5.5. Access to Alternative Dispute Resolution

560. Awareness of mediation is limited and is, in fact, decreasing over time. According to the 2020 Regional Justice Survey, only 14 percent of general court users and around 37 percent of business users know what mediation is, and these levels are lower than in the 2013 Multi-Stakeholders Justice Survey when 17 percent of citizens and 53 business users were familiar with mediation.

³⁹² See: <https://portal.sud.rs/sr/tok-predmeta>

³⁹³ See: <https://esud.sud.rs/home/#/login>

³⁹⁴ See: <https://etabla.sud.rs>

³⁹⁵ The web application and the portal for the citizens is envisaged under the most recent set of amendments for the Law on Enforcement and Security which are being implemented as of January 1, 2020, for the issues affecting personal service of process. The courts were previously unable to maintain accurate records on document served, and the eBoard application is set to make this task easier and allow insight into complete data on documents served via the electronic notice board in the enforcement procedure.

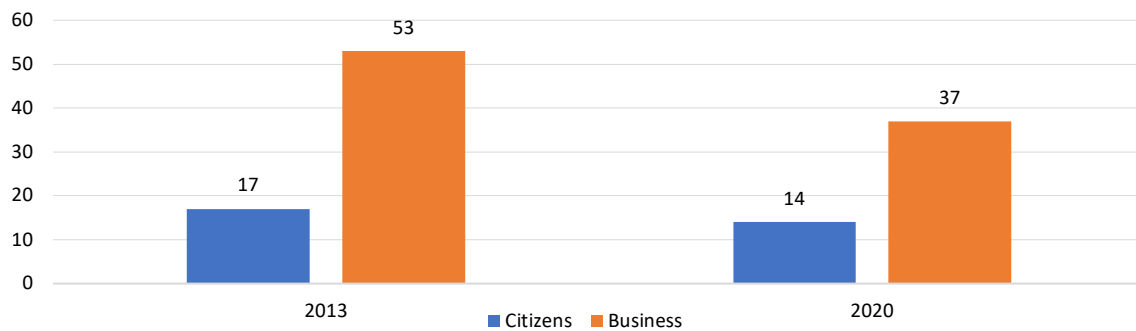
³⁹⁶ See: <https://portal.sud.rs/cr/baza-znanja>

³⁹⁷ See: https://sudskapraksa.sud.rs/sudska-praksa?tip_suda=3&sud=4

³⁹⁸ See: <http://www.ni.ap.sud.rs/bazapercent20sudskepercent20prakse>

³⁹⁹ See: <https://www.sudskapraksa.sud.rs/sudska-praksa>

Figure 111: Citizens and Businesses: Familiarity with Mediation Process 2013-2020



561. In May 2014, a new Law on Mediation was adopted by the Serbian Parliament. The 2014 Mediation Law allows for parties to be relieved from paying court fees if mediation is successful before the end of the first hearing. Mediation may be used under the new Law in any dispute unless a law stipulates the exclusive authority of a court or other relevant body. In particular, mediation is seen as suitable for property, family, commercial, administrative, environment, consumer, and labor cases.

562. The Law on Mediation introduced an obligation on courts to promote mediation. The court is obliged to provide all necessary information to the parties in a dispute about the possibility of mediation, which can also be done by referring the parties to the mediator. The Civil Procedure Code was amended in 2014 to include an obligation for judges and courts to refer parties to mediation.

563. Despite results showing that mediation is faster and cheaper than a court proceeding, the Law on Mediation did not produce its expected impact in terms of the number of issues handled. In 2019 courts in Serbia managed 460,970 civil cases, while only 569 mediation cases were heard during the same year.⁴⁰⁰ Research conducted with the EU for Serbia – Support to the Supreme Court of Cassation project confirmed that first instance cases are resolved in mediation in 53 days on average or 1/8th of the time of 414 days required to be resolved without mediation.

564. Support for mediation by the Court Presidents is vital for its success. Courts that were included in projects for the promotion of mediation, like the Second Belgrade Court, the Commercial Court in Belgrade, and Basic and High Courts in Cacak, established an information service to provide information on the possibilities of and procedures for alternative dispute resolution to citizens coming to the court. Best practices were recognized and included in the 2017 Guidelines for Enhancing Use of Mediation in the Republic of Serbia, adopted jointly by the Supreme Court of Cassation, High Judicial Council, and Ministry of Justice.⁴⁰¹

565. A case referral and registry for mediation cases is a critical step to optimize the benefits of mediation and improve both quality and efficiency in the courts' performance. Implementation of mediation in courts requires statistical monitoring and reporting on mediation. This is difficult as mediation is still registered in auxiliary books rather than the registry. A proposal of the Forum of Judges

⁴⁰⁰ See: <https://www.danas.rs/drustvo/vladavina-prava/medijacija-uspesna-u-70-odsto-slucajeva/>

⁴⁰¹ See:

<https://www.mpravde.gov.rs/files/20170628percent20Jointpercent20Guidelinespercent20forpercent20Enhancingpercent20thepercent20Usepercent20ofpercent20Mediationpercent20SCCpercent20MoJpercent20HCC.PDF>

to amend the Court Rulebook and introduce a special M registry to track mediation cases could, by counting mediation as part of the individual judges' workload, incentivize judges to refer certain types of cases to mediation.⁴⁰² However, the amendments to the Court Rulebook did not incorporate the proposed measure.

5.6. Access to Allied Professional Services

566. A vast array of professionals other than attorneys – bailiffs, notaries, interpreters, expert witnesses, and mediators – support the delivery of justice. Providing information about these providers and ensuring they can be retained at a reasonable cost is key to effective court access. Litigants need to be able to identify these professionals easily by geographic area and topic area, understand likely fees, and know if there are pending complaints against them.

567. The information available in registries varies in quality and scope. The MOJ has created registries for most enforcement agents, mediators, expert witnesses, notaries, and interpreters. Interpreter and expert witness registries are available in Excel and allow searches depending on the digital literacy of users. The registry of bailiffs is also available on the website of the Chamber of Bailiffs, and bailiffs are listed based on court seats,⁴⁰³ as are notaries on the website of the Chamber of Notaries.⁴⁰⁴ The registries of bailiffs and notaries are in a user-friendly format that enables easy search per geographical location or court jurisdiction.

5.7. Geographic and Physical Access to Justice Service

5.7.1. Geographic Access to Court Locations

568. Geographic barriers to access to justice are not a significant concern in Serbia. Around 80 percent of citizens and 89 percent of business representatives do not consider distance to the courthouse to be a problem.

569. As internet penetration improves, further expansion of the court network becomes even more unnecessary. The development of streamlined online processes can bring a range of court services directly to the user. Future efforts to improve physical access to justice services would be best addressed using online strategies, such as e-filing.

5.8. Equality of Access for Vulnerable Groups

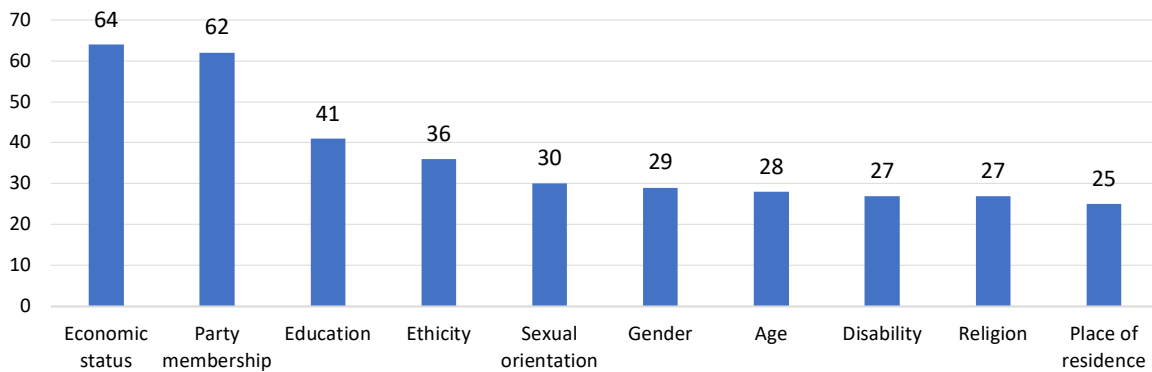
570. Most citizens do not consider the judiciary equally accessible to all citizens. According to the general population, unequal treatment of the citizens is primarily based on economic status and different political party membership. Almost half of the citizens believe that degree of education impacts treatment by the courts, while around one-third believe that ethnicity, sexual orientation, and gender affect treatment. Age is mentioned as a reason for different treatments by 28 percent of general users. Disability and religious differences are mentioned by 22 percent of citizens.

⁴⁰² See: <https://forumsudija.org.rs/sr/predlog-za-izmenu-sudskog-poslovnika-dostavljen-ministarstvu-pravde.a104.html>

⁴⁰³ See: <https://www.komoraizvrstiteija.rs/?q=imenik-izvrstiteija>

⁴⁰⁴ See: <http://beležnik.org/index.php/sr/pronadi-svog-javnog-beležnika/spisak-javnih-beležnika-i-kontakti>

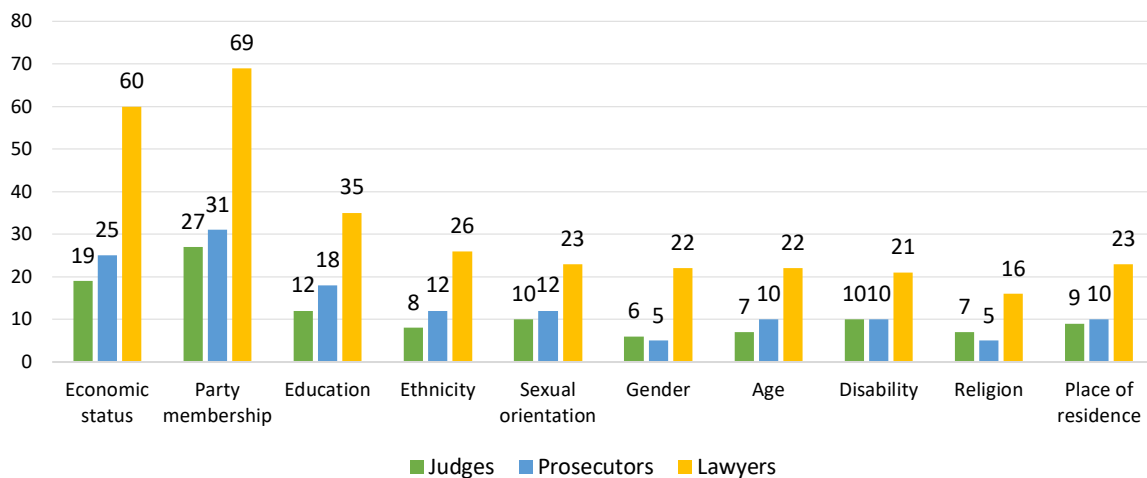
Figure 112: Citizens Opinion on Equal Treatment of Citizens⁴⁰⁵



571. A considerably smaller percentage of judges and prosecutors think that different categories of citizens are treated disparately. However, 27 percent of judges and 31 percent of prosecutors party membership as grounds for unequal treatment.

572. The attitudes of lawyers regarding inequality of treatment are considerably closer to those of the general population than to the attitudes of providers of court services.

Figure 113: Judges, Prosecutors and Lawyers Opinion on Equal Treatment of Citizens



573. Members of the business sector also think that there is disparate treatment of residents and legal entities. 57 percent of representatives of the business sector believe the treatment of economic enterprises depends on their ownership structure, and 47 percent think that treatment varies by size of the enterprise. Another 40 percent believe that treatment depends on the specific geographic location in which the business is located, while 38 percent have concluded it depends on the type of economic activity.

⁴⁰⁵ Survey Question: *In your view, does the judicial system in Serbia equally treat all citizens/businesses notwithstanding their...?*; Base: Total target population

5.9. Recommendations and Next Steps

Recommendation 1: Accessibility of court fees.

- Update court fee schedules based on principles that ensure affordability to file valid proceedings, discourage frivolous proceedings, encourage alternative dispute resolution and settlement, and ensure access to cases involving the public welfare, such as family law cases. (MOJ, SCC – short-term)
- Amend the Law on Court Fees and Civil Procedure Code to state the deadline for submitting requests for exemption from court fees and the deadline for courts to decide on a request. (MOJ – short-term)
- Increase awareness that the court will not suspend litigation for failure to pay fees. To safeguard against abuse of this policy, consider requiring unpaid fees to be paid to the court till the end of the procedure and extend the statute of limitations for court fees. (SCC – short-term)
- Require courts to make an up-to-date online fee calculator available to the public at no charge. (SCC – short-term)
- Develop a consistent and timely system for application for court fee waivers. Evaluate whether the Central Application for Court Fees (CSST), developed in 2020, is being used effectively, including its use to track payments of court fees and information about fee waivers. (SCC – short-term)
- Consider removing caps on court fees so that fees in high-value cases are proportionate to those in lower-value cases. (MOJ, SCC – medium-term)

Recommendation 2: Reexamine the affordability of attorney fees.

- Consider alternative attorney fee arrangements under which attorneys are not paid per hearing or motion. This will also incentivize limiting the use of appeals and remands and improve case processing efficiency. (MOJ, Bar Chamber – medium-term)
- Consider implementing practices used in EU member states and other nations to negotiate attorney fees based on guidelines that consider the value of the case, the amount of work required by the attorney, and the public interest served by the case (for instance, more strictly regulating fees for cases addressing child custody, injured workers and people with disabilities, while allowing more arms-length negotiation in cases of private interest). (MOJ, Bar Chamber – medium-term)

Recommendation 3: Ensure access to and quality of ex officio attorneys assigned to provide mandatory representation.

- Use the call center and tracking software introduced in 2019 by the Bar Association of Serbia to collect data on the number of appointments, the number of rejections of assignments and the reasons given, and the types of cases where ex officio appointment is most common. (MOJ, Bar Chamber – short-term)
- Monitor the work of ex officio attorneys to ensure quality and impartiality. (MOJ, Bar Chamber – medium-term)

Recommendation 4: Increase public awareness of and access to free legal aid.

- Encourage Community Service Organizations to refer clients to Free Legal Aid Centers. (MOJ – continuous)
- Encourage law faculties to contribute their time and supervise their students in providing Legal Aid services. (MOJ, Law faculties – continuous)
- Adopt proper budget planning and increase funds for free legal aid in municipalities' budgets. Require all municipalities, Legal Aid, and Legal Support centers to keep a registry of their activities and submit data to the Ministry of Justice. (MOJ, MDULS – short-term)
- Develop a method for tracking user satisfaction, implement it locally, and evaluate results centrally. Provide the Ministry with additional staffing to monitor the programs. (MOJ – medium-term)

Recommendation 5: Increase access to information about laws and courts.

- Consider having public libraries subscribe to online databases of legislation and regulations so that the public can have full access without charge. (MOJ – short-term)
- Improve the general public's access to published court decisions and associated searchable databases. (MOJ – medium-term)
- When publishing new legislation, track changes and cross-references to existing legislation. (National Assembly, line ministries – short-term)
- Increase the public's access to practical guidelines and plain-language explanations of the law. (National Assembly, line ministries – short-term)
- Require ministries and other institutions that adopt regulations to broadly publish them (All – short-term).
- Continue to improve websites that provide information about courts and particular cases. (MOJ, SCC – medium-term)

Recommendation 6: Increase access to alternative dispute resolution options.

- Conduct additional outreach initiatives to potential court users about the possibility of mediation. (MOJ, SCC – short-term)
- Provide additional training for judges, prosecutors, lawyers, and court staff on the role of mediation. Consider using the best practices recognized in the 2017 Guidelines for Enhancing Use of Mediation in the Republic of Serbia. (JA – short-term)
- Adopt a case referral and registry for mediation cases rather than continuing to register mediation in auxiliary books. Adopt the proposal of the Forum of Judges to amend the Court Rulebook and introduce a special M registry to track mediation cases, which would count mediation as part of individual judges' workload and incentivize them to refer more cases to mediation. (SCC – short-term)

6. Promoting Integrity in the Serbian Judicial System

6.1. Main Findings

574. Despite numerous anti-corruption initiatives and some improvements in normative and institutional frameworks, prevention of judicial corruption and impunity remained an issue of concern in Serbia from 2014 to 2022. There still was no effective coordination mechanism in place for the prevention, reduction or elimination of corruption. In October 2020, the Group of States against Corruption (GRECO) found that since 2015, Serbia had satisfactorily implemented only two of GRECO's 13 recommendations regarding "Corruption prevention in respect of members of parliament, judges and prosecutors,"⁴⁰⁶ which led to GRECO's evaluation of the situation as "globally unsatisfactory".⁴⁰⁷ However, in March 2022, in the Second Interim Compliance report,⁴⁰⁸ GRECO concluded that the overall level of compliance with the recommendations was no longer "globally unsatisfactory" as ten recommendations had been partially implemented.

575. Judicial institutions have not made use of integrity plans. Such plans are required by the Law on the Prevention of Corruption as a means of self-assessment, but there is no evidence that they have been used effectively to develop or strengthen safeguards against corruption.

576. There are still notable openings for the exercise of undue influence on the judicial system. The constitutional and legislative framework continued to leave room for undue political influence over the judiciary, and pressure on the judiciary remained high.⁴⁰⁹ The 2022 Constitution amendments remove the role of the executive and legislative branches from the process of appointment of judges and composition of the HJC. However, for the operationalization of the new provisions, the legal framework has to be adopted and it is set for March 2023. Government officials, some at the highest level, as well as members of Parliament, continued to comment publicly on ongoing investigations and court proceedings and about individual judges and prosecutors, while articles in tabloid newspapers targeted and sought to discredit members of the judiciary.⁴¹⁰

577. The SPC established the Commissioner for Autonomy in 2017 to report to the public on claims of undue influence or attempts to place undue influence on prosecutors. However, the post was not filled from March 2020, when the term of the first Commissioner expired, through the end of the mandate of the SPC composition in March 2021. The new Commissioner was appointed in April 2022, but the rules of procedure for the Commissioner and needed resources are still missing.

⁴⁰⁶ GRECO's Fourth Evaluation Round, "Corruption prevention in respect of members of parliament, judges and prosecutors" Second Compliance Report, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a07e4d>, para 80 and 86.

⁴⁰⁷ Ibid.

⁴⁰⁸ GRECO's Fourth Evaluation Round, "Corruption prevention in respect of members of parliament, judges and prosecutors" Second Interim Compliance Report, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a5ff19>

⁴⁰⁹ The EU Serbia 2021 Report, p. 21, available at: https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en

⁴¹⁰ Ibid. Similar concerns were raised by the European Parliament. In its 2021 resolution on the 2019-2020 Commission reports on Serbia; the Parliament noted "with concern the continued political influence over the judiciary, and the need for strengthening the safeguards for the accountability, professionalism, independence and overall efficiency of the judiciary." For more information see https://www.europarl.europa.eu/doceo/document/TA-9-2021-0115_EN.html

578. The automated, random assignment of cases became the official norm in Serbia's courts by 2018, but the Law on Judges and the Court Rules of Procedure still contained fairly broad provisions that allowed court presidents to assign or transfer a case to a particular judge, despite the general prohibition of deviating from random assignment. There was no centralized tracking of cases that were not randomly assigned. There still was no automated mechanism for the random assignment of cases in PPOs.

579. There was no central tracking of the source, basis, or disposition of written complaints about court and prosecutorial operations. Complaints were submitted directly to courts and PPOs and/or the SCC, RPPO, the Councils, the Ministry of Justice, and the Anti-corruption Agency (ACA) / Agency for Prevention of Corruption (APC). Each court was obligated to collect and submit complaint statistics every six months to the MOJ, SCC, HJC, and its immediately superior court.⁴¹¹ The Ministry of Justice introduced an automated system for complaints, however, it is not linked with other stakeholders.⁴¹² However, there was no office in the system with unified numbers for the written complaints received during the period under review, how many complaints were submitted to more than one institution, how many were ignored, and how many were considered to be valid.

580. From 2017 to 2022, Serbia made significant steps in integrating ethical codes for judges and prosecutors into the regimes governing their behavior. Ethical boards were established as permanent bodies within the HJC and SPC⁴¹³, while "Ethics and Integrity in the Judiciary" were one of the most frequently covered thematic areas within the JA's continuous training curricula on "Special Knowledge and Skills." Furthermore, continuous training curricula for holders of judicial office shifted to include more skills-based training on ethics and integrity.

581. The appointment of expert witnesses does not conform to international standards for impartiality, leaving the Serbian judicial system vulnerable to corruption. There were no clear and transparent rules about the process that prosecutors use to appoint expert witnesses in criminal proceedings. Experts in the same field were not always paid at the same rates. These variations reportedly influenced the selection of witnesses by parties or judges and the quality of their work. The MOJ did not keep systematized data when revoking the authorization of experts for unethical, incompetent or unprofessional performance. Experts who missed deadlines or hearings generally were not penalized.

582. While judicial institutions have complied with the Law on the Protection of Whistleblowers, adopted in 2014 by appointing whistleblower point persons, these individuals have not received training in how to carry out their responsibilities. In addition, surveys indicate that employees of the judicial system are not well-informed about the protections under this law.

⁴¹¹ There was no corresponding obligation for PPOs.

⁴¹² Linking of these complaints should take into consideration different monitoring roles of different institutions, i.e. the Ministry of Justice has competence to oversight implementation of the Court Rulebook, while the HJC could monitor to work of the individual judge.

⁴¹³ In 2018, the HJC and SPC established their Ethical boards as ad hoc bodies. In on 22 July 2021 Parliament adopted amendments to the Law on the High Judicial Council and the Law on Judges so that the Ethics Committee of the HJC to become a permanent body.

583. In large part, the legal frameworks governing the disciplinary accountability of judges and public prosecutors conformed to international standards. The major exception was the continued designation of the Councils as the second-instance disciplinary bodies, particularly since the Councils also elect members of the respective Disciplinary Commissions for judges and prosecutors.⁴¹⁴ There is also a need for clarity in the grounds for discipline.

584. The 2020 Regional Justice Survey showed a significant increase in the trust of Serbian citizens in their judicial system, compared to 2009 and 2013. The judicial system was in the middle of the 2020 ladder of trust, at 55 percent. This improvement was part of a pattern of increased trust in state institutions generally, with the exception of the media. Trust in the judicial system increased both among court users and the general public.

585. A significant portion of judges, prosecutors, and lawyers report that the judicial system is not independent in practice. Approximately 24 percent of judges and 34 percent of prosecutors reported that the judicial system is not independent. Lawyers are even more skeptical, with 73 percent of lawyers reporting that the judicial system is not independent.

6.2. Introduction

586. Ensuring that judicial functions are conducted with integrity is of the utmost importance to Serbia's democratic and economic future. The EU's revised Western Balkan enlargement methodology, adopted by the European Commission in 2020, places an even stronger focus on the core role of fundamental reforms essential for Serbia's EU accession, including judicial reform.⁴¹⁵ This represents an application of international standards that recognize no society can be considered serious about fighting corruption if its judiciary or security services are perceived to be operating with impunity. Maintaining a culture of integrity cannot be accomplished by repressive measures alone: promoting integrity requires safeguarding the independence and autonomy of judges and prosecutors and eliminating aspects of the system that create opportunities for corruption to flourish.⁴¹⁶

587. For purposes of this review, both 'integrity' and 'corruption' are used in a broad sense. 'Integrity' encompasses the ability of the judicial system or an individual judicial actor to resist corruption while fully respecting the core values of judicial and prosecutorial independence,

⁴¹⁴ See Report of the Special Rapporteur on the independence of judges and lawyers, 2014, p. 13, para 72; p. 17, para 93, and p. 21, para 127, available at <https://undocs.org/A/HRC/26/32>

⁴¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Enhancing the accession process - A credible EU perspective for the Western Balkans, Brussels, 5.2.2020, COM(2020) 57 final, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargement-methodology_en.pdf.

⁴¹⁶ The United Nations Convention Against Corruption (UNCAC) (Article 11), which Serbia signed in 2003 and ratified in 2005, requires each State Party to (a) take measures to strengthen integrity among members of the judiciary, and (b) take measures to prevent opportunities for corruption among members of the judiciary.

impartiality, personal integrity, propriety, equality, competence, and diligence.⁴¹⁷ ‘Corruption’ includes bribery or intimidation of judges, court staff, or public prosecutors, abuse of official authority by holders of judicial office, influence peddling, and exercising undue influence on holders of judicial office (externally by political actors, media, etc., or internally by colleagues or higher-ranking officials within the system).⁴¹⁸

588. In 2019, Serbia adopted a Law on Prevention of Corruption,⁴¹⁹ which replaced and expanded upon the Law on the Anti-Corruption Agency adopted in 2008. The objectives of the 2019 Law, which took effect in September 2020, are the protection of the public interest, the reduction of corruption risks and the strengthening of the integrity and accountability of public authorities and public officials. (See Box 21). The 2019 Law changed the name of the Anti-Corruption Agency to the Agency for the Prevention of Corruption and expanded and clarified the duties and mandate of this independent state authority.

Box 21: The 2019 Law on Prevention of Corruption

The Law on Prevention of Corruption was drafted to provide guarantees that ensure the independence of the APC (formerly known as the Anti-Corruption Agency), and to give the Agency a stronger role in preventing and resolving conflicts of interest, including conflicts of interests that may exist for judges and prosecutors. The APC’s new, expanded, or clarified authorities related to judges and prosecutors include:

- (1) obtaining immediate and unimpeded access to official records and documents held by public authorities;
- (2) requiring financial institutions to submit data to the APC about the accounts of public officials;
- (3) obtaining a declaration of assets from a wider circle of persons associated with a public official;
- (4) acting upon anonymous complaints;
- (5) filing criminal complaints, requesting the filing of misdemeanor proceedings and initiating disciplinary proceedings, and
- (6) initiating the adoption or amendment of regulations, providing opinions about the corruption risk assessment in draft laws in the fields that are particularly susceptible to the risk of corruption,

⁴¹⁷ See, e.g., Article 11 of UNCAC, Value 3 of the Bangalore Principles of Judicial Conduct (https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) of the United Nations Office on Drugs and Crime, and the corresponding Commentary on the Bangalore Principles of Judicial Conduct, https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf at p. 79. These values are identified in the Bangalore Principles of Judicial Conduct, endorsed by the United Nations Economic and Social Council in its resolution 2006/23, and elaborated in the Commentary on the Bangalore Principles of Judicial Conduct (https://www.unodc.org/unodc/en/corruption/tools_and_publications/bangalore-principles.htm) and elaborated in the Commentary on the Bangalore Principles of Judicial Conduct, (https://www.unodc.org/unodc/en/corruption/tools_and_publications/commentary-on-the-bangalore-principles.html), while the United Nations Guidelines on the Role of Prosecutors are designed to ensure that national systems are based on certain basic values that promote the effectiveness, impartiality and fairness of prosecutors in criminal proceedings (A/CONF.144/28/Rev.1 at 189 (1990)).

⁴¹⁸ See Corruption and Anti-Corruption In The Justice System, 2009, p. 10-16, available at https://www.kas.de/c/document_library/get_file?uuid=efeb9a87-f5c0-6e14-78ef-e5708063bacb&groupId=252038; International Bar Association Judicial Integrity Initiative, Judicial Systems and Corruption, May 2016, p. 18-27, available at <https://www.ibanet.org/MediaHandler?id=F856E657-A4FC-4783-806E-6AAC6895D37F>, Transparency International, Fighting Judicial Corruption Topic Guide, October 2014, available at https://knowledgehub.transparency.org/assets/uploads/kproducts/Topic_guide_on_judicial_corruption.pdf

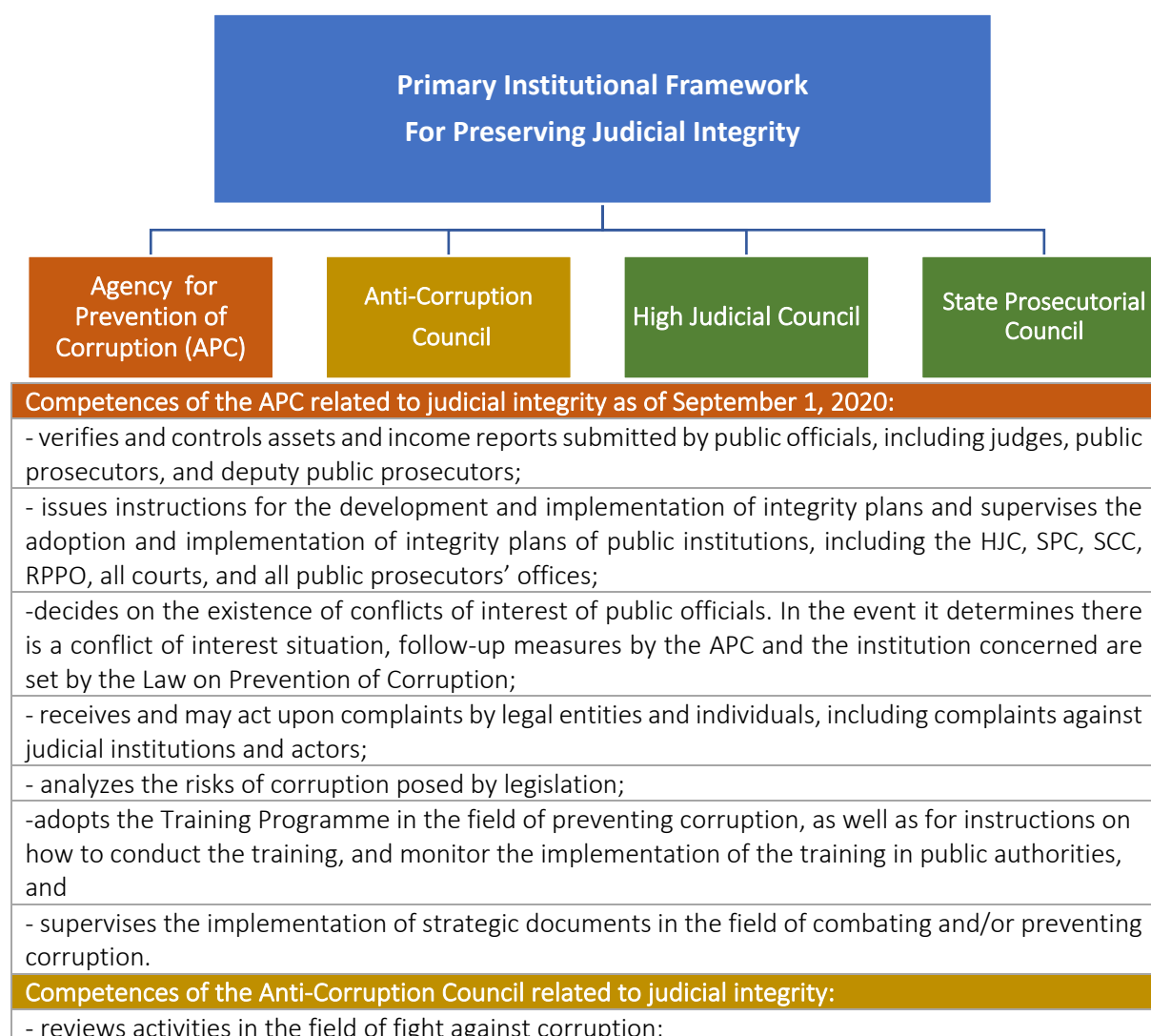
⁴¹⁹ “Official Gazette of the Republic of Serbia”, No. 35/19 and 88/19.

and providing opinions on draft laws governing issues covered by ratified international treaties in the field of preventing and combating corruption.

The Law also specifies the procedures the APC should follow to determine the extent of any discrepancies in the declarations of assets submitted by public officials and imposes greater penalties for violation of the Law by public officials.⁴²⁰

589. In addition to those shown in Figure 114 below, institutions and organizations with roles to play in preventing and reporting corruption include the Ministry of Justice, the National Assembly, the Judicial Academy, and civil society organizations. Persons working within the judicial system with anti-corruption roles include individual judges, prosecutors, judicial and prosecutorial staff, lawyers, and expert witnesses.

Figure 114: Institutional Framework for Integrity in the Judicial Sector



⁴²⁰ See articles 103 and 104 of the Law on Prevention of Corruption. If convicted for a criminal offense for intentionally failing to declare assets or providing false information, a public official will be punished by imprisonment from six months to five years, termination of public office and/or termination of employment. The public official also will be barred from acquiring a public office for a period of 10 years. Fines may be imposed for misdemeanor violations of the law.

- receives and may act upon complaints by legal entities and individuals, including complaints against judicial institutions and actors, although individual complaints generally are forwarded for handling to the institutions involved;
- proposes measures to be taken to effectively fight corruption, and
- monitors implementation of anti-corruption measures.
Primary competencies of the High Judicial Council and the State Prosecutorial Council
- rules on the incompatibility of other services and jobs with judicial office;
- determines the process for conducting performance evaluations of judges, public and deputy prosecutors
- conducts disciplinary proceedings for judges and public and deputy prosecutors, and
- offers advice/counseling on appropriate conduct in particular cases.

590. Few of the recommendations related to the problem of corruption in the judiciary from the 2014 Functional Review had been fully implemented by the end of 2020. The 2014 Functional Review contained six recommendations, consisting of 20 sub-parts, related to issues of corruption in the judiciary. Of the 20, only two were completely implemented, seven were partially implemented, and 11 were not implemented at all.⁴²¹

591. Despite numerous anti-corruption initiatives and some improvements in normative and institutional frameworks, prevention of judicial corruption and impunity remained an issue of concern in Serbia from 2014 to 2020. There still was no effective coordination mechanism in place for the prevention of and reduction or elimination of corruption. In October 2020, the Group of States against Corruption (GRECO) found that since 2015, Serbia had satisfactorily implemented only two of GRECO's 13 recommendations regarding "Corruption prevention in respect of members of parliament, judges and prosecutors,"⁴²² which led to GRECO's evaluation of the situation as 'globally unsatisfactory'.⁴²³

592. There are still notable openings for the exercise of undue influence on the judicial system. The constitutional and legislative framework continued to leave room for undue political influence over the judiciary, and pressure on the judiciary remained high.⁴²⁴ Government officials, some at the highest level, as well as members of parliament, continued to comment publicly on ongoing investigations and court proceedings and about individual judges and prosecutors, while articles in tabloid newspapers targeted and sought to discredit members of the judiciary.⁴²⁵

⁴²¹ The two completed were those related to rules for promotion and performance appraisal of judges by the HJC, and to conducting a comprehensive training needs assessment for existing judges, prosecutors, and staff. Those partially included the development of integrity plans for all courts and PPOs and dissemination of existing rules on gift-giving; providing public information about court processes; reporting by Court Presidents on instances when the random assignment is overruled and monitoring of these reports by the SCC, and ensuring adequate staffing of disciplinary departments in the HJC and SPC. The sub-parts which were not implemented related to targeting interventions to deal with the most commonly reported forms of corruption, such as petty bribery of court staff; development of public relations information on the websites and in brochures at the courts regarding the law and policy on gift-giving; issuing HJC opinions with practical examples of permissible/impermissible conduct, including online FAQs about ethics; analyzing the outcomes of complaints at a systemic level, and using data to inform future reforms.

⁴²² GRECO's Fourth Evaluation Round, "Corruption prevention in respect of members of parliament, judges and prosecutors" Second Compliance Report, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a07e4d>, para 80 and 86.

⁴²³ *Ibid.*

⁴²⁴ The EU Serbia 2020 Report, pg 20, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf.

⁴²⁵ *Ibid.* Similar concerns were raised by the European Parliament. In its 2021 resolution on the 2019-2020 Commission reports on Serbia; the Parliament noted "with concern the continued political influence over the judiciary, and the need for

593. The most fundamental change to the promotion of integrity is the 2022 Constitutional amendments that reduce openings for political influence on judicial operations affecting the membership and duties of the HJC and SPC.⁴²⁶ However, for the operationalization of the new provisions, the legal framework has to be adopted, and it is set for March 2023. These changes are discussed in the Governance and Management chapter.

6.3. Institutional Coordination

594. There was insufficient cooperation and coordination among the institutions with responsibility for building the integrity of Serbia's judiciary for the country to improve its reputation related to corruption in the judicial system. This is a message the institutions and their leaders have heard many times, e.g., from the annual Communications on EU Enlargement Policy as well as the 2014 Judicial Functional Review.⁴²⁷ The lack of coordination included the lack of sufficient interaction between the Councils and the Anti-Corruption Agency/APC about the development, implementation, and monitoring of integrity plans, rules, and standards governing conflicts of interest and implementation of those rules and standards.⁴²⁸

595. The Councils' lack of centralized databases that collect all written complaints about the work of judicial institutions impaired the system's ability to track breaches of integrity provisions by judicial officials or employees and to correct problems in justice service delivery. While there was no legislation requiring the Councils to collect and analyze all written complaints about the system, the failure to collect and analyze complaints posed significant integrity (as well as governance and quality) issues for the judicial system. The Councils were unable to determine how many of the complaints were duplicates or how many pertained to a particular type of case or to a particular court, PPO, judge, prosecutor, or employee. Given their responsibilities for system performance and the selection, training, evaluation, ethics, and discipline of judges and prosecutors, the Councils were in the best position to collect and analyze the data related to judicial integrity in coordination and cooperation with other competent institutions.

596. The judicial system failed to inform the outside institutions that originally received complaints about judicial corruption and/or justice service delivery. This represented another gap in Serbia's ability to track and correct breaches of integrity provisions by judicial officials. Through 2020, these complaints were made to the court presidents and public prosecutors of PPOs, the Councils, the SCC, RPPO, APC, and the Ministry of Justice. Until the Law on Prevention of Corruption took effect, there was no law requiring any judicial institution to report back to a non-judicial agency receiving the complaint about

strengthening the safeguards for the accountability, professionalism, independence and overall efficiency of the judiciary. For more information see https://www.europarl.europa.eu/doceo/document/TA-9-2021-0115_EN.html

⁴²⁶ Venice Opinion, Serbia – Urgent opinion on the revised draft constitutional amendments on the judiciary, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure on 24 November 2021, endorsed by Venice Commission at its 129th Plenary Session, 10-11 December 2021.

⁴²⁷ See, for example, the discussion about Chapter 23: Judiciary and fundamental rights in the Commission Staff Working Document Serbia 2020 Report at https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf.

⁴²⁸ Meeting between the Councils and Anti-Corruption Agency were organized annually, however it is not sufficient to ensure effective implementation of rules and full effectiveness of integrity plans and other preventive tools. There is impression that meetings have protocol role.

its disposition,⁴²⁹ except to the Ministry of Justice in line with the Law on Court Organization.⁴³⁰ For example, the APC reported to the World Bank team that relevant judicial institutions did not routinely tell the Anti-Corruption Agency about the outcome of the 117 complaints about corruption in the courts or PPOs from 2015 to 2020. In that period, the Anti-Corruption Agency received a total of 283 complaints related to the work of courts and public prosecutor's offices. Of that number, 96 complaints were related to the suspicion of corruption in courts, criminal offenses against official duty, and criminal offenses against the judiciary by judges. Also, 21 complaints were related to the suspicion of corruption in PPOs and criminal offenses against official duty and criminal offenses against the judiciary by public prosecutors and deputy public prosecutors.⁴³¹

Table 17: Structure of complaints to the APC related to the work of courts in the period 2015-2020

Suspicion of corruption in courts and criminal offenses against official duty and against the judiciary	Possible irregularities in the court decision-making process	Dissatisfaction with the court's decision
96	80	57

Table 18: Structure of complaints to the APC related to the work of PPOs in the period 2015-2020

Suspicion of corruption in PPOs, and criminal offenses against official duty and against the judiciary	Suspicion of possible irregularities in the proceeding, presenting evidence and their assessment	Dissatisfaction with the public prosecutor's decision
21	33	16

597. The Law on Prevention of Corruption requires judicial institutions to inform the APC about the outcome of complaints forwarded by that agency only when the APC determines “there are circumstances in the work of a public authority that might lead to corruption.”⁴³² In those cases, the

⁴²⁹ Article 87 of the Law on the Prevention of Corruption reads in part: “If the Agency is not competent to act upon a complaint, it shall forward the complaint to the competent authority and inform the complainant thereof.” Article 89 reads: “If, while acting upon a complaint, facts are established and evidence presented that raise suspicion that there are irregularities in the work of a public authority, the Agency shall submit a reasoned proposal for supervision to the authority that supervises the work of the public authority against which the complaint was submitted. If the authority that supervises the work of the public authority rejects the Agency’s proposal, said authority is obliged to explain the reasons for rejection to the Agency in writing, no later than within 30 days from the day of receiving the proposal.” As of December 2020, there still was no law requiring judicial agencies to inform the reporting institution about the outcome of a complaint to any agency other than the APC.

⁴³⁰ Article 55 of the Law on Organization of Courts: “When a party or other participant in the proceedings files a complaint, the president of the court is obliged to consider it, to submit it to the judge to whom it refers and to inform the complainant about its merits and measures taken, as well as the president of the immediately higher court. 15 days from the date of receipt of the complaint.

The president of the court may reject the complaint, in whole or in part, if he finds that the applicant is abusing the right to complain.

The complainant shall be deemed to be abusing the right to complain if the complaint has offensive content or if he files a complaint of the same or similar content as previously decided.

If the complaint is incomprehensible, the president of the court will order the applicant to edit it within eight days from the day of receipt of the order, and if the applicant fails to do so, he will reject the complaint.

If the complaint is filed through the ministry in charge of justice, the immediately higher court or the High Judicial Council, the body through which the complaint was filed shall be notified of the merits of the complaint and the measures taken.”

⁴³¹ Anti-Corruption Agency data submitted for the purpose of this FR in July 2019 and April 2021. Due to multiple complaints the total number of complaints related to the work of courts and prosecutor offices is 303.

⁴³² Article 90 of the Law on the Prevention of Corruption.

APC must recommend measures for the public authority to remedy the situation, along with a time limit for taking the measures, and the receiving institutions are obliged to inform the APC about the outcome of those measures.⁴³³

6.4. Formal Mechanisms to Strengthen Integrity and Prevent Conflicts of Interest

6.4.1. Development and Monitoring of Integrity Plans

598. Integrity plans are designed to be self-assessments of an institution’s exposure to opportunities for corruption and other irregularities, but there was no evidence the judicial system used them effectively to develop or strengthen its safeguards against corruption. From 2012 to 2015, public institutions developed and implemented their initial integrity plans and completed the first cycle of implementation. The second cycle started in December 2016 and lasted until October 2019. In preparation for the second cycle, the Anti-Corruption Agency worked with the MoJ and the Councils to develop model integrity plans for judicial institutions. Each institution could add risk areas and processes beyond those in the model plans, but none of the judicial institutions chose to do so.⁴³⁴ For instance, no court or PPO identified risks related to the implementation of rules on deferring criminal prosecution, concluding plea agreements or the recusal of judges or public prosecutors, although these were issues discussed throughout the criminal justice system from 2012 through 2019.

Table 19: Areas Identified in the Integrity Plans of judicial institutions as Most Vulnerable to Corruption

First cycle (2012 to 2015)	Second cycle (2016- 2019)
<ul style="list-style-type: none"> - Ethics and Personal Integrity - Security - Institutional Management - Human Resources Management - Documentation Management - Public Procurement - Financial Management 	<ul style="list-style-type: none"> - IT Security - Security of information - Human Resources Management

Source: Data from the Anti-Corruption Agency, July 2019

599. Effective use of the plans also was hampered by the failure of judicial institutions to appoint senior personnel to develop and monitor the implementation of integrity plans and the lack of transparency about their contents. APC data shows integrity plans were adopted by 84percent of judicial institutions in the first cycle and 88 percent in the second.⁴³⁵ However, as of the end of 2020, most judicial institutions, including the MoJ, the Councils, courts, and PPOs, also had failed to follow

⁴³³ *Ibid.* Article 90 also states that when the Agency finds, while acting upon a complaint, that there are grounds for suspicion that a criminal offence prosecuted ex officio or a misdemeanor offence or a breach of duty has been committed, the APC must submit a criminal report to the competent authority, a request for initiating misdemeanor proceedings or an initiative for initiating disciplinary procedure. Within 90 days from the receipt of any of these, the competent authority must inform the Agency about the responsive action it has undertaken.

⁴³⁴ Crta, ActionSee, National Endowment for Democracy, The Analysis of Openness of the Judicial Bodies in the Republic of Serbia and the Region in 2017, October 2018, pp. 7 and 15, available at <http://crta.rs/wp-content/uploads/2018/10/Otvorenost-pravosudnih-organa-u-Srbiji-i-regionu-u-2017.godini.pdf>, 19. 11. 2018.

⁴³⁵ Anti-Corruption Agency information submitted for the purpose of this FR, July 2019 and review of court and PPO websites by the FR team.

the Anti-Corruption Agency recommendations that integrity plans be posted on each institution's web page.⁴³⁶

6.4.2. Rules on conflict of interest, undue influence, and declarations of assets

600. From 2015 to 2020, under the Law on the Anti-Corruption Agency/Law on Prevention of Corruption, the Anti-Corruption Agency initiated 217 proceedings against judges and public prosecutors for violations of statutory provisions related to assets and income disclosures, conflicts of interest of public officials, and the statutory rules on gift-giving. Of these, 196 proceedings were completed. These resulted in 185 measures of caution, seven public announcements that violations had occurred, and four proceedings were suspended.⁴³⁷ Measures of caution were the mildest available sanctions for these violations.

601. The Law on the Prevention of Corruption generally strengthened and clarified the rules on conflicts of interest and asset declarations. The judicial and prosecutorial codes of ethics in effect through 2020 did not address "conflicts of interest" as such, but the codes⁴³⁸ and Articles 30-31 of the Law on Judges and Articles 65-68 of the Law on Public Prosecution did contain clear prohibitions on external activities that might compromise impartiality, and the duty to notify superiors of activities that might do so.⁴³⁹

The Law on the Anti-Corruption Agency and the Law on the Prevention of Corruption both define a conflict of interest as a "situation where a public official has a private interest which affects, may affect or may be perceived to affect actions of an official in the discharge of office or official duty in a manner which compromises the public interest." Both laws also prohibit the holding of various external positions and obligate the officials to notify the Anti-Corruption Agency (before September 1, 2020) or the APC of any possible conflict of interest. Under both laws, the Agency could request information about the possible conflict and was required to notify the individual and the employing institution after it determined whether a conflict of interest existed. In the event the Agency finds a conflict, both laws provide it should recommend measures to the employing institution to address the conflict.

602. In April 2021, the HJC and SPC amended their Rules of Procedure. The HJC adopted amendments to its Rules of Procedure regulating the prevention of undue influence on individual judges and the judiciary as a whole.⁴⁴⁰ Also, the SPC decided to revise the Rules of Procedure with improved provisions regulating the prevention of undue influence on prosecutors. Those Rules now

⁴³⁶ Crta, ActionSee, National Endowment for Democracy, The Analysis of Openness of the Judicial Bodies in the Republic of Serbia and the Region in 2017, October 2018, pp. 7 and 15, available at <http://crta.rs/wp-content/uploads/2018/10/Otvorenost-pravosudnih-organa-u-Srbiji-i-regionu-u-2017.godini.pdf>, 19. 11. 2018.

⁴³⁷ Anti-Corruption Agency data submitted for the purpose of this FR in July 2019 and April 2021.

⁴³⁸ Ethical code of judges, principle 4.4. A judge must not use the position of a judge to pursue his or her own interests, the interests of his or her family members or others, nor may he or she allow others to give the impression that anyone is in such a special position that they can influence the judge's work. The Ethical code of prosecutors contains only conditions for recusal, principle 3 (3): The public prosecutor and the deputy public prosecutor are obliged to request an exemption from acting in cases, when he is aware of the existence of grounds for exemption, in accordance with the law.

⁴³⁹ GRECO's position on Serbia's conflict of interest and asset declaration regime as of October 2020 are found in its Fourth Evaluation Round, Second Compliance Report, para 67, 70 and 87.

⁴⁴⁰ For more details about the working group for amending Rule of procedure, see <https://www.coe.int/en/web/cdcj/-/second-meeting-of-the-high-judicial-council-s-working-group-on-preventing-undue-pressure>.

provide the basis for the functioning of the Commissioner for Autonomy of the Prosecution. Following the amendments of its Rules of Procedure, the HJC conducted numerous activities to promote reporting of undue influence on judges and to adequately implement this mechanism.

603. The Code of Ethics for Public Prosecutors and Deputy Public Prosecutors and accompanying guidelines adopted by the SPC in April 2021 contains a series of principles related to conflicts of interest.

⁴⁴¹ However, conflict of interest is not presented as a separate topic, and different types of conflict of interest are not elaborated on in the new Code. In addition, the Code recognizes only one strategy for preventing or resolving a conflict of interest – recusal. The practical effect of this limitation is aggravated by the lack of any provisions in the Code or guidelines clarifying when prosecutors should seek a recusal;⁴⁴² Instead, prosecutors are referred back to “the law.”⁴⁴³

604. By late 2020 there also were efforts to increase awareness among judges and prosecutors about the problems posed by potential risks of conflict of interest and undue influence. In addition to training conducted by the Judicial Academy and discussed in more detail below, the APC published a Manual for Recognizing and Managing Conflicts of Interest and Incompatibility of Offices,⁴⁴⁴ while Guidelines for the Prevention of Undue Influence on Judges⁴⁴⁵ and the Guidelines for the prevention of Undue Influence on Prosecutors⁴⁴⁶ were published in February 2019. Although the Manual was not written only for judges and prosecutors, the APC promoted it among representatives of the judicial system.⁴⁴⁷ Both Guidelines contained instructions for proper management of these risks.

605. Also positive was the 2017 establishment of the Commissioner for Autonomy⁴⁴⁸ by the SPC in 2017, to report to the public on claims of undue influence or attempts to place undue influence on prosecutors. The Commissioner was introduced after the EU 2016 Serbia Report noted that external pressure was being exerted on the judiciary through many public comments made about investigations and ongoing cases, including comments from the highest political levels, and the HJC and SPC had not taken adequate measures to protect those in the system from the effects of those comments. As GRECO noted, the Commissioner addressed 18 cases in 2019 and 40 in 2017 and 2018, “he recommended to the SPC to further protect prosecutors against excessive criticism from the political sphere, carried out direct inspections to verify in eight cases that the prosecutors had not worked under

⁴⁴¹ In April 2021, the SPC adopted the new Code of Ethics of Public Prosecutors and Deputy Public Prosecutors with Guidelines, available at <http://www.dvt.it.rs/wp-content/uploads/2021/04/Eti-ki-kodeks-javnih-tu-ilaca-i-zamenika-javnih-tu-ilaca-RepublikTe-Srbije-i-Smernice-za-primenu-Eti-kih-na-ela.pdf>

⁴⁴² “Public prosecutors and deputy public prosecutors are obliged to request a recusal from acting in cases, when they are aware of the existence of grounds for recusal, following the law.” Ethical Code of Public Prosecutors and Deputy Public Prosecutors, principle 3 (3).

⁴⁴³ Criminal Procedural Code, articles 37-42.

⁴⁴⁴ GRECO’s Fourth Evaluation Round, Second Compliance Report, para 69. Although plans called for the Manual to be released before the Law took effect, it appears it was not published until after September 1, 2020: it then appeared on the website of the APC. The Manual was drafted with the assistance of the USAID Government Accountability Initiative project.

⁴⁴⁵ GRECO’s Fourth Evaluation Round, Second Compliance Report, para 45. The guidelines were published with the support of the Council of Europe’s project “Strengthening the Independence and Accountability of the Judiciary”, within the joint program of the European Union and the Council of Europe “Horizontal Facility for the Western Balkans and Turkey”

⁴⁴⁶ Guidelines for Public Prosecutors on Countering Risks of Undue Influence. Available: www.uts.org.rs/images/2019/smernice_za_tuzioce_neprimereni_uticaji.pdf

⁴⁴⁷ In November 2020, the APC promoted this Manual by holding a meeting with the representatives of the HJC and SPC. The APC also presented the Manual in a workshop with the RPPO.

⁴⁴⁸ Article 9 of the SPC Rules of Procedure (Official Gazette No. 29/2017 and 46/2017).

undue political influence, published on its website specific reports and statements on undue influence exercised on public prosecutors on specific cases.”⁴⁴⁹

606. However, the Commissioner’s post was vacant for a year after the three-year term of the first Commissioner expired in March 2020. With the new composition of the SPC, the new Commissioner was appointed in April 2021. The SPC also failed to adopt rules of procedure for the Commissioner as a proper legislative framework for the operations, as well as necessary resources for the effective work.⁴⁵⁰

6.4.3. Rules on Gifts

607. Both the Law on Judges and Law on Public Prosecution Service envisage that acceptance of gifts is contrary to the provisions regulating conflict of interests and can amount to a disciplinary offense. The provisions about the receipt of gifts are somewhat clearer under the Law on Prevention of Corruption than they were in the Law on the Anti-Corruption Agency. The newer law permits public officials and their family members to retain only a protocol or “occasional gift”⁴⁵¹ received in connection with the discharge of public office, providing the gift’s value does not exceed 10 percent of the average monthly salary without taxes and contributions in the Republic of Serbia.⁴⁵² The gift provisions of the Law on the Anti-Corruption Agency required officials to relinquish protocol or “appropriate gifts” with values exceeding five percent of the value of the average net salary in the Republic of Serbia.

608. There still was concern that the newer law still did not include criteria to determine whether a gift was “in connection to the discharge of public office” or not.⁴⁵³ Furthermore, the World Bank team could not verify that from 2015-2019 the HJC, SPC, RPPO, individual courts, or PPOs kept the records required by Article 41 of the Law on the Anti-Corruption Agency of gifts reported by judicial officials.

6.4.4. Random assignment of cases

609. The automated, random assignment of cases became the official norm in Serbia’s courts by 2018, but as of December 2020, there was no centralized tracking of cases that were not randomly assigned. Also, as of December 2020, the Law on Judges and the Court Rules of Procedure still contained fairly broad provisions that allowed court presidents to assign or transfer a case to a particular judge, despite the general prohibition on deviating from random assignment. The combination of Articles 24-27 Law on Judges and the Court Rules of Procedure allowed non-random assignment if the assigned judge already was overloaded or the judge had been precluded, in the event of a prolonged absence on the party of the judge, if the efficient functioning of the court was jeopardized, or if the judge received a final disciplinary sanction due to a disciplinary offense for unjustified procrastination, “as well as in the other cases prescribed by law.”

⁴⁴⁹ GRECO’s Fourth Evaluation Round, Second Compliance Report, para 50.

⁴⁵⁰ Ibid., para 52.

⁴⁵¹ Defined in Article 59 as “a gift that is received on occasions when gifts are traditionally exchanged.”

⁴⁵² Article 60 of the Law on the Prevention of Corruption.

⁴⁵³ N. Nenadić, Conflict of Interest in the Republic of Serbia, Analysis of Legal and Strategic Framework, pp. 29, 49, http://www.skgo.org/storage/app/media/dobro-upravljanje/pubs/sukob_interesa_u_republici_srbiji__analiza_pravnog.pdf

610. There still was no automated mechanism for the random assignment of cases in PPOs by late 2020, and the random allocation of assignments was not the rule. As noted in the 2014 Judicial Functional Review, Public Prosecutors were supposed to assign incoming cases to the next Deputy Public Prosecutor based on an alphabetical list, and the assignments were to be recorded in a case assignment logbook. However, as of December 2020, Public Prosecutors still had broad discretionary power to reassign cases when they found it was justified under the Rules of Administration in the Public Prosecutor's Office.⁴⁵⁴

6.4.4. Appointment of expert witnesses

611. The regulatory framework governing expert witnesses in Serbia did not comply with European standards.⁴⁵⁵ Since expert witnesses are a key component of a well-functioning court system as they provide evidence that is often decisive in shaping court decisions, it is vital that expert evidence is seen to be independent, objective, and unbiased.⁴⁵⁶

612. The appointment of expert witnesses has been recognized as one of the main corruption vulnerabilities in the Serbian judicial system.⁴⁵⁷ Through December 2020, first-instance courts informed the MoJ about their general needs for expert witnesses with specific expertise.⁴⁵⁸ However, the MoJ was not bound by the Courts' requests when it published its calls for expert witnesses, so the available supply of experts did not necessarily match the needs of the system. Prosecutors could appoint expert witnesses in criminal proceedings, but there were no clear and transparent rules about that process.⁴⁵⁹

613. Experts in the same field reportedly did not always charge or were not always paid at the same rate, in violation of the Rulebook on Reimbursement of Expert Witnesses. These variations reportedly influenced the selection of witnesses by parties or judges as well as the quality of work done by expert witnesses.⁴⁶⁰ Experts also reported it was rare for judges to ask the witnesses to supply a statement of expenses and specification of fees upon completion of the opinion, even though this is a Rulebook requirement.⁴⁶¹

⁴⁵⁴ Article 42, Rulebook of Procedures in PPOs: "Prior to assignment, the public prosecutor may classify cases according to complexity according to the category of processor. As a rule, cases are assigned to case processor [prosecutor] according to the order of receipt, by assigning the case to the first subsequent case processor from the list of processors made in alphabetical order. The public prosecutor shall deviate from the manner of assigning the case provided for in paragraph 4 of this Article when justified by reasons of workload and impediment of certain processors, specialization of processors for a certain area or if justified by other reasons."

⁴⁵⁵ See Examining the Experts: The Role of Expert Witnesses in Serbia, and how Reform Could Improve Efficiency and Quality of Justice (June 2018), <https://www.mdtfjss.org.rs/archive//file/EWpercent20Report.pdf>. The CEPEJ Guidelines on the role of role of court-appointed experts in judicial proceedings of Council of Europe's Member States, Part 3.2.1, https://rm.coe.int/168074827a#_Toc409171468, and European Guide for Legal Expertise (EGLE) Guide to Good Practices in Civil Judicial Expertise in the European Union, para 3.12, <https://experts-institute.eu/wp-content/uploads/2018/03/2016-01-07-eeee-guide-to-good-practices-egle-en-brochure.pdf>.

⁴⁵⁶ Risk Analysis of Corruption Within Judiciary, 2015, available at <https://rm.coe.int/risk-analysis-of-corruption-within-judiciary-en/16807823cb>, pg 34.

⁴⁵⁷ Council of Europe, Assessment of Risks of Poor Conduct and Corruption in the Serbian Judiciary and Prosecution, 2015, p 34, available at <https://rm.coe.int/risk-analysis-of-corruption-within-judiciary-en/16807823cb>

⁴⁵⁸ See Article 11 of the Law on Expert Witnesses, "Official Gazette of the Republic of Serbia", No. 44/10.

⁴⁵⁹ *Id.*, pages 24 and 26.

⁴⁶⁰ Examining the Experts: The Role of Expert Witnesses in Serbia, and how Reform Could Improve Efficiency and Quality of Justice (June 2018), <https://www.mdtfjss.org.rs/archive//file/EWpercent20Report.pdf>, para 69.

⁴⁶¹ *Ibid.*

614. While the Law on Expert Witnesses allowed the MoJ to revoke its authorization for experts who performed his or her duties in an unethical, incompetent, or unprofessional manner,⁴⁶² the MoJ did not keep systematized data about any revocations.⁴⁶³ There also were few reported instances of parties or courts penalizing or seeking redress from experts who missed deadlines or even missed hearings altogether.⁴⁶⁴

6.4.5. Mechanisms for the protection of whistleblowers

615. The 2014 Law on the Protection of Whistleblowers⁴⁶⁵ governed the reporting of irregularities related to the work of all public institutions, including those in the judicial system. As a result, holders of judicial office, judicial and prosecutorial associates and assistants, and other judicial system staff could use the mechanisms in the Law to report issues related to the work of their colleagues and/or of judicial institutions.

616. There were no reliable statistics indicating what efforts had been made to make those working in the system aware of the availability of the whistleblowing mechanism. Interviews conducted by the FR team indicated that holders of judicial office, judicial and prosecutorial associates, and assistants, as well as other judicial staff, were not sufficiently aware of the possible use of the whistleblowing mechanisms.

Whistleblowing in Serbia can be done within judicial institutions by disclosure to the specified person in a court or PPO, externally by disclosure to another authorized body (e.g., the HJC or the SPC), or publicly by disclosure to the media, during a public meeting, etc. The Law on the Protection of Whistleblowers also requires employers such as judicial institutions and other authorized bodies, such as the HJC or SPC, to act based on anonymous tips.

Courts and PPOs were required to provide all employees with written information about their rights under the whistleblowing law, to appoint a specific person to receive initial information from a whistleblower and conduct whistleblowing proceedings. In addition, courts and PPOs had to adopt general acts governing their internal whistleblowing procedures and to display them in a visible location, as well as on their website, if technically possible.

617. Interviewees reported that most of the persons designated to receive the information and conduct whistleblower proceedings had no training on how to execute their responsibilities. However, judicial institutions did fulfill their obligation to appoint whistleblower point persons and to adopt general acts on internal whistleblowing.

⁴⁶² See articles 18 and 19 of the Law on Expert Witnesses, "Official Gazette of the Republic of Serbia", No. 44/10.

⁴⁶³ Examining the Experts: The Role of Expert Witnesses in Serbia, and how Reform Could Improve Efficiency and Quality of Justice (June 2018), <https://www.mdtfjss.org.rs/archive//file/EWpercent20Report.pdf>, para 78.

⁴⁶⁴ *Idem.*, at para 73-77.

⁴⁶⁵ Official Gazette, No. 128/2014.

6.5. Effectiveness of Complaints, Ethical Codes and Discipline Processes

6.5.1. Complaint mechanisms

618. There was no central tracking of the source, bases, or disposition of written complaints about court and prosecutorial operations. As noted above, a non-exhaustive list of institutions receiving judicial system complaints included individual courts and PPOs, the SCC, RPPO, the Councils, the Ministry of Justice, and the ACA/APC. Each court was obligated to collect and submit complaint statistics every six months to the MoJ, SCC, HJC, and its immediately superior court.⁴⁶⁶ However, there was no office in the system with unified numbers about written complaints received during the period under review, how many complaints were submitted to more than one institution, how many were ignored, or how many were considered to be valid.

619. The lack of statistics about the basis for complaints left the system with little ammunition to counter rumors and perceptions that the judiciary was riddled with corruption. While appeals could be filed only if a party was not satisfied with the substance of a court's decision, complaints could be made if the party or other participant believed the proceeding was being improperly prolonged, that it was irregular, or that there had been an unauthorized influence on the course or outcome of the case.⁴⁶⁷

620. Interviewees told the FR team reasons the two major reasons for filing a complaint on court proceedings were dissatisfaction with a decision and the length of proceedings. Once a written complaint from any source reached a court president, he or she had to get the response of the judge concerned and inform the complainant, as well as the president of the immediately superior court, of the court president's own opinion and measures taken in response to the complaint. This had to be done no later than 15 days after the court president received the complaint. The court president could dismiss the complaint in full or partly based on a finding that the complainant abused the right to a complaint.⁴⁶⁸

621. If a complaint was filed through the Ministry of Justice, the immediate superior court, or the High Judicial Council, the court president also was obligated to notify that body about the merits of the complaint and any resulting measures taken. However, none of those bodies could overrule the decision of the court president or take any further action if the court president had not acted on the complaint.

622. Complaints about the work of a Deputy Public Prosecutor could be submitted to the Deputy Public Prosecutor, and about the work of a Public Prosecutor to the superior Public Prosecutor. The responding Public Prosecutor was required to provide a written decision to the complainant within 30 days from the date of its receipt.⁴⁶⁹ If the complaint was submitted to the SPC, MoJ, RPPO, or another superior PPO, these bodies also had to be notified of the results. Citizens, legal entities, state bodies, and bodies of the autonomous province and local self-government units could submit complaints to PPOs about the handling of cases.⁴⁷⁰

⁴⁶⁶ There was no corresponding obligation for PPOs.

⁴⁶⁷ Article 55, Law on Organization of the Courts and Article 9-10a of the Court Rulebook.

⁴⁶⁸ Article 55, Law on Organization of the Courts.

⁴⁶⁹ Article 72-73, Prosecutors' Rulebook.

⁴⁷⁰ Article 72, Prosecutors' Rulebook.

623. As of December 2020, the websites of many courts incorporated information from the MoJ’s website about the filing of complaints; the MoJ information included a written guide, a model complaint, and an infographic that explained the procedure visually. The MoJ’s website made it clear that the procedures did not apply to dissatisfaction with the legality or regularity of court decisions. The SCC included information on complaints procedure and a model complaint on its website⁴⁷¹, and a model complaint could be found in the section of the RPPOs website dedicated to regulations and models.⁴⁷² However, as of late 2020, the HJC, SPC, and PPOs had not included information about filing complaints regarding the work of courts or prosecutors on their websites.

6.5.2. Effectiveness of Ethical Codes

624. From 2017 to 2022, Serbia made significant steps in integrating ethical codes for judges and prosecutors into the regimes governing their behavior. As of March 2022, GRECO found that the 2015 recommendation on effective communication of the Code of Ethics for judges, complemented by additional written guidance on ethical questions, has been implemented satisfactorily.⁴⁷³ GRECO reported that by late 2020 a large number of judges had gone through awareness training on the “Guidelines for the prevention of undue influence on judges”. In April 2022, GRECO noted that dedicated training on ethical issues is not regularly organized for judges.

625. There were also other positive developments relating to judicial and prosecutorial ethics. These included the posting of 36 anonymized final decisions of the HJC’s Disciplinary Commission “with specified interpretations serving as practical examples and providing guidance on the ethical questions,”⁴⁷⁴ and, as noted above, the SPC adopted a new Code of Ethics for Public Prosecutors and Deputy Public Prosecutors, with accompanying guidelines, in April 2021.⁴⁷⁵ The Judicial Academy integrated training on the prosecutorial ethics code in its 2019 training program,⁴⁷⁶ with 51 prosecutors participating in ethical training in 2019.⁴⁷⁷

626. Confidential counseling was an official mechanism to promote and support the ethical conduct of holders of judicial office was established in the HJC, and a confidential adviser was appointed in November 2021.⁴⁷⁸ Before 2018 there were no clear mechanisms for judges to seek advice or counseling on appropriate ethics-based conduct in particular cases.⁴⁷⁹ In September 2018, the High

⁴⁷¹ <https://www.vk.sud.rs/sr-lat/obrapercntC4percent87anje-stranaka-sudu>

⁴⁷² <http://www.rjt.gov.rs/sr/informacije-o-radu/propisi-i-obraci>

⁴⁷³ GRECO’s Fourth Evaluation Round, “Corruption prevention in respect of members of parliament, judges and prosecutors” Second Interim Compliance Report, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a5ff19>

⁴⁷⁴ Ibid., para 44.

⁴⁷⁵ The document is available at <http://www.dvt.jt.rs/wp-content/uploads/2021/04/Eti-ki-kodeks-javnih-tu-ilaca-i-zamenika-javnih-tu-ilaca-Republike-Srbije-i-Smernice-za-primenu-Eti-kih-na-ela.pdf>. By early 2021, the HJC reportedly had established a working group to amend the courts’ Rules of Procedure to address attempts to exercise undue influence on the courts from any source.

⁴⁷⁶ GRECO’s Fourth Evaluation Round, Second Compliance Report, at para 64.

⁴⁷⁷ Ibid.

⁴⁷⁸ The decision of the HJC to appoint retired judge as confidential adviser: <https://vss.sud.rs/sr-lat/saopštenja/vazno-obaveštenje-6>

⁴⁷⁹ „Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution”, Joint European Union – Council of Europe Project “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia”, April 2014

Judicial Council finally adopted the Rules of Procedure for its Ethical Board, eight years after the HJC adopted its Code of Ethics. These rules required the Ethical Board to provide written guidance on ethical issues with practical examples and recommendations and to provide opportunities for judges to seek confidential advice/counseling on appropriate conduct in particular cases.⁴⁸⁰

627. Although the SPC entrusted confidential counseling to the Ethical Board and appointed a professor as a confidential adviser, there is no reported confidential counseling on ethical issues for prosecutors.⁴⁸¹ The prosecutorial Code of Ethics allowed prosecutors to ask the Ethical Board of the SPC for an interpretation of a particular ethical rule or advice or determination of facts on given ethical issues.⁴⁸² However, there was no requirement that the consultation is confidential.

In the Netherlands, all levels of government, including the judicial system, introduced the position of confidential integrity advisers (CIA) as a part of the broader organizational integrity policies. The tasks of CIAs include educating employees about the relevant codes of ethics and giving confidential support and practical advice about ethical dilemmas and the report of wrongdoing. If criminal offenses or malfeasance may be involved, the CIA must advise the employee to contact the police or the public prosecutor. Confidentiality does not apply if the employee refuses: in those instances, the CIA must contact the police or prosecutor and reveal the identity of the reporter.⁴⁸³

6.5.3. Disciplinary accountability

628. In large part, the legal frameworks governing the disciplinary accountability of judges and public prosecutors in Serbia conformed to international standards. The major exception was the continued designation of the Councils as the second-instance disciplinary bodies, particularly since the Councils also elect members of the respective Disciplinary Commissions for judges and prosecutors.⁴⁸⁴ The normative framework also received criticism from domestic sources for being incoherent and inconsistent,⁴⁸⁵ based on at least two issues. The first criticism was that Law on Judges was not explicit about the disciplinary accountability of court presidents who did not implement the rules and regulations they were required to apply. The second dealt with the lack of definitions for terms used in the description of offenses, e.g., “serious,” “severe,” or “to a great extent.”⁴⁸⁶ This criticism is not

⁴⁸⁰ Article 3, Rules of Procedure of Ethical Board of the High Judicial Council.

⁴⁸¹ 2021 Annual report of the SPC, February 2022, p. 36. <http://dvt.it.rs/wp-content/uploads/2022/03/lzve-taj-o-radu-Dr-avnog-ve-a-tu-ilaca-za-2021.-godinu-usvojen-prednja-strana.pdf>

⁴⁸² The SPC’s Rules of Procedure for the Ethical Board adopted in July 2018 made the board responsible for providing written guidelines with practical examples of ethical matters. The Ethical Board had not prepared written guidelines with practical examples and recommendations as of December 2020, and as of December 2021 there were no publicly available data on the number of public prosecutors and deputy public prosecutors who asked for confidential advice/counseling.

⁴⁸³ „Introducing a new key-player in internal whistleblowing procedures. Examining the current and future position of confidential integrity advisers” found at <https://www.researchgate.net/publication/333852044>.

⁴⁸⁴ See Report of the Special Rapporteur on the independence of judges and lawyers, 2014, p 13, para 72; p. 17, para 93, and p 21, para 127, available at <https://undocs.org/A/HRC/26/32>

⁴⁸⁵ See T. Papic “Legal Framework and Overview of Case Law on Disciplinary Responsibility of Judges” at <https://www.osce.org/files/f/documents/1/e/263891.pdf>, and “Legal Framework and Overview of Case Law on Disciplinary Responsibility of Public Prosecutors” (OSCE Mission Serbia, 2016 and 2017). See also “Legislation and practice in determining disciplinary liability of prosecutors in Serbia”, OSCE, 2017.

⁴⁸⁶ For example, article 75 of the Law on judges provides that that court presidents can be removed from their positions “due to a serious disciplinary offence committed while performing the function of the president of the court” and Article 90 of the Law on Judges states “A severe disciplinary offence exists if the commission of a disciplinary offence referred to in

only an academic concern since judges and prosecutors were sanctioned under those provisions.⁴⁸⁷ The EU urged Serbia to amend the disciplinary rules for both judges and prosecutors in line with European standards, so only serious misconduct and not mere incompetence could give rise to disciplinary proceedings.⁴⁸⁸

629. According to the data of the High Judicial Council,⁴⁸⁹ from 2015 to 2020, there were 90 disciplinary proceedings initiated against judges before the HJC Disciplinary Commission. This is shown in Table 20. During the same period, 27 disciplinary proceedings were initiated against public prosecutors and deputy public prosecutors before the Disciplinary Commission of the State Prosecutorial Council,⁴⁹⁰ as shown in Table 21.

Table 20: Number of complaints to the disciplinary prosecutor and initiated disciplinary proceedings against judges

High Judicial Council		
Year	Number of complaints to the disciplinary prosecutor ⁴⁹¹	Disciplinary proceedings initiated ⁴⁹²
2015	956	18
2016	831	19
2017	N\A	15
2018	584	14
2019	491	14
2020	429	10

paragraph 1 of this Article caused a serious disruption in the exercise of judicial power or regular duties at the court or a severe damage to the dignity of the court or public trust in the judiciary, and in particular if it results in the statute of limitations causing serious damages to the property of the party in proceedings.” Article 104 of the Law on Public Prosecution provides that a prosecutor commits a disciplinary offense if there has been “serious violations of the Code of Ethics,” and that serious disciplinary offenses “are deemed to exist if a disciplinary offence referred to in paragraph 1 of this Article resulted in a serious disruption in the performance of prosecutorial office, or in the performance of work tasks in the public prosecution, or in serious damage to the reputation of, and trust in, the public prosecution, which in particular includes the expiry of the statute of limitations for criminal prosecution, as well as in cases of repeated disciplinary offenses.”

⁴⁸⁷ See, e.g., T. Papic “Legal Framework and Overview of Case Law on Disciplinary Responsibility of Judges” and “Legal Framework and Overview of Case Law on Disciplinary Responsibility of Public Prosecutors” (OSCE Mission Serbia, 2016 and 2017), pg. 23-28, <https://www.osce.org/files/f/documents/1/e/263891.pdf>.

⁴⁸⁸ EU 2020 Report at pg. 21.

⁴⁸⁹ The source for data from 2015-2018 was a report by the High Judicial Council submitted for the World Bank team. The sources for 2019 and 2020 were the 2019 and 2020 reports on the work of the Disciplinary Commission.

⁴⁹⁰ Data from annual reports on the work of the State Council of Prosecutors from 2015-2020, available at <http://www.dvt.jt.rs/izvestaji/>.

⁴⁹¹ Data from reports on the work of disciplinary prosecutors (2015, 2016, 2018) found at <https://vss.sud.rs/sr-lat/stalna-radna-tela/disciplinski-organi-vss>.

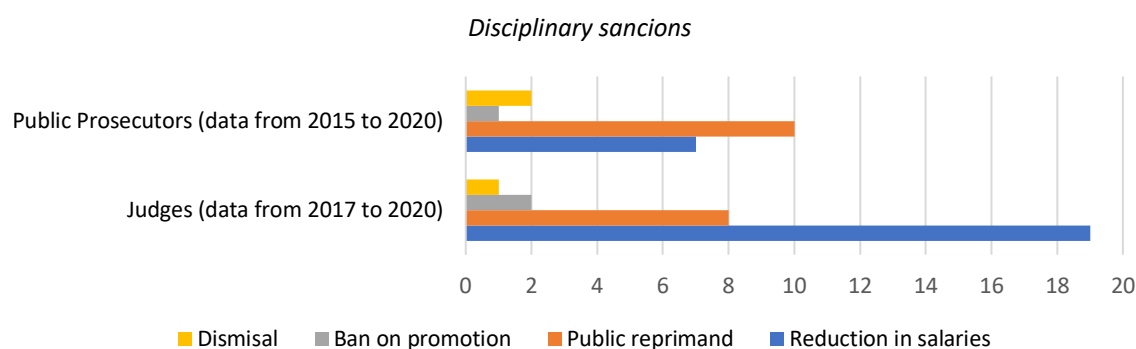
⁴⁹² Source for data from 2015-2018 was a report by the High Judicial Council submitted to the World Bank team. The sources for 2019 and 2020 were the 2019 and 2020 reports on the work of the Disciplinary Commission.

Table 21: Number of complaints to the disciplinary prosecutor and initiated proceedings against public prosecutors and deputy public prosecutors

State Prosecutorial Council ⁴⁹³		
Year	Number of complaints to the disciplinary prosecutor	Disciplinary proceedings initiated
2015	262	8
2016	197	4
2017	179	3
2018	152	5
2019	162	7
2020	111	0

630. Disciplinary sanctions for judges and public prosecutors included public reprimand, reduction in salary, and the prohibition of promotion and termination, although the most common sanctions were public reprimand and salary reduction. See Figure 115.

Figure 115: Number of disciplinary sanctions imposed on judges and public prosecutors



Source: Annual Reports of the High Judicial Council and the State Prosecutorial Council

631. The most common disciplinary offenses for which judges were sanctioned related to efficiency and violations of the applicable ethical codes. Judges were found responsible for (1) negligent performance of judicial duties related to the conduct or the completion of legal proceedings, especially unreasonable extension of proceedings, (2) delays in drafting decisions, and (3) failing to schedule hearings or trials. In 2017 and 2018, there were three cases in which judges were found responsible for “violation of provisions of the Ethical Code to a great extent”.⁴⁹⁴

632. There also were no details available about individual prosecutorial disciplinary proceedings.⁴⁹⁵ The SPC reported that from 2015 to 2018, public prosecutors and deputy public prosecutors were found responsible for (1) failing to render prosecutorial decisions and file ordinary and extraordinary legal remedies within stipulated time limits; (2) manifestly violating rules of procedure relating to the respect to be shown to judges, parties, their legal counsel, witnesses, staff,

⁴⁹³ Source for data from 2015-2018 was a report by the State Prosecutorial Council submitted to the World Bank team. The sources for 2019 and 2020 were the 2019 and 2020 reports on the work of the Disciplinary Commission.

⁴⁹⁴ High Judicial Council website,

⁴⁹⁵ Analysis of law and practice of judges disciplinary responsibility in Serbia, OSCE, 2016, see: <https://vss.sud.rs/sites/default/files/attachments/Analizapercent20pravapercent20ipercent20praksepercent20disciplinskepercent20odgovornosti.pdf>

or colleagues; (3) violating the principle of impartiality and thereby jeopardizing the public’s trust in the public prosecution, and (4) “serious violations of the Ethical Code.”⁴⁹⁶

6.5.4. Training on Ethics and other Aspects of Integrity

633. Training covering ethics and integrity was incorporated into the JA curricula for both initial⁴⁹⁷ and continuous training⁴⁹⁸ of judges and prosecutors. While the Academy was responsible for providing the training, the Councils were responsible for defining the initial training curricula, approving the curricula for the continuous training of holders of judges and prosecutors, and monitoring training plan implementation.⁴⁹⁹ The prosecutors’ Code of Ethics, in effect before 2021, also was promoted among public prosecutors and their deputies by the JA, which integrated the code into its 2019 Training Program.⁵⁰⁰

634. The JA’s initial training curricula covered ethics and integrity as part of the classes on "Professional Knowledge and Skills, EU Law and International Standards." As described in JA material, the two-day workshops consisted of lectures and debates and were designed to cover regulations governing the selection, dismissal, and professional ethics of judicial officials.

635. According to the 2018 and 2019 Judicial Academy Reports,⁵⁰¹ “Ethics and Integrity in the Judiciary” were one of the most frequently covered thematic areas within the JA’s continuous training curricula “Special Knowledge and Skills.” In 2018, this “Ethics and Integrity” theme included one day of training about the ethics of public servants, judicial ethics, and prosecutorial ethics. In 2019, training on the undue influence of prosecutors and judges was added, and for 2020 the curricula added the consideration of professional ethics as a tool for preventing corruption. See Table 21 and Table 22. The chapter on Commercial Law also included a workshop for judges and judicial associates and assistants of Commercial Courts on judicial ethics.

Table 22: Training conducted in 2018 for the Chapter “Special Knowledge and Skills”

Topics	Number of training
Mentorship	21
Ethics and Integrity in the Judiciary	18
Administration in Courts and PPOs	4
Economic Education of Public Prosecutors	4
Public Relations and Communication	4

⁴⁹⁶ Annual Reports of the State Prosecutorial Council.

⁴⁹⁷ Those receiving the mandatory initial training to become judges and prosecutors have passed the bar exam, had the specified professional experience, and passed an entrance exam for the JA (See Articles 26 to 28 of the Law on Judicial Academy).

⁴⁹⁸ Participation was voluntary for the JA’s “continuous” training to judges and prosecutors working in the system, based on Article 41 of the Law on Judicial Academy.

⁴⁹⁹ See Article 5 of the Law on the Judicial Academy, Article 13 of Law on High Judicial Council and Article 13 of Law State Council of Prosecutors.

⁵⁰⁰ GRECO’s Fourth Evaluation Round, Second Compliance Report, para 64. GRECO noted that Serbian authorities reported that during 2019 there were three training sessions on professional ethics, attending by 51 public prosecutors or deputy public prosecutors, although the FR team could not determine if these training were part of or in addition to the JA’s Special Skills Workshops discussed below.

⁵⁰¹ See <https://www.pars.rs/images/dokumenta/2019-godina/godisnji-izvestaj-2019/godisnji-izvestaj-pa-za-2018-09-04-19.pdf> and <https://www.pars.rs/images/dokumenta/2020-godina/godisnji-izvestaj-2019/GODISNJI-IZVESTAJ-PA-2019.pdf>.

Economic Education	3
Improving training	3
Protection and Support of Witnesses	3
Public Relations and Communication; Assistance and Support to Victims, Injured Parties, and Witnesses, and Protection and Support of Witnesses.	1

Source: *The 2018 Judicial Academy Report*

Table 23: Training conducted in 2019 for Chapter “Special Knowledge and Skills”

Topics	Number of training
Ethics and Integrity in Judiciary	41
Resolving Backlogged/Aging Cases	18
Public Relations and Communication	15
Training for Using of the Electronic Database of Case Law	4
Mediation	2
Improving training	2

Source: *The 2019 Judicial Academy Report*

Table 24: Number of judges and prosecutors participating in training on ethics and integrity from 2016 to 2018.⁵⁰²

Year	Number of participants – judges	Number of participants – prosecutors
2016	96	89
2017	94	91
2018	184	94
Total	374	274

Source: *Annual Reports of the Judicial Academy*

636. From 2018 to 2020, the continuous curricula shifted to include more skills-based training on ethics and integrity. This was done with the assistance of the EU-funded project *Prevention and Fight Against Corruption*.⁵⁰³ This training aimed to provide participants with skills to identify and resolve ethical dilemmas and risk situations in practice by application of the Ethical Code and anti-corruption tools and covered issues of conflict of interest and gift-giving. According to the 2019 Judicial Academy report, 16 one-day training sessions were held with the support of the EU project,⁵⁰⁴ and in 2020, the JA included this training program in the continuous training curricula.⁵⁰⁵ However, the training program was not mandatory for all judges and prosecutors.

⁵⁰² There was no comparable data available for 2019.

⁵⁰³ See: Judicial Academy data at <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/989-bg-training-on-professional-ethics-in-preventing-and-fighting-corruption?layout=post>; <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/1232-bg-professional-ethics-in-the-prevention-and-fight-against-corruption>; <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/1257-ni-training-professional-ethics-in-the-prevention-and-fight-against-corruption>; <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/1027-kg-training-on-professional-ethics-in-preventing-and-fighting-corruption>; <https://www.protivkorupcije.rs/eng/view.php?id=44>, and <https://www.pars.rs/sr/strucno-usavrsavanje/kontinuirana-obuka/15-strucno-usavrsavanje/kontinuirana-obuka/1261-pr-f-si-n-ln-i-u-pr-v-nci-i-i-b-rbi-pr-iv-rupci-3>.

⁵⁰⁴ See https://www.pars.rs/images/dokumenta/2020-godina/godisnji-izvestaj-2019/GODISNJI-IZVESTAJ-PA-_2019.pdf.

⁵⁰⁵ Continuous training program for 2020, page 183, at <https://www.pars.rs/images/dokumenta/Stalna-obuka/Program-stalne-obuke-za-2020.pdf>.

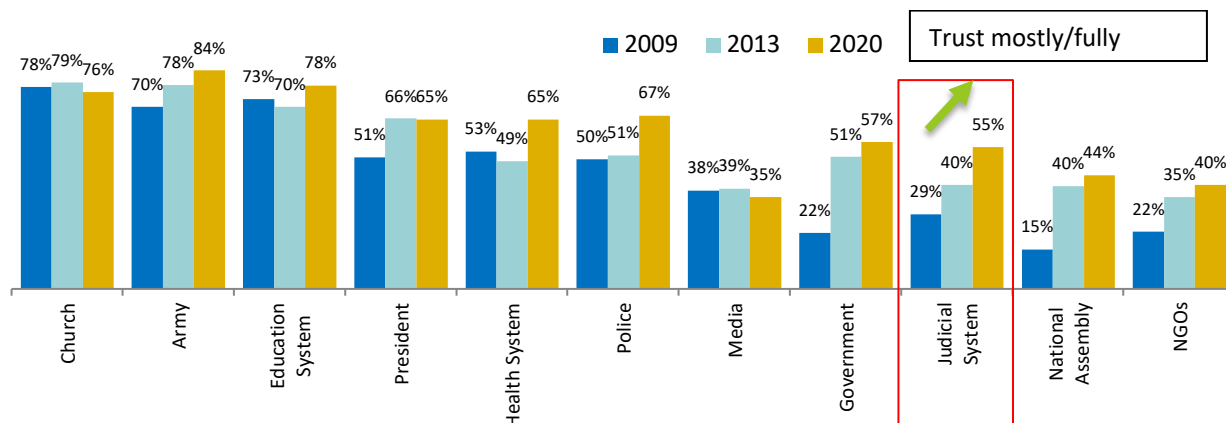
637. The topic of undue influence on judges and prosecutors also was incorporated into the 2019 continuous training curricula for the first time.⁵⁰⁶ The Judicial Academy’s first training needs assessments (TNA) of program users, conducted in 2018, was a primary source for the contents of the 2019 continuous training curricula.⁵⁰⁷ The TNA identified ethics and integrity training as a top priority for judges of higher courts⁵⁰⁸ and deputy appellate public prosecutors.⁵⁰⁹ The 2019 curricula covered preventing the risk of undue influence and protection of judges and training of trainers for preventing the risk of undue influence and protection of prosecutors. The training was in addition to the distribution of “Guidelines for the Prevention of Undue Influence on Judges” to all judges in February 2019⁵¹⁰ and several awareness-raising programs held for judges about the guidelines.⁵¹¹ However, the training on preventing the risk of undue influence and protection of judges was not included in the 2020 training curricula.⁵¹²

6.6. Views of Integrity Within the Delivery of Justice Services

6.6.1. Perception of Trust and Confidence

638. The 2020 Regional Justice Survey showed a significant increase in the trust of Serbian citizens in their judicial system compared to 2009 and 2013. The judicial system was in the middle of the 2020 ladder of trust, at 55 percent (see Figure 116). This improvement was part of a pattern of increased trust in state institutions generally, with the exception of media. Trust in the judicial system increased both among court users and the general public (see Figure 117).

Figure 116: Citizen Trust in Institutions, 2009, 2013 and 2020⁵¹³



⁵⁰⁶ Continuous training program for 2019 at <https://www.pars.rs/images/dokumenta/Stalna-obuka/Program-stalne-obuke-za-2019.pdf>.

⁵⁰⁷ A TNA was part of Recommendation 38 in the FR2014, found at <https://www.mdtfjss.org.rs/data/pub/sifr/en/Serbia-Judicial-Functional-Review.pdf>.

⁵⁰⁸ Judicial Academy Annual report for 2019, <https://www.pars.rs/images/dokumenta/2019-godina/godisnii-izvestaj-2019/godisnja-analiza-procena-potreba-za-obukom-korisnika-programa-pravosudne-akademije-02-2019.pdf>, pg 82

⁵⁰⁹ Ibid, pg 56

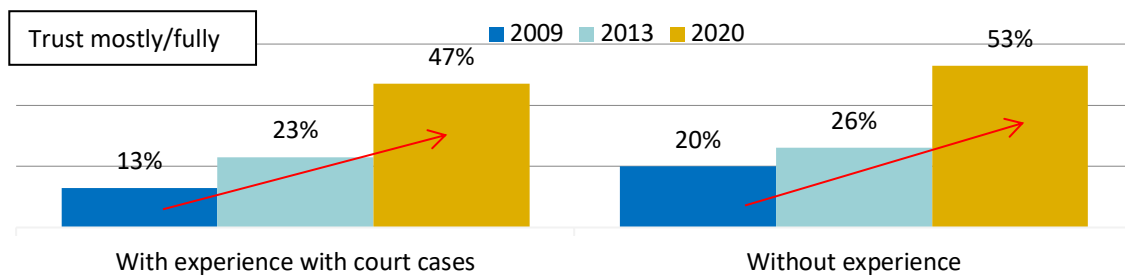
⁵¹⁰ GRECO’s Fourth Evaluation Round, Second Compliance Report, para 44.

⁵¹¹ Ibid.

⁵¹² Curricula of permanent training for 2020, <https://www.pars.rs/images/dokumenta/Stalna-obuka/Program-stalne-obuke-za-2020.pdf>.

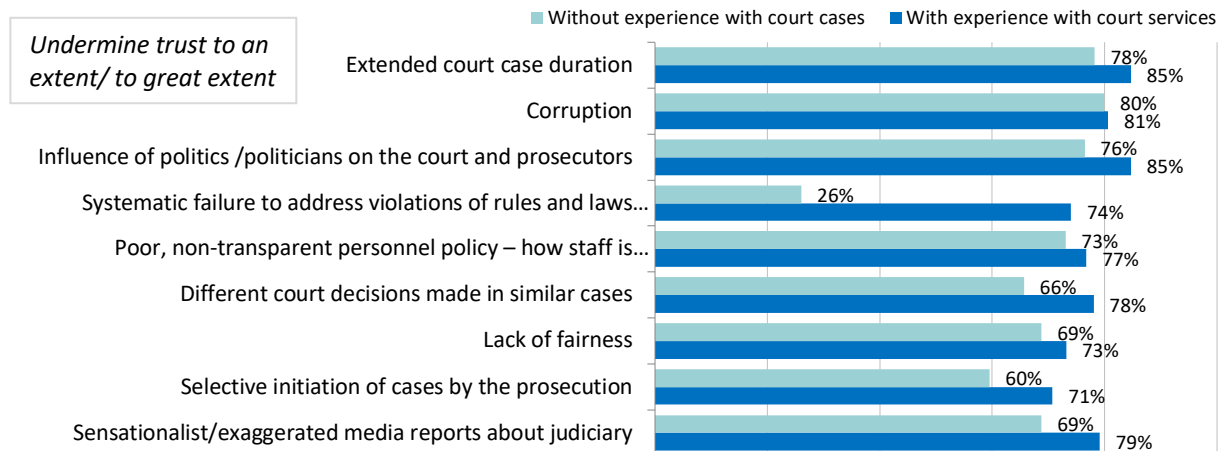
⁵¹³ Survey Question: *Rate the degree in which you trust the following sectors and institutions in the last 12 months? Scale from 1 to 5, 1 = ‘not at all’ and 5 = ‘fully’.* Population base: public total target population. *Regional Justice Survey*, World Bank, 2020.

Figure 117: Citizens' Trust in the Serbian Judicial System, 2009, 2013 and 2020⁵¹⁴



639. A variety of factors continues to undermine citizens' trust in the judicial system. Eighty percent of respondents selected the length of proceedings, corruption, and political influence as reasons for their lack of trust, and more than 70 percent also named poor and non-transparent personnel policies. Other factors cited were different results reached in similar cases, lack of fairness, and the selective initiation of cases (see Figure 118). Some of these factors were mentioned more often by the court users than by members of the general public, such as systematic failures to address violations of rules. Based on the similarity between the factors selected by respondents in the 2013 Multi-Stakeholder Justice Survey and the factors selected by respondents in 2020, it appears judicial stakeholders still have significant work to do in addressing these issues.

Figure 118: Are the following issues present in the judicial system?⁵¹⁵



6.6.2. Extent of Reported Corruption and Use of Informal Means

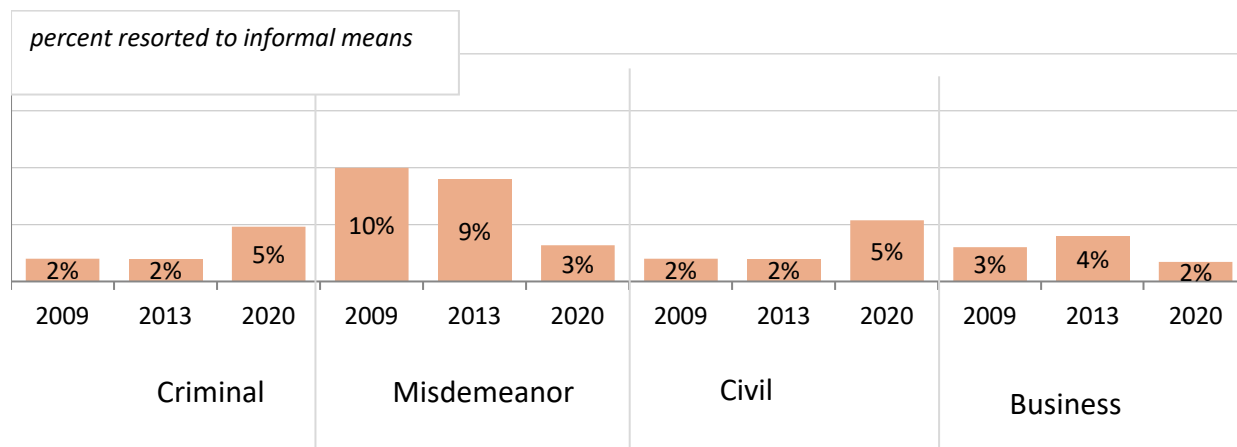
640. The Survey results suggest that most attempts to influence judges and prosecutors are more sophisticated than outright bribery, although some court users surveyed in 2020 still admitted to using informal means to advance their cases, compared to those surveyed in 2013, as shown in Figure 119 below. Three percent of court users in misdemeanor cases reported using informal means to advance their case in misdemeanor cases, compared to nine percent of the court user respondents in 2013. There also was a drop of two percent of court users in business cases willing to make the admission.

⁵¹⁴ Survey Question: *Rate the degree in which you trust the following sectors and institutions in the last 12 months? Scale from 1 to 5, 1 = 'not at all' and 5 = 'fully'.* Population base: public total target population. *Regional Justice Survey, World Bank, 2014.*

⁵¹⁵ *Regional Justice Survey, World Bank, 2020.*

However, there was an increase from two percent in 2013 to five percent in 2020 of respondents admitting to using informal means to advance their civil and criminal cases.

Figure 119: Court Users Who Reported Using Informal Means to Advance their Case, 2009, 2013 and 2020⁵¹⁶



641. According to the 2020 USAID GAI Citizens’ Perceptions of Anti-Corruption Efforts in Serbia,⁵¹⁷ roughly 10 percent of citizens reported they gave a gift, paid a bribe or did a favor for personnel in courts and prosecution offices. Among those, the majority said they offered a bribe to obtain faster service, while others wanted a service they were not entitled to, or they sought to avoid responsibility for their actions.

642. Attempts to unduly influence the judiciary come from a range of sources and via a range of means. In the Regional Justice Survey, judges and prosecutors identified the most common situations they encountered in which an individual tried to resort to informal means to affect their work as pulling strings through political influence or through an employee. See Figure 120 and Figure 121 below. Thirty-two percent of judges and 25 percent of prosecutors reported influential people had influenced their career (not necessarily in a positive way) during the past year, and 22 percent of judges and 17 percent of prosecutors reported offering a ‘service in return’. Gifts and pecuniary compensation were the most infrequently reported forms of corruption.

⁵¹⁶ Survey Question: *Did you ever find yourself in circumstances in which you resorted to informal means – made an additional payment, offered a gift, pulled strings... – to have your case adjudicated more efficiently.* Population base: public and business sector with experience with court cases. *Regional Justice Survey, World Bank, 2020.*

⁵¹⁷ Found at <https://www.odgovernavlasi.rs/wp-content/uploads/2020/12/USAID-GAI-Citizens'-Perceptions-of-Anticorruption-Efforts-in-Serbia-2020-1.pdf>

Figure 120: Share of judges who report experiencing the following practices in the last 12 months⁵¹⁸

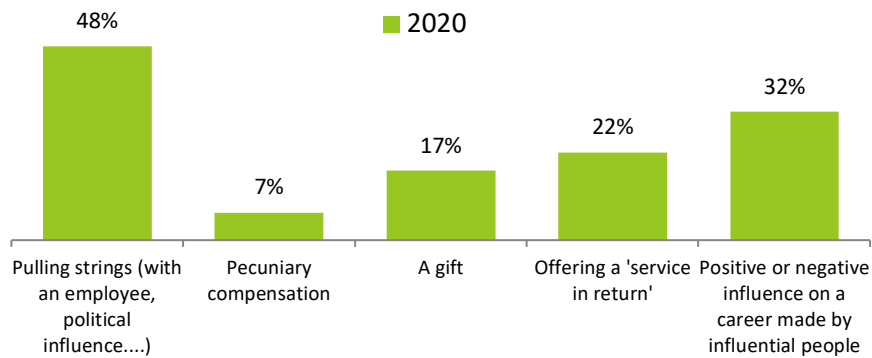
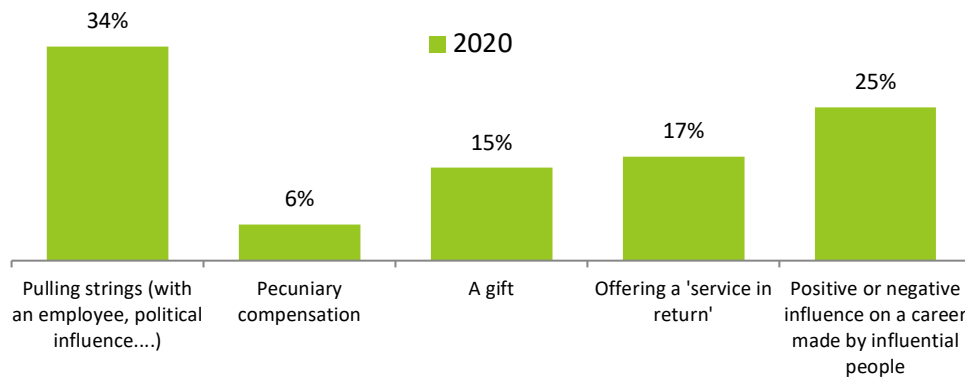


Figure 121: Share of prosecutors who reported experiencing the following practices in the last 12 months⁵¹⁹



6.6.3. Perceptions of Corruption

643. Although trust in the judicial system had increased in 2020, there remains a widespread perception that corruption within the Serbian judiciary is pervasive, and the levels of perceived corruption are not improving either within or outside the judicial system. More than 80 percent of the citizens surveyed, 42 percent of judges, and 39 percent of prosecutors believe corruption is present in the judiciary (see Figure 122 and Figure 123). In response to other survey questions, businesses also report that corruption poses an obstacle to their operations.

644. The percentage of those who reported that corruption is present in the judicial system remained the same for judges from 2013, decreased substantially for prosecutors, and increased substantially for lawyers. There also was a substantial increase in 2020 in the percentage of judges and prosecutors who refused to say whether they thought corruption was present or could not assess the situation. On the other hand, lawyers apparently had no problem stating their opinions.

⁵¹⁸ Survey Question Base: Those who believe these practices take place in the judiciary of Serbia, Regional Justice Survey, World Bank, 2020.

⁵¹⁹ Survey Question Base: Those who believe these practices take place in the judiciary of Serbia, Regional Justice Survey, World Bank, 2020.

Figure 122: Perception of Corruption in the Judiciary among Judges, Prosecutors and Lawyers, 2009, 2013 and 2020⁵²⁰

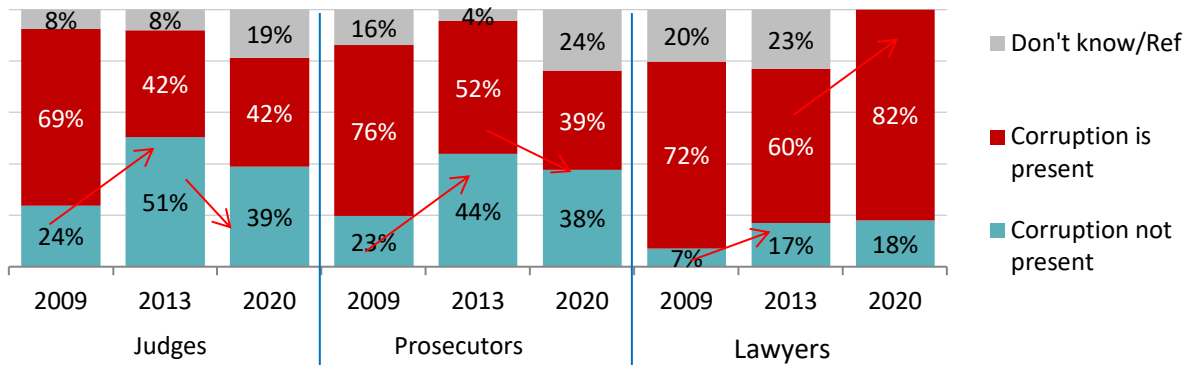
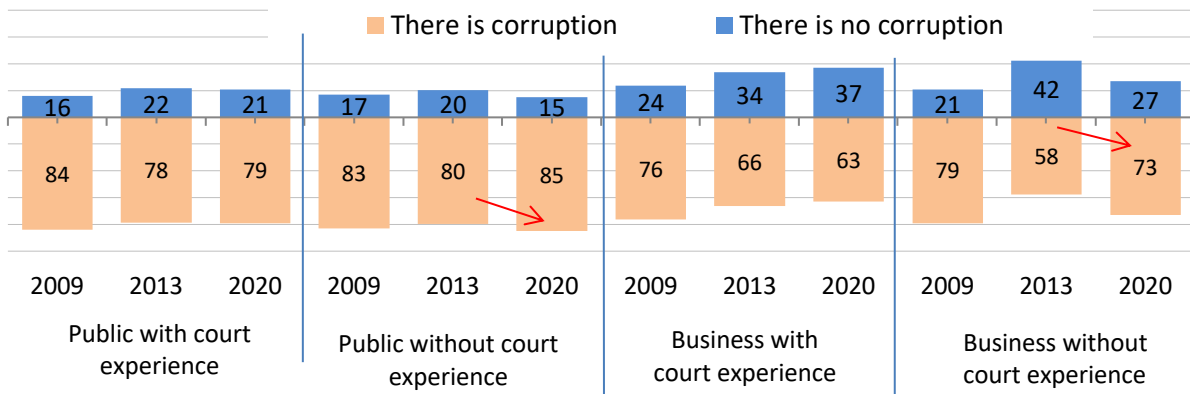


Figure 123: General Perception of Corruption in the Judiciary, 2009, 2013 and 2020⁵²¹



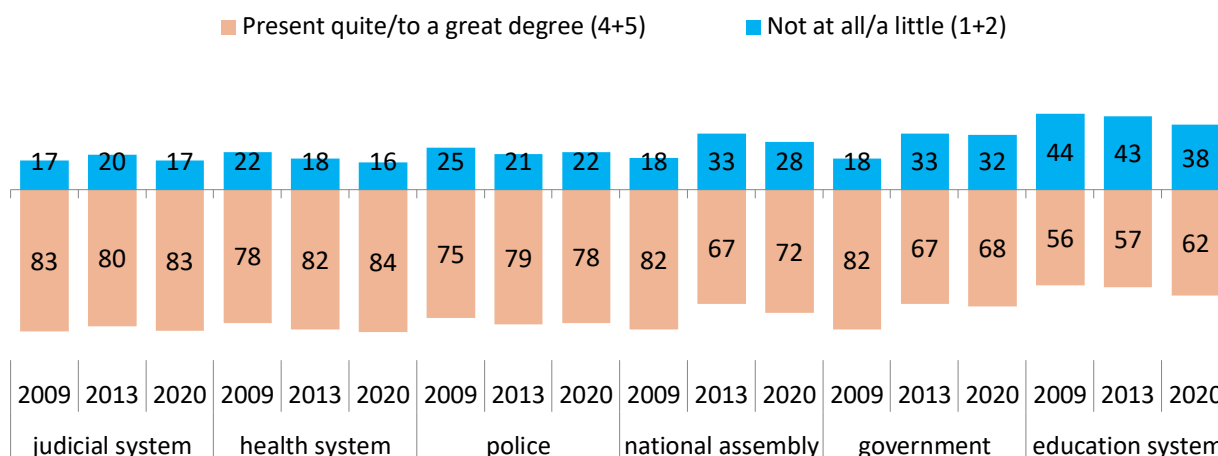
645. For citizens, the judiciary is second only to the health system as the institution most affected by corruption,⁵²² as shown in Figure 124. These are the only two institutions for which the majority of citizens report that corruption is present to a considerable degree (rated at 4 or 5).

⁵²⁰ Survey Question: *Was there corruption in the judicial system in the last 12 months?* Scale: 1 = There was no corruption, 2 = To an extent, 3 = To great extent. Population base: legal professionals total target group. *Multi-Stakeholder Justice Survey*, World Bank, 2014.

⁵²¹ Survey Question: *In your opinion, how present is corruption in judicial system?* Scale from 1 to 5, 1 = 'not at all', 4 and 5 = 'to a great degree'; 1 and 2 = there is no corruption, 4 and 5 = there is corruption. Population base: public and business sector total target population. *Multi-Stakeholder Justice Survey*, World Bank, 2014.

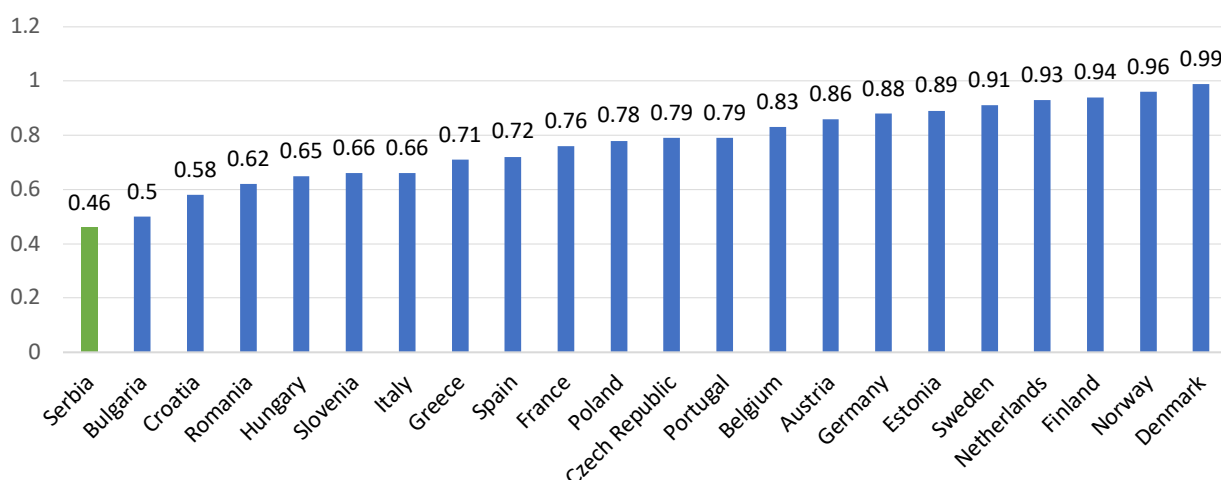
⁵²² The share of citizens who report that corruption is present in judicial system increased from 80 percent in 2013 to 83 percent in 2020, as shown in Figure 124, above.

Figure 124: General Perception on the Presence of Corruption in State institutions, 2009, 2013 and 2020⁵²³



646. The World Justice Project Rule of Law Index 2020 also examined perceptions of corruption in both civil and criminal cases.⁵²⁴ In civil cases, Serbia scored 0.46 and ranked behind all EU countries (73 out of 128 countries included in the Index). In criminal cases, Serbia scored 0.43 and again ranked behind all EU countries (see Figure 125).⁵²⁵

Figure 125: 2020 World Justice Project, Perception that Civil System is Free of Corruption (1 = no corruption), Serbia and EU⁵²⁶



⁵²³ Survey Question: *How present is corruption in the following sectors and institution? Scale from 1 to 5, 1 = 'not at all', 4 and 5 = 'to a great degree'; 1 and 2 = there is no corruption, 4 and 5 = there is corruption.* Population base: public total target population. *Regional Justice Survey*, World Bank, 2020.

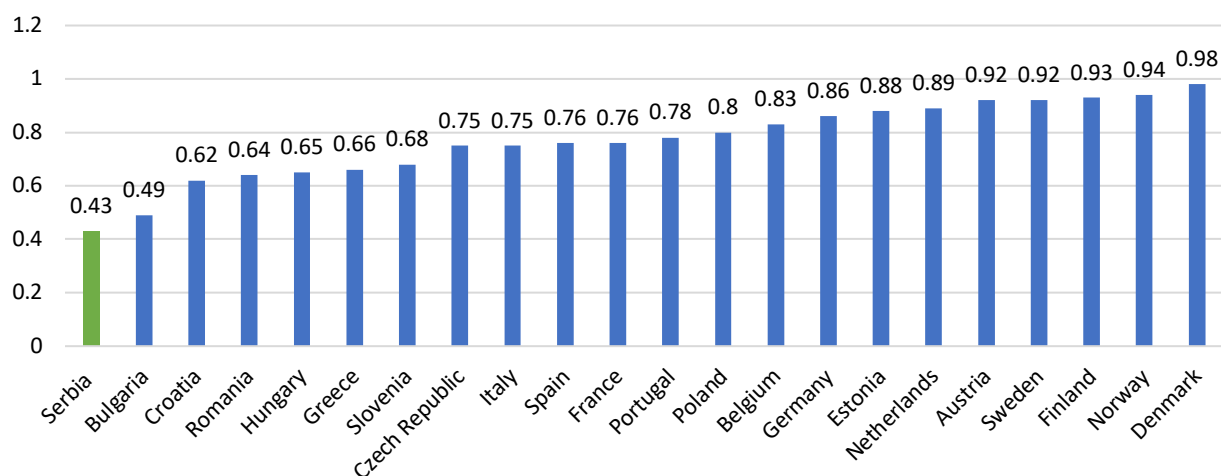
⁵²⁴ The 2014 *WJP Rule of Law Index* measures how the rule of law is experienced in everyday life in 99 countries around the globe, based on over 100,000 household and 2,400 expert surveys worldwide. See: <https://www.worldjusticeproject.org/rule-of-law-index/>

⁵²⁵ Scores are from 0 to 1, with 0 as the weakest adherence to the rule of law and 1 as the strongest adherence to the rule of law. More about the Methodology is available at:

<https://worldjusticeproject.org/sites/default/files/documents/2020percent20Behindpercent20thepercent20Numbers.pdf>

⁵²⁶ *The World Justice Project, Rule of Law Index, 2020.*

Figure 126: 2020 World Justice Project, Perception that Criminal System is Free of Corruption (1 = no corruption), Serbia and EU⁵²⁷

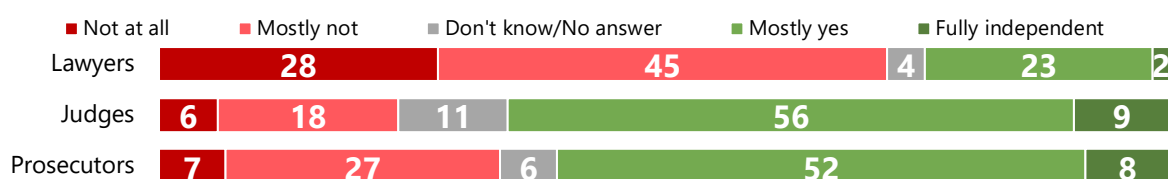


6.6.4. Perceptions of Judicial Independence

647. A range of legal safeguards exists to protect the independence of the judiciary, but reforms to remove vestiges of dependence have been delayed, as discussed in the Governance and Management Chapter. Among other changes, draft Constitutional amendments which have been proposed would remove the Assembly’s approval of judicial appointments.⁵²⁸

648. A significant portion of judges and prosecutors report the judicial system is not independent in practice. Approximately 24 percent of judges and 34 percent of prosecutors reported that the judicial system is not independent. Lawyers are even more skeptical, with 73 percent of lawyers reporting the judicial system is not independent, as shown in Figure 127.

Figure 127: Lawyers, judges, prosecutors: the perception of independence of the justice system⁵²⁹



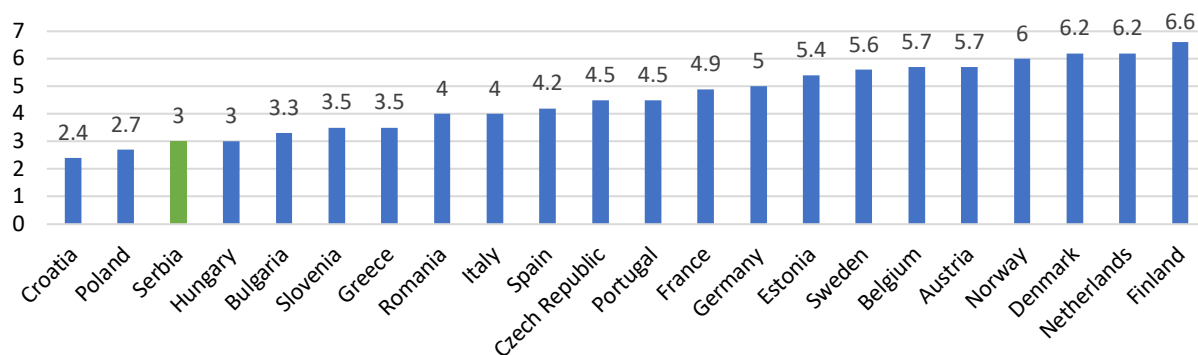
⁵²⁷ The World Justice Project, Rule of Law Index, 2020.

⁵²⁸ For more on this topic, see the Governance and Management Chapter.

⁵²⁹ Survey Question: *How independent is the judicial system in Serbia?*, Base: Total target population, Regional Justice Survey, World Bank, 2020

649. The 2019 World Economic Forum’s Global Competitiveness Report⁵³⁰ ranked Serbia’s judiciary 101th out of 141 countries for judicial independence. Serbia fell behind all EU countries except Croatia and Poland. The results are similar in the 2014 Bertelsmann Transformation Rule of Law Index,⁵³¹ in which Serbia ranked below all the countries of the EU11: its score for Serbia’s judicial independence was 6.0 out of 10 in 2014 and remained unchanged from 2009.⁵³²

Figure 128: 2019 WEF Global Competitiveness Report, Judicial Independence in the EU and Serbia⁵³³



6.6.5. Perceptions of Impartiality and Fairness

650. Perceptions of the fairness of the judicial system varied widely. Only 47 percent of the public, 57 percent of business representatives, and 62 percent of lawyers consider the system to be fair. These were small decreases compared to the results of the 2013 survey. In contrast, about 80 percent of judges and prosecutors evaluated the system as fair in 2020, as shown in Figure 129.

⁵³⁰ The Global Competitiveness Report assesses the competitiveness landscape of 148 economies via over 15,000 Executive Opinion surveys with 15,000. Its definition of independence includes influences on judicial decision-making from members of government and firms. Report is available at: http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

⁵³¹ The Bertelsmann Stiftung’s Transformation Index (BTI) analyzes and evaluates the quality of democracy, a market economy and political management in 137 developing and transition countries. It measures successes and setbacks on the path toward a democracy based on the rule of law and a socially responsible market economy (<https://www.bti-project.org/en/methodology.html#country-selection>).

⁵³² The lowest score in the EU11 was Hungary’s, which scored 7.0. Estonia and Lithuania received top marks of 10.

⁵³³ WEF Global Competitiveness Report 2019. The 2020 edition of the report is unique, since it and focuses on the impact COVID-19.

Figure 129: Public Perceptions of Fairness of the Judiciary, 2013 and 2020⁵³⁴

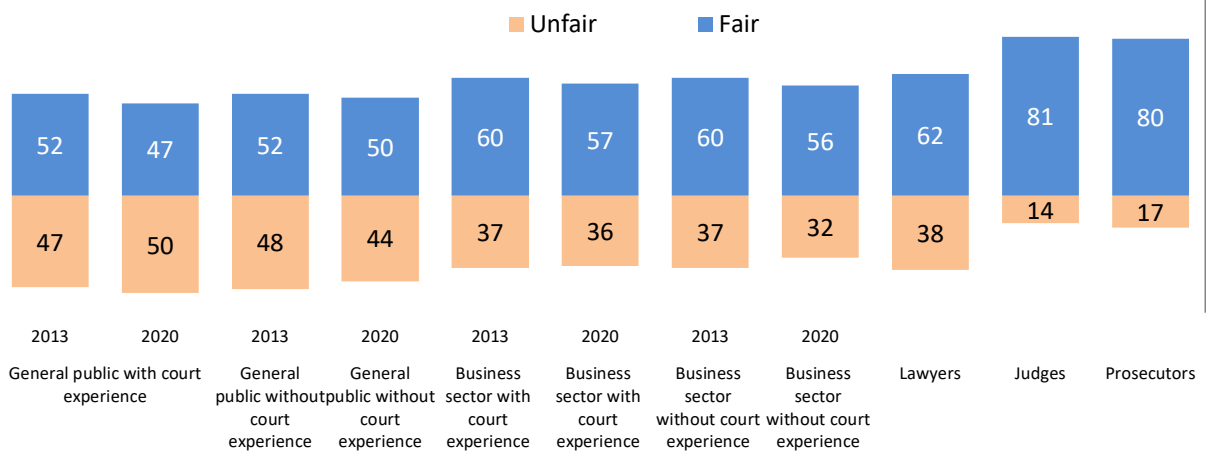
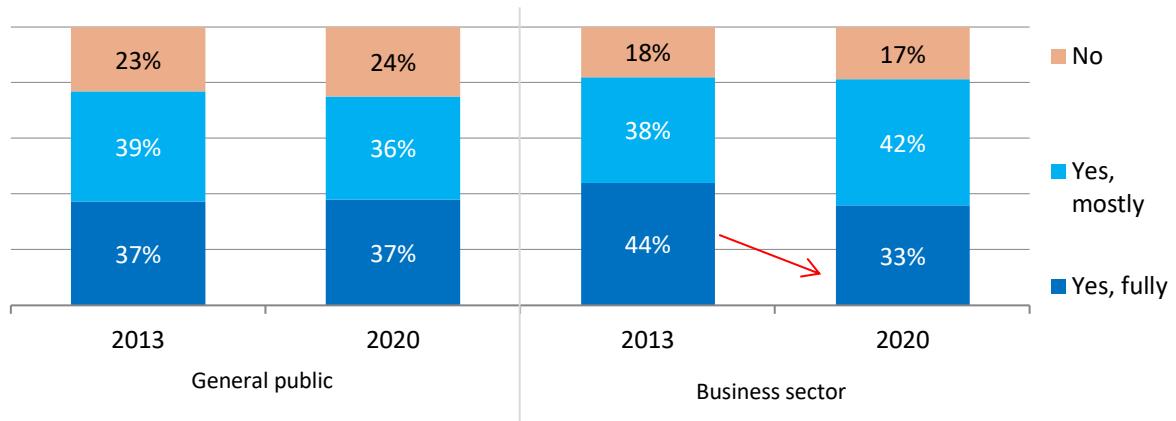


Figure 130: Perception of Fairness in Court User's Case, 2013 and 2020⁵³⁵



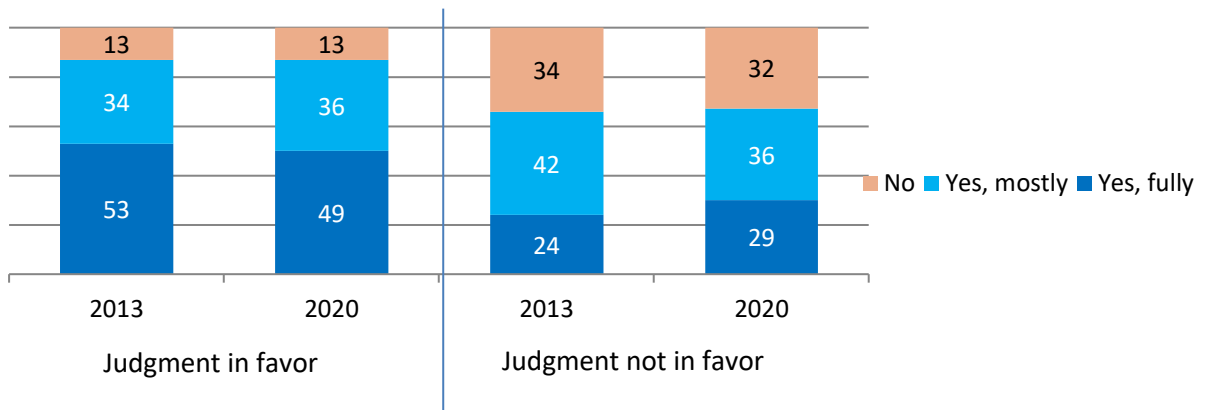
651. While one might expect the evaluations of fairness by court users to be influenced by the judgments in their cases.⁵³⁶ The majority of surveyed court users who had unfavorable judgments still evaluated the trial as fair. Approximately 30 percent of them even evaluated their trials as fully fair (see Figure 131).

⁵³⁴ Survey Question: *In your opinion, how fair was the judicial system in the last 12 months (2013/2020)? Scale from 1 to 4: 1 = very unfair, 2 = mainly unfair, 3 = mainly fair, 4 = very fair.* Population base: total target population. *Regional Justice Survey*, World Bank, 2020.

⁵³⁵ Survey Question: *Notwithstanding the outcome of the court proceedings, what do you think of the first-instance proceedings themselves? Did you have a fair trial? Scale from 1 to 3: Fully, mostly, no.* Population base: public and business sector with experience with court cases. *Multi-Stakeholder Justice Survey*, World Bank, 2014.

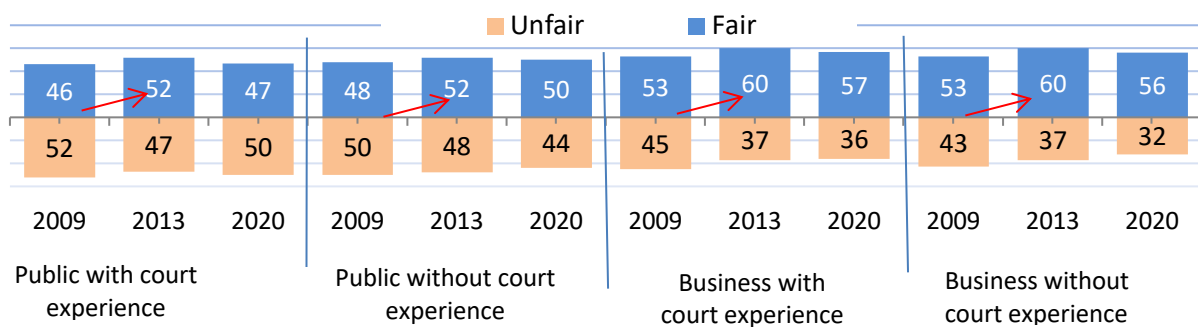
⁵³⁶ Respondents were asked whether they had won or lost their cases.

Figure 131: Perception of Fairness vs. Outcome of Judgment 2013 and 2020⁵³⁷



652. Perceptions of fairness of the justice system have declined somewhat among the public and businesses since 2013, as shown in Figure 132. The majority of all groups surveyed expressed more positive than negative perceptions in 2013 compared to 2009. However, even though at least 50 percent of groups (except for members of the public with court experience) still rank the system as fair in 2020, the percentages of the groups finding it to be fair are lower in 2020 than they were in 2013.

Figure 132: Public Perception of Fairness of the Justice System, 2009, 2013 and 2020⁵³⁸

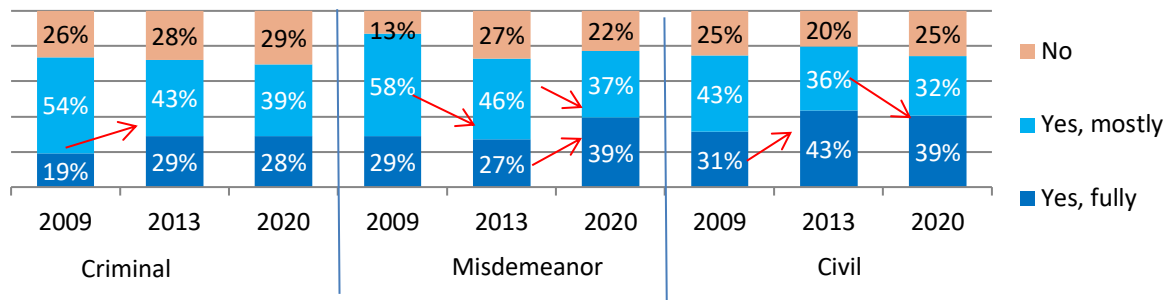


653. A majority of court users considered the system to be fair or mostly fair without regard for the outcome of their case, with criminal defendants the least likely to consider the system fair at all. The perceptions of fairness dropped among court users in civil and criminal cases in 2020 compared to 2013, even as the perceptions of fairness by court users in misdemeanor cases slightly improved. (See Figure 133.)

⁵³⁷ Survey Question: *Notwithstanding the outcome of the court proceedings, what do you think of the first-instance proceedings themselves? Did you have a fair trial? Scale from 1 to 3: Fully, mostly, no.* Population base: public with experience with court services. *Multi-Stakeholder Justice Survey*, World Bank, 2014.

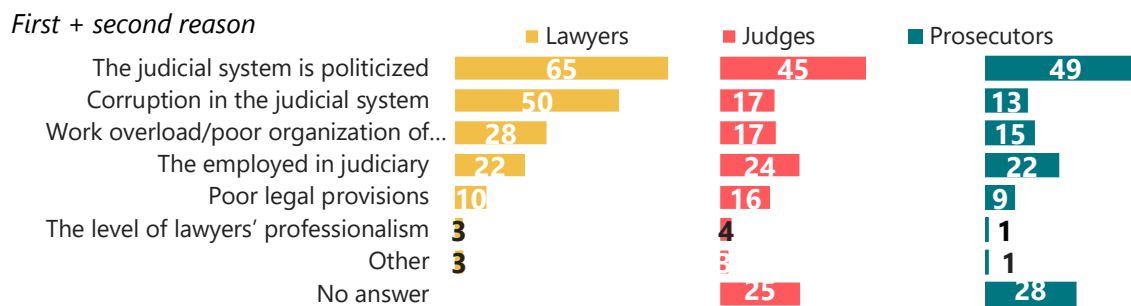
⁵³⁸ Survey Question: *In your opinion, how fair was the judicial system in the 2009 / last 12 months (2013)? Scale from 1 to 4: 1 = very unfair, 2 = mainly unfair, 3 = mainly fair, 4 = very fair.* Population base: public and business sector total target population. *Multi-Stakeholder Justice Survey*, World Bank, 2014.

Figure 133: Court User's Evaluation of Fair Trial, Notwithstanding the Outcome of their Case, 2009, 2013 and 2020⁵³⁹



654. The politicization of the judicial system and corruption in the judicial system were reported as the most common causes of unequal treatment by the system. The majority of judges, prosecutors, and lawyers agree that the primary reason for unequal treatment lies with politicization, while lawyers believe corruption plays a much greater part than judges and prosecutors do. Lawyers also found work overload/ poor organization as reasons for unequal treatment more often than judges and prosecutors, as shown by Figure 134.

Figure 134: Reasons for Unequal Treatment Cited by Judges, Prosecutors and Lawyers, 2020⁵⁴⁰



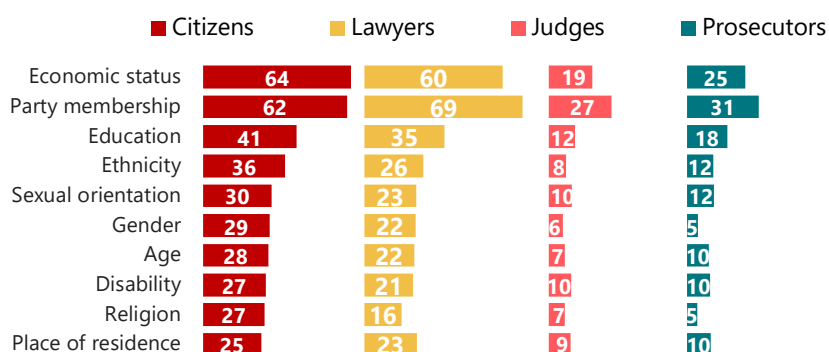
655. The quality of Serbia's laws is also perceived to be part of the unequal treatment. Sixteen percent of judges, nine percent of prosecutors, and 10 percent of lawyers named poor legal provisions as a source of unequal treatment.

656. Economic status was still cited as another primary reason for unfair treatment. Twenty-five percent of prosecutors, 19 percent of judges, and 60 percent of lawyers, reported that the public is treated unequally by virtue of their economic status, while 64 percent of citizens reached the same conclusion.

⁵³⁹ Multi-Stakeholder Justice Survey, World Bank, 2014.

⁵⁴⁰ Survey Question: Multiple choice; most often selected reason (Could you please specify the first most important reason for discrimination or unequal treatment? And the second most important reason?); Base: Those who believe the justice system does not treat all users equally; Regional Justice Survey, World Bank, 2020.

Figure 135: Equal treatment of citizens, 2020



6.7. Recommendations and Next Steps

The most fundamental change needed to promote integrity in the judiciary is to reduce openings for political influence on judicial operations. This can be accomplished by the National Assembly passing legislation in line with the 2022 Constitutional amendments affecting the membership and duties of the HJC and SPC. New laws should elaborate new Constitutional provisions that remove the Assembly's approval of judicial appointments, as discussed in the Governance chapter.

Recommendation 1: Put in place an effective coordination mechanism among institutions for the prevention of corruption.

- Increase cooperation and coordination among the institutions with responsibility for building the integrity of Serbia's judiciary. (MOJ, HJJ, SPC, SCC, RPP – short-term)
- Increase interaction between the Councils and the Agency for Prevention of Corruption (APC) about the development and implementation of integrity plans, rules, and standards governing conflicts of interest and implementation of these regulations. (HJC, SPC, ACC – short-term)
- Institute procedures for the central tracking of the source, basis, and disposition of written complaints about courts and prosecutors. (HJC, SPC, ACC – short-term)
- Develop procedures to ensure that the courts or PPOs to which complaints are originally made report on the complaints and outcomes to the APC and the Councils. (HJC, SPC, SCC, RPP – short-term)
- Amend the Law on Judges to be explicit about the disciplinary accountability of court presidents. (MOJ, Parliament – short-term)
- Analyze the outcomes of complaints at a systemic level; use this data to inform future reforms. (HJC, SPC – medium-term)
- Address the continued designation of the Councils as the second-instance disciplinary bodies. (MOJ, Parliament – medium-term)
- Amend the disciplinary rules for both judges and prosecutors in line with EU standards, so only serious misconduct and not mere incompetence give rise to disciplinary proceedings. (MOJ, Parliament – medium-term)
- Ensure adequate staffing of disciplinary departments in the HJC and SPC. (HJC, SPC – medium-term)

Recommendation 2: Strengthen the effectiveness of the Commissioner for Autonomy.

- Ensure that post is not vacant for a long period. (SPC – short-term)
- Ensure resources for conducting work of the Commissioner. (SPC – short-term)
- Publicize opinions and assessments of cases on the SPC website to increase the transparency of the Commissioner’s work, inform the general public and guide the conduct of public prosecutors. (SPC – short-term)

Recommendation 3: Complete the development of procedures for reporting by court presidents on instances when the random assignment of cases was overruled and for monitoring these reports by the SCC.

- Clarify the criteria for court presidents to assign or transfer a case to a particular judge. (HJC, SCC – short-term)
- Adopt an automated mechanism for the random assignment of cases in PPOs. (SPC, RPPO – medium-term)

Recommendation 4: Complete the process of adopting integrity plans in all courts and PPOs.

- Require institutions to post Integrity plans on their institution’s web page. (All – short-term)
- Provide mechanisms beyond developing a model plan on paper for courts and prosecutors to identify integrity risks. (HJC, SPC, SCC, RPO – short-term)
- Require each court or PPO to appoint senior personnel to monitor the implementation of integrity plans. (HJC, SPC – medium-term)
- Ensure coordination and monitoring of implementation at the central level. (SCC, HJC, SPC, RPPO – short-term)

Recommendation 5: Further implement the Law on Whistleblowers.

- Ensure that all court and PPO employees know about protection for whistleblowers through enhanced general training. (HJC, SPC, JTC – short-term)
- Provide training to the whistleblower point person in each institution. (HJC, SPC, JA – short-term)
- Create an environment for safe and effective reporting of all types of undue influence. (HJC, SPC – medium-term)

Recommendation 6: Complete the process of ensuring that all court and PPO employees, and the public, know about rules related to conflicts of interest.

- Clarify criteria to determine whether a gift was “in connection to the discharge of public office.” (HJC, SPC – short-term)
- Ensure the collection, maintenance, and accessibility of the records required by Article 41 of the Law on the Anti-Corruption Agency, requiring that judicial officials report on gifts. (HJC, SPC, SCC, RPPO – short-term)
- Develop public information regarding the law and policy on giving gifts to court and PPO employees, and make it available on websites and in brochures available at the courts and PPOs. (HJC, SPC, SCC, RPPO – medium-term)

Recommendation 7: Fully implement the Code of Ethics and Rules of Procedure of the Ethical Board of the HJC.

- Provide written guidance on ethical issues with practical examples and recommendations, including online FAQs. (HJC – short-term)
- Make existing training mandatory for all judges and prosecutors. (HJC, SPC, JA – short-term)
- Monitor the impact of confidential advice/counseling on appropriate conduct in particular cases. (HJC, SP– medium-term)
- Expand the Ethical Code of Prosecutors to include a level of detail similar to the code for judges regarding permissible/impermissible conduct. (SPC – short-term)

Recommendation 8: Enforce rules about the appointment, disqualification, and compensation of expert witnesses.

- Ensure that all expert witnesses are compensated at the same rate in accordance with the Rulebook on Reimbursement of Expert Witnesses. (MOJ, SCC – short-term)

7. Human Resource Management

7.1. Main Findings

657. Although all institutions made an effort to overcome the challenges, key problems with human resources management remained. However, the recently adopted constitutional amendments and the upcoming revision of the legal framework, as well as the implementation of the Human Resource Strategy in Judiciary for the period 2022-2026, have the potential to bring about significant positive change in the Serbian judiciary.

658. Despite the progress in aligning human resources management procedures with EU standards, the Functional Review team could not locate evidence of a strategic approach to HR management in the Serbian court and prosecution system. However, the adoption of the Human Resource Strategy in the Judiciary for the period 2022-2026⁵⁴¹ represents a stepping-stone to applying a strategic approach in managing human resources. For instance, notwithstanding the transfer of criminal investigation and more than 38,000 investigation cases from Basic Courts to PPOs, the number of judges significantly increased between 2013 and 2014. At the same time, adequate resources were not assigned to prosecutors' offices to absorb criminal investigations. While the SPC attempted to analyze the corresponding cost implications and staffing needs of criminal investigation functions newly assigned to the prosecutors' offices, the analysis was not based on comprehensive and comparative examinations of staffing numbers and competencies, caseload, organizational and procedural changes, etc.

659. Compared with European benchmarks, in 2018, Serbia had one of the highest ratios of judges-to-population and a lower number of public prosecutors per 100,000 inhabitants.⁵⁴² When staffing is considered, Serbia had moderate ratios of staff per judge and prosecutor. However, this indicator should be considered with caution, taking into account that Serbia reported to CEPEJ on permanent employees only, and a significant number of contractors have been working in courts and PPOs. In addition, having a large number of judges with inadequate support staff prevents appropriate delegation of tasks and is financially more costly.

660. The staffing levels for judges, prosecutors, and staff appeared to be set in an ad hoc manner. Serbia still lacks a comprehensive methodology for determining the number of judges and prosecutors needed in either a particular court/PPO or overall, and methods currently applied dated from 2006⁵⁴³ and 2009,⁵⁴⁴ respectively. From 2014-2017, the total number of 780 deputy prosecutor positions remained unchanged despite a significant increase in incoming cases. In the next two years, however, 60 new deputy prosecutor positions were approved in the Basic, Higher, and Appellate PPOs⁵⁴⁵, but the methodology for doing so is unclear. Similarly, the number of judge positions had fluctuated over

⁵⁴¹ Adopted in December 2021 (<https://www.vk.sud.rs/sr-lat/strategija-ljudskih-resursa-u-pravosupercentC4percent91u-za-period-2022-2026-godine>)

⁵⁴² European Judicial Systems – CEPEJ Evaluation Report, 2020 Evaluation Cycle, CEPEJ.

⁵⁴³ Framework criteria for determining number of judges in courts of general and specific jurisdiction, Official Gazette 61/2006

⁵⁴⁴ Rulebook on PPO Administration, Official Gazette no.77/2004, as amended 52/07,2/08, 11/09 and 44/09

⁵⁴⁵ 36 in 2018 and 24 in 2019

time, with 3022 positions in 2019, or 87 more than in 2013,⁵⁴⁶ despite the transfer of functions from the courts. The reduction in the number of staff positions and permanent employees in both courts and PPOs occurred as part of the implementation of the Public Administration Reform Strategy and the 2015 Law on Maximum Number of Employees in Public Sector⁵⁴⁷, which called for an annual reduction in a number of employees in the period 2016-2019. Under the Law, the Government was to define the number maximum of permanent staff for each public institution each year.⁵⁴⁸ Instead, the number of contracted staff gradually increased.

661. In addition to the large existing staff, large numbers of temporary staff and volunteers create a ‘shadow workforce’. Selection is decentralized, and the existing procedures do not apply to these categories of staff. In addition, their performance goes largely unmonitored. Such a practice impedes integrated resource planning and inhibits longer-term efficiency.

662. Serbia does not have a national career service in the judiciary or prosecution. Judges and prosecutors are appointed to an individual court and PPO, and cannot be moved without their consent, notwithstanding the system's needs.

663. The Judicial and the Prosecutorial Council have a central role in the recruitment and selection of judicial officials. Prior to the constitutional changes, the National Assembly also had a role in their appointment and dismissal. In addition, the Government played a highly influential role in the appointment of prosecutors, often not submitting the entire list of prosecutors recommended by the Prosecutorial Council to the National Assembly for consideration. By the new constitutional provisions, the role of the National assembly is limited to the election and dismissal of the Republic Public Prosecutor and judges of the Constitutional Court.

664. The performance assessment systems designed for judges and prosecutors aim to boost organizational and individual advancement. Despite the HJC and SPC invested efforts to align its performance evaluation systems with European standards, the procedures still suffer from excessive rigidity and lack some elements of an effective performance appraisal system. The procedure for judges was first implemented in 2016 and that for prosecutors in 2015, and the results were used to decide on the election of candidates to permanent tenure and higher instance positions. For permanent judges, the evaluation rules were first implemented in 2017.

665. The system should continue to invest in continuing training and lead a large-scale capacity-building initiative for judges, prosecutors, assistants, and other staff in courts and PPOs. Training should cover all aspects relevant to the transformation into a modern European judiciary, and the training programs should be designed based on a comprehensive training needs assessment.

⁵⁴⁶ 16 new judge positions were added in first half of 2020

⁵⁴⁷ Official Gazette 68/2015 as amended 81/2016 - Constitutional Court Decision and 95/2018.

⁵⁴⁸ The Law allows institutions to employ an additional 10percent of staff on long-term contracts of up to one year. It also allows up to 10 long-term contractors to be employed in institutions that have fewer than 100 permanent staff members, a provision that applies to all PPOs and majority of courts.

7.2. Staffing Levels and Methodology

7.2.1. Numbers of Judges and Prosecutors

666. Serbia still lacks a comprehensive methodology for determining the number of needed judges and prosecutors. The procedures currently applied⁵⁴⁹ require considering caseloads only, and the Councils' decisions on the number of judges/prosecutors only included figures without justifications. No attempt has been made to establish more rigorous and transparent criteria for determining how many judges and prosecutors are needed, and it is, therefore, unknown if the decisions on a number of judges and deputy prosecutors periodically taken by the Councils reflected caseloads, organizational or procedural changes or some other needs of the judiciary⁵⁵⁰. In addition, although decisions on the number of judges and prosecutors are currently made by the Councils, prior consent of the Ministry of Justice is still required for the number of prosecutors.

667. As there is no a rigorous and transparent methodology for determining the number of judges and prosecutors, and the Councils' periodic decisions on the number of judge and prosecutor positions have not been accompanied by some justifications, it is unclear how the Councils decide on their number in each court and prosecution office. Despite the transfer of criminal investigation and more than 38,000 investigation cases from Basic courts to PPOs, additional judge positions were created in 2013. On the other hand, the overall number of authorized judge positions was reduced between 2014 and 2017, notwithstanding the rising numbers of incoming cases across all courts. Furthermore, changes in the number of authorized judges positions have not always followed the trend of incoming cases – e.g., the annual rise of the incoming case by approximately 5 percent in 2015 and 2016⁵⁵¹ led to creation 25 percent more judge positions in the Administrative Court in 2017⁵⁵² while the HR Plan of Higher Courts underwent changes in the opposite direction (annual rise of incoming cases by approximately 12percent in 2015 and 2016⁵⁵³ led to 3percent reduction in the number of judge positions in 2017⁵⁵⁴). At the same time, the overall number of authorized deputy prosecutor positions remained unchanged between 2014 and 2017 despite the introduction of prosecution-led investigations.

Table 25: Number of Judges by Court Type, 2013-2020

		Judges								
		Basic Courts	Higher Courts	Appellate Courts	Administrative Court	Commercial Courts	Appellate Commercial Court	Misdemeanor Courts	Appellate Misdemeanor Court	Supreme Court of Cassation
HR Plan	2013	1,430	377	237	38	172	33	548	65	35
	2014	1508	369	237	38	178	33	544	65	37
	2015	1,545	381	237	41	180	33	551	65	37
	2016	1475	368	237	39	178	41	538	65	38
	2017	1476	367	237	51	178	41	535	65	40

⁵⁴⁹ Framework criteria for determining number of judges in courts of general and specific jurisdiction, Official Gazette 61/2006 and Rulebook on PPO Administration, Official Gazette no.77/2004, as amended 52/07,2/08, 11/09 and 44/09

⁵⁵⁰ These decisions include only figures on positions per each court/PPO without justifications.

⁵⁵¹ Compared to previous year, i.e. 2014 and 2015 respectively

⁵⁵² Number of judge positions changed from 41 in 2015 to 51 in 2017

⁵⁵³ Compared to previous year, i.e. 2014 and 2015 respectively

⁵⁵⁴ Number of judge positions changed from 381 in 2015 to 367in 2017

	2018	1438	399	240	51	178	41	541	65	46
	2019	1446	413	240	51	179	41	541	65	46
	2020*	1451	420	240	51	179	41	541	65	50
Filled Positions	2013	1423	366	213	30	157	30	531	61	33
	2014	1,384	342	219	NA	159	32	509	56	37
	2015	1325	343	229	40	157	31	492	64	35
	2016	1352	340	224	41	162	31	505	63	37
	2017	1350	337	217	40	152	35	491	61	38
	2018	1206	356	216	48	162	41	456	62	41
	2019	1244	375	230	49	148	37	515	56	46
	2020*	1266	366	229	50	169	37	512	56	45

Sources:

HR Plan:

2013 Data - Serbia Judicial Functional Review, October 2014, Page 281, Table 21. Number of Judges by Court Type, 2013
 2014 Data - HJC Decisions on the number of judges
 2015-2017 data provided by the HJC
 2018 Data - SCC Annual Report on the Work of Courts for 2018
 2019-2020 data provided by the HJC
 2020* - data as of 30 June

Filled Positions:

2013 Data - Serbia Judicial Functional Review, October 2014, Page 281, Table 21. Number of Judges by Court Type, 2013
 2014-2017 data provided by the HJC
 2018 Data - SCC Annual Report on the Work of Courts for 2018
 2019-2020 data provided by the HJC
 2020* - data as of 30 June

668. There was also no documentation to justify the increase in the number of filled judge positions in 2013 or the reduction in their numbers between 2015 and 2018. As the criteria for filling vacant positions are not transparent, it is unknown if these decisions are based on objective needs. For example, to manage some 5 percent rise of incoming cases each year, the Administrative Court was supported with new judges while Higher Courts, who experienced an increase of over 10 percent of incoming cases each year, operated with fewer judges in 2016 and 2017 than in 2014.

669. Recent Constitutional amendments granted full autonomy of the Councils in the appointment and dismissal of court presidents, judges, prosecutors, and deputy prosecutors and limited the role of the Parliament to the selection of four members⁵⁵⁵ of the HJC and SPC and the appointment and dismissal of the Republic Public Prosecutor and judges of the Constitutional Court, thus reducing the risk of political interference in human resource-related decisions. Before replacing judiciary-related constitutional provisions, the Councils were tasked to carry out recruitment procedures, and responsibility for the appointment and dismissal of Court Presidents, Republic Public Prosecutors, and Public Prosecutors, as well as initial appointment of judges and Deputy Public Prosecutors were shared with the Parliament. In addition, the Government confirmation of candidate lists for heads of PPOs was required before the parliamentary deliberations and not all candidates recommended by the SPC were put forward. Finally, even if the National Assembly merely elected candidates nominated by the Councils and previously selected by their peers, it could still refuse to elect proposed candidates and thereby trigger a new selection process.

670. For 2018, Serbia reported almost twice the average of filled judge positions per capita compared with the EU28 average and more than the Western Balkan average. According to the CEPEJ

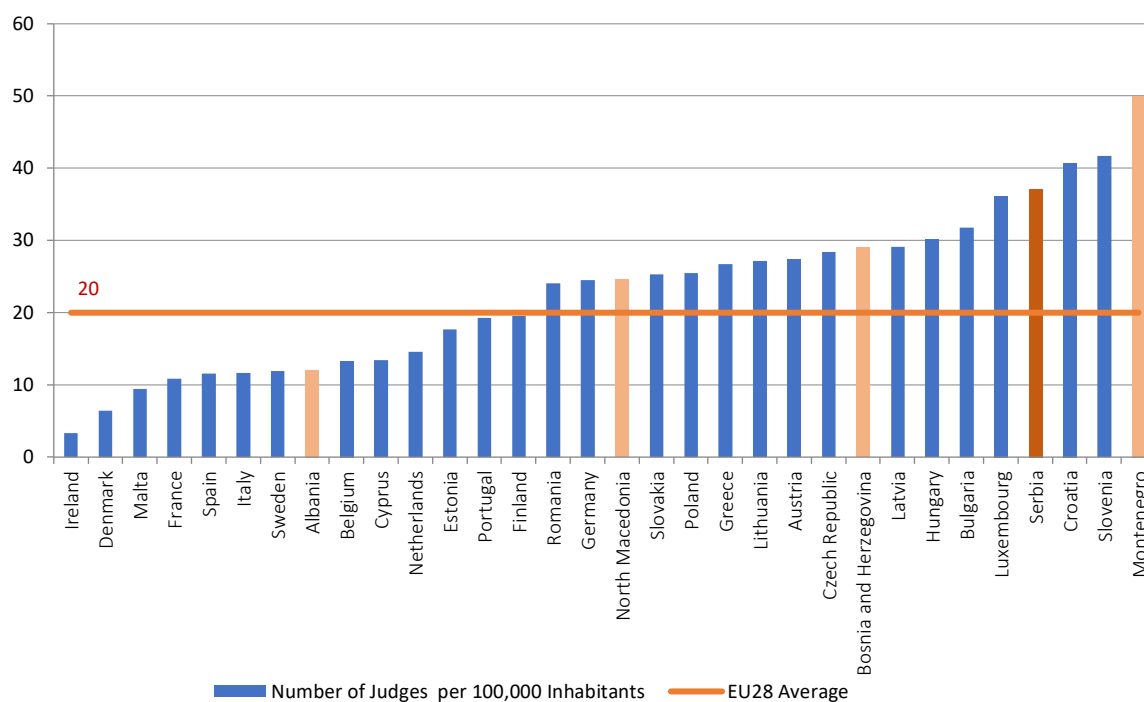
⁵⁵⁵ A qualified majority is required for their appointments, i.e. two-thirds of all Parliament members

2020 report, the number of judges per 100,000 inhabitants was in Serbia 37, while the EU28 average was 20. The EU11 average was 29, and the Western Balkans average was 31.

671. Among EU member countries, Croatia and Slovenia had more judges per capita than Serbia in 2012, 2014, 2016 and 2018. States with over 30 judges per 100,000 inhabitants are mainly those coming from the Former Yugoslavia, including Croatia, Montenegro, and Slovenia.

672. The SCC does not have a clear methodology to systematically and transparently determine the number of needed judges in courts, which is a precondition for future appointments and equal workload per judge. The data shows that HJC filled about 75 percent of judge positions that became vacant over the six-year period.⁵⁵⁶ In the interim, the HJC priority should be to develop the above-mentioned staffing methodology.

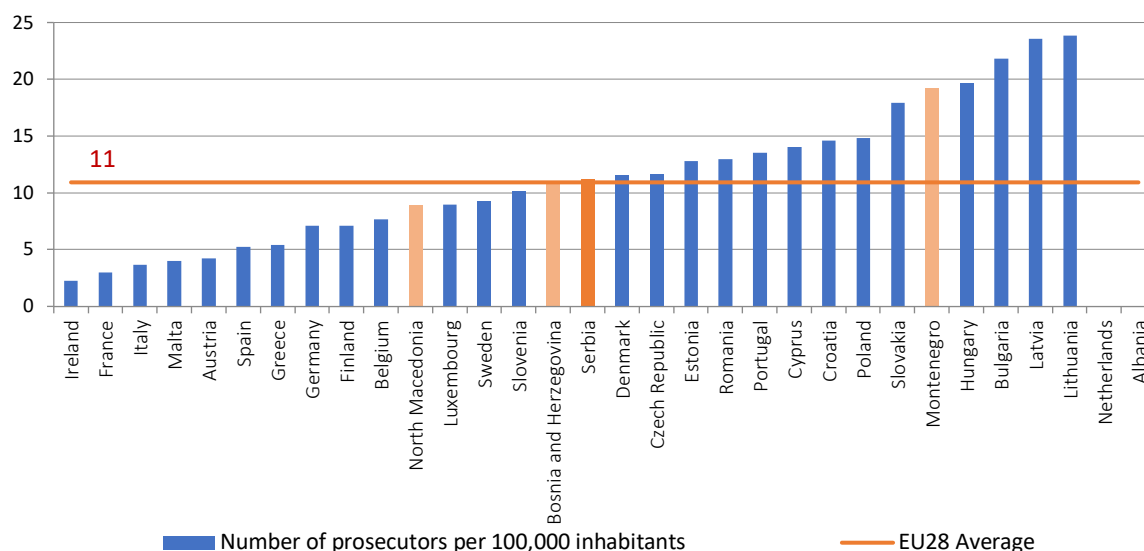
Figure 137: Number of judges per 100,000 inhabitants, Serbia, EU member states and Western Balkan countries (CEPEJ data for 2018)



673. For 2018, Serbia reported a significant increase in the number of public prosecutors per 100,000 inhabitants and reached the EU28 average. According to CEPEJ reports, the number of public prosecutors per 100,000 inhabitants in Serbia increased from 9.2 in 2012 to 11.2 in 2018. EU28 average was 10.9, EU11 average was 16.7 and the Western Balkans average was 12.5.

⁵⁵⁶ 2014-2019

Figure 138: Number of prosecutors per 100,000 inhabitants, Serbia, EU member states and Western Balkan countries (CEPEJ data for 2018)



674. As of December 2019, Serbia counted 68 Prosecutors, and 723 Deputy Prosecutors organized across six prosecution levels (see Table 26 below). The overall number of planned prosecutors increased by 12percent between 2013 and 2019, and those appointed by 11percent. The decision was taken in late 2013 to increase the number of higher and basic prosecutor positions. This occurred right after the adoption of the new CPC but also shortly after the establishment of a new network of PPOs that was significantly affected by the need to reintegrate 153 prosecutors who returned to office after the decisions of the Constitutional Court of Serbia. The figures suggest that the increase was more driven by the establishment of additional 25 basic PPOs than by new obligations that expanded their scope of work due to the transition to a prosecution-led adversarial system. In 2018, the decision was taken to create 23 new prosecutor positions at the basic prosecution level without reference to the offices' relative workload. In contrast, the decision to create an additional prosecutor position in higher PPOs (13 in 2018 and 24 in 2019) was primarily motivated by a legal obligation⁵⁵⁷ to establish special departments for organized crime in four higher PPOs and was directly workload-related.

Table 26: Number of Prosecutors and Deputy Prosecutors in Serbia, 2013-2020

Type of Prosecutors' Office		RPPO	Appellate Prosecutors	Higher Prosecutors	Basic Prosecutors	Special Prosecutor for Organized Crime	Special Prosecutor for War Crimes	Total	
HR Plan	2013	PPs	1	4	26	34	1	1	67
		DPPs	15	72	171	428	25	8	719
	2014	PPs	1	4	25	58	1	1	90
		DPPs	15	72	179	442	25	8	741
	2015	PPs	1	4	25	58	1	1	90
		DPPs	15	72	179	442	25	8	741
	2016	PPs	1	4	25	58	1	1	90
		DPPs	15	56	185	452	25	8	741

⁵⁵⁷ Article 14 of the Law on Organization and Jurisdiction of State Authorities in the Suppression of Organized Crime, Terrorism and Corruption (Official Gazette 94/2016 as amended 87/2018 – other laws) specifies establishment of special department for suppression of corruption in higher PPOs Belgrade, Kraljevo, Novi Sad and Nis and all new higher prosecutor positions created in 2018 and 2019 were in these four offices.

Type of Prosecutors' Office		RPO	Appellate Prosecutors	Higher Prosecutors	Basic Prosecutors	Special Prosecutor for Organized Crime	Special Prosecutor for War Crimes	Total		
	2017	PPs	1	4	25	58	1	1	90	
		DPPs	15	56	185	452	25	8	741	
	2018	PPs	1	4	25	58	1	1	90	
		DPPs	15	56	198	475	25	11	780	
	2019	PPs	1	4	25	58	1	1	90	
		DPPs	15	56	222	475	25	11	804	
	2020*	PPs	1	4	25	58	1	1	90	
		DPPs	15	56	222	475	25	11	804	
	Filled Positions	2013	PPs	1	0	21	30	1	1	54
			DPPs	11	63	155	407	9	6	651
		2014	PPs	N/A	N/A	18	12	N/A	N/A	30
			DPPs	N/A	N/A	165	394	N/A	N/A	559
2015		PPs	N/A	4	18	14	N/A	N/A	36	
		DPPs	N/A	56	167	381	N/A	N/A	604	
2016		PPs	N/A	4	19	33	N/A	N/A	56	
		DPPs	N/A	46	174	389	N/A	N/A	609	
2017		PPs	1	3	21	46	1	1	73	
		DPPs	12	48	170	380	12	4	626	
2018		PPs	1	3	21	44	1	1	71	
		DPPs	11	46	186	429	12	9	693	
2019		PPs	1	3	20	42	1	1	68	
		DPPs	11	46	206	439	12	9	723	
2020*		PPs	1	N/A	N/A	N/A	1	1	68	
		DPPs	11	46	206	439	12	9	723	

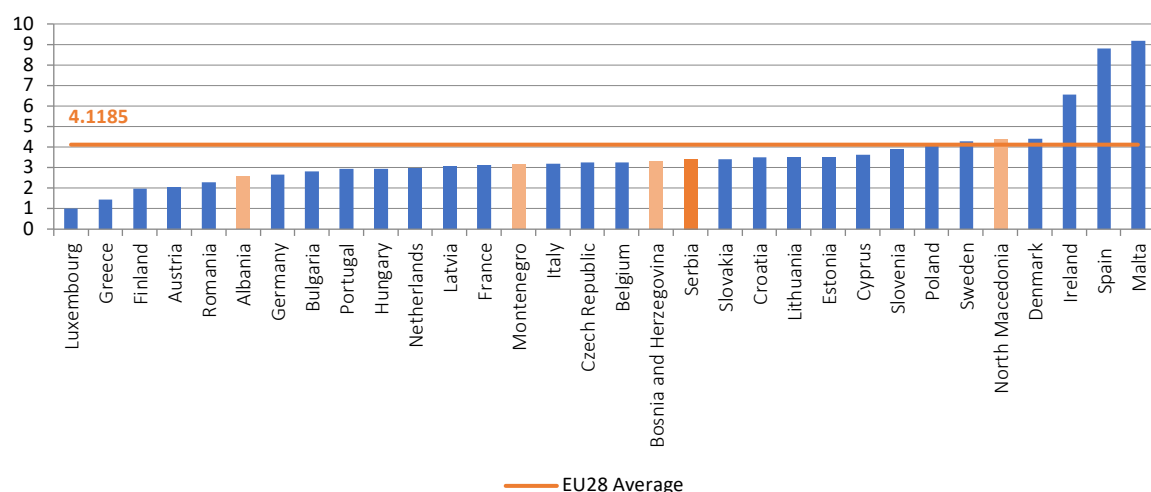
Sources: 2013 Data - Serbia Judicial Functional Review, October 2014, Page 282, Table 22. Number of Prosecutors and Deputy Prosecutors in Serbia, 2013; 2014-2020 data provided by the SPC; 2020* - data as of 30 June;

675. Compared with 2013, the overall number of appointed prosecutors only increased in 2018 and 2019, notwithstanding the earlier court re-networking and PPOs' growing responsibilities. A continual backlog increase, affected, among other things, by the introduction of a prosecution-led adversarial system and transfer of more than 38,000 investigation cases from basic courts to PPOs in late 2013 triggered the SPC to undertake an analysis of resource needs. A caseload analysis conducted by five members of SPC in 2016 found both basic and higher PPOs to be under-resourced and suggests almost all vacant prosecutor positions be filled as well as an immediate increase of 77 authorized positions in basic PPOs and 17 in higher PPOs made. The SPC informed the Functional Review Team that the findings of this analysis were reflected in subsequent revisions of the act on the number of prosecutors in PPOs.

7.2.2. Numbers of Court Staff

676. In 2018, Serbia had an average of 3.4 non-judicial employees per judge (see Figure 138 below). This is in the middle of staff-to-judge ratios seen in the EU and lower than the average of EU Member States that submitted data on this issue to the CEPEJ for 2018. The average staff-to-judge ratio fluctuated over time for both EU28 and Serbia, and in 2018 the EU28 ratio returned to the same level as in 2012, and that for Serbia dropped by 0.3 points compared to 2014 data.

Figure 139: Ratio of Court Staff to Judges, Serbia, EU and Western Balkan countries, 2018⁵⁵⁸



677. While staffing norms exist in theory to set personnel allocations, they are not implemented or enforced in practice. The norms may be a too simplistic way of determining staffing levels given the complexity of justice institutions and the absence of a case weighting methodology, and it may be reasonable for systematizations to vary from these prescribed norms. However, such variations should be justified and documented.

678. The ratios of budgeted staff-to-judges vary significantly between courts of the same type, demonstrating that the numbers of personnel are not determined based on needs or data analysis. There are significant ranges of budgeted staff to judge ratios in the Basic, Higher, Commercial, and Misdemeanor Courts (see Table 27 below). Compared to the range of positions per judge in 2013, variation among the Basic Courts and less in the Higher, Commercial, and Misdemeanor Courts grew in 2019.

Table 27: Budgeted Employees per Judge by Category of Employees and Court Type, 2019

Court Type	2019												
	Judges	Total Non-Judge Employees			Judicial Assistants			Other Case Processing Positions*			Other Positions**		
	Number	Number	Mean Ratio to Judge	Range	Number	Mean Ratio to Judge	Range	Number	Mean Ratio to Judge	Range	Number	Mean Ratio to Judge	Range
Basic	1446	4747	3.3	2.2-5.0	590	0.4	0.1-0.7	3039	2.1	1.2-2.9	1118	0.8	0.3-2.0
Higher	413	1475	3.6	2.6-4.8	248	0.6	0.3-1.0	812	2.0	1.5-3.2	415	1.0	0.7-1.8
Appellate	240	515	2.1	1.9-2.5	213	0.9	0.7-1.0	250	1.0	0.9-1.2	52	0.2	0.0-0.5
Appellate Commercial	41	69	1.7		35	0.9		34	0.8		0	0.0	
Commercial	179	593	3.3	2.8-4.6	94	0.5	0.2-1.0	409	2.3	1.8-2.9	90	0.5	0.1-1.3
Appellate Misdemeanor	65	174	2.7		52	0.8		101	1.6		21	0.3	
Misdemeanor	541	1659	3.1	2.5-5.8	76	0.1	0.0-0.4	1129	2.1	1.7-4.0	454	0.8	0.4-2.2

⁵⁵⁸ Data from the CEPEJ Evaluation Report 2020 based on 2018 data.

Administrative	51	174	3.4		64	1.3		108	2.1		2	0.0	
Supreme Court of Cassation	46	212	4.6		54	1.2		65	1.4		93	2.0	
TOTAL	3022	9618	3.2	1.7-5.8	1426	0.5	0-1.3	5947	2.0	0.8-4.0	2245	0.7	0-2.2

*Case-related staff include judicial assistants (judicial trainees not included); Court Managers/Secretaries; Registry Office, Other Administration, Typists; and ICT positions. ** 'Other' includes technical support, court police, enforcement staff and land book staff

679. Despite reductions in the number of low-level staff positions, over 23 percent of court staff do not contribute to case processing; this number represents a decline in non-case-processing staff since 2013. The proportion of these ancillary staff (such as drivers, cleaners, and judicial guards) to total non-judge staff positions is higher in the Basic, Higher, and Misdemeanor courts and the Supreme Court of Cassation (see Table 28 below) than the average for the Commercial and Appellate Courts. Over the past six years, the proportion of ancillary to total staff positions dropped in all courts. In 2013, ancillary employees represented 33 percent of non-judge staff positions in basic, 31percent in higher, 14percent in appellate, 17percent in commercial, and 32percent in misdemeanor courts.

Table 28: Ratio of Budgeted Ancillary to Core Staff by Court Type, 2019

Court Type	Total Non-Judge Employees	All Case Processing Related Positions	percent Case Processing Positions	Ancillary Employees	percent Ancillary Employees
Basic	4747	3629	76percent	1118	24percent
Higher	1475	1060	72percent	415	28percent
Appellate	515	463	90percent	52	10percent
Appellate Commercial	69	69	100percent	0	0percent
Commercial	593	503	85percent	90	15percent
Appellate Misdemeanor	174	153	88percent	21	12percent
Misdemeanor	1659	1205	73percent	454	27percent
Administrative	174	172	99percent	2	1percent
Supreme Court of Cassation	212	119	56percent	93	44percent
TOTAL	9618	7373	77percent	2245	23percent

680. However, comparisons with EU Member States suggest that Serbia could further reduce its complement of non-case-processing staff. According to CEPEJ 2020 Report (2018 data), Serbia's 78 percent of staff dedicated to case-processing tasks is lower than in a majority of EU member countries. However, this comparison should be treated as a general depiction of the use of court support staff as the staff categories and job descriptions are not clearly distinguished by the CEPEJ.

681. Even though overall court staffing decreased, staffing needs have not been evaluated in a systematic way, and significant variations in the ratio of budgeted positions per judge/prosecutor among courts and PPOs remained. The ratio of budgeted judicial assistants per judge continued to vary significantly across courts of the same type – e.g. among basic courts, it ranged from 0.3 to 1.0 in 2013 and from 0.1 to 0.7 in 2019. However, with the devolution of certain responsibilities to prosecutors under the new CPC, the number of budgeted judicial assistants dropped in courts and increased in

PPOs. Thus, courts budgeted 2,115 judicial assistants and trainees in 2013 and 1,649⁵⁵⁹ in 2019, and PPOs⁵⁶⁰ planned 252 prosecutor assistants and trainees in 2014 compared to 374⁵⁶¹ in 2019.

682. Similarly, the courts have not evaluated its staffing needs in light of the devolution of certain responsibilities to other judicial professions. The number of court-employed bailiffs was reduced since the introduction of private enforcement agents in 2011. However, there were still 640 budgeted positions and 597 bailiffs employed by courts in 2019. Their functions are not clear in the court systematizations or job descriptions.

683. Similarly, the establishment of the notary system has not dramatically changed the profile of court staff in Serbia. Rationally, the transfer of verification services should result in large-scale redundancies among registry staff, particularly in Basic Courts. However, the transfer of these functions to private notaries in Serbia resulted in a slight increase in staff in these positions. Between 2014 and 2019, Basic Courts added 29 registry positions, and the number of employees in these functions was increased from 1,080 to 1110. So far, no analysis has been conducted of the staffing implications of the introduction of private notaries.

684. A strategy for eliminating excess positions through layoffs, attrition, or other means such as transfers is needed. For the strategy development, and analysis of the staffing implications of the reforms undertaken in previous years is needed, primarily those related to the transfer of responsibilities to PPOs and other judicial professions. The funds saved through right-sizing could then be invested in much-needed areas, such as in technical and advisory positions or improvements in ICT or judicial facilities.

685. Despite reductions in the number of budgeted employees, significant variations by region remained with no clear justification. For instance, the Higher and Basic Courts in Belgrade and Novi Sad demonstrate much higher staffing ratios than courts in Nis or Kragujevac. Moreover, revisions of staffing plans of Higher Courts created even higher discrepancies between regions. The overall range did decline from 3.8-4.6 budgeted employees per judge in 2013 to 3.1-4.0 in 2019.

Table 29: Ratios of Budgeted Positions to Judges in Higher Courts by Region, 2019

Appellate Group	Judges	Total Non-Judge Staff		Judicial Assistants		Other Case Processing Positions		Other Non-Judge Staff	
	Number	Number	Ratio to Judges	Number	Ratio to Judges	Number	Ratio to Judges	Number	Ratio to Judges
Belgrade	146	590	4.0	133	0.9	313	2.1	144	1.0
Kragujevac	95	297	3.1	39	0.4	179	1.9	79	0.8
Nis	81	270	3.3	29	0.4	146	1.8	95	1.2
Novi Sad	88	318	3.6	47	0.5	174	2.0	97	1.1
TOTAL	410	1475	3.6	248	0.6	812	2.0	415	1.0

Source: MoJ data and WB calculation

⁵⁵⁹ 1,426 judicial assistants and 223 judicial trainees

⁵⁶⁰ Basic, Higher and Appellate PPOs

⁵⁶¹ 267 prosecutor assistants and 107 prosecutor trainees

686. As in previous years, staffing patterns do not generally reflect economies of scale (see figures below). Overall figures at the court level indicate that this approach is consistently in effect in misdemeanor courts only. At the same time, the Higher, Commercial, and to a lesser extent the Basic Courts begin to experience economies of scale as they grow from small to large courts. However, that pattern does not continue as basic courts in Belgrade and Novi Sad grow in size to become very large or high courts grow to a large size.

687. However, the ratio of budgeted employees per judge significantly differs among courts of the same type and size. For instance, in 2019, this ratio ranged from 2.5 to 5.8 among small size misdemeanor courts.⁵⁶²

Figure 140: Ratios of Budgeted Staff Positions to Judges by Court Size in Basic Courts, 2013 and 2019

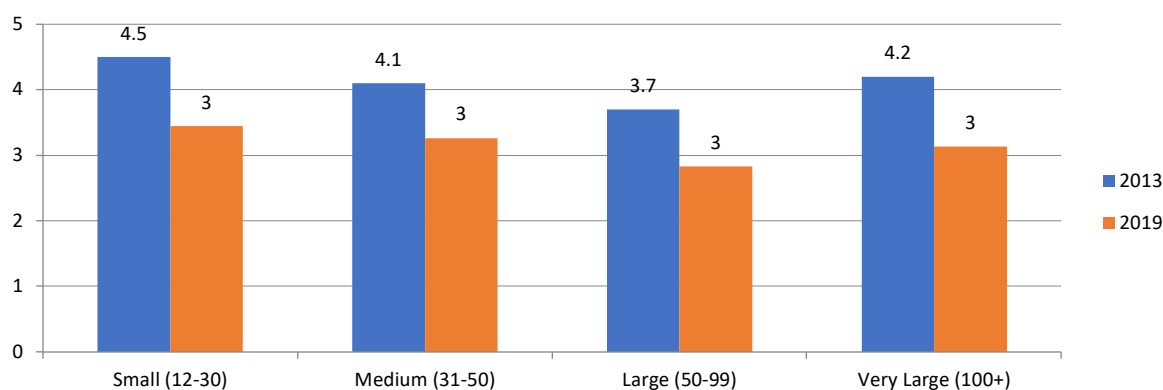
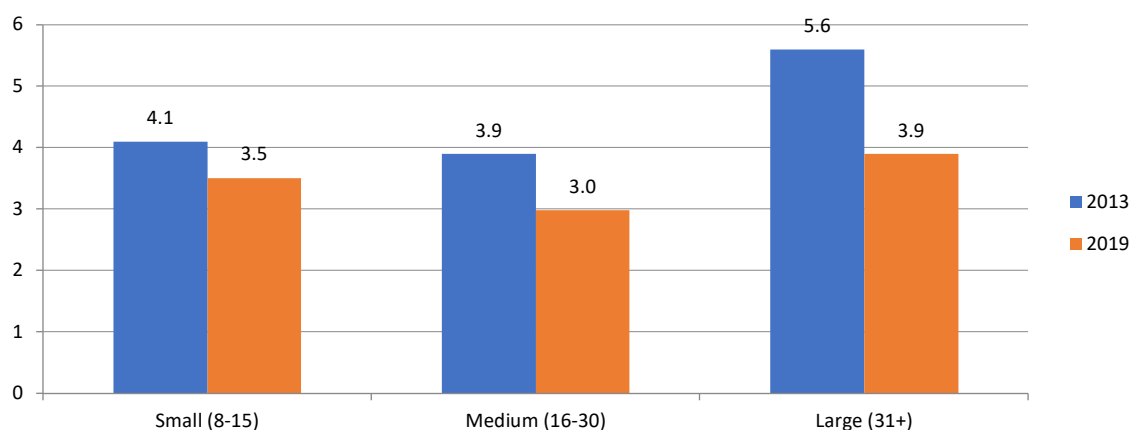


Figure 141: Ratios of Budgeted Positions by Court Size in Higher Courts, 2013 and 2019



688. In PPOs, the number of prosecutor assistants and trainees is defined without taking into account caseloads or the complexity of cases. Moreover, staffing patterns and/or work processes have not been revised to address the introduction of a prosecution-led adversarial system that expanded the roles and responsibilities of prosecution offices and increased their caseloads. According to the Rulebook adopted by the MoJ in 2009, the Basic and Higher PPOs are allowed to have one assistant for

⁵⁶² Up to 15 judge positions

every two prosecutors, while in the Appellate PPOs, the recommendation is for one assistant for every three prosecutors. However, the real ratios are far different, with PPOs enjoying significantly fewer budgeted prosecutor assistants than authorized by legislation⁵⁶³. According to this Rulebook, trainee positions are planned in all Basic and Higher PPOs, but the criteria used to determine the number of these positions in individual PPOs is unknown. Additionally, there were wide variations in the ratio of budgeted trainee positions to prosecutors, ranging from 0.1 to 1.0 in 2019. Prosecutor-trained positions were no longer planned by individual PPOs but by an act adopted by the MoJ⁵⁶⁴.

689. Furthermore, even already budgeted PA positions remain vacant for years – of the total 267 prosecutor assistant positions budgeted in 2019, only 142 were filled. Between 2013 and 2019, the number of filled PA positions dropped significantly⁵⁶⁵ even though the PPOs undertook new responsibilities in this period. The reason for having a significant number of vacant prosecution assistants’ positions remained unclear. Without an objective staffing ratio, it is not possible to determine whether all these vacancies should be filled or funds reallocated to other priority positions, invested in capacity building of the existing staff or ICT and infrastructure projects.

Table 30: Number of Prosecution Assistants, 2019

	Prosecutors and Deputy Prosecutors	Prosecutors Assistants	Allowed Number per Quota Defined by Rulebook	Variation to Quota
RPPO	12	0	5	-5
Appellate Prosecutors	49	3	20	-17
Higher Prosecutors	226	49	124	-75
Basic Prosecutors	481	85	267	-182
Special Prosecutor for Organized Crime	13	0	26	-26
Special Prosecutor for War Crimes	10	5	6	-1

690. As in courts, the average ratio of ancillary staff to core prosecutor staff is high and varies significantly between prosecution types. Table 31 below indicates that the number of case processing positions ranges from 79percent in Basic to 64percent in Appellate PPOs. Compared to 2013 data, the proportion of case-related total staff slightly increased in Higher PPOs only. The lower numbers of ancillary staff in Basic PPOs are mostly due to the fact that these PPOs often share facilities with courts and rely on the services of ancillary court staff (such as cleaners, maintenance staff, etc.).

⁵⁶³ In total, in 2019 PPOs planned for 267 prosecutor assistants instead of 447 positions as authorized by relevant legislation.

⁵⁶⁴ Rulebook on Determining the number of Prosecutors Trainees , Official Gazette no.108

⁵⁶⁵ From 243 prosecution assistants and trainees in 2013 to 151 in 2019 (142 prosecutor assistants and 9 trainees)

Table 31: Ratio of Budgeted Ancillary-to-Core Staff by Type of Prosecutors Office, 2019

	Total Non-Prosecutor Employees	All Case Processing Positions	percent Comprising Case Processing Related	Ancillary Employees	percent Ancillary Employees
RPPO	26	14	54percent	12	46percent
Appellate Prosecutors	80	51	64percent	29	36percent
Higher Prosecutors	400	287	72percent	113	28percent
Basic Prosecutors	785	618	79percent	167	21percent
Special Prosecutor for Organized Crime	51	38	75percent	13	25percent
Special Prosecutor for War Crimes	36	21	58percent	15	42percent
TOTAL	1378	1029	75percent	349	25percent

7.2.3. Extent and Impact of Temporary Staffing

691. The judiciary employs over 1,900 temporary employees, representing 18 percent of the total workforce. Despite the legal requirement that temporary staff shall not exceed 10 percent of the permanent employees in a public authority⁵⁶⁶, an effective mechanism for controlling temporary engagements in courts has not been established.

692. The use of temporaries is extensive in both courts and PPOs, particularly those located in regional city centers. Moreover, the number of employees in certain positions often exceeds budgeted staff figures. For example, the Belgrade Commercial Court planned only 27 judicial assistants, but 56 were working in 2019. Of the total of 41 temporary judicial assistants in this court, one was a substitute for a colleague on leave, and 40 were attributed to ‘increased workload’ even though the number of incoming cases dropped by over 8 percent in 2019. While the total number of permanently appointed judicial assistants rarely exceeds the staffing norm, it seems that their temporary engagement goes largely unplanned.

693. In addition to temporary staff, a large number of interns and volunteers support permanent personnel in courts. This shadow workforce is reported to be extensive, but precise numbers are unknown. Their roles are also unclear, but it is reported that the majority of them perform tasks of judicial assistants. As there is no effective mechanism for performance monitoring of “shadow” workers, their contribution is difficult to assess.

694. Overall, the total number of employees exceeded the 2019 courts’ staffing plan by 10percent (see Table 32 below). Much of the additional labor is focused in the Basic Courts. In 2019, the majority of courts exceeded the staffing complement due to temporary employment. The largest deviations were in the Basic and Commercial Courts, which employed 13percent and 22percent more staff than envisaged by the systematizations.

As CEPEJ has observed, the European trend goes towards professionalization of judges with a decrease in the number of countries using lay judges.

⁵⁶⁶ Law on Maximum Number of Employees in Public Sector, Official Gazette 68/2015 as amended 81/2016 - Constitutional Court Decision and 95/2018.

Table 32: Total Employment Compared to Budgeted Personnel Complement, 2019

Court Type	Budgeted Positions	Vacancies	Permanent Staff (budgeted less vacancies)	Temporary Employees	Total Employees	percent over (under) Budgeted Positions
Basic	4747	540	4207	1174	5381	13percent
Higher	1475	167	1308	211	1519	3percent
Appellate	515	34	481	48	529	3percent
Appellate Commercial	69	1	68	0	68	(1percent)
Commercial	593	60	533	193	726	22percent
Appellate Misdemeanor	174	21	153	18	171	(2percent)
Misdemeanor	1659	121	1538	289	1827	10percent
Administrative	174	50	124	15	139	(20percent)
Supreme Court of Cassation	212	13	199	12	211	0percent
TOTAL	9618	1007	8611	1960	10571	10percent

695. There are also large variations among courts, with some courts hiring significantly more employees than approved by their systematizations (see Table 33 below) and not always in relation to caseload. In total, 67 courts had over 10 percent more staff than envisaged in 2019. In some cases, this seems justified by caseloads, while in others, it does not. For example, Commercial Court Leskovac employed around 28 percent more staff than their budgeted positions in 2019 to cope with a significant increase in the number of incoming cases each year. On the other hand, Misdemeanor Court Zrenjanin exceeded its staffing complement by 12 percent in 2019, notwithstanding a decline in the number of incoming cases in this court. Considering the number of temporary contracts increase each year, further efforts are needed to restrict the unjustifiable use of temporary contracts in the judiciary.

Table 33: Temporary Positions by Court Type, 2019

Court Type	Judicial Assistants			All Other			Total		
	No. of Temp	percent of Approved	High End of Range	No. of Temp	percent of Approved	High End of Range	No. of Temp	percent of Approved	High End of Range
Basic	262	44percent	300percent	912	22percent	58percent	1174	25percent	64percent
Higher	71	29percent	80percent	140	11percent	32percent	211	14percent	33percent
Appellate	32	15percent	24percent	16	5percent	8percent	48	9percent	15percent
Appellate Commercial	0	0percent		0	0percent		0	0percent	
Commercial	66	70percent	152percent	127	25percent	42percent	193	33percent	58percent
Appellate Misdemeanor	5	10percent		13	11percent		18	10percent	
Misdemeanor	36	47percent	300percent	253	16percent	50percent	289	17percent	47percent
Administrative	0	0percent		15	14percent		15	9percent	

Supreme Court of Cassation	0	0percent		12	8percent		12	6percent	
TOTAL	472	33percent	300percent	1488	18percent	58percent	1960	20percent	64percent

Source: MoJ data and WB calculation

696. The use of temporary staff is most acute in Basic and Commercial Courts. Basic courts in the Belgrade appellate region exceeded their staffing complement by around 21 percent, and nearly 30 percent percent of all employees were temporarily engaged in 2019. Commercial Courts in the region of Belgrade employed 32percent more staff than budgeted. There is no correlation between court size and over-budget employment - the most significant over-budget employments occur among courts of different types and size (Table 34, below).

Table 34: Temporary Positions by Type of Position in Basic Courts, 2019

Appellate Group	Judicial Assistants			All Other			Total		
	No. of Temp	percent of Approved	High End of Range	No. of Temp	percent of Approved	High End of Range	No. of Temp	percent of Approved	High End of Range
Belgrade	101	49percent	100percent	426	34percent	58percent	527	36percent	64percent
Kragujevac	51	40percent	150percent	207	20percent	38percent	258	22percent	42percent
Nis	54	52percent	133percent	146	18percent	24percent	200	22percent	33percent
Novi Sad	56	37percent	300percent	140	14percent	34percent	196	17percent	40percent
TOTAL	262	44percent	300percent	919	22percent	58percent	1181	25percent	64percent

Source: MoJ data and WB calculation

697. Temporary staff recruitment procedures have not been developed, and stakeholders report that recruitment practices are neither open nor transparent. Temporary employees and contractors are still hired at the discretion of the Court President, and the absence of procedures opens space for cronyism and influence-trading. Stakeholders also report that many temporaries continue to work for years despite the legislation limited terms of their engagement to one year for civil servants and six months for non-civil servants.

698. The extensive use of temporary staff over the years indicates the system has not stabilized but is still in crisis. The extensive use of contracted staff impacts quality and efficiency as their presence often distracts more experienced staff, their performance goes largely unmonitored, and their use increases the risk of losing institutional memory. Furthermore, staff contracts that are not integrated into the overall resource plan create an unstable working environment as additional efforts are required in building staff knowledge and skills and trigger the need for additional management and training time. Moreover, high numbers of temporary employees usually impact quality and efficiency.

699. The number of temporary employees in PPOs grew each year. There were 480 temporary employees in 2019⁵⁶⁷, compared to 46 temporary staff in 2013. Moreover, PPOs rely on a large number of volunteers as part of a ‘shadow workforce,’ but these data were not available in the course of the analysis.

7.2.4. Use of Lay Judges

700. A significant number of lay judges assist professional judges in Serbian courts. The HJC estimated the need for 2,392 lay judge positions in the judiciary⁵⁶⁸, and Serbia reported to CEPEJ that there were 2,123 lay judges in 2018. The actual number of lay judges is not known for 2019.

701. Current Law on Judges does not delineate the roles and responsibilities of lay judges in court proceedings. In practice, their duties were limited to listening to the proceeding without being engaged in deliberations with professional judges.

702. With recent Constitutional changes, Serbia meets the minimum requirement and definition of a lay judge outlined in the European Charter on Lay Judges⁵⁶⁹ - lay judges would have to “take part in decision-making”. The role of non-professional judges and the appointment procedures vary considerably among countries.

703. As lay judges are not functioning as intended, the need for these 2,000 positions should be reconsidered. The upcoming legislative changes would need to address their new roles and responsibilities in judicial activities should be modified, and their election should be in accordance with objective criteria and in consideration of suitability without political interference.

704. The methods for the selection of lay judges are rather vague – although announcements and formal criteria are published, the selection is left to the discretion of HJC. The Law on Judges specifies that any citizen of Serbia between the age of 18 and 70 at the time of appointment and ‘who is worthy of the function’ may become a lay judge. These generic criteria and lack of transparency in the selection undertaken by the HJC leave room for potential abuses.

705. No induction or ongoing training is provided for lay judges. If a lay judge is interested in a trial, the judge is expected to provide an explanation of the proceedings. Such a practice slows down the efficiency of proceedings. Lay judges should receive properly funded initial and continuing training in order to meet the standards in the European Charter of Lay Judges.

706. Lay judges are entitled to remuneration plus transport costs, but the funds spent specifically for this purpose are not publically available. Although lay judge net remuneration equals only around 3 Euro per hour, this may generate high costs for the system. Assuming that each appointed lay judge is paid for 20 working days per year, the annual cost of their salaries would exceed 1.5 million Euros.

⁵⁶⁷ The data on the number of contractors were not available to the FR Team.

⁵⁶⁸ Decision on the Number of Lay-Judges in Courts, Official Gazette No. 67/2019 as amended 74/2019.

⁵⁶⁹ European Charter of Lay Judges, 11 May 2012, http://www.sed-trading.eu/UEMC/telechargements/LAYJUDGES.European_Charter_20120511-EN.pdf

707. There is a broad consensus among stakeholders that the contribution of lay judges to sector performance is likely to be marginal. The newly granted decision-making role of lay judges creates room for their more effective use and a positive contribution to the delivery of justice. Nevertheless, at least a part of the funds used for their salaries could be reallocated to more effective mechanisms for enhancing transparency, access to justice, and fair treatment of parties.

7.3. Recruitment, Evaluation, and Promotion of Judges and Prosecutors

708. Following the recent adoption of the constitutional amendments, it is expected that the legal framework be thoroughly revised to allow for merit-based judicial recruitments and careers.

7.3.1. Recruitment and Nomination of Judges and Prosecutors

709. Graduation from the Academy is not a mandatory precondition for the initial selection of judges and prosecutors. To comply with a 2013 Constitutional Court decision and CoE principles, the Councils must select Judges and Deputy Prosecutors from both those who have attended the Judicial Academy and those who have not. However, the Law on Judicial Academy stipulates that judges and prosecutors elected for the first time who have not attended the initial Judicial Academy training must undergo a special training program.

710. General and specific requirements for the appointment of judges and prosecutors are stipulated by the Law on Judges and the Law on Public Prosecution. Recruitment and selection procedures require public competition for all positions. The HJC's and SPC's Selection Panels publish invitations to apply and select candidates based on procedures specified by the rulebooks for the assessment of qualifications, competencies, and ethics of candidates. The use of written applications, tests, and interviews as tools to assess applicants strengthens the merit-based selection process. However, the criteria used for evaluation and the award of points both for professional knowledge and competence and for soft skills are unclear, triggering criticisms by both local stakeholders and international partners.

711. Once appointed, Serbian judges and prosecutors cannot be moved either permanently nor temporarily to another court without their consent. Thus, accommodating shifts in workload is very difficult. Over the six-year period, the HJC took 81⁵⁷⁰ decisions to transfer judges permanently from one to another court. Additional 71 decisions⁵⁷¹ were issued for the temporary transfers of judges.

712. Candidates who complete the initial training at the Judicial Academy apply to open positions in Basic and Misdemeanor Courts and Basic PPOs. For those not selected for a judge or deputy prosecutor position, the Councils may approve temporary employment as judicial/prosecution assistant in a court or a prosecution office for a period of up to three years.⁵⁷² As discussed above, these decisions are not made based on workload criteria.

⁵⁷⁰ Annual reports of the SPC and WB calculation.

⁵⁷¹ 60 for transfers from one court to another, five for transfers to Special Departments for Organized Crime and Corruption, and six for transfers to the MoJ, JA and international organizations.

⁵⁷² Article 40, para 9, Law on Judicial Academy.

713. There is no internal nomination process for appointment to higher instance courts and PPOs, and applicants can be from inside or outside the judiciary. Applicants respond to HJC and SPC announcements of open positions; the job requirements and the selection procedure are similar to those for first instance courts and PPOs. Statistical data on the profile of judges appointed from 2013 to 2019 indicates the system gives preference to internal promotions rather than appointing candidates from outside the judiciary.

Table 35: Profile of Judges Appointed in the period 2013-2019

Year	Other Court Judges	Judicial Assistants	Judicial Academy Graduates	Others	Total
2013	77	14	14	1	106
2014	57	44	3	5	109
2015	48	67	6	5	126
2016	40	83	4	6	133
2017	48	2	1	0	51
2018	92	229	45	17	383
2019	117	46	6	7	176
Total	479	485	79	41	1084

Source: HJC Annual Report for 2020

7.3.2. Criteria for the Evaluation and Promotion of Judges and Prosecutors

714. After being piloted in 20 courts in 2014, formal rules for the evaluation of judges and court presidents became effective as of July 2015. The purposes of the HJC’s Performance Assessment Act are improving system efficiency, enhancing the competence and accountability of judges, motivating judges to improve performance, and increasing public confidence in the judiciary. Performance evaluation should also be used as a tool for deciding on the professional career of judges, i.e., for informing decisions on the appointment, obligatory training, and dismissal.

715. The evaluation scale has three levels: extraordinarily successful, successful, and not satisfied, and no marks are given. The evaluation generally covers a three-year period, with annual evaluations for initially appointed judges. Extraordinary assessments are being made upon the decision of the HJC. All performance elements must be evaluated as excellent or satisfactory for satisfactory overall performance.

The Judicial Academy designed a separate training program for staff of the HJC Administrative Office.

716. The Rulebook on Performance Assessment⁵⁷³ was first implemented in 2016. The performance results were considered when deciding on the election of candidates to permanent tenure, and the HJC found all 27 candidates met the performance standards in this first evaluation cycle. For permanent judges, the evaluation rules were first implemented in 2017. The performance evaluations conducted during the three-year period (2017-2019) encompassed 1816⁵⁷⁴ judges, with a total of 1949⁵⁷⁵ regular

⁵⁷³ Adopted by the HJC in July 2014.

⁵⁷⁴ 569 in 2017, 1,093 in 2018 and 154 in 2019.

⁵⁷⁵ 599 in 2017, 1,196 in 2018 and 154 in 2019.

and extraordinary evaluations being made. The HJC Performance Evaluation Committees found 19⁵⁷⁶ judges did not meet minimum performance standards.

717. The assessment criteria contain both quantitative and qualitative elements with standards and targets specified by court type. The performance evaluation system relies heavily on the existence of reliable and accurate statistical data. Productivity norms rely on the number of dispositions per month, with targets specified by case type. For judges having fewer cases than prescribed by monthly norms, the performance evaluations consider the total number of cases assigned to him/her. However, since no case-weighting methodology is in place, the system still lacks a mechanism for discouraging judges from ‘cherry-picking’ simple cases while avoiding complex ones.⁵⁷⁷ The consideration of work quality encompasses the judge’s timely resolution of cases and appellate success rate during the evaluation period.

Table 36: Factors in Judicial Evaluation effective as of July 2015

Criteria	Factor
Quantity	Number of resolved cases in relation to the norm;
Quality	Percent of abolished decisions; Time to draft decisions;

718. The evaluation of court presidents includes aspects of their work as a judge and performance of court administration, but there is only one insufficient indicator for their work as court presidents. That simple numerical indicator is whether there are elements of malfunctioning court administration identified by the immediately superior court president and which were not remedied during the performance period. This is an insufficient performance metric of a court president, which should also include statistical analyses of the disposition rate of judges under his/her supervision and founded complaints from the public about the court’s performance.

719. The rules remained very imprecise about how evaluations are used to determine promotions or discipline judges, with a few exceptions. It is clear that initially appointed judges evaluated as ‘not satisfactory’ cannot be retained in a permanent appointment. For the election of candidates to permanent tenure, an automatic appointment is envisaged for judges who have attained ‘exceptional success’ during probation. For permanent judges applying to open positions in courts of the same or higher instance, the Law on Judges only specifies that ‘an extraordinary evaluation’ of a judge can be conducted but does not discuss how regular performance evaluations will be applied. Concerning performance improvement of individual judges, the procedures specify only that low-performing judges can be mandated to attend training. Further, the Law on Judges specifies that the ‘incompetent’ performance of a judge should lead to his/her dismissal, but without further guidance.

720. The lack of nuance in grading may result in under-performing judges being graded as satisfactory. Judges complained about 96⁵⁷⁸ decisions made by the Performance Evaluation Committees over the three years, and the HJC Appeal Committee revised 85⁵⁷⁹ and confirmed only

⁵⁷⁶ 15 in 2017 and four in 2018.

⁵⁷⁷ A special work group of the HJC prepared first draft of the case-weighting methodology in 2017.

⁵⁷⁸ 44 in 2017, nine in 2018 and 43 in 2019.

⁵⁷⁹ 42 in 2017, nine in 2018 and 34 in 2019.

11⁵⁸⁰ decisions⁵⁸¹. In 2017, for example, of 42 revisions made by the Appellate Committee, 28 initial decisions were changed to extraordinary successful and 14 to successful performance.

721. If the system tolerates under-performance as a satisfactory, substantial effort to develop the performance evaluation system will be undermined. Moreover, such a practice may then discourage well-performing judges and negatively affect motivation and morale within the judiciary. Time will tell whether the system is implemented rigorously for under-performing judges.

722. The evaluations present a significant administrative burden and additional workload for higher instance courts. 44 Performance Evaluation Committees, each comprising three judges, have been established from the court level immediately superior to the judge being reviewed. The Committees must collect and verify the data, perform all the calculations, conduct performance interviews and prepare needed reports for each judge. If judges were evaluated once every three years, around 900 judges would need to be evaluated each year. On average, each Committee would have to undertake around 20 regular evaluation processes annually.

723. Incentives should be built into the performance evaluation system to encourage judges to continually develop knowledge and skills. Training-related criteria should be included to create incentives to improve performance, such as mentoring less-experienced judges, participation in relevant task forces and working groups, introducing obligatory training for promotion to a higher instance, changing a legal area, or becoming head of the judicial authority, etc.

724. The evaluation system would also benefit from building positive incentives for judges to contribute to the judiciary's performance. Such criteria would recognize good behavior and personal attitudes required for career progression. The HJC has yet to consider the 'highly desirable' criteria for career advancement already identified in the 2014 Judiciary Functional Review report⁵⁸², i.e.:

- a) served in at least one court (thus encouraging judges to move locations at least once in their career, which may also foster consistency in practice and procedure and stronger collegiality);
- b) undertook management training (thus encouraging a modern management approach in courts);
- c) undertook continuing training, particularly in European law (thus encouraging increased capacity in line with European standards); and
- d) contributed to performance improvements, such as participating in backlog reduction teams or leading an innovative project within their court.

725. The performance assessment system for Public Prosecutors and Deputy Prosecutors aims to boost organizational and individual advancement in line with EC norms.⁵⁸³ The SPC's draft procedure

⁵⁸⁰ Two in 2017 and nine in 2019.

⁵⁸¹ HJC Annual Reports for 2017, 2018 and 2019.

⁵⁸² Page 297

⁵⁸³ See, for instance, Opinion No. 11 (2016) CCPE – "the CCPE recommends that the evaluation of prosecutors' work be transparent and foreseeable, having been based on clear and previously published criteria, both as regards substantive and procedural rules" so prosecutors can discuss the results of the evaluation, or compare the results to their self-evaluation with the evaluation conducted by their superior.

was piloted in 18 PPOs in 2014, and the Rulebook on Performance Assessment⁵⁸⁴ was first implemented in 2015. The performance results used over the four-year period⁵⁸⁵ were considered when deciding on the election of candidates to permanent tenure or higher instance positions, on temporary transfers or assignment of specific tasks, on initiating dismissal procedures and on obligatory training.

726. Despite the fact that the SPC invested efforts to align its performance evaluation system with CCPE recommendations, the procedures suffered from excessive rigidity and lacked some elements of an effective performance appraisal system. The missing elements included specific quantity standards and targets, self-evaluations, performance feedback, and guidelines on how less-than-optimal performance should be addressed. Thus, instead of having evaluations based on quantitative criteria that applied to all PPOs at the same level, the quantity of work was scored based on the number of cases allocated to and resolved by a prosecutor, without taking into account the caseloads of other prosecutors in the PPO or the jurisdictional average. Further, the performance rating system based on the number of cases allocated to and resolved by a prosecutor introduced considerable subjectivity in the evaluation process. This was particularly true since there was (and is) no automated system for the distribution of cases. The rules also were not clear about how evaluation ratings could be used to make decisions about probation, promotion, and discipline and did not include criteria that create incentives to improve performance.

727. For both the HJC and SPC performance evaluation rules, the procedures should be reviewed to incorporate lessons learned from the implementation and ensure further alignment with directions provided by their European colleagues. If designed and implemented properly, the performance evaluation system may strengthen the judicial system's performance.

7.4. Training

728. Pursuant to the law, the Academy delivers special mandatory in-service training for judicial and prosecutor assistants and trainees. There are also voluntary training programs organized by experience levels and staff categories, some of which are done for administrative staff.⁵⁸⁶

729. The prosecution offices reported that there were few management-related courses offered by the JA at all in 2014-2016⁵⁸⁷. Moreover, there were no management training specifically for Public Prosecutors, although the Academy provides a specific management training program for court presidents. Prosecutor assistants primarily took courses relating to core prosecutorial functions, but they also participated in management training. Training for other staff usually focused on technical skills and financial issues. In 2016, a total of 40 Public Prosecutors and Deputy Public Prosecutors participated in some form of training. Training statistics for PPOs were not available for other years, and no data on training organized for judges and court staff were available to the Functional Review Team.

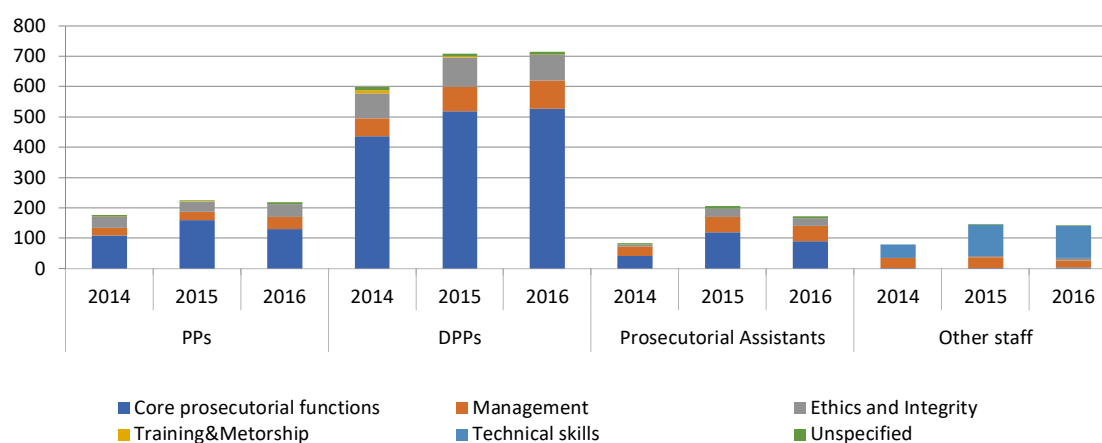
⁵⁸⁴ Adopted by the SPC in May 2014

⁵⁸⁵ 2016-2019

⁵⁸⁶ For instance, in 2016, a separate training program was organized for public relations officers in prosecution offices.

⁵⁸⁷ Such as general management, financial management, human resources, communication, cooperation with other authorities, improving quality of the judicial system, freedom of information, personal data protection, leak information, etc.

Figure 142: Number of Trainees by Area of Training and Category of Staff in PPOs, 2014-2016



Source: Data provided by PPOs and WB calculation

730. Capacity enhancement of the HJC and SPC has been supported by the Judicial Academy, National Academy for Public Administration, and technical assistance projects, but it seems they are not ready yet for undertaking new responsibilities. The Professional Development Plan for Employees of the Administrative Office of the HJC for the period 2020–2022⁵⁸⁸ represents an intention of the HJC to apply a strategic approach to improve the functioning of the Administrative Office. This training plan considers the training needs of each individual staff member and also includes courses on strategic planning and management issues.

7.5. Salary and Benefit Structure for Judges, Prosecutors, and Staff

731. Compared to Serbia’s national average salary, judges and prosecutors in Serbia are paid on a par with their EU counterparts, however, in the observed period, there is a decline in the salaries of judges and public prosecutors in Serbia compared to the national average salary. In relation to the 2018 average salary in the country, the salaries of judges ranged from 2.1 times higher than the average salary at the first instance and 5.0 times higher at the Supreme Court level, however, in 2020 that ratio was reduced and the salaries of first-instance judges were 1.9 times higher, and in the highest instance 1.9 times. Among EU member countries, these indicators ranged from 1.0 to 6.8 at early career stages and from 1.6 to 6.4 at the highest instance⁵⁸⁹. Salaries of prosecutors were also within the range of EU Member States monitored by the CEPEJ. In 2018, Serbian prosecutors earned 2.4 times more than the national average in Basic and 4.6 times in the highest PPOs. As with judges, public prosecutors also

Despite the HJC AO demonstrates a commitment to providing training for its staff, the approach to training should be more systematic. The World Bank assessment of the HJC AO training needs implemented in late 2017, found the training for HJC staff has concentrated on the fundamentals of information technology and English language skills, finance, communications, and public procurement and substantive law (data privacy, law on protection of personal data, administrative proceedings), with a little focus being placed on professional development that would help the HJC excel in the strategic duties envisioned for it, namely in strategic planning, performance management linked to budgeting, process reengineering, IPA project management/monitoring, international cooperation, and general management.

⁵⁸⁸ Developed with the support of IPA 2016 project Support to HJC.

⁵⁸⁹ CEPEJ 2022 Report (2020 data).

perienced a decline in 2020, so the first-instance public prosecutors earned 2.2 times more than the national average salary, while the highest-instance public prosecutors earned 3.4 times more. Among the member countries of the Council of Europe, CEPEJ reported⁵⁹⁰ these indicators ranged from 1.0 to 4.1 at early career stages and from 1.7 to 6.6 at the highest instance.

732. Since 2012, the salaries of Serbian judges and prosecutors have decreased both in real terms and in relation to the average salary in the country. Such decreases have been common in countries where the 2008 financial crisis was significant. In addition, a one-time 10 percent decrease in public sector salaries was in effect from November 2014 to November 2017⁵⁹¹. The relative salaries of Serbian judges and prosecutors also were affected by national average salary increases and a high variation in the exchange rate, in particular between 2012 and 2014. By 2018, however, their salaries had almost reached the 2012 levels.

733. Non-salary compensation⁵⁹² should be monitored. On average, “other compensation” equaled only 3 percent of judges’ salaries throughout the observed period. However, the share of other compensation to salary was as high as 9 percent at the appellate level in 2015. As “other compensation” could relate to a range of compensations, these should be further examined and regulated as to prevent favoritism.

Table 37: Share of ‘Other-compensation’ to a Judge Salary by Court Type, 2013-2019

Court Type		Basic Courts	Higher Courts	Appellate Courts	Commercial Courts	Misdemeanor Court
Other Compensation as Share of Net Salary	2013	3percent	3percent	8percent	3percent	3percent
	2014	3percent	2percent	8percent	3percent	3percent
	2015	3percent	3percent	9percent	2percent	3percent
	2016	3percent	2percent	8percent	2percent	3percent
	2017	3percent	2percent	6percent	2percent	4percent
	2018	3percent	3percent	6percent	4percent	4percent
	2019	3percent	2percent	5percent	2percent	3percent
Range of Other Compensation as Share of Net Salary	2013	1-6percent	1-18percent	3-16percent	0-12percent	0-12percent
	2014	0-11percent	1-6percent	3-17percent	1-15percent	0-12percent
	2015	0-8percent	1-7percent	3-19percent	1-3percent	0-9percent
	2016	0-9percent	1-6percent	3-20percent	1-5percent	0-9percent
	2017	0-41percent	1-6percent	3-12percent	1-4percent	1-17percent
	2018	0-9percent	1-7percent	3-10percent	1-10percent	0-13percent
	2019	1-8percent	1-6percent	3-8percent	1-4percent	1-7percent

734. As in most European jurisdictions, the salaries of Serbian prosecutors correspond to the salaries of judges. They have the same salary structure, with the same factors influencing their salaries. As there

⁵⁹⁰ CEPEJ 2022 Report (2020 data).

⁵⁹¹ Law on Temporary Rules for Calculation and Payment of Basic Salaries and Other Permanent Incomes for Users of Public Funds, Official Gazette No. 116/2014 as amended 95/2018.

⁵⁹² Other than salary or social benefits, such as severance pays for layoffs and retirement, sick leave payments, education of employees’ children, providing housing to employees, supplements for meals and refreshments, transport costs, etc.

is no clear guidance on the use of non-salary compensation, some PPOs reported no expenses in this category, while in others, it represented as much as 28 percent⁵⁹³ of a prosecutor's salary in 2015.

Table 38: Share of 'Other-compensation' to a Prosecutor Salary by PPO Type, 2013-2019

Prosecutors Level		Appellate Prosecutors	Higher Prosecutors	Basic Prosecutors
Other Compensation as Share of Net Salary	2013	17percent	5percent	6percent
	2014	13percent	3percent	3percent
	2015	14percent	3percent	3percent
	2016	13percent	3percent	3percent
	2017	11percent	3percent	3percent
	2018	11percent	3percent	3percent
	2019	9percent	3percent	3percent
Range of Other Compensation as Share of Net Salary	2013	1-18percent	1-18percent	1-18percent
	2014	6-24percent	0-6percent	0-12percent
	2015	6-28percent	0-7percent	0-11percent
	2016	7-22percent	0-11percent	0-12percent
	2017	5-19percent	0-9percent	0-12percent
	2018	5-18percent	0-12percent	0-11percent
	2019	3-18percent	0-11percent	0-8percent

Source: SPC data and WB calculation

735. The salaries of administrative staff in courts and PPOs are regulated by the law applicable to all civil servants, but the wide variation in non-salary compensation indicates inconsistent implementation of the provisions of the salary law. However, a separate analysis of salaries by categories of the administrative staff seems to be useful as stakeholders reported their salaries rarely reach the national average. The salary is composed of a basic salary (fixed compensation for regular work calculated by multiplying the coefficient foreseen for specific categories of jobs⁵⁹⁴, with their value set by the Government on an annual basis⁵⁹⁵) and⁵⁹⁶ supplements, such as the one for years of service. Additional payments can be made for the performance of additional duties, overtime work, on-call duty, and work on public holidays. There are wide variations in non-salary compensations to salary, ranging 0-33percent among courts and 0-29percent among PPOs.

⁵⁹³ Appellate PPO in Novi Sad.

⁵⁹⁴ Salary coefficients are organized by rank and range from 1.4 for junior clerks to 5.57 for senior advisor positions. Salary coefficients for judicial and prosecutor assistants range from 1.9 for associates to 5.57 for senior advisor positions. Trainees, as a separate staff category, are entitled to 80 percent of the lowest basic salary for a judicial/prosecutor assistant position.

⁵⁹⁵ Since 2017, the coefficient value for civil servants working in the judiciary has been higher than the value for those working in the authorities of the executive. The figure for 2017 was approximately 5 percent.

⁵⁹⁶ In 2016 the new Law on Salaries in Public Sector was adopted with the aim to unify the system of salaries in public sector. However, the implementation of this law has been postponed several times with the current start date of January 1st, 2025.

Table 39: Share of 'Other-compensation' to Salary of Non-Judge Staff, 2013-2019

Court Type		Basic Courts	Higher Courts	Appellate Courts	Commercial Courts	Misdemeanor Court
Other Compensation as Share of Net Salary	2013	18percent	18percent	18percent	18percent	18percent
	2014	19percent	15percent	12percent	16percent	19percent
	2015	19percent	15percent	12percent	15percent	19percent
	2016	21percent	16percent	13percent	18percent	20percent
	2017	22percent	17percent	13percent	19percent	21percent
	2018	19percent	15percent	11percent	17percent	19percent
	2019	17percent	13percent	10percent	14percent	16percent
Range of Other Compensation as Share of Net Salary	2013	NA	NA	NA	NA	NA
	2014	0-33percent	11-24percent	9-16percent	12-21percent	3-27percent
	2015	12-27percent	12-22percent	9-15percent	0-22percent	12-28percent
	2016	13-29percent	12-23percent	9-16percent	12-23percent	10-28percent
	2017	11-31percent	12-22percent	9-17percent	12-21percent	15-30percent
	2018	NA	NA	NA	NA	NA
	2019	12-22percent		7-12percent	10-17percent	10-21percent

Source: MoJ data and WB calculation

Table 40: Share of 'Other-compensation' to Salary of Non-Prosecutor Staff, 2013-2019

Prosecution Type		Appellate PPOs	Higher PPOs	Basic PPOs
Other Compensation as Share of Net Salary	2013	NA	NA	NA
	2014	NA	NA	NA
	2015	NA	NA	NA
	2016	19percent	19percent	20percent
	2017	16percent	17percent	20percent
	2018	16percent	17percent	18percent
	2019	3percent	3percent	3percent
Range of Other Compensation as Share of Net Salary	2013	NA	NA	NA
	2014	NA	NA	NA
	2015	NA	NA	NA
	2016	16-21percent	14-24percent	14-27percent
	2017	10-23percent	11-24percent	14-29percent
	2018	NA	NA	NA
	2019	2-4percent	0-6percent	0-14percent

Source: MoJ data and WB calculation

736. Performance bonuses are envisaged by the salary law, but not as one-time payments, and are rarely used to promote performance. The bonus scheme is linked to the performance assessment system, allowing for promotion to a higher salary grade. The Serbian system provides additional compensation based on performance for exceptional performers and those who meet expectations, although bearing in mind the differences between these two. However, these pay-for-performance

provisions are not used extensively in the judiciary or the rest of public service due to budgetary constraints.

7.6. Support Staff Planning and Utilization

7.6.1. Human Resource Systems for Court and PPO Staff

737. The MOJ retains responsibility for the internal organization of courts and PPOs, for the use and number of civil servants and state employees, and for staff salaries.

738. The books of rules for courts and PPOs have been amended a few times since 2013. The rules revisions were organized under the leadership of the MoJ, and key stakeholders were consulted. These revisions were primarily motivated by the need to improve statistical reporting. In a positive step, however, courts are enabled to exchange digital documents.

Some interviewees indicated that a significant number of volunteers were working in courts and prosecution offices. However, data about their numbers were not available in the course of this analysis.

739. The responsibilities for human resources management of non-judge/non-prosecutor staff are split between the MoJ and Court Presidents/Heads of PPOs. Civil service policies and procedures apply to staff working in courts and PPOs, with some specific procedures applicable to the judiciary by the MoJ and HJC/SPC. Thus, MoJ develops methodologies for determining the number of needed staff and recruitment and selection procedures for all staff and HJC/SPC design criteria for performance evaluation of judicial/prosecutor assistants only. The responsibilities for implementation lie with Court Presidents/Heads of PPOs (planning, selection, assignment, performance assessment, promotion, and termination), with the exception of trainees, where the MoJ decides the number of trainees in each court and PPO and prescribes the selection procedure, while the Judicial Academy conducts the selection process.

740. Court Presidents and Heads of PPOs do not have full autonomy in planning their staff and deciding on new employees. When developing staffing plans, courts and PPOs are required to anticipate the needs for additional employment in the following year, but they also must obtain approval of the plans from the MoJ and MoF. The staffing plan comprises information on planned staff, filled positions and contractors engaged for a definite period, and the need for additional staff, both permanent and temporary. The data are organized by types of positions⁵⁹⁷ and ranks⁵⁹⁸ and education levels.

741. Hiring for positions in courts and PPOs remained excessively rigid. Prior consent of the MoJ is required to fill even those positions already in an approved staffing plan. In addition, MoJ and MoF approval is required to add non-budgeted positions, even if the funds are available within the salary budgets of the relevant court or PPOs.

⁵⁹⁷ Appointed civil servants, civil servant and state employees.

⁵⁹⁸ Five levels/grades for appointed civil servants; eight ranks for civil servants (senior advisor, independent advisor, advisor, junior advisor, associate, junior associate, clerk, junior clerk), and six levels for state employees.

742. The roles of judicial and prosecutor assistants, a position critical to court and PPO performance, are specified by legislation, but the level of assistants' autonomy in performing the duties is decided by their immediate supervisors and varies widely. By the Law on Organization of Courts⁵⁹⁹, judicial assistants are supposed to assist judges by drafting judgments, analysis of legal issues, researching court practice and legal literature, drafting legal opinions, etc. The Law on Public Prosecution⁶⁰⁰ specifies that prosecutor assistants assist the Public Prosecutors and Deputy Public Prosecutors in drafting acts, recording complaints and submissions, taking statements of citizens, etc.

743. Many trainees and volunteers are reported to work in courts and PPOs (but, as discussed above, the number is unknown) as part of their preparation for the bar exam. In practice, they perform the same tasks as the assistants. Most volunteers are law faculty graduates completing their two-year *stage* period before they take the bar exam. However, volunteers are not entitled to financial compensation, while trainees receive 80percent of the basic salary of a judicial/prosecutor assistant and enjoy all labor rights as permanent staff⁶⁰¹.

744. As of mid-2020, uniform position-specific methods for recruitment or promotion of non-judge and non-prosecutor staff in the courts and POs had not been developed. This is despite the fact that, in late 2018, the Government decided to implement a competency-based approach to hiring and promotion of civil servants.⁶⁰² Like all other state authorities, courts and PPOs were required to amend job descriptions by specifying the required knowledge, skills, abilities, and attitudes and applying competency-based staff selection and performance assessments.

745. Although the Civil Service Law passed in 2005 calls for management by results, there is little evidence that employee performance assessment systems have been properly applied. Although Court Presidents and Heads of PPOs followed standard procedure and regularly completed performance evaluation forms for their staff,⁶⁰³ no analysis has been conducted to review these evaluations or assess how those affected any decisions on promotion, performance bonuses, compulsory training, etc.

746. An appropriate implementation of the performance assessment system can boost individual advancement and system performance. Evaluation can be a valuable tool to help employees improve their skills or advance in their jobs by identifying training needs or development assignments. On the other hand, skilled and motivated staff can contribute to priority efforts such as backlog reduction or innovation in case processing.

⁵⁹⁹ Article 58

⁶⁰⁰ Article 119

⁶⁰¹ Articles 65 to 67 of the Law on Organization of Courts (Official Gazette No. 116/2008 as amended 104/2009, 101/2010, 31/2011 – other law, 78/2011 – other law, 101/2011, 101/2013, 40/2015 – other law, 106/2015, 13/2016, 108/2016, 113/2017, 65/2018 - Constitutional Court Decision, 87/2018, 88/2018 - Constitutional Court Decision) and Articles 119 to 124 of the Law on Public Prosecution (Official Gazette, No. 116/08 as amended 104/2009, 101/2010, 78/2011 – other law, 01/2011, 38/2012 – Constitutional Court decision, 121/2012, 101/2013, 111/2014 - Constitutional Court decision, 117/2014, 106/2015 i 63/2016 - Constitutional Court decision); Article 47 and 109 of the Labour Law (Official Gazette, No. 24/2005 as amended 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - Constitutional Court decision and 113/2017); Article 2 and 10 of the Volunteering Law (Official Gazette, No. 36/2010).

⁶⁰² Law on Changes and Amendments of the Law on Civil Servants, Official Gazette No.79/2005 as amended 81/2005, 83/2005, 64/2007, 67/2007, 11/2008, 104/2009, 99/2014, 94/2017 and 95/2018 .

⁶⁰³ The immediate supervisors of judicial and prosecutorial assistants draft proposed evaluation forms.

747. The staffing plan for the Councils lacks the needed specialization. For instance, HJC employs one statistician for all data analyses needed, while the SPC has not even planned for such a position. The human resources staff in both HJC and SPC focuses only on their internal needs and primarily performs administrative duties.

7.6.2. Division of Labor between Judges and Support Staff

748. A heavy administrative burden impacts the ability of Court Presidents and Heads of PPOs to focus on case management and other substantive management issues. Revisions of the books of rules have not reflected the need to re-engineer business processes in courts and PPOs to ensure work is effectively assigned or relieve judges and prosecutors of administrative tasks where possible.

749. Effective allocation of duties to staff in preparatory departments would ensure more efficient use of the judges' and prosecutors' time, as well as the assistants' capacity and more consistent decision making. The legislation provides that these departments be established in larger courts⁶⁰⁴ and PPOs⁶⁰⁵. According to the information presented in reports on the organization and operation of individual courts⁶⁰⁶, these departments are rarely established – e.g., only 11⁶⁰⁷ basic and five⁶⁰⁸ higher courts have established preparatory departments.

750. The system would benefit from more effective use of existing human resources. The legislation provides that preparatory departments be established in larger courts⁶⁰⁹ and PPOs⁶¹⁰. An effective allocation of duties to staff in these departments would ensure more efficient use of the judges' and prosecutors' time, better utilization of the assistants' capacities, and provide more consistent decision-making.

751. Courts and PPOs generally need more staff in analytical functions as analysis needs are increasing in scale and complexity. Very few courts⁶¹¹ and PPOs⁶¹² employ analytical staff outside finance and ICT functions. Considering the specialized skills required for these functions, these staff will likely have to be recruited from outside the judiciary.

752. Court Presidents and Heads of PPOs take direct responsibility for human resource management and labor relations without sufficient staff support. Court secretaries and human resource specialists, where they exist, can assist them in the performance of these tasks. Where they do not exist in larger

⁶⁰⁴ Court Rules of Procedure states that that court departments shall be established in courts with a greater number of court chambers or individual judges proceeding in the same legal area.

⁶⁰⁵ Rulebook on PPO Administration stipulate that departments shall be established in PPOs with a greater number of deputy public prosecutors, in PPOs that cooperate with different courts or with the same court but in different legal areas.

⁶⁰⁶ So-called "Informator o radu".

⁶⁰⁷ Eight small, two medium and one larger sized basic court.

⁶⁰⁸ Three small and two medium sized higher courts.

⁶⁰⁹ Law on Organization of Courts states that that court departments shall be established in courts where several chambers or individual judges proceed in the same legal area.

⁶¹⁰ Rulebook on PPO Administration stipulate that departments shall be established in PPOs with a greater number of deputy public prosecutors, in PPOs that cooperate with different courts or with the same court but in different legal areas.

⁶¹¹ In 2019, by two employees in the Supreme Court of Cassation and Belgrade Higher Court, and by one in the Administrative Court, Appellate Misdemeanor Court, Appellate Courts in Belgrade and Nis, Belgrade First Basic Court and Misdemeanor Courts in Zrenjanin and Cacak.

⁶¹² In 2019, by one employee in Belgrade First, Second and Third Basic PPO and Belgrade Higher PPO.

institutions⁶¹³, they should be created to allow Court Presidents and Heads of PPOs to focus on strategic management.

753. Courts and PPOs rarely employ specialist staff in a human resource management function. Where they are in place, they focus on clerical duties rather than substantive human resource management issues. Moreover, a majority of institutions did not even envisage a need for these positions⁶¹⁴.

Table 41: Human Resources Staff by Court Type, 2013 and 2019

Court Type	Number of HR Staff		Average HR Staff per Court		HR as a percent of Judges & Staff	
	2013	2019	2013	2019	2013	2019
Basic Courts	18	21	0.3	0.3	0.2percent	0.3percent
Higher Courts	3	5	0.1	0.2	0.1percent	0.3percent
Appellate Courts	5	5	0.8	1.3	0.6percent	0.7percent
Commercial Courts	1	2	0.1	0.1	0.1percent	0.2percent
Misdemeanor Courts	4	5	0.1	0.1	0.2percent	0.2percent

Source: MoJ and HJC data and WB calculation

7.6.3. Deployment and Use of Court Managers

754. Court Managers are civil servants with the highest salary in the judiciary; the deployment of court managers is considered an international best practice.

755. Using Court Managers for strategic planning, analytical, and general administration functions would assist the courts in becoming more efficient and free Court Presidents to focus on strategic management. However, the Court Book of Rules specifies their tasks to be primarily financial management, procurement, and management of facilities.

756. There is limited use of Court Managers, and their number decreased from 2014 to 2019. Of the 23 courts authorized to employ Court Managers, only eight budgeted for this position and seven filled the position. There was no discernible pattern in the size of courts or locations that have decided to budget for or hire a Court Manager. All of the current Court Manager positions are classified as senior or independent advisors, requiring five to seven years of prior experience. Some stakeholders noted that finding qualified people in certain geographical areas has proven difficult.

Table 42: Courts with Court Managers, 2014⁶¹⁵ and 2019

Court Type	Existing Court Manager Positions		Additional Eligible Courts	
	2014*	2019**	2014*	2019**
Basic	2 (Belgrade First, Novi Sad)	2 (Belgrade First, Novi Sad)	11	8
Higher	2 (Belgrade, Nis)	1 (Belgrade)		1
Appellate	4 (all)	1 (Novi Sad)		3

⁶¹³ Nis Basic PPO.

⁶¹⁴ In 2019, HR positions did not exist in 133 of the total of 162 courts; among PPOs, 80 of 90 PPOs did not have HR positions.

⁶¹⁵ Table 36, Page 307 of the Serbia Judicial Functional Review, October 2014.

Appellate Commercial			1	1
Commercial	1 (Nis)	2 (Belgrade, Nis)	1	-1
Appellate Misdemeanor		1		
Misdemeanor	1 (Belgrade)	1 (Belgrade)		1
Administrative			1	1
Supreme Court of Cassation			1	1

*All courts with more than 30 judges or which manage a facility.

**All courts with more than 30 judges, appellate and courts with state level jurisdictions

7.6.4. Planning for the Future

757. The Serbian judiciary is now facing an ‘aging’ problem. By 2024, some 17percent of judges will meet age requirements for retirement. To deal with these aging workforce challenges, it is necessary to conduct an analysis of the likely judge turnover and design an age management policy. Precise data on the age structure of the prosecutors and of court presidents was not available to the FR team.

Table 43: Age of Judges, 2019

	Up to 39	40-49	50-59	Over 60	Total
Judges	321	752	1164	466	2703

Source: HJC Annual Report for 2019

758. For a cohort of judges in the younger and middle-age segments, the system should provide continuous training and career progression opportunities. Progression makes the most of the knowledge and skills already available within the system and can be an alternative to the costly and difficult task of hiring for key roles.

759. In order for judges to be employed where there is the greatest need, it is necessary to develop and adopt a clear and transparent methodology to determine the needed number of judges. According to the data presented in the Annual Report on the Work of All Courts for the year 2019⁶¹⁶, there were 319 vacant judge positions or approximately 11 percent of the total number of judge positions. Based on the methodology, it needs to be determined whether all vacancies need to be filled and whether there is a need for judges in some of the courts that do not have vacancies, in order to ensure an even workload for judges and courts.

760. Unlike the courts, the number of prosecutors per 100,000 inhabitants reached the EU28 average in 2018 but was still far lower than the EU11 average. With the increased number of prosecutors in the system, the staff-to-prosecutor ratio dropped. However, a relatively high staff to prosecutor ratio indicates the need to impose a staff hiring freeze on non-prosecutors. This is also supported by findings of the analysis on how staffing did not assist the productivity of PPOs in the observed period – high total or case-related staff-to-prosecutor ratios did not guarantee high productivity⁶¹⁷.

⁶¹⁶ Page 2 of the Annual Report on the Work of Courts in 2019 published by the Supreme Court of Cassation.

⁶¹⁷ Pages 123 and 124 of the WB Functional Review of the Prosecution System in Serbia, January 2019.

761. Assessments of future needs for non-judge and non-prosecutor employees also need to be considered carefully as to ensure an appropriate staffing mix in courts and PPOs. Assistants are a particularly valuable resource, and these are the positions to be considered for filling as turnover occurs.

762. Initial training for judges and prosecutors elected for the first time need not be prioritized. Besides, further investments should be made in intensive continuing training of the existing cadre, including the non-judge and non-prosecutor staff.

763. Personnel tracking in courts and PPOs represents a challenge due to divided HRM responsibilities between authorities and the lack of an automated personnel tracking system. The HJC has developed such a system for judges and is focused now on ensuring the data are regularly updated. Conversely, the data on prosecutors and non-judge and non-prosecutor staff are still collected manually.

764. The HR information system should assist implementation of a strategic approach to human resource management. Such a system should be used for planning and managing overall resource needs in the system and encompass the needs of all authorities involved in HR functions.

7.6.5. Gender Equity in Employment in the Serbian Judiciary

765. According to the CEPEJ, Serbia is in the group of countries that reported the highest percentage of women in the judiciary. According to the 2018 data submitted to the CEPEJ by Serbia (see Table 44 the proportion of women is greater than men among both court presidents and judges. Figures on gender distribution by court instance show more female than male professional judges at all levels and a nearly equal number of women and men in Court President positions at first and second instance courts. Compared with 2013⁶¹⁸, the proportion of women in both court president and judge positions increased significantly in second-instance courts.

Table 44: Gender Distribution of Court Presidents and Judges, Serbia and EU28⁶¹⁹

Serbia	Court Presidents	55percent	17percent	Court Presidents	EU28
	1st Instance	55percent	47percent	1st Instance	
	2nd Instance	50percent	50percent	2nd Instance	
	Supreme Courts	0percent	0percent	Supreme Courts	
	Professional Judges	71percent	60percent	Professional Judges	
	1st Instance	70percent	63percent	1st Instance	
	2nd Instance	78percent	59percent	2nd Instance	
	Supreme Courts	61percent	39percent	Supreme Courts	

Source: CEPEJ 2018 data and WB calculation

⁶¹⁸ Tables 37 and 38, Page 309 of the Serbia Judicial Functional Review, October 2014.

⁶¹⁹ CEPEJ EU Justice Scoreboard 2020 based on 2018 data.

766. Many more women than men are employed as non-judge court staff, comparable to the situation in the EU member states. According to the 2018 data submitted to CEPEJ (see Table 45), over 70 percent were women, and they represented a majority in almost all staff categories.

Table 45: Gender Distribution of Non-Judge Staff, Serbia and EU28⁶²⁰

Serbia	Non-judge staff	71percent	78percent	Non-judge staff	EU28
	Case related staff	81percent	81percent	Case related staff	
	Other staff	33percent	70percent	Other staff	

Source: CEPEJ 2018 data and WB calculation

767. Gender equity in the Serbian prosecutorial system compared well with European benchmarks. However, the percentage of women was somewhat lower at higher levels of the prosecutorial system.⁶²¹

768. In 2018, Serbia had more female than male prosecutors (56 to 44 percent), but significant variations occurred among prosecution offices. There were more female Deputy Public Prosecutors only at the first instance level, and women represented the minority in managerial positions at all levels.

Table 46: Percentage of Women in Leadership Positions in the Prosecution System, Serbia and EU28 (CEPEJ data for 2018)⁶²²

Serbia	Heads of Prosecution Offices	41percent	40percent	Heads of Prosecution Offices	EU28
	1st Instance	41percent	41percent	1st Instance	
	2nd Instance	25percent	37percent	2nd Instance	
	Highest instance	100percent	42percent	Supreme Courts	
	Prosecutors	56percent	55percent	Prosecutors	
	1st Instance	57percent	56percent	1st Instance	
	2nd Instance	40percent	47percent	2nd Instance	
	Supreme Courts	50percent	47percent	Supreme Courts	

Source: CEPEJ 2018 data and WB calculation

769. The 2020 CEPEJ Report noted that only a few countries apply specific measures in favor of gender parity in recruiting and promotion of judges and prosecutors. In Serbia, as in most EU countries, there are only general provisions or mechanisms aimed at avoiding gender discrimination. Therefore, Serbia should develop a policy that would effectively take gender into account, such as to ensure gender equality in access to higher positions and encourage other judicial professions (such as public notaries and enforcement agents) to implement more favorable recruitment, and promotion, and working conditions for women, etc.

⁶²⁰ CEPEJ EU Justice Scoreboard 2020 based on 2018 data.

⁶²¹ CEPEJ EU Justice Scoreboard 2020 based on 2018 data.

⁶²² CEPEJ EU Justice Scoreboard 2020 based on 2018 data.

7.7. Recommendations and Next Steps

The majority of the recommendations from the 2014 Functional Review Report are still valid. In a positive move, Serbia developed systems for performance evaluation and discipline of judges and prosecutors and judicial and prosecutor assistants that provided a framework for measuring performance. Both systems need strengthening.

Recommendation 1: Fully implement a human resources strategy for the justice sector.

- Harmonize standards and regulations for hiring, promotion, and disciplinary procedures across the agencies that provide judicial services. (HJC, SPC, SCC – medium term)
- Develop clear and transparent methodology for determining the necessary number of judges/public prosecutors that will be applied to the future employment. (HJC, SPC – short-term)
- Analyze the age structure of judiciary when determining staffing policy and use attrition for equal distribution of judges/public prosecutors and equal workload. (HJC – medium-term and ongoing)
- Work within the budget process to reallocate funding for unfilled judicial positions to other priority expenditures, such as investments in a managerial capacity, training, ICT upgrades, and infrastructure improvements. (HJC, SPC, MOJ with approval of MOF – medium-term)
- Request the consent of existing judges/prosecutors to be appointed as substitute judges/prosecutors in courts and PPOs of the same jurisdiction within the same appellate region. Transfer judges/prosecutors temporarily with their consent, where needs arise. (HJC, SPC – medium-term)
- Establish a rigorous and transparent methodology at the central level to determine the number of judges/prosecutors needed, taking into account, inter alia, geography, demand for court services, demand by case type, population, domestic legal requirements, recent reforms to court and PPO mandates, and the experience of comparator EU Member States. (HJC, SPC – medium-term)

Recommendation 2: Determine non-judge/non-prosecutor staffing objectively and in line with European experience, and adjust staffing when circumstances change. Reduce temporary employees, volunteer, and contract ('shadow') staff.

- Analyze non-judge/non-prosecutor staffing needs in the courts and PPOs based on caseload and economies of scale. Examine outliers to identify immediate staff reductions longer-term through attrition. (HJC, SPC, MOJ – short-term)
- Develop a staff optimization program in the courts and PPOs, focusing on rationalizing staff in accordance with the changing mandates of courts and PPOs (i.e., targeting redundancies of bailiffs, verification staff, etc.) and reducing or outsourcing ancillary staff whose roles do not contribute to case processing (cleaners, drivers, maintenance staff, etc.). (HJC, SPC, MOJ – short-term)
- Strictly limit reasons for hiring temporary or contract employees. Standardize qualifications and procedures for hiring temporary employees. Standardize reporting on numbers, roles, and costs of the contract or temporary workforce. (MOJ, PPOs, Courts – short-term)
- Enforce legal requirements that temporary or contract labor be limited to 10 percent of an institution's workforce and to six months (non-civil service) or one year of employment. (MOJ – short-term)
- Reexamine all volunteer appointments in courts and PPOs. (HJC, SPC – short-term)

- Create formulas for determining funds and the number of case processing staff per judge and administrative staff based on units of work (e.g., the standard number of ICT people per device supported). Establish transparent justifications for deviations from the staffing levels set in the standards. Address staffing levels of administration and public employees in the medium-term. (MOJ, HJC, and SPC – short to medium-term)
- Create a more sophisticated staffing needs/norms model considering the impact of statutory, administrative, or technological changes on staff needs. Learn from the changing roles of other civil servants and public employees. (MOJ, HJC, SPC – long-term)
- Engage court presidents and heads of PPOs in determining staffing needs. For example, amend the Rulebook on Determining the Number of Prosecution Assistant Trainees, Official Gazette no. 108 issued by MOJ, so that the staffing of assistants and trainees is determined in consultation with individual PPOs. (MOJ – medium-term).

Recommendation 3: Enhance systems to select, evaluate, and promote the most qualified judges/prosecutors to enhance quality, improve efficiency and increase public trust in the judiciary.

- Use the evaluation and promotion system to recognize good performance and incentivize innovation. Develop and apply remedial actions for low-performing judges/prosecutors, including mandatory training. (HJC, SPC – short-term).
- Limit appointments to higher instances to those already in the system. (HJC, SPC – short-term)
- Give preference in promotions to judges/prosecutors who have served in multiple courts/PPOs or voluntarily worked on backlog reduction in their own or other courts/PPOs. (HJC, SPC – short-term)
- Improve rules on the criteria, standards, and procedures for promotion and performance appraisal of judges/prosecutors. Clarify performance evaluation procedures, including how evaluation ratings will be used to make decisions about promotion, and discipline. This will entail changes to both statutes and evaluation rules. (HJC, SPC – short-term)
- Provide evaluation panels with sufficient support staff to compile information against evaluation criteria to be used in the conduct of performance reviews. (HJC, SPC – short-term)
- Establish more rigorous standards for the achievement of a satisfactory rating. (HJC, SPC – medium-term)
- Include evaluation criteria that create incentives to improve system performance, including participation in training, mentoring of less-experienced judges, and participation in task forces and working groups; (HJC, SPC – medium-term)
- Develop and apply remedial actions for low-performing judges/prosecutors, including mandatory retraining. Implement enhanced evaluation rules. (HJC, SPC – medium-term) Enhance criteria and rules for filling vacant judge/prosecutor/court president/head of PPO positions so that temporary appointments (e.g. acting functions, transfer), if necessary, are for only a short duration. (HJC, SPC – medium-term)
- Conduct an educational campaign for judges and prosecutors about the skill enhancement and promotional purposes of evaluations. (HJC, SPC – medium-term)

Recommendation 4: Enhance training for new and existing judges, prosecutors, and court and PPO staff, covering all aspects relevant to the transformation to a modern European judiciary.

- Conduct a comprehensive training needs assessment for existing judges, prosecutors, and staff. (JA, HJC, SPC, MOJ – short to medium-term)
- Raise the standards of the initial and continuing training curriculum and evaluation. (JA, HJC, SPC – medium-term)

- Based on a needs assessment, implement a large-scale capacity-building initiative for judges, prosecutors, assistants, and other staff in courts and PPOs. (JA – medium-term)
- Rebalance the Judicial Academy budget by reducing funding for initial training activities and increasing funding for continuing training activities. Shift the focus of staff towards preparing continuing training activities. (JA, MOJ – short-term)
- Improve the Academy’s focus as a training center by developing rigorous, consistent, and effective training materials and methods, using lessons from the European Judicial Training Network (EJTN) as a guide. (JA, HJC, SPC, MOJ – short-term)
- Adopt a skills-based training program for staff in courts and PPOs to enhance their performance. (JA, HJC, SPC – medium-term)
- Create a training plan and provide budget-funded training to other employees (e.g., court managers, HR, registry staff). (JA, MOJ – medium-term)

Recommendation 5: Develop more effective, efficient, and transparent disciplinary measures to ensure the quality of justice and effective access to justice.

These inexpensive reforms will reduce the number of complaints and could result in the Disciplinary Prosecutor and Commission becoming more cost-effective.

- Reduce delays in the application of disciplinary procedures. Provide training on disciplinary procedures to judges, prosecutors, and staff in courts and PPOs. (HJC, SPC, JA – medium-term)
- Issue opinions with practical examples of permissible/impermissible conduct, including online FAQs about ethics. (HJC, SPC – short-term)
- Analyze the outcomes of complaints at a systemic level, and use data to inform future reforms. (HJC, SPC – long-term)

Recommendation 6: Consolidate human resource policy development in the HJC/SPC and promote a professional, properly managed staff within Courts and PPOs, consistent with CCJE adjudication standards to promote efficiency⁶²³ in accordance with the Bangalore principles.⁶²⁴

- Create a detailed position description, improve the evaluation rules, and design career paths for judicial/prosecutor assistants (from junior to senior assistant and on to advisor). Specify evaluation criteria for judicial/prosecutor assistants to recognize their contributions to system performance. (HJC, SPC – short-term)
- Build capacity within the Councils to take responsibility for the use and number of civil servants and employees. Reduce the number of job positions while allowing flexible deployment. (HJC, SPC, MOJ – short-term)

Codify that the HJC and SPC (with dedicated HR units) will be responsible for non-fiscal aspects of court employee policy development. (HJC, SPC, MOJ – short-term)

- Establish uniform civil servant and labor processes for non-judge employees (uniform judicial-sector job descriptions, position-specific recruitment and selection methods, performance evaluations with standardized rankings); identify training needs and candidates for succession. (HJC, SPC, MOJ – medium-term)
- Invest in mid-level analytical staff in the courts and PPOs, with the additional benefit of creating

⁶²³ See CCJE Opinion No. 2.

⁶²⁴ “The responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel, should vest in the judiciary or in a body subject to its direction and control.” Implementation of Bangalore Principles of Judicial Conduct, 2010.

an attractive career path in court and PPO administration for judicial and prosecutor assistants and other staff. Consider a regional approach for analytical tasks for smaller courts. (HJC, SPC – medium-term)

- Identify the source of reluctance in certain courts to utilize court managers; raise awareness of how court managers are successfully utilized in some courts. Establish standard duties and qualifications for court managers. (HJC – medium-term)
- Introduce periodic reviews of performance evaluations by a centralized authority to ensure that procedures are followed. (HJC, SPC, MOJ – long-term)

Recommendation 7: Reconsider the role of lay judges.

- Reconsider whether lay judges are needed. (HJC – medium-term)
- If needed, select lay judges in accordance with objective criteria. (HJC – medium-term)
- Provide lay judges with initial and continuing training to meet the European Charter of Lay Judges standards. (HJC – medium-term)

Recommendation 8: Review and standardize the role of compensation for judges, prosecutors, and staff.

- Develop uniform standards for, e.g., meal compensation. (MOJ, HJC, SPC – short-term)
- Monitor the wide variations in non-salary compensation (as a percentage relative to salary) among courts and PPOs. (MOJ, HJC, SPC – short-term)

Recommendation 9: Make better use of non-judge, non-prosecutor staff so that judges and prosecutors can focus on tasks that require legal training.

- Amend rulebooks to relieve judges and prosecutors of administrative tasks. (HJC, SPC – medium-term)
- Establish preparatory departments in all of the larger courts and PPOs. (HJC, SPC – medium-term)

Recommendation 10: Develop policies to affirmatively take gender into account with regard to equality in access to higher positions.

8. Financial Resources Management

770. **Financial management has a significant impact on both the efficiency and quality of delivering justice as well as on other auxiliary functions of the judicial system (i.e. HR, ICT, infrastructure).** Efficient organization of financial management and optimal allocation of financial resources are vital for effective service delivery in all segments of the system.

8.1. Main findings

771. **Financial management has a significant impact on both the efficiency and quality of delivering justice as well as on other auxiliary functions of the judicial system (i.e., human resources, ICT, infrastructure).** Efficient organization of financial management and optimal allocation of financial resources are vital for effective service delivery in all segments of the system.

772. **Compared to other European countries, Serbia's judicial system is funded at moderate levels. Serbia's judicial budget as a percentage of GDP was near the top of its peer countries, while its judicial expenditure per capita is among the lowest in Europe (i.e., EUR 29.1 per capita).** When these two dimensions are combined, Serbia's judicial system could be described as operating at affordable, although relatively low levels compared to other European countries. This held true for both of its main components – the court and prosecution systems.

773. **The budgetary system of the Serbian judiciary remains unnecessarily complex and fragmented and hampers the development of rules and guidelines for financial management in the judiciary.** As in 2014, the formulation, execution, and reporting of different portions of the judicial budget remain split by the Budget System Law between the MOJ and the HJC/SPC. As a result, there is a lack of accountability for overall judicial budget performance, and no central data is available to allow consistent, ongoing evaluation of financial management.

774. **In 2016 judicial institutions were granted access to the budget execution system.** This allowed real-time tracking of their annual expenditure and increased transparency of their financial operations. This was necessary but, in the end, an insufficient step towards achieving judicial institutions' budgetary independence. Judicial institutions' individual accounts within Treasury were closed, and their budgets started being executed from the central budget execution account. These changes did not earn budgetary independence for judicial system institutions. Instead, in practice, the MOJ and HJC/SPC retained full control of the budgets of judicial institutions by simply replacing the management of transfer requests for budget appropriations management. The issue of lack of flexibility in budget reallocation seems to have been magnified by the recent changes.

775. **Budgeting processes are not linked to performance criteria.** Annual budgets are prepared by making minor upward adjustments to the prior year's budget or spending. The entire budget process of the country relied on limits set by the MOF, and judicial authorities could not provide evidence-based rationales for challenging the MOF limits.

776. Budget formulation practices have not progressed much since 2014. With the exception of the courts, there is no budget preparation software linking the direct or indirect budget beneficiaries. Budget preparation and monitoring in the MOJ and SPC is done through an Excel spreadsheet exchange, while since 2017 HJC is using a BPMIS tool that is poorly maintained, inflexible, and incompatible with the BPMIS used by the MOF to prepare the state budget (software collecting budget requests from DBBs).

777. Existing automated case management systems do not allow courts or PPOs to determine their per-case costs, perform full-scale program budgeting or reduce their arrears and the penalties assessed through enforced collections. There is not enough automatic exchange of data between the various information systems used within the judicial system⁶²⁵ for any of these functions to occur. As in 2014, interoperability between the existing systems remains an issue to be addressed in the future.

778. Budget preparation software used in courts allows for manual case-related data entry, but this feature is not sufficiently exploited. The exchange between other systems is at low levels. Since 2014, there have been attempts to link the accounting software (ZUP) with budget execution by allowing the external formulation of payment requests based on accounting records. However, the use of this feature is not very widespread.

779. When compared to other European court systems, Serbia's share of wage-related expenses lies well below the median (approximately 69 percent compared to 74 percent). However, as the amount of funds spent for other purposes is insufficient overall, judging wage expenses as a ratio of total expenditures does not provide a complete picture. The decrease in the share of wages seen in the period from 2014 onwards is a consequence of the overall increase in capital expenditures on one side and the drop in the overall public sector wage bill in 2015.

780. Capital expenditures increased over the past four years to fund needed, accelerated implementation of large judicial infrastructure investment projects managed by the MOJ. The share of CAPEX in total expenditure went from an average of 2.3 percent over the 2010-2013 period to more than 8 percent in 2019. The increase in capital expenditure matches the trend of increasing funds from international loans and donations, which are at the disposal of the judiciary for infrastructural investments. Internal capacities for capital project implementation have to be further developed to ensure the sustainability of the share of CAPEX in total expenditure. However, more needs to be done to resolve the issue of the lack of procedures for the selection and prioritization of public investments.

781. As a result of the introduction of private notaries and enforcement agents, court fees have dropped more than 40 percent over the past years. Likewise, the share of the judicial budget financed from court fees has dropped significantly compared to the previous period from almost 50 percent to an average of 20 percent of the court system budget. In absolute terms, this is commensurate with the decline in court fees. Instead, these fees are distributed to the general budget. The rate of decrease stabilized in the past couple of years, and court fees are not expected to decline further, at least not significantly.

782. There was no significant progress made in terms of recording and collecting debts related to court fees. The introduction of Tax Stamps facilitated court fees settlement, but the issue of uncollectable court fees persists. Although the level of uncollectable court fees cannot be precisely determined due to a lack of accurate records, some estimates are that between 30 and 40 percent of those remain unpaid.⁶²⁶ The issue is slightly alleviated by the fact that a certain share of court fees (i.e., mostly for enforcement cases) is now collected through enforcement agents on behalf of courts.

783. There were large variations in costs per active case across the judicial system and within the courts and PPOs of the same level. As noted above, the lack of interoperability between CMS and budget execution systems prevented detailed tracking of expenses per case. To a significant extent, the variations were due to disparate views of which criminal investigation costs should be paid by courts and which should be paid by PPOs. This issue relates to ongoing weaknesses identified in the budget formulation process in the 2014 Functional Review and the lack of communication between CMS and the financial software components across the judicial system.

784. Compared to the levels observed at the end of the period covered by the 2014 Functional review (i.e., at the end of 2013), the level of arrears dropped significantly. In the case of courts, arrears dropped from nearly 15 percent of total expenditures at the end of the first quarter in 2014 to just above one percent at the end of 2019. As correctly predicted by the previous Functional Review, one important difference is that the transfer of responsibility for criminal investigation management brought arrears into the prosecutorial system.

785. Ongoing arrears hamper the effective management of current year resources. Even at the lower levels now being experienced, significant effort should be put into properly addressing the source of arrears accumulation – both in courts and PPOs.

8.2. Budgetary Framework of the Judicial System

786. The Budget System Law (BSL)⁶²⁷ is the cornerstone legislation that governs all aspects of judiciary financial management in Serbia – from budgeting to accounting and financial reporting. It defines the scope of the budget, structure, and management of the Treasury Single Account (TSA) and the general ledger, budget calendar and elements of financial plans of budget beneficiaries, the process of budget execution and accounting, and the reporting framework. It differentiates between direct and indirect budget beneficiaries: direct budget beneficiaries are defined as “the institutions and organizations established by the state” (e.g., ministries and separate administrations at their arm’s length, such as the Supreme Court of Cassation and specialized appellate courts), while indirect budget beneficiaries comprise most judicial and educational institutions. The Rulebook on Budget Execution defines the detailed procedures for financial planning and execution of public institutions’ budgets, which vary depending on an institution’s status as a direct or indirect budget beneficiary.

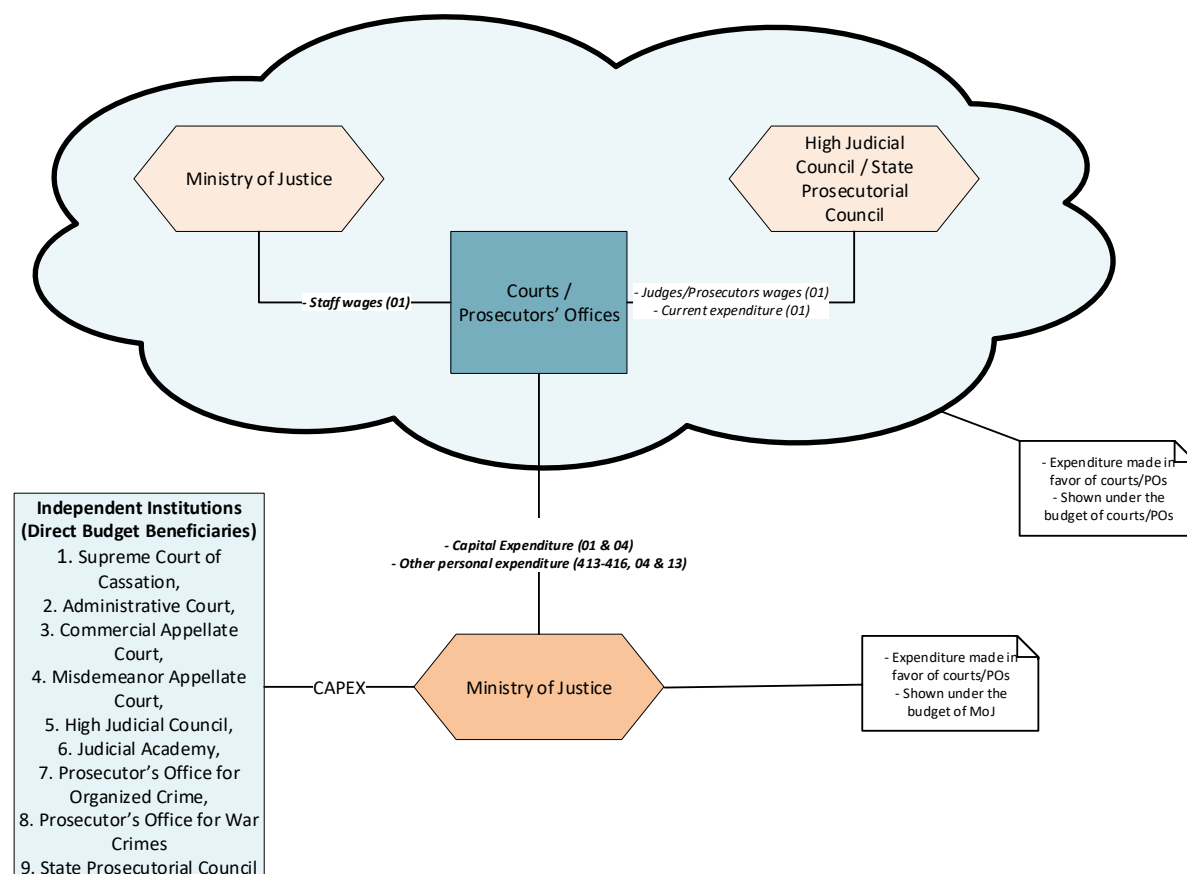
787. The MOJ, together with the HJC for the courts and the SPC for the PPOs, manages the budgets of the judicial system. The competencies of the HJC, SPC, and MoJ over the budgets of judicial

⁶²⁶ According to the HJC assessment the level of collection court fees is 70 percent.

⁶²⁷ The Official Gazette of the Republic of Serbia No. 54/2009 – amended subsequently.

institutions overlap and include harmonizing budget formulation and monitoring budget execution, and collecting and aggregating annual financial statements. Figure 142 below depicts the overlapping structure of the budgetary framework and contains the types and sources of expenditure managed by HJC/SPC and MoJ.

Figure 143: Budgetary Framework of Serbia’s Judicial System



788. The HJC, the SPC, some courts and PPOs, and the Judicial Academy are financially independent of the HJC, SPC, and the MOJ since they are DBBs and are provided with flexibility and independence in executing their budgets. The relevant courts and PPOs have specialized rather than general jurisdiction, i.e., the Supreme Court of Cassation, Administrative Court, Commercial Appellate Court, Misdemeanor Appellate Court, Prosecutor's Office for Organized Crime, and the Prosecutor's Office for War Crimes. Their budget preparation process is done in direct communication with the MoF. Also, they are free to utilize their annual operating appropriations to the full extent, as defined by the annual Budget Law.

789. The type of expenditure dictates whether the MOJ or the HJC/SPC manages a particular budget function for an indirect budget beneficiary.⁶²⁸ The Councils manage budget functions for i) wages and wage-related expenses of judges/prosecutors⁶²⁹; ii) material costs (e.g., rent, utilities, gas, office materials, postal services); iii) travel expenses; iv) certain contract services (e.g., mandatory

⁶²⁸ According to the article 70 of the Law on Court Organization and article 127 of the Law on Public Prosecution Offices (Official Gazette of the Republic of Serbia 116/2008). Both Laws were amended subsequently.

⁶²⁹ This category includes salaries and allowances for employees; social contributions; in kind compensations; employee social benefits; awards; bonuses and other related payments.

representation and expert witness services); v) current maintenance (e.g., painting and decoration, plumber services, repair of vehicles, computer equipment, furniture), and vi) fines and penalties⁶³⁰. On the other hand, the MoJ manages the budget for wages and wage-related expenses of non-judicial and non-prosecutorial staff, as well as capital expenditures.

790. Starting in the fiscal year 2016, courts and PPOs became the first indirect budget beneficiaries (IBBs) to be included in the budget execution platform (ISIB), which, until that point, had been reserved for direct budget beneficiaries (DBBs) only. Before that, almost all judicial system institutions were IBBs, meaning they had to rely on physical transfers of funds from their superior DBB – HJC/SPC and MoJ to finance their operations. These transfers were made to the sub-accounts of each institution held at the Treasury Administration, which had a web-based application to facilitate the execution of payment orders. The web application was used by the majority of judicial institutions, but others were forced to place their payment orders through the nearest Treasury branch office. Budget preparation was done through the councils and the MoJ, which collected financial plans (draft budgets) from courts, aggregated them, and adjusted them to fit expenditure ceilings set by MoF. Reporting from the accounting records held by each individual judicial institution was done directly only at the end of fiscal years to each of the superior DBBs rather than throughout the year, limiting institutions' ability (and incentive) to manage resources proactively. It was only through an ex-post audit that the reliability of their expenditure records could be determined, and mid-year adjustments based on expenditure patterns (whether up or down) were infeasible, reducing budgetary responsiveness.

791. The use of the common budget execution platform after 2016 has not effectively added to the budgetary independence or responsiveness of judicial institutions. The budget appropriations of individual courts and PPOs are still decided from the central level (i.e., SPC/HJC and MoJ) at a detailed level in the budget, and in-year appropriation changes have to be approved centrally as well. The appropriation distribution among courts and PPOs are made based on their expressed and determined needs during the budgetary process. Procedures for altering appropriations are complex, rigid, and controlled closely by MoF. SPC/HJC and MoJ indicate that this is why they retain certain shares of the total appropriation to these institutions as undistributed. As a practical matter, this allows MoJ and the councils to increase an institution's appropriation when necessary, but it does not add to the strategic efforts of Serbia to secure budgetary independence or responsiveness of the judicial system. However, a significant benefit of moving judicial institutions under the umbrella of ISIB has been that expenditure control mechanisms can now be applied before charges are incurred, rather than waiting for a post-doc audit of expenditures. Reporting practices also have not changed since judicial institutions still compile financial reports based on their own records and send them to SPC/HJC and MoJ, which compile and forward them to the Treasury.

792. In 2015, modifications of the BSL allowed the introduction of program budgeting across Serbia's budgetary system, but there was little progress towards the full implementation of program budgeting, and this is true for the Serbian budgetary system as a whole. The BSL introduced many novelties, including changes in the structure of the budget and the requirement for DBBs to assess the performance of their programs. Unfortunately, in practice, this was not done, so performance

⁶³⁰ This category mainly includes enforced collection bills coming from lawyers and expert witnesses, for services rendered during the investigation process.

assessments did not form the basis for potential adjustments to the financial plans of judicial institutions or the cornerstones of their budget preparation process. Instead, budgets continued to be prepared on an annual rolling basis, based to a great extent on previous years' budget execution data. The Councils simply combined the budget requests from their courts and PPOs and adjusted them to the overall limits set by MoF.

793. Measuring budget performance is hindered by the lack of integration and interoperability between the CMS and financial management software, and other manual approaches to integrate financial and performance data are not evident. There is no automatic exchange of data between these systems since such functionality is not developed in either system. There is no evidence of systematically considering financial data in the context of case-related analytics – in either the court or prosecutorial system.

794. The current financing structure of Serbian courts is unnecessarily complex, creating much additional workload and confusion.⁶³¹ Although the presentation of the judicial system budget had been split into programs and projects since 2015, different segments of the budget still rested with different institutions. For instance, the budget for Basic Courts is shown under the budget chapter called “Courts”, and the heading “Basic Courts. This heading contains two projects: implementation of court activities (for which the budget is managed by HJC) and administrative support to the work of Basic Courts (for which the budget is managed by MoJ). F managed by MoJ includes only appropriations related to net wages and social contributions of non-judicial staff. The rest of the budget, including capital expenditures and other personnel expenses such as in-kind compensation, employee social benefits, awards, bonuses, and other special payments, for the activities of Basic Courts, is shown under the budget of the MoJ. A very small share of material costs and current maintenance also are financed by MoJ. While some specific capital expenditure projects related to courts are shown explicitly in the MoJ budget, the majority of appropriations for capital interventions made in favor of courts are part of a general appropriation for capital expenditure under MoJ's budget and are not earmarked for the courts.

795. In addition to the division of authorities for different aspects of the budget, both the MOJ and HJC portions of the budget are financed from both budget revenues (i.e. source 01) and internal ('own source') revenues coming from court fees (i.e., sources 04 and 13).⁶³² MoJ also takes a certain portion of the court fees to finance expenditures for court proceedings. Simultaneously, capital expenditures are financed from general budget revenues but also from internal funds. MoJ is financing capital expenditures and non-wage-related personal expenses (i.e., in-kind compensation, employee social benefits, awards, bonuses, and other special payments) while they also cover a certain portion of current maintenance. Apart from the organizational difficulties and natural lack of coordination between the two budgets, such a system lacks clarity and transparency. All of the MoJ administered appropriations – wages as well as capital appropriations - are not shown under courts' budgets but are, instead, placed within the budget of MoJ, where no distinction is made between courts and PPOs in terms of how much each of the judicial sub-systems is receiving for these purposes.

⁶³¹ The same is true for the prosecutorial system.

⁶³² Courts collect the fees but since they are immediately transferred to the Treasury's central budget. However, the Treasury tracks the fees as “own source revenues” and allows them to be used for the benefit of courts and PPOs. Details of court fees distribution are laid out in the Law on Court Fees.

796. Budget preparation is carried out without a well-developed budget preparation information system (BPMIS). PPOs manually exchange MS Excel files through email, which represents a serious workload issue and presents a high level of risk regarding the integrity of data and general security. Courts have an information system for budget preparation, but all courts do not use it, and it lacks compatibility with the BPMIS used at the central government budget level. The introduction of a well-planned BPMIS across the judicial system should solve the operating shortcomings of current practices and also free staff to build their skills for more effective budget performance assessments; these skills would be particularly important as Serbia deals with the challenges posed by EU accession processes.

797. Procurement of large capital investment projects which are complex to process or envisage multi-year financial commitment are centralized at the MoJ. Courts and PPOs perform projects/purchases that are smaller in scale. MoJ indicates that individual institutions lack the capacity to carry out complex procurement procedures because they do not have staff dedicated exclusively to procurement.

798. Individual appropriations in the capital budget are set differently than for operating funds. MoJ not only continues to act on behalf of DBBs as well as IBBs for large capital, but budgetary funds for these purposes are retained by MoJ. Based on the limits from MoF and the aggregate needs for capital expenditures, the MoJ sets the overall volume of funds earmarked for this purpose. While courts and PPOs prepare their procurement plans, which MoJ approves, funds are not allocated in separate appropriations for courts and PPOs but are part of an overall capital expenditure appropriation under the MoJ's budget section. Courts and PPOs are then required to file a request to MoJ to initiate the procurement procedure. After the official approval is attained, the procurement starts, and finally, the goods/services are paid at the end once the whole documentation reaches the MoJ and is checked against the Procurement Law.

8.3. Budget Levels and Sources

8.3.1. Expenditure Benchmarking

799. Serbia ranked at the high end in Europe for overall judicial system expenditure measured as a share of GDP in 2018. At the same time, it lies well below the European average when judicial expenditure was measured in per capita terms. In 2018, according to the latest CEPEJ report on efficiency and quality of justice,⁶³³ Serbia spent 0.61 percent of GDP on its overall judicial system, while the European average was 0.33 percent⁶³⁴ (see Figure 143 below). At the same time, per capita expenditure was EUR 37.4 which was well below the European average of EUR 54.6. To expend the average per capita on the Serbian judiciary, an additional 46 percent or RSD 14.8 billion would need to be appropriated.

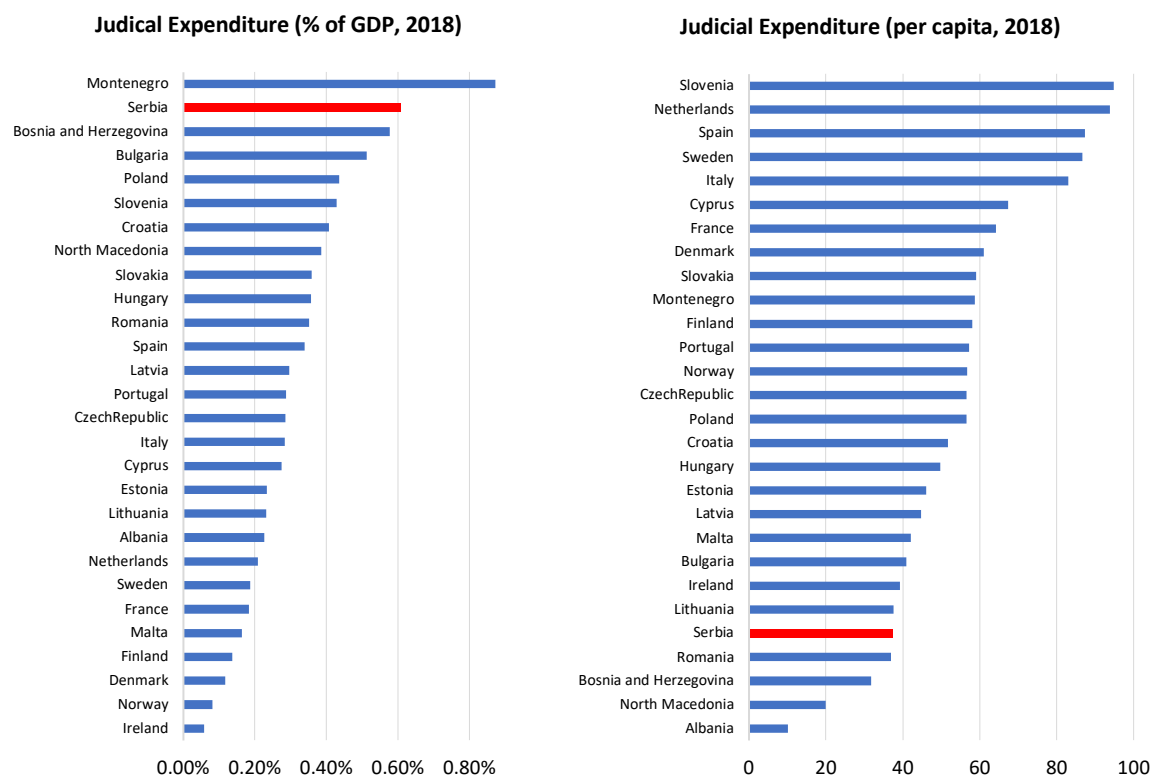
⁶³³ 2020 edition of the "European Judicial Systems: Efficiency and Quality of Justice" Report, prepared by CEPEJ. The latest 2020 edition of the report is based on 2018 data.

Available at: <https://www.coe.int/en/web/cepej/special-file-publication-of-the-report-european-judicial-systems-cepej-evaluation-report-2020-evaluation-cycle-2018-data>

⁶³⁴ The report published in October 2018 contains data from 2016. Serbia was one of the countries that did not supply its financial data for 2016. The figures for Serbia presented here are coming from authors' calculations based on data provided by local authorities for the purpose of this assessment.

800. The same trend was observed in other European countries with comparable GDP levels. Most of these countries were Serbia’s regional peers (e.g., Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Montenegro, Romania, and North Macedonia). Within this group, the average expenditure stood at EUR 35.9 per capita and 0.49 percent of GDP, a bit lower than in Serbia.⁶³⁵

Figure 144: Total judicial expenditure, 2018, Serbia and Europe; as percent of GDP (left), per capita (right)

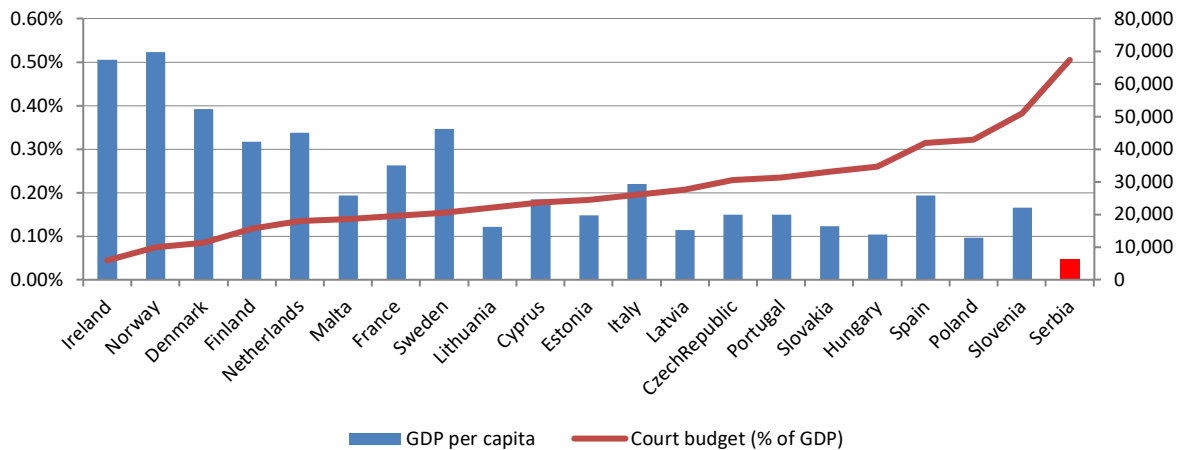


Source: 2020 CEPEJ Report (2018 data) and authors’ calculations

801. The expenditure level per capita raises a question of financial sustainability. Serbia is, together with Ireland, the European country which spends the least on its court system in per capita terms. Total court expenditure was 0.50 percent of GDP. Excluding countries from the region mentioned above, the only country with somewhat comparable levels of expenditure was Slovenia, with 0.38 percent of GDP (see Figure 144 below). At the same time, Slovenia is the country with the highest per capita court expenditure with EUR 84.5, while the average lies at EUR 47.5. Figure 144 below indicates that Serbia would have to adjust its court system expenditure downwards significantly to align it with its GDP per capita level.

⁶³⁵ In per capita terms, Croatia and Montenegro were on the top of the ladder with EUR 49 and 54.3 spent on judicial system. The highest expenditure as a share of GDP was in Bosnia and Herzegovina and Montenegro, which had expenditures of 0.65 and 0.86 percent of GDP. Albania was at the bottom of the list in both categories with only EUR 9.6 per capita and 0.25 percent total expenditure on its judicial system in 2016.

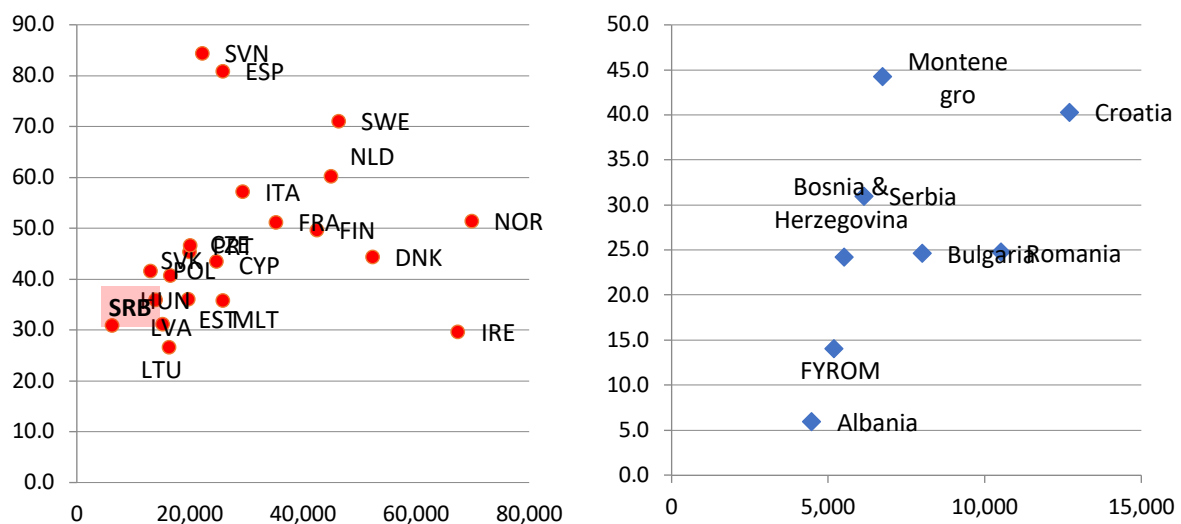
Figure 145: Court expenditure as percent of GDP in the context of GDP per capita, 2018, Serbia and EU



Source: 2020 CEPEJ and WB calculations

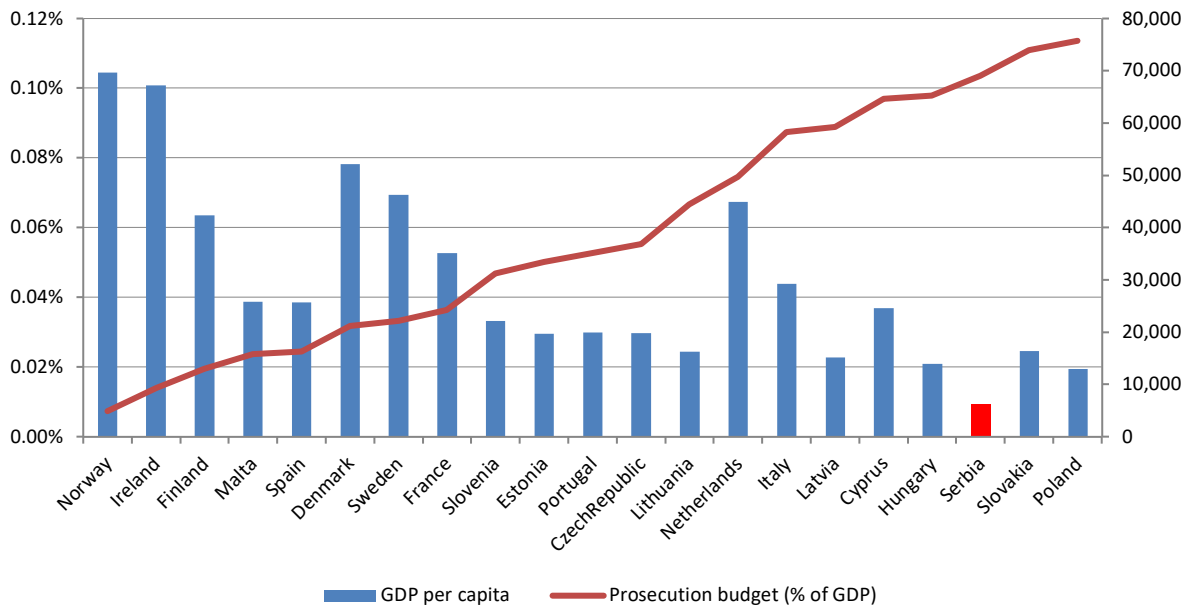
802. Compared to the court system expenditures of its regional peers, Serbia is in the mid-range of financial sustainability. The average regional GDP per capita in 2018 was EUR 7,400, while the per capita court expenditure was EUR 26.1. With the GDP per capita being close to the average (i.e. EUR 5,191), Serbia was roughly aligned with the average regional spending. The only countries which obviously were out of the average were Montenegro, which had very high per capita expenditure levels (i.e. EUR 44.2), and Albania, which seems to be underspending per capita (i.e. EUR 5.9); Croatia spends almost twice as much as Romania (i.e. EUR 40.3 versus 24) with almost identical GDP per capita.

Figure 146: Court expenditure per capita in the context of GDP per capita, 2018; Serbia and EU (left), Serbia and regional peers (right)



Source: 2020 CEPEJ and WB calculations

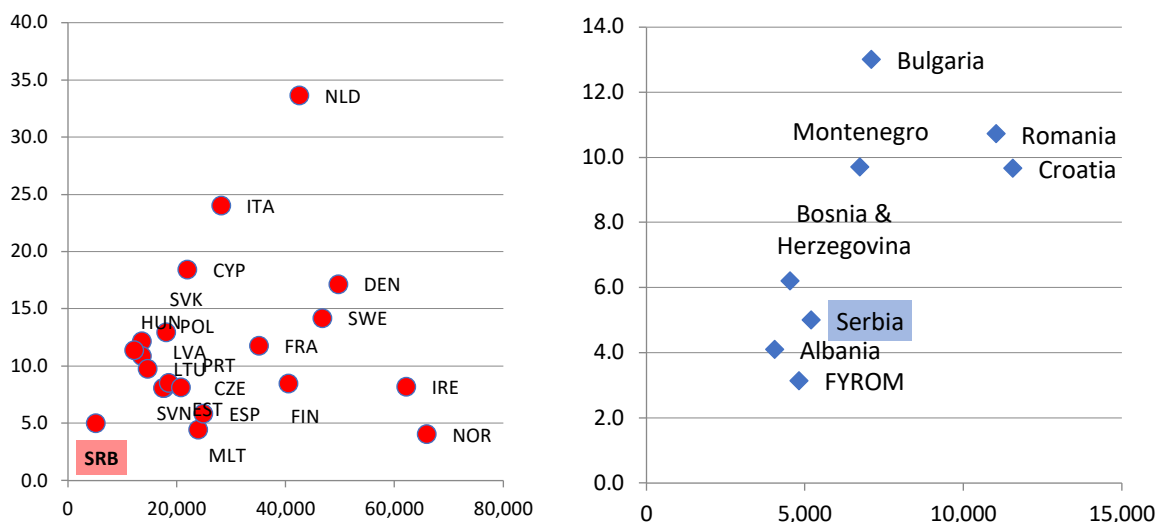
Figure 147: Prosecution expenditure as percent of GDP in the context of GDP per capita, 2018, Serbia and EU



Source: 2020 CEPEJ and WB calculations

803. Likewise, with EUR 5 per capita, Serbia’s prosecution system expenditures were at the very bottom when compared with EU countries, while it ranked among the top spenders when expenditure is scaled with GDP. Compared to regional countries, Serbia’s prosecution expenditure was at the average and roughly aligned with its wealth level.

Figure 148: Prosecution expenditure per capita in the context of GDP per capita, 2018; Serbia and EU (left), Serbia and regional peers (right)



Source: 2020 CEPEJ and WB calculations

8.3.2. Budget Execution, Trends, and Sources

804. Expenditures on the court system have continued to grow since 2015, after a sharp decline following the public sector wage bill reduction. The court system expenditure was nearly RSD 25 billion in 2014. In 2015 the aggregate wage bill of the system was reduced significantly – by 13 percent or just short of RSD 2 billion. The reduction of the wage bill coincided with a permanent decrease in expenditures for court services due to transferring responsibilities for carrying out criminal investigation activities from courts to PPOs. The changes in the Criminal Procedure Code that introduced this change were adopted in 2013; however, it took until 2015 for these changes to operationalize and show their effect on the budget. The growth in expenditures since 2015 did not exceed the reductions in the services expenditures and the wage cut that was still in effect at the end of 2017 (i.e., 1.5 percent in 2016 and 3.8 percent in 2017).

805. On an aggregate level, in the case of the court system expenditure units, which act as IBBs⁶³⁶, there is a steady share of budgets managed by MoJ and HJC. HJC is, on average, managing around 58 percent, while MoJ is responsible for the remaining 42 percent. The reason for the stability of the shares managed by one versus the other institution is that there was virtually no shift in responsibilities over the part of the budget financed by MoJ and HJC in the observed period. The mentioned drop-in services expenditure in 2015, which is managed completely by HJC, was compensated by the higher cuts in wage bill in the part of the budget under MoJ management.

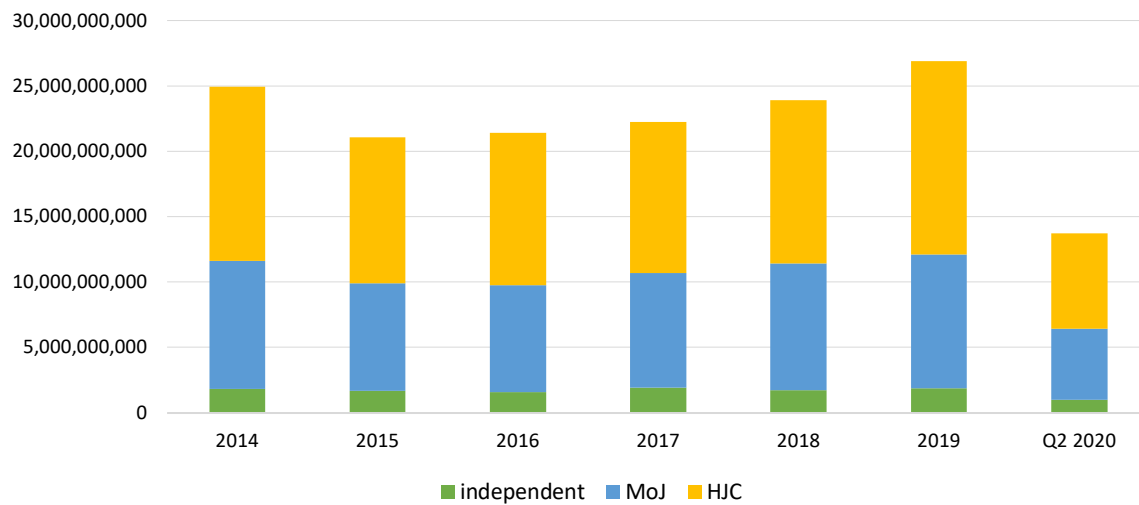
806. Court budget expenditures grew steadily from 2016 to 2019, after a sharp decline in 2015 due to moving expenses for criminal investigations to PPOs from the courts. Court system expenditures were nearly RSD 25 billion in 2014. However, in 2015 the aggregate wage bill of the system was reduced significantly – by 13 percent or just short of RSD 2 billion – as responsibility for the direction of criminal investigations was transferred from the courts to Pos in order to ensure the independence of investigations. Overall court expenditures grew by 1.5 percent in 2016, 3.8 percent in 2017, and 7.6 percent in 2018. Courts that act as DBBs, marked “independent” in Figure 148 below, are shared in the trend.

807. The shift in investigative responsibilities did not affect the relative spending by MoJ and the HJC on the IBB courts.⁶³⁷ On average, the HJC managed approximately 58 percent of the non-employee budgets for those courts, while the MoJ was responsible for the remaining 42 percent. After the 2015 transfer of investigative responsibilities, non-employee expenditures were managed completely by HJC and corresponded to cuts in the wage bills managed by the MoJ.

⁶³⁶ Appellate, Higher, Basic, Misdemeanor and Commercial courts.

⁶³⁷ Appellate, Higher, Basic, Misdemeanor and Commercial Courts.

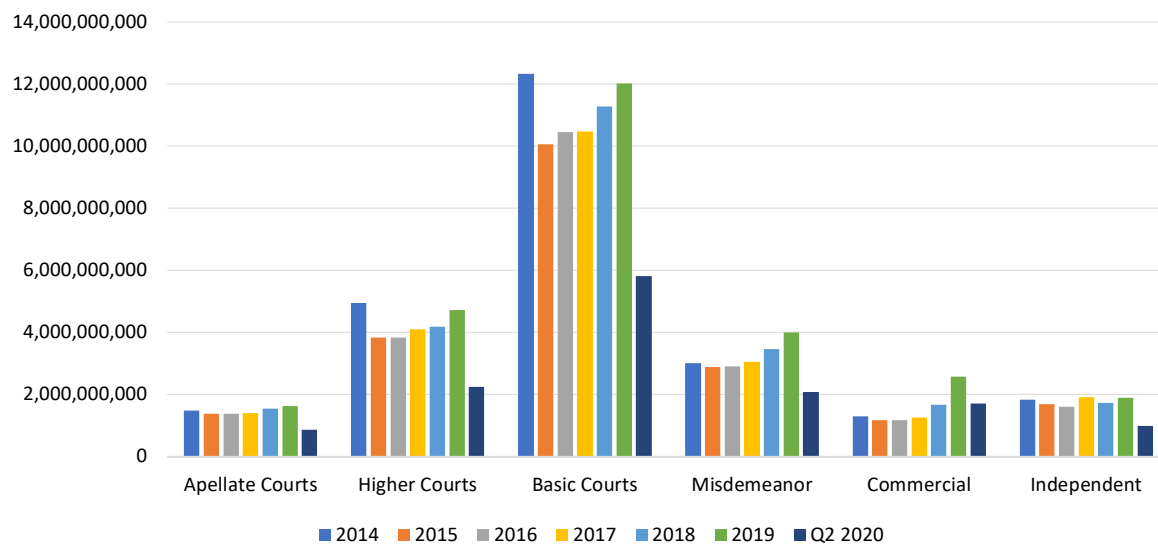
Figure 149: Court system total expenditures, 2014-Q2 2020, excluding expenditures financed from court fees.



Source: Budget execution reports of judicial institutions and WB calculations

808. Basic and Higher Courts absorbed most of the expenditure cut in 2015, both in relative and absolute terms. Since these two sets of courts are the largest components of the court system, their salaries constituted almost half of the entire system budget. From the total of RSD 2 billion salary decrease in 2015, 1.4 billion was taken from the wage bills of these courts. All other courts (i.e. Appellate, Misdemeanor, and Commercial) had smaller decreases in their budgets.

Figure 150: Court system total expenditure, by type of court, 2014-Q2 2020



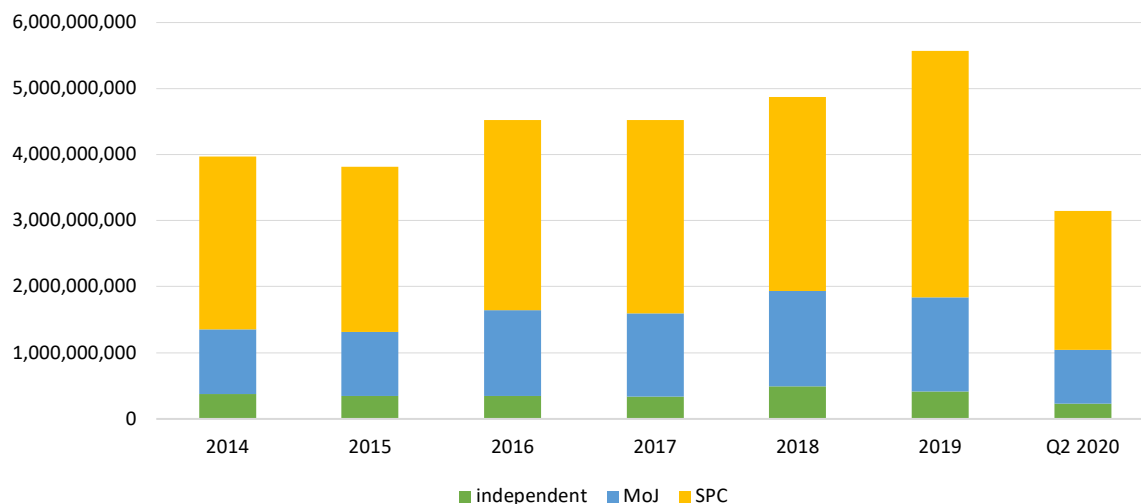
Source: Budget execution reports of judicial institutions and WB calculations

809. Prosecutorial expenses also dropped in 2015, but this was offset starting in 2016 thanks to increases in the service-related parts of PPOs' budgets.⁶³⁸ The increases were due almost entirely to

⁶³⁸ These are expenses related to criminal investigation procedure since PPOs assumed responsibilities for it in 2015.

year-end transfers from budgetary reserves to cover the significant arrears that PPOs generated each year, discussed in more detail below, and which totaled more than 600 million in 2016. The increase in expenditure levels continued at a stable pace of around 8 percent on average.

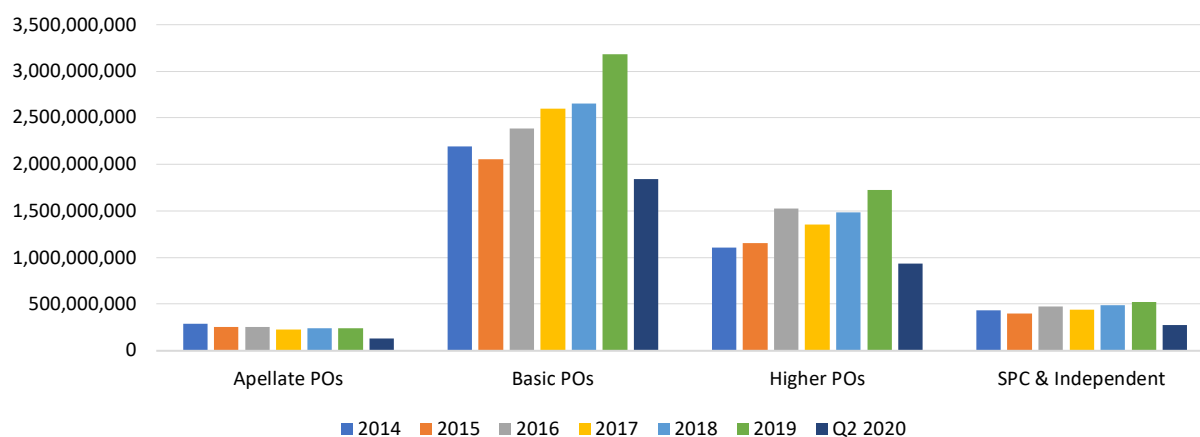
Figure 151: Prosecution system total expenditure, 2014-Q2 2020



Source: Budget execution reports of judicial institutions and WB calculations

810. Different types of PPOs had very different expenditure patterns from 2014 to 2019. All PPOs had cuts in the gross wages in 2015, but the transfer of investigative responsibilities triggered an increase in Higher PPOs expenditures from RSD 169 million in 2014 to RSD 319 million in 2015. On the other hand, Basic PPOs services were kept steady in 2015 and increased from RSD 3443 million in 2015 to RSD 518 million only in 2016. The available data did not offer an explanation of the one-year lag.

Figure 152: Prosecution system total expenditure, by type of PPO, 2014-Q2 2020



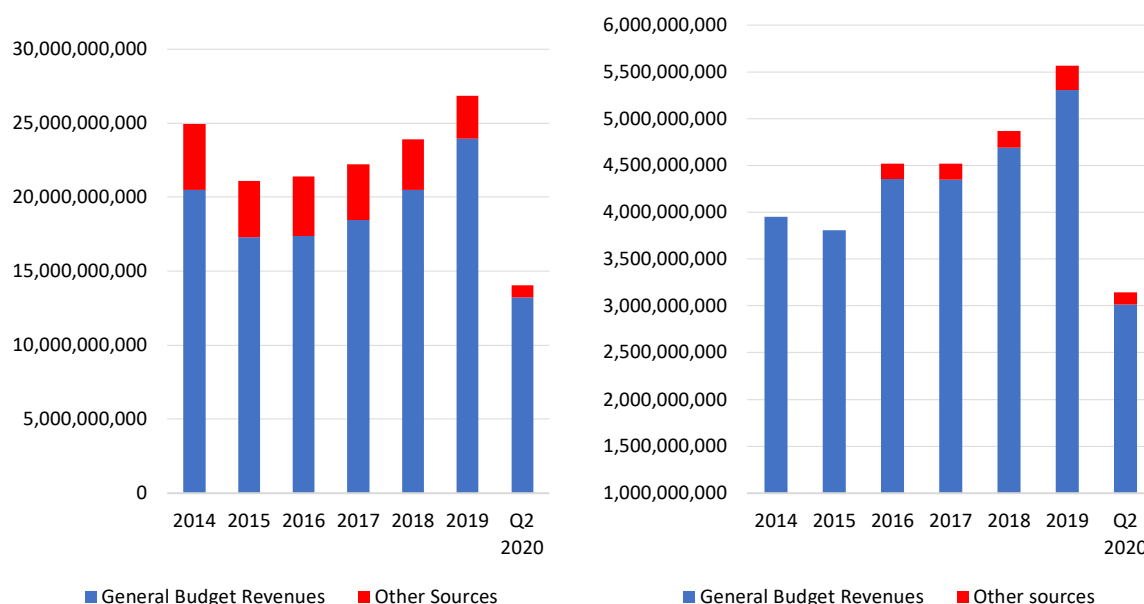
Source: Budget execution reports of judicial institutions and WB calculations

8.3.3. Judicial System Financing Sources

811. The judicial system in Serbia was financed predominantly from general budget revenues. These revenues moved in the narrow range between 81.3 and 83 percent of the courts' budgets from 2014

until 2019. and between 96.1 and 96.4 percent of the share of the budget for the prosecutorial system in the same period.

Figure 153: Total expenditure, by source, 2014-Q2 2020, court system (left) and prosecutorial system (right)



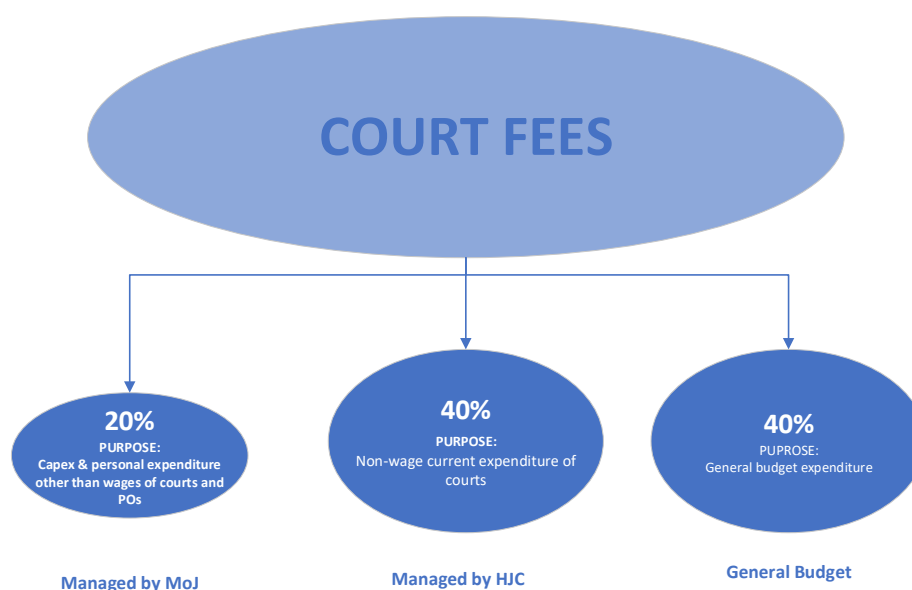
Source: Budget execution reports of judicial institutions and WB calculations

812. Collected court fees, included in the “other sources” category in Figure 152 above, made up close to 20 percent of court's budgets and only around 3.5 percent of the prosecutorial system budget. Collected court fees made up more than 90 percent of the ‘other sources’ category; the rest of the revenues in this category consisted primarily of donations, loans, and EU support used for capital projects.

813. Budgeting and expenditure allocation of own court fees is unclear. According to the Law on Court Fees (LCF)⁶³⁹, 40 percent of court fees are to be used for the current expenditure of courts, 20 percent is distributed for non-wage related expenses of public servants from courts and PPOs and capital expenditures, and the remaining 40 percent represent general budget revenue and do not serve the purpose of judicial system financing in any sense. However, court fees are shown only as a gross figure in the budget and are not explicitly distributed to the appropriations financed from this source that appear under budgets of different segments of the court and prosecutorial system. Starting from 2017, they are allocated across the budgets; for instance, each basic court and PPO knows the gross amount they will receive. However, justice institutions are still not aware of what will get financing from this source. Finally, budget execution data shows that, in practice, the mix of appropriations financed from court fees in favor of both courts and PPOs includes virtually all expenditure types. There is no mechanism to follow if the expenditure is in line with what the LCF prescribes.

⁶³⁹ The Official Gazette of the Republic of Serbia 28/94 – subsequently amended

Figure 154: Court fees distribution matrix

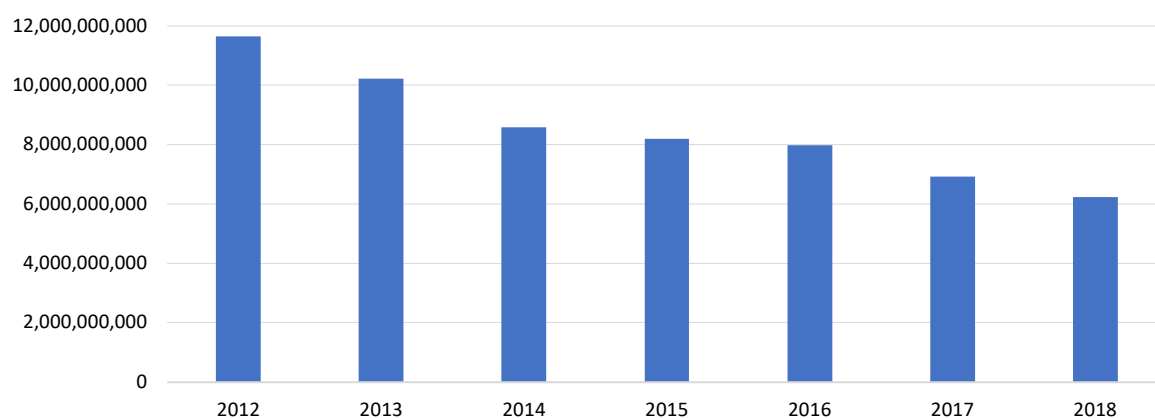


814. It is unclear what the distribution mechanisms are when allocating the financing from court fees between courts and PPOs and across individual courts and PPOs, rendering this procedure **untransparent**. The distribution seems to consider institutional size (i.e. staffing levels), but there is no formal argument to support this observation. To the best of our knowledge, the MoJ and HJC have not developed transparent criteria to perform these splits. It seems that the distribution of funds is performed on a need basis where MoJ decides arbitrarily on the priority level of individual requests. This should not be interpreted as an issue of improper use of funds but rather a practice that should be eliminated to increase transparency and accountability.

815. The level of court fees declined by more than 46 percent between 2012 and 2018⁶⁴⁰, after the introduction of enforcement agents in 2012 and private notaries in 2014. Court fees dropped by 26 percent from 2012 (RSD 11.6 billion) to 2014 (RSD 8.6 billion in 2014). Court fees then stabilized at approximately RSD 8 billion until legislative changes to enforcement procedures, including the introduction of enforcement agents, triggered a further drop of more than RSD 1 billion in court fees in 2017. The fall continued in 2018, in which collected fees dropped to RSD 6.2 billion.

⁶⁴⁰ Court fees data for 2019 and first half of 2020 were not made available to the World Bank team.

Figure 155: Level of court fees, 2012-2018



Source: MoJ

816. In the absence of detailed records, court representatives estimated only 30-40 percent of assessed court fees were collected.⁶⁴¹ The Law on Court Fees requires debtors to be told that a court fee must be paid within eight days, and collection should be assigned to enforcement agents if it is not paid. In practice, however, these provisions were not applied. There were attempts to increase the rate of collection in recent years through changes in the Law which now allows court fees to be paid through Tax Stamps – however, the lack of records does not allow to measure the extent to which this is reflected on the collection rate. This payment method is definitely more practical, but the question remains whether it increases fee payment discipline.

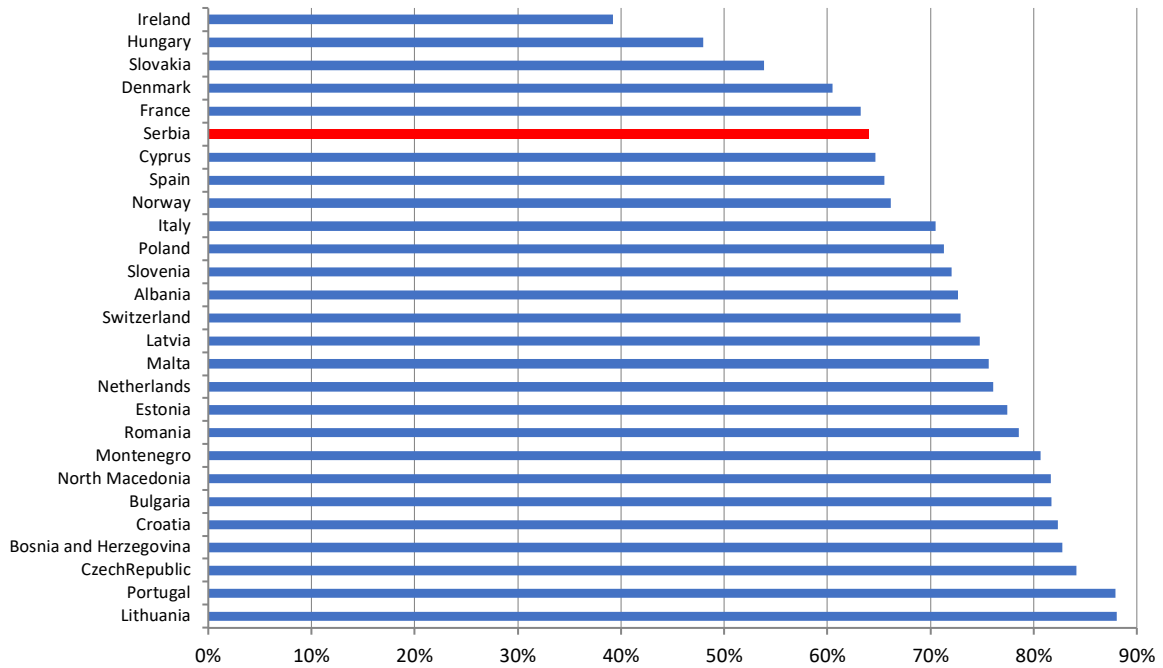
8.4. Budget Structure

817. The budget structure of the judicial system in Serbia is strongly skewed towards wage and wage-related expenses. In the case of courts, this share ranged around 68.5 percent over the 2014-2018 period (see Figure 156), while the prosecutorial system share dropped significantly over time – from 79.3 in 2014 to 70.2 percent in 2017 and started to recover to reach nearly 73 percent in 2018. This earlier drop was a result of increased service-related expenditure due to the transfer of investigation processing responsibility. The share of wage expenses in the expenditure structure of the court's system was maintained because the drop in services expenditure was matched by the decrease in wages from 2015 onwards. At the same time, the service expenditure that spilled over from courts to the PPOs system brought down the share of wages in the prosecutorial system as non-salary expenditures increased.

818. Nonetheless, the percentage of court system expenditures for wages was much lower for Serbia than it was for most other European countries and most of Serbia's regional peers. As shown by Figure 155, wages for judges and court staff made up only 64.8 percent in 2016, compared to the median figure of 72.9 percent. Wages and wage-related expenses made up roughly 68.5 percent of courts' expenditures from 2014-2020 (see Figure 156); the drop in expenditures triggered by the transfer of investigative responsibilities was accompanied by the drop in wage expenditures beginning in 2015.

⁶⁴¹ HJC estimates that the collection rate is near 70percent. This was based on internally done assessment

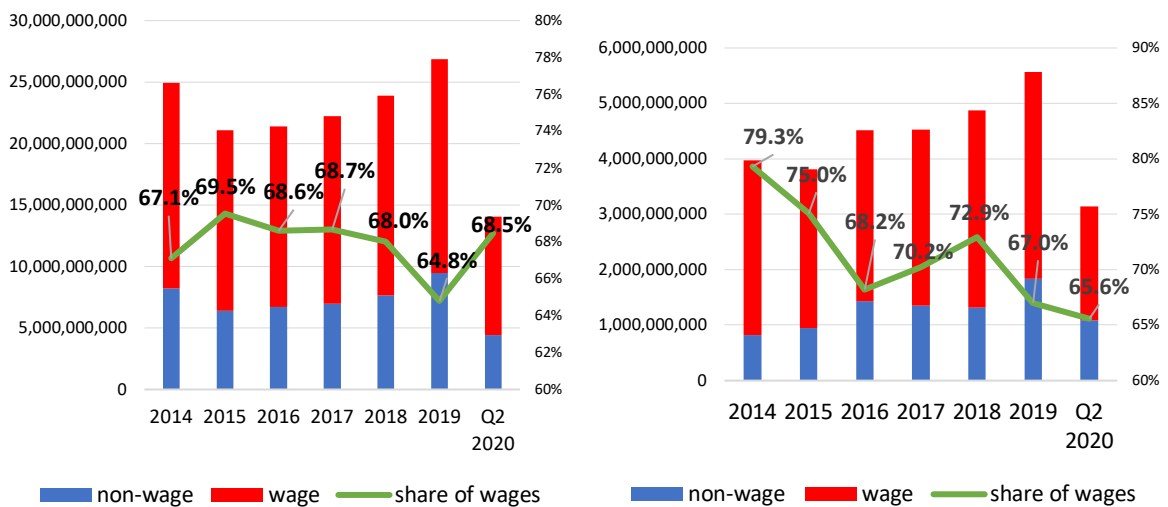
Figure 156: Court system, share of wages, Serbia and EU, 2018⁶⁴²



Source: CEPEJ 2020 Report and budget execution reports

819. The share of wage expenses for the prosecutorial system’s budget went from 79.3 percent in 2014 to 70.2 percent in 2017 due to the transfer of investigatory expenses from the courts to PPOs and the resulting increase in non-wage expenses. However, slower growth of non-wage expenses in 2018 pushed the percentage back to just below 73 percent 2018. During 2019, however, services expenditure grew by almost 15 percent, which lowered the share of wages back to the level below 70 percent. This is also shown in Figure 156.

Figure 157: Court system (left) and prosecutorial system (right), share of wages in total expenditure, 2014-Q2 2020



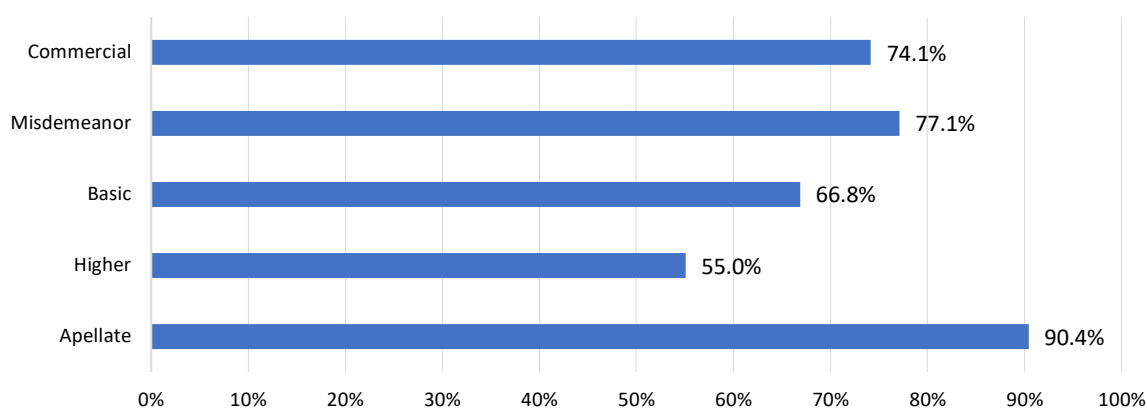
Source: Budget execution reports of judicial institutions and WB calculations.

⁶⁴² No comparable data was available for prosecutors.

820. Higher Courts had the lowest share of wages in their expenditure structure (55 percent) since they handled more complex cases, which tended to have high service (i.e., lawyer and expert witness) costs. They were followed by Basic Courts, which had 66.8 percent spent on wages and other personal expenses. Appellate Courts, which have less demand for the attorney and expert witness fees, spend 90.4 percent of their expenditures on wages.

821. There were large variations in the wage-to-budget ratios among the same categories of courts, with courts in areas with lower populations spending a greater share of their budgets on wages. For example, the average four-year expense for wages among the Higher Courts ranged from 36.4 percent in Kragujevac to 71.12 percent in Valjevo. In the case of Basic Courts, the percentage spent on salaries ranged from 47.6 percent in Novi Pazar to 79.1 percent in Mionica. This is unsurprising as any court has certain staffing requirements, regardless of size. It also reflects less focus on capital and IT expenditures in smaller courts.

Figure 158: Court system, share of wages, per type of court, 2014-2019 (average)

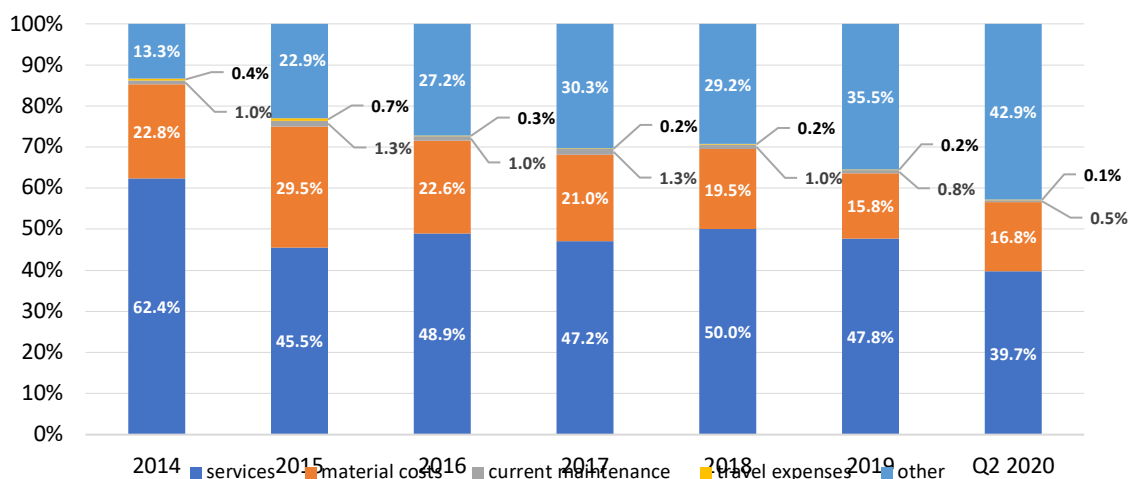


Source: Budget execution reports of judicial institutions and WB calculations

822. Non-wage court expenses were relatively stable from 2014-2019, except for the steady increase in penalties and fines paid by courts through the enforced collection process (discussed further below) and a decline in the share of total expenses consisting of services related to court proceedings, such as legal aid attorney fees and expert witness fees. In 2014, the ‘services’ item constituted 62.4 percent of the total non-wage court expenditure. However, the shift of responsibilities over managing the criminal investigation process between courts and PPOs resulted in a substantial decrease in these expenditures in 2015, and hence their share of total expenses dropped to an average of 47 percent in the period from 2015 to 2019. Penalties and fees were included in “other expenses,” which increased from 13.3 percent in 2014 to around 30 percent in 2017 and 2018.⁶⁴³

⁶⁴³ The issues of enforced collection and arrears are discussed in more detail in the next section

Figure 159: Court system, structure of current non-wage expenditure, 2014-2018

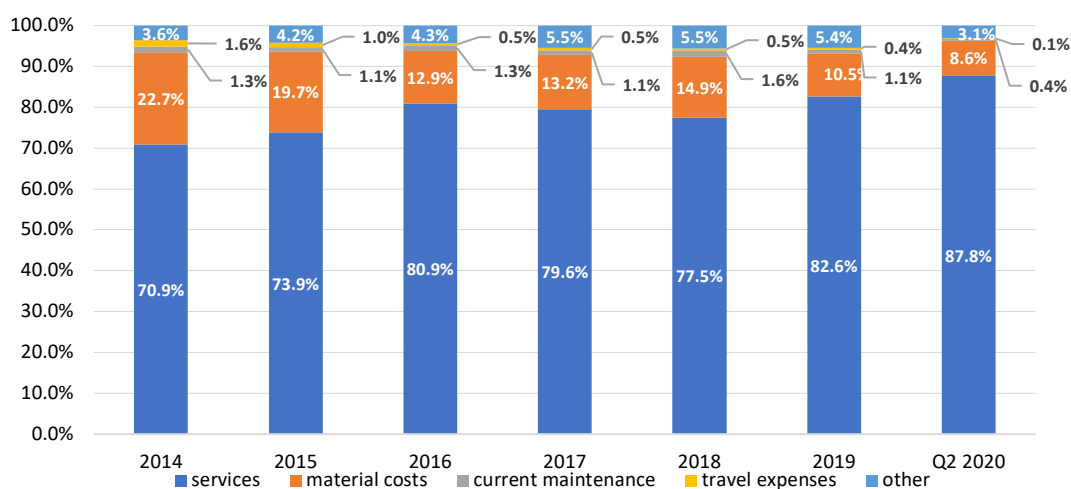


Source: Budget execution reports of judicial institutions and WB calculations

823. The shift in investigatory responsibilities left the prosecutorial system with an increase in its budget share for ‘services’ expenditure – from 70.9 percent in 2014 to almost 83 percent in 2019. The rise in services expenditures was responsible for the entire increase in prosecutorial system expenditures over the four-year period. Material costs such as utilities and office supplies, the second-largest category, remained at around RSD 180 million, so their share of expenses shrank from 22.7 percent in 2014 to 10.5 percent in 2019. Other categories of expenses included current maintenance and travel expenses as well as ‘fees and penalties’.

824. There were significant differences in the structure of expenditures among PPOs within the same category due to the varying interpretation of Article 261 of the Criminal Code and its language about the payment of costs incurred during an investigation by the courts or PPOs. In some cases, the prosecution offices took over all expenses related to the investigation, while in some, courts are the ones covering expenses if an indictment is issued. This is covered in more detail in the following section.

Figure 160: Prosecutorial system, structure of current non-wage expenditure, 2014-Q2 2020



Source: Budget execution reports of judicial institutions and WB calculations

825. There were significant discrepancies between the amount deducted from court budgets and added to PPO budgets for investigatory expenses. With some fluctuations, PPO budgets for services increased by RSD 350 million from 2014 to 2017, while the court services budgets decreased by RSD 1.45 billion in that period. This insufficient funding for PPOs triggered the acceleration of arrears. Some individual courts which retained responsibility for at least some increased expenses also had increased arrears, as discussed in the following section. This trend changed as in 2018, and 2019 services expenditure increased in both courts and PPOs compared to 2017, predominantly to settle previously accumulated arrears.

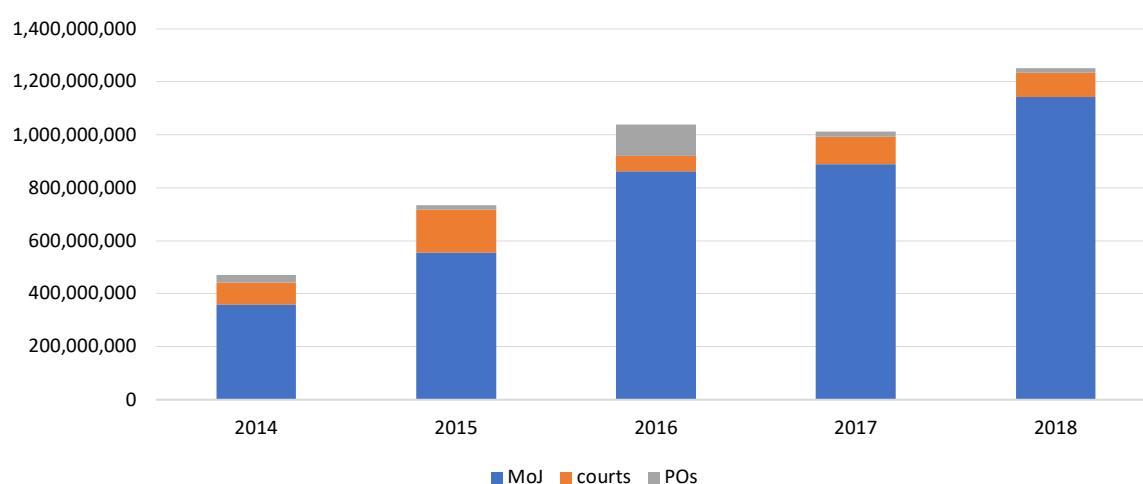
826. Capital expenditure grew almost 300 percent from 2014 to 2019, from RSD 479 million to RSD 2.3 billion. This primarily was due to the accelerated implementation of projects that had been under consideration for several years, such as the reconstruction of the Palace of Justice in Belgrade and the Judicial Building in Kataniceva, which alone account for more than a half of the entire capital budget over the period. In 2019, almost RSD 1 billion were invested in the new judicial building in Kragujevac.

827. There was substantial progress in the funding of judicial infrastructure, primarily from external sources. The 2015 addition of the capital budget section of the Budget Law enabled the MoJ to enter into multi-year contracts, which in turn allowed the development of more reliable financial plans for capital investment projects. However, there were still gaps in the capacity of the system to handle large investment projects.

828. The public investment system of the MOJ displayed the same weaknesses as the overall Public Investment Management (PIMO framework of the Republic of Serbia. There was a pronounced pattern of weak project preparation and selection mechanisms leading to backlogs and poorly performing projects, including those financed by IFI. Overall, the system lacked formal mechanisms for pre-screening, selection, prioritization, and monitoring of projects, which undermined the execution and integrity of the processes.

829. Serbia has to continue investments in judicial infrastructure to prevent further deterioration of judicial buildings and replacement of existing equipment, as discussed in the chapters on ICT and Infrastructure Management. During the period under study, the court system capital budget went from an average of 2.3 percent during the 2010-2013 period to more than seven percent in 2019.

Figure 161: Capital expenditure, judicial system, 2014-2020



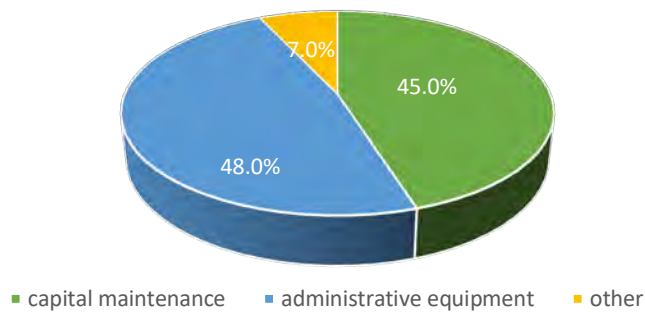
Source: Budget execution reports of judicial institutions and WB calculations

830. The MoJ managed large capital investments on behalf of all judicial institutions, while only a small portion of total capital expenditures was managed by the judicial institutions themselves. This is shown in Figure 160, above. Large capital investment projects began appearing as separate items within the MoJ budget only in 2015. However, most projects benefitted more than one judicial institution as many institutions share a single building (e.g., a Basic and Higher Court and/or both a court and PPO in the same town). Formulated as separate projects, it is possible to track their financial implementation, but since the large majority of them benefit more than one judicial institution, they cannot be allocated to any of these institutions in particular but are kept in the financial records of the MoJ. This adds to the complexity of the budgetary structure and makes it difficult to assess the budgetary performance of the judicial system.

831. Most of the MOJ-managed projects involved the construction or reconstruction of buildings; capital expenditures managed by courts and PPOs consisted primarily of capital maintenance (48 percent) and purchase of administrative equipment (45 percent).⁶⁴⁴ This is shown in Figure 161 below. The breakdown of capital expenditure is very stable over the period, with one exception in 2016 when the “other” category included nearly RSD 89 million for the reconstruction of the Basic and Higher PPO building in Sombor was reported in the budget of the Higher PPO Sombor. The remaining portion of the “other” category consisted predominantly of expenses related to preparing technical documentation for large capital projects and purchasing security equipment and vehicles.

⁶⁴⁴ Includes mostly furniture and computer equipment purchases

Figure 162: Structure of capital expenditure, aggregate, average 2014-2019



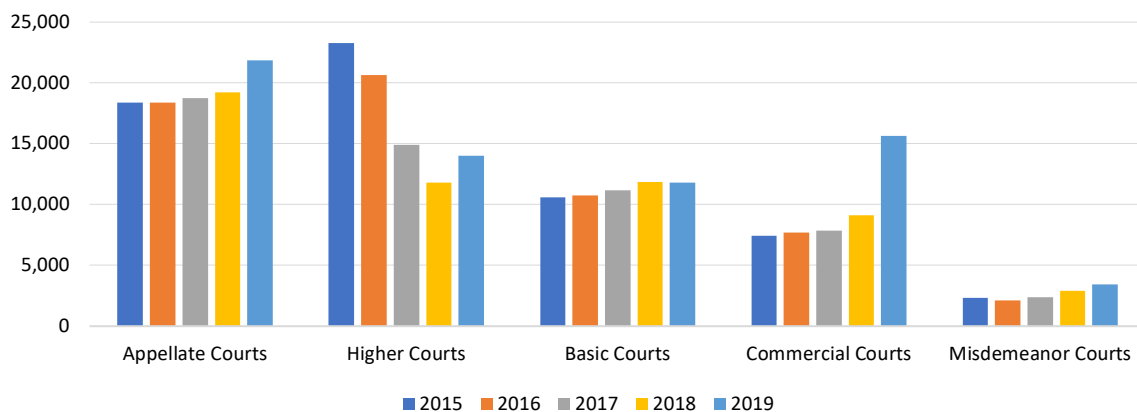
Source: Budget execution reports of judicial institutions and WB calculations

832. While the Law on Court Organization⁶⁴⁵ regulated the authority over capital and current maintenance of the courts, there was no official definition of what constitutes capital maintenance assigned to the MOJ versus current maintenance assigned to the SPC. As a result, to address emergency situations, the MoJ sometimes financed work from own-source revenues, based on the provision of the Law on Court Fees which allowed that “up to 20 percent of court fees can be used for improving the material status of the employees, CAPEX, and other expenses”. The 2017 version of the Law on Organization of Courts consolidated authority for both types of court maintenance expenses in the MoJ. However, the distinction between capital versus current maintenance remains for PPOs.

8.5. Effectiveness in Budget Execution

833. The average cost for all active cases fluctuated from 2014-2018, with variances due to wage decreases in 2015 and 2016, ending at RSD 9,038 in 2019.⁶⁴⁶ The average cost per active case was RSD 10,515 in 2014, RSD 7,442 in 2015, RSD 7,136 in 2016, and RSD 7,393 in 2017, compared to RSD 8,016 in 2018. In 2018 and 2019, the cost per case rose due to an overall increase in court budgets⁶⁴⁷ and a relatively stable number of active cases.

Figure 163: Aggregate cost per case per court category, 2014-2019



Source: Budget execution reports of judicial institutions and WB calculations

⁶⁴⁵ The Official Gazette of the Republic of Serbia 116/2008 – subsequently amended

⁶⁴⁶ For the purpose of this analysis, we defined active case numbers as the sum of unresolved cases at the beginning of a year and those filed during the same year.

⁶⁴⁷ Driven mostly by the increased service-related expenditures used to settle accumulated arrears.

834. Almost all types of courts brought their average cost per case down in the observed period.

The primary sources of the decrease for Higher and Basic Courts from 2014 to 2015 were the drop in salaries and the drop in the cost of criminal cases once the investigative responsibilities were transferred to PPOs. By 2018, as a whole, the expenses of Higher Courts were less than 50 percent of their expenses in 2014, based on the overall drop in expenditures and the consistent increase in active (incoming plus unresolved) cases. Thus, costs in the Higher Courts were not reduced because of efficiencies but rather because of an increase in unresolved caseloads. Basic Courts stabilized their expense per active case at RSD 11,000 from 2017 onwards. Their average number of cases was 916,000, without any significant annual fluctuations.

835. There were significant variations in the per-case expenditures of individual courts within the same categories.

The expenditures for Higher Courts from 2014 to 2019 ranged from RSD 12,236 on average for HC Leskovac to as much as RSD 37,805 in HC Negotin.⁶⁴⁸ For Basic Courts, the differences were even higher. The minimum average expenditure per case was recorded in BC Lebane (RSD 5,944), while BC Valjevo had the largest expenditure level of RSD 21,192.

836. In addition to possible inefficiencies within particular institutions, different treatment of the split of investigation-related expenses between the courts and PPO probably accounted for much of these discrepancies.

These differences are not being examined to ensure consistency. Article 261 of the Criminal Code defines criminal procedure costs as including “awards” to service providers (i.e., lawyers and expert witnesses) along with other costs, such as travel and material costs (e.g. utilities, office supplies). The article also specifies which expenses should be paid in advance of the investigation process by “the institution managing the process”, but there were different views of when the expenses should be paid and which institution should pay. In some districts, PPOs paid the investigation expenses they incurred regardless of whether an indictment was issued or not. Other courts and PPOs, however, operated on the principle that once an indictment was issued, the court became the “managing institution” and was responsible for paying investigation expenses.

837. Responsibility for examining these vast differences in per-case costs has not been taken on by any governance institution.

The additional data are now available to evaluate cost per case by type of institution should be utilized by MoJ and the Councils to examine where efficiencies might be realized.

838. The court system could not track cost-per-case trends in the system or review other aspects of system performance as there are inadequate systems to do so.

Since there was no interoperability between CMS and budget execution systems, it was not possible to systematically link expenditure items to cases based on their type, duration, number of parties involved, etc., and the HJC and other authorities were severely hampered in their ability to spot and address inefficiencies of different courts, or set standard ranges or limits for expenditures for various case types or within different levels of courts.

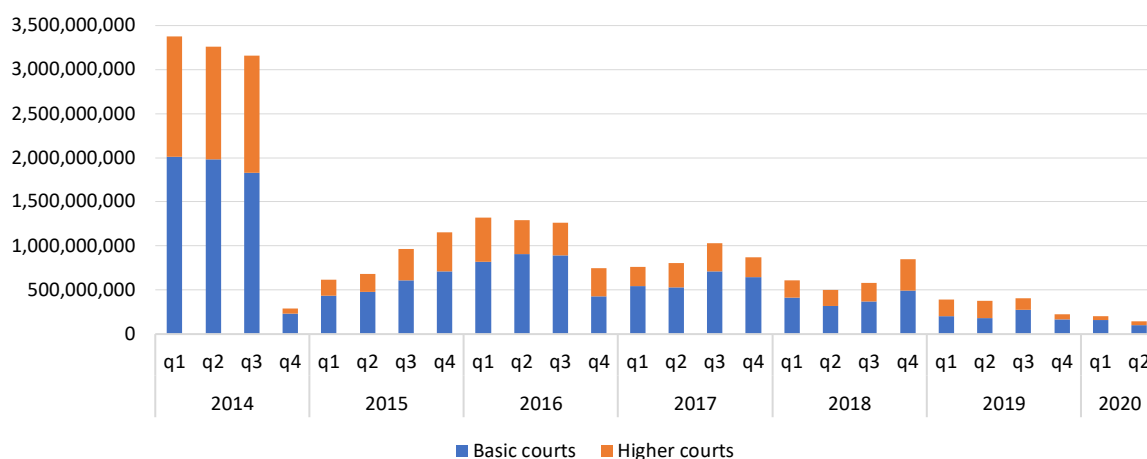
839. The court system finally cut its arrears significantly in 2015 through a one-time intervention of allocating funds from the budgetary reserve.

Serbia’s Budget System Law prohibits agencies from

⁶⁴⁸ Comparison of costs per case among different courts was not possible in 2018 since the financial data for the MoJ-financed part of the budget was not disaggregated by individual institutions.

incurring liabilities that exceed current appropriations; these liabilities are defined as arrears. Arrears represented 11.5 percent of total expenditure at the end of 2013 and only 1.5 percent at the end of 2018. The assumption of responsibility for criminal investigation expenses by PPOs was a major factor in the accumulation of more arrears by the courts after the 2015 intervention.

Figure 164: Court system arrears, end of period, 2014-Q2 2020, quarterly data

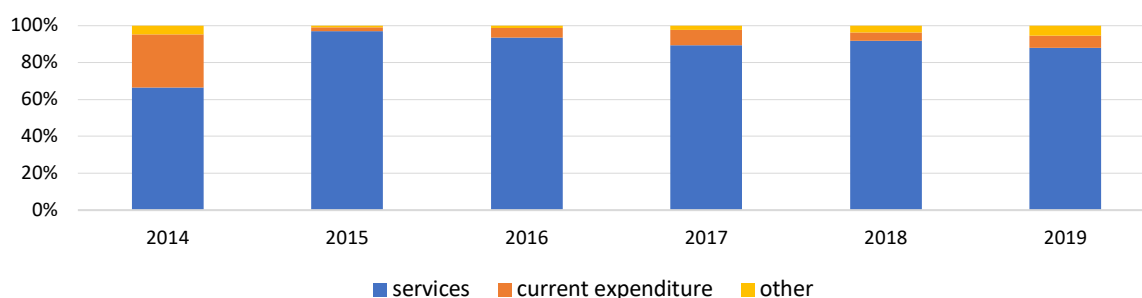


Source: Quarterly arrears reports of HJC

840. Judicial authorities and the MoF also made less successful attempts to tackle the issue of arrears and prevent them from growing again. In 2015, the HJC issued an Act that intended to have all courts in the system pay invoices for services rendered in the criminal proceedings (the largest source of arrears in the system) within 60 days. However, the requirement of payment within 60 days already was part of the 2012 Law on Deadlines for Payments in Commercial Transactions (LDPCT), so the 2015 Act effectively only clarified when the 60-day period began. Greater monitoring of timely payments is not in place.

841. Lawyer and expert witness fees represented the largest sources of arrears in the prosecutorial system and required more examination and control. For both courts and PPOs, these fees fell within ‘services,’ which also included costs for postal services, fees for lay judges, arrest services, and compensation for lawyers and expert witnesses providing their services during a trial.

Figure 165: Breakdown of arrears by type, end of period, 2014-2019



Source: Quarterly arrears reports of HJC

842. The process of assuming commitments in courts and PPOs generally was straightforward. Judges or prosecutors verified service invoices for court proceedings and issued orders for payment of the invoices. Once it was approved (and assuming the service provider did not challenge the amount approved), the invoice was payable and represented a liability of the court or PPO.

843. The budget execution system did not require pre-approval of commitments from budget authorities or the other procedures that could have prevented the accumulation of excessive arrears. In addition, the assumptions of commitments were not recorded against the relevant appropriations, so there was no real-time tracking of the accumulation of arrears.

844. The enforced collection as a mechanism for settling outstanding invoices was not used uniformly against all courts. As confirmed by chief accountants of several courts and PPOs, individual lawyers and expert witnesses make decisions about whether to force collections. Lawyers and expert witnesses may hesitate to exercise this right because they fear courts may cease engaging them. Although courts and PPOs claim that lawyers are called for mandatory representation according to an alphabetical list, in practice, there is nothing stopping judges and prosecutors from calling a lawyer of their preference. The same is true for expert witnesses. Such issue is more pronounced in large courts and PPOs where the market for lawyers and expert witnesses is abundant.

845. One important feature of the LDPCT is it allowed the debt of public sector entities to be settled through the enforced collection. The introduction of enforcement agents, which coincided with the LDPCT, set the stage for settling judicial institutions' debt through this mechanism. Interviews confirm that most of the arrears come from debt to lawyers and expert witnesses combined with benefits that accrue to lawyers during the process of enforced collection, creating a network of incentives that boosts such practice. There is an estimated 30 percent of unnecessary expenses on top of original debt when an enforced collection is used to settle invoices. These funds consist of various penalties and fees paid to the bailiff, lawyer, NBS, court, etc.⁶⁴⁹

846. Commitments are recorded in two parallel ways – manually (i.e. in notebooks or in MS Excel spreadsheets) and in the accounting software used across the judicial system (ZUP). Both courts and PPOs lack proper incentives to use ZUP since they report on their financial operations on a cash basis. Reporting on arrears happens through a separate procedure. Hence, it seems that the most accurate records are kept manually. The lack of interoperability of these 'sources' of commitment and arrears records and BEX creates a world of opportunities for excessive accumulation of uncovered commitments which result in arrears growth.

847. Although the stock of arrears is reported to HJC and SPC quarterly, the accuracy and completeness of those figures are questionable as it highly depends on the financial awareness and responsibility of judicial staff. As a result, accounting departments of courts and PPOs find out about a portion of their unsettled bills only after they get paid through the enforced collection. In practice,

⁶⁴⁹ The Conclusion adopted by the HJC in 2015, which introduced the obligation of all courts to pay the debt incurred during the investigative procedure within 60 days. In practice, not much has changed, because the same obligation was prescribed by the LDPCT (Article 4). Invoices that did not reach the accounting department simply could not be paid on time and were settled through enforcement. The Conclusion could not solve this problem, but it did solve the problem of the moment from which the beginning of the 60-day period after which enforcement is possible is calculated.

there are many cases when judges or prosecutors never notify their accounting departments of an invoice or wait until the end of the process to do that. A large portion of such invoices ends up being settled through the enforced collection. Sometimes it even happens that invoices are not settled regularly based on a verbal agreement between the judge and service provider (i.e., lawyer or expert witness) that it will be settled through enforced collection. It is obvious that such examples of blunt disregard toward the financial aspect of judicial function should be completely eliminated.

848. The reduction in arrears seen in the 2014-2019 period is, thus, partially due to an increase in them being settled instead through the enforced collection, which is very costly and ineffective. This only magnifies operational risks associated with arrears generation as it complicates relationships with main service providers during investigation and trial procedure. The FR team found out through interviews with judges and prosecutors that, for instance, expert witnesses, who are limited in number, are becoming reluctant to provide their services because of the difficulty and uncertainty around settling their invoices. These situations are more common in courts and PPOs occupying smaller territories.

849. Lack of data exchange (i.e. interoperability) between accounting and financial systems on the one hand, and CMS on the other, undermine efforts to obtain comprehensive, accurate, and reliable financial information. If these systems were interconnected, engaging a lawyer or expert witness would be an activity recorded in the CMS, which would flow to the accounting system as an account payable. From there, it would flow to the budget execution system, where such commitment would be recorded and appropriate appropriation encumbrance made. Although this is not easily attainable as it requires joint effort from many parties (primarily MoF), achieving interoperability between these platforms would prevent arrears accumulation and add significantly to the quality of service delivery across the whole system.

850. Budgets of judicial institutions should only be enhanced once these institutions demonstrate awareness of the volume and type of their financial operations. In other words, there has to be a standard way of determining how much it costs to run a judicial institution in Serbia with a certain number of judges/prosecutors handling a certain number and types of cases. Only in these circumstances can the requests for additional funds coming from judicial institutions be assessed and decided properly. Increasing the budgets of courts and PPOs linearly or continuing the practice of settling their debts at year-end with a one-off outlay from the budget reserve is not a solution. In fact, this represents a 'reward' for those who act irresponsibly and assume financial commitments beyond what they are allowed to. On the other hand, the more prudent institutions are discouraged from continuing to act responsibly.

8.6. Recommendations and Next Steps

Examples of recommendations that inspired some reform activity over the past seven years are: i) regular reporting on arrears and settling existing levels of arrears, and ii) introduction of a binding interpretation of financial responsibilities for the costs of investigations. The majority of 2014 Functional Review recommendations in data management, court fees collection, commitment and arrears management, in-year budget management, and financial responsibilities within the judicial system have not been implemented. Although there is clear evidence of efforts made to address the

issues of budgetary responsibility and arrears management, these efforts were far from sufficient to resolve them.

Recommendation 1: Improve the financial management infrastructure and institutional framework to enhance operations, improve transparency and efficiency, and add to the budgetary independence of judicial institutions.

- Increase awareness of judges and prosecutors about budgetary matters and public financial management in general. This is the key to achieving better cost-effectiveness across both court and prosecutorial systems. (HJC, SPC – short-term)
- Simplify the management structure of the judicial system budget. This can be achieved by transferring the budget responsibilities of MOJ to HJC and SPC, with the exception of capital budget management, which should remain with MOJ because of: (1) MOJ's greater capacity related to procurement and (2) the challenge of allocating such costs and responsibilities over multiple institutions occupying the same facility. (MOJ, SPC, HJC, MOF – short-term)
- Introduce a standardized Budget Preparation Management tool (i.e., software) across the entire judicial system, which is fully compatible with the existing BMPIS used by MOF. (MOJ, SPC, HJC, MOF - medium-term)
- Further strengthen the capacity to manage capital investments. In order to maintain and improve current capital expenditure levels, MOJ's staff skill set needs to be enhanced in the following areas: project preparation, appraisal and selection, and management and monitoring of project implementation. Formulate and introduce project selection and prioritization methodology. (MOJ – medium-term)

Recommendation 2: Strengthen the budget execution process to enhance financial data integrity and completeness, improve current-year monitoring capacities, and ensure standardization and consistency in budget execution.

- Clarify the financial responsibilities of courts versus PPOs within the criminal investigation procedure by modifying article 261 of the Criminal Code and formulating accompanying bylaws to further clarify the issue and ensure consistency in costing. (HJC, SPC – short-term)
- Optimize and standardize all elements of invoice processing (i.e., define precisely the document flow) across judicial institutions to avoid excessive arrears accumulation and eliminate invoice settlement through the enforced collection. (HJC, SPC – medium-term)
- Ensure accuracy and completeness of accounting records within ZUP. This would eliminate the need for keeping parallel manual records of various accounting categories for different purposes. (Courts, PPOs, HJC, SPC, MOJ – short-term)
- Increase the insight of MOJ, SPC, and HJC into aggregate accounting categories in ZUP to enhance their in-year analytical focus and inform budgetary policy adjustment/formulation. (MOJ, HJC, SPC - medium-term)
- Enable data exchange (i.e., enable formulation and transfer of payment request and retrieval of transaction settlement information) between ZUP and the budget execution system. (MOJ, HJC, SPC – medium-term).
- Gradually reduce the “buffers” (i.e., reserves) from appropriation management. Increase the financial responsibility of judicial institutions by allocating the full amount of their annual appropriations at the beginning of the year. (HJC, SPC – medium-term)
- Increase transparency of allocation of court fees across courts and PPOs. The subjectivity in distributing the shares of court fees by MOJ and HJC should be eliminated through the introduction of a coherent and comprehensive allocation methodology in line with the Law on Court Fees. (MOJ,

HJC – medium-term)

Recommendation 3: Strengthen the budget preparation process. Since budgets of judicial system segments are not based on performance-related criteria, they cannot be used to assess performance, which is the cornerstone of responsible budget management. The following recommendations are designed to: i) enable judicial authorities to determine a credible baseline budget, ii) formulate their budgets based on case-related performance criteria, and iii) measure performance in order to inform decision-making based on reliable data.

- Ensure interoperability between CMS, the budget execution system, and the budget preparation system. Ensuring data exchange between them is an instrumental precondition for introducing performance-based budgeting. (HJC, SPC, MOJ – medium-term)
- Introduce case-costing methodology. This methodology should be able to answer the question of what is an expected range of costs for different types of cases and thus feed into the budget formulation process. (HJC, SPC – medium-term)
- Introduce performance-based budgeting. Develop a baseline budget based on the data retrieved from the CMS and the case-costing methodology. Analysis of the budget will subsequently enable cost-effectiveness and free up resources for other purposes. (HJC, SPC – medium-term)
- As a transitional measure, engage with MOF to gradually increase the investigation services budget. At present, arrears are settled by one-off increases in judicial budgets at the end of the year. This amount should be made available at the beginning of the year to avoid unnecessary fees and penalties paid by courts and PPOs in the process of enforced collection. (SPC, MOF – short-term)

9. ICT Management

9.1. Main Findings

851. There have been some notably positive trends in ICT Management, particularly in data sharing, transparent reporting, and ICT security, since the 2014 Serbia Judicial Functional Review. A 100 percent increase in the ICT budget over the period 2015-2020, training for external compliance with ISO standards, and enhanced data security and backup procedures have contributed to this progress. Several modern web-based tools have been adopted, contributing to the overall better dissemination of judicial information, both internally and externally. Access to justice information – both generally about the system and related to specific cases – and quality of judicial decision-making have thus both been enhanced. These improvements have increased the accountability, transparency, and efficiency of the judiciary.

852. Internally, the implementation of the Enterprise BUS has allowed for data exchange across judicial systems and with allied entities outside of the justice sector. There are now common registries for internal justice systems users. The Judicial Information System (JIS) system speeds proceedings in court cases and enforcement procedures, with time and cost savings for the citizens and the justice system, and allows automated data sharing with the National Statistics Agency, Ministry of Interior, Ministry of Public Administration and Local Self-Government, the National Bank of Serbia, and others. Uniformity of the AVP application installed at the courts ensured that the courts operate the same version of the software, with the same features and operational characteristics, although AVP does not allow all necessary functions and is scheduled for updating. Business intelligence software was fully implemented in 2019 with predefined reports from court registers and customized reports, enriched with a high variability of graphic data visualization. CEPEJ found that Serbia now exceeds the experience of most states in introducing tools to measure performance, a significant change from 2013.

853. Externally, the portal for calendars and decisions of most court types, representing a significant advance in the access to justice, has enhanced legal certainty and increased transparency. A regulatory structure to allow e-filing of all case types, an e-filing pilot in three courts, and an e-Auction platform for the electronic sale of property in enforcement proceedings have been implemented. A central application for court fees allows users to see all payments made by and due from court users, flagging unpaid court fees and automatically distributing fees. Basic and higher courts currently use the application; the commercial courts will be added in the near future. There is also an e-Board that provides citizens with quick and modern insight into the contents of bulletin boards in one place.

854. Nonetheless, despite significant progress in some areas, Serbia's overall judicial ICT development remains uneven and lags behind other European countries. CEPEJ's most recent report⁶⁵⁰ on the Use of Information Technology in European Courts (including prosecutorial systems) focused on three key aspects – ICT governance, ICT equipment, and infrastructure, and the legal framework surrounding ICT development. On a scale from 3 to 9, Serbia (as in the earlier evaluation) earned an overall score of 4, with only ICT governance arrangements earning the score of 2. This placed Serbia's

⁶⁵⁰ *Use of Technology in European Courts*. European Judicial Systems: Efficiency and Quality of Justice, CEPEJ Studies, No. 24.

judicial ICT well below the European average; within the region, only Albania has a lower development level (i.e., a score of 3).

855. In governance, CEPEJ found that Serbia continues to lack a system for identifying and optimizing IT innovation.¹ Since 2013, Serbia has experimented with creating an e-Justice Department at the Ministry of Justice as well as a Sectoral ICT Council. The e-Justice Department's broader planning mandate has been disbanded in favor of ICT planning rooted in individual systems. The Council has not met in almost four years.

856. ICT has not been used to bring about improvements in efficiency. The Judicial Development Strategy 2020-2025 and the revised Action Plan for Chapter 23 within the EU Negotiation process recognize ICT as one of the key areas of development. For example, CEPEJ found that Serbia continues to have relatively low use of IT equipment in criminal matters while the pending criminal caseload continues to grow.¹ It is among seven states whose low IT equipment deployment contributed to "greater difficulty in reducing the number of pending cases," according to CEPEJ.

857. In February 2022, Serbia adopted IT Strategy in Judiciary for the period 2022-2027 to ensure the preparation of the judicial system for new challenges and increase the application of the ICT in the judiciary. The accompanying Action plan includes the estimated cost of the Strategy to ensure financing and implementation of the Strategy.

858. While national ICT funding has increased substantially, the bulk of the budget is spent on salaries and outsourced maintenance services, leaving funding insufficient to cover investment needs and to improve the judicial infrastructure. While the justice sector reports that it has an adequate number of computers and other devices, a sizeable percentage of these are more than 10 years old and operate on outdated operating systems.

859. ICT investment decisions continue to be a donor- and supplier-driven. The justice sector is over-reliant on donors for ICT funding. The sector lacks a strategy for the self-sustainability of its ICT systems. There is a lack of planning for ongoing maintenance and support costs of ICT equipment provided by donors. Of the needed 8,000 replacement PCs, 5,700 will be provided by an IPA project, but no funding has been allocated for replacement. Inevitably, equipment will become obsolete once again.

860. Consistent rules and routines for data entry are not in place, rendering the statistical information collected incomplete. The AVP system, in particular, lacks automated routines ensuring data quality, and there are an inadequate number of mandatory data fields, inadequate field validation, and no 'lock down' of statistics once submitted. Information is thus missing or is not collected in a uniform manner. This is covered in more depth below.

861. Institutional and resource barriers have impeded automated data sharing between the courts and PPOs, legal professionals, and the general public. The absence of protocols for electronic signatures, limited promotion of electronic exchange by the MoJ, inadequate scanning, printing, and audio-visual capacity, a continued lack of capacity in electronic communications, and a lack of public trust in such communications have hindered the wider use of electronic data exchange and sharing, e-filing and use of remote hearings.

862. Case information continues to be disconnected from resource management information. When cases are registered in the case management system, they are not automatically registered in the accounting system; courts are required to give multiple supervisory bodies (the Councils, the SCC, and the MOJ) regular reports that overlap but never provide the whole picture on performance and are not shared among the supervising organizations; and the systems used for the preparation and execution of court budgets are not linked

863. While the use of websites is widespread today within the justice system, many still offer only basic functionality. There are a few notable exceptions offering higher functionality in the form of proactive, automated service delivery.

864. The conclusions of the 2014 Functional Review about ICT staffing are still valid: the percentage of court staff devoted to ICT falls well below the benchmark of 3.6 set by the Gartner Group and varies widely between courts, even at the same jurisdictional level (from 0.8 to 3.5 percent of total staffing).

865. ICT training for judges and staff is woefully inadequate and generally occurs only when a new system is implemented (and is usually funded by the donor that funded the system).

9.2. Governance, Funding, and Management of ICT

9.2.1. Governance Structures

866. The justice sector has completed several critical strategic analyses of sectoral ICT, but these strategies have not been incorporated by the Government. In 2013, under the leadership of the MOJ, the justice sector evaluated its ICT systems, operations, and management structures and created the ICT Strategy Report and Annex. The Strategy, completed by the Multi-Donor Trust Fund, recognizes the strategic role of automation in the long-term success of the judiciary, assesses how the judiciary's IT and business strategies can be aligned, prioritizes areas most in need of reform, and identifies specific action steps and funding for making ICT improvements. However, the draft ICT strategy has not been adopted by the Government. A comprehensive ICT infrastructure assessment was also carried out in the last quarter of 2017 by the EUD. The assessment contains a detailed map of future investment actions required to complete the development of the proposed ICT agenda, split into phases along with corresponding cost estimates. In addition, a guiding document, "Justice System ICT Systems Development Directions", was adopted in April 2016. Nonetheless, these investment priorities have not been incorporated into the budget proposed by MoJ.

867. The Serbian judicial system does not yet embrace ICT as a tool for transformation even though ICT is acknowledged in relevant strategic documents, including the strategies above, the Judicial Development Strategy (JDS), and the revised Action Plan for Chapter 23 within the EU Negotiation process, as one of the key development needs in the areas of impartiality, accountability, competence, and efficiency. However, while many of the other activities laid out in the JDS and Action Plan have been successfully completed, the key ICT infrastructure development implementation is still on hold.

868. ICT systems remain unable to meet the overall business needs of the judicial system at either a policy or the operational level, despite the number of initiatives aimed at improving the functionality of management information systems.

869. In the absence of strong governance structures, the judiciary is struggling with the scope and depth of recommendations to improve ICT processes. Planning for the implementation of improvements cannot begin in earnest until governance structures are strengthened and roles clearly defined. ICT investment decisions continue to be a donor- and supplier-driven.

870. The Serbian judicial system began to make strides in improving the governance of ICT but has reversed those initiatives and continues to lack strong, strategic leadership. In 2014, an e-Justice Department at MoJ and the new Judicial ICT Sectoral Council were created. However, the E-justice department is not reflected in MoJ’s most recent systematization and has been replaced by staff groups related to specific areas of law rather than strategic ICT planning. The ICT Sectoral Council has not met since 2017. MOJ continues to lack people with enough in-depth knowledge of either court operations or programming, limiting its ability to develop systems to enhance court efficiency or quality. Instead, the MOJ’s efforts in ICT continue to be centered on donor contributions and contract management rather than the development of new or existing systems. A dedicated Chief Information Officer (CIO) function at the ministry level would greatly enhance the visibility of ICT issues and their contribution to overall justice sector efficiency.

871. There is little cooperation and few points of contact between MOJ and the Government office in charge of the design and functioning of eGovernment and information systems. The Office for IT and eGovernment has established a State Data Center, which is one of the most modern in the region and stores the key information and communication infrastructure of the Republic of Serbia and provides support in the application of information and communication technologies and procurement in state administration bodies and Government services.

9.2.2. ICT Funding

872. The ICT part of the MoJ budget has increased by over 100percent since 2015, with significant investments in infrastructure in 2019 and 2020.

Table 47: ICT part of the MoJ budget

	2015	2016	2017	2018	2019	2020
RSD	433,000,000	396,000,000	252,000,000	481,000,000	780,700,000	894,200,000
Euro (M)	3.59 M	3.22	2.08	4.1	6.64	EUR 7.61
Annual percent Change		9percent	37percent	91percent	64percent	14percent

Source: Ministry of Justice, Annual public procurement plans

873. There is no long-range ICT budget planning or funding to sustain automation initiatives on an ongoing basis. Capital budgeting remains on an annual cycle.

874. The Serbian judiciary does not perform business case analyses for proposed projects or analyze their likely total cost of ownership (TCO). The TCO approach would require closer coordination between the MOJ, the HJC, and the SPC decision-makers and strategic advisors. This is especially important for assessing current conditions, providing a framework for further sustainability of case management systems in the Serbian judiciary, and addressing the overall IT infrastructure and IT systems within the judiciary.

875. The maintenance of software, internet connections, and equipment replacement absorb a significant share of judicial ICT resources, much of it outsourced to private companies. The total ICT justice sector expenditures were estimated at 894.2 million RSD in 2020, of which 463 million RSD was spent on maintenance.

876. Ongoing maintenance and support costs of ICT equipment provided by donors are not foreseen. The courts still do not have any kind of strategy for the self-sustainability of their ICT systems. MoJ invested in ICT infrastructure renovation at commercial courts and a new CMS (SIPRIS), but there is no indication of how these systems will be sustained and maintained by the courts in the future.

877. Significant arrears for amounts owed to vendors for system development in prior years have been resolved, with no significant arrears remaining.

878. A complete inventory of ICT hardware and software was completed in 2017. This represents significant progress since 2014, when there was no unified inventory of justice system ICT hardware or software assets to be used as a basis for planning future ICT funding needs. However, since 2017, no inventory of ICT hardware and software has been taken.

879. The courts report that they have an adequate number of computers, at a ratio of almost one desktop or laptop per authorized position (see Table 48). This ratio has improved since 2013, especially for desktops/laptops in the Basic and Commercial Courts.

Table 48: Available Court Hardware by Court Type, 2021

Court Level	Total desktops/	percent Change Since 2016	Desktops/ per position	# Courts	Scanners	Scanners/ court
Basic Courts	5,969	-17percent	0.92	66	308	4.67
Higher Courts	1,830	+8percent	0.95	25	127	5.0
Appellate Courts	965	+30percent	1.29	4	26	6.5
Commercial Courts	1,501	+30.2percent	1.68	16	86	3.5
Misdemeanor Courts	1,450	-7.5percent	0.6	45	44	1.0
Total	11,750	-5percent	0.9 (+12.5percent)	156 (+26percent)	791 (+26percent)	4.3 (no change)

Source: Ministry of Justice, Active directory numbers

880. However, the use of many older, slower computers impedes the effective use of systems and efficient service delivery. In many courts, a sizable number of PCs (30-50percent of the desktops from the list above) are more than 10 years old and use Windows XP, a key obstacle to the use of modern software tools and applications. Many printers, local servers, and scanners are also obsolete. The necessary and large refurbishment of justice ICT systems infrastructure (hardware) is not underway due to prohibitive costs in comparison with the overall sectorial budget and funds within it that can be used for this purpose. The Ministry has taken steps over the last couple of years to provide smaller deliveries of PCs to most critical areas (e.g., servers, the central domain at appellate courts in 2017) as has some donors, usually within the delivery of new systems (e.g., SIPRIS).

881. It is estimated that some 8,000 replacement PCs are needed. This represents a substantial investment in itself. Adding in other necessary pieces of outdated hardware that need to be replaced (servers, printers, switches, storage, etc.), very high levels of required investment in hardware, probably at the level of 15-20 million Euro, are needed. The IPA EuropeAid Supply of IT equipment and software for improvement of CCMS in courts plans to procure 5,700 PCs for the courts of general jurisdiction (basic, higher, commercial, and appellate courts).

9.2.3. Operational Management

882. The MOJ has not historically provided ICT staff support to the courts. Operations are fragmented and reliant on vendors, donor organizations, or internal court resources. Currently, the following services are fully or partially outsourced to private vendors:

- a. application system development and implementation;
- b. application system support;
- c. provision of a wide-area network, WAN/LAN development, and maintenance;
- d. provision of e-mail services;
- e. end-user hardware; and
- f. anti-virus software.

883. Reliance on outside vendors to provide IT services is greater than in most countries. The Gartner Group, the leader in assessing technology planning, states that governments spend slightly over 40 percent of IT expenditures on average on personnel and only 22 percent on outsourcing.

884. ICT vendor agreements, largely developed by individual institutions, were often not written to the benefit of the judiciary, resulting in varying degrees of effectiveness. Vendors are responsible for critical tasks throughout the judiciary, including system development. Because of the heavy reliance on vendors, contracts' details are critically important. Some current contracts do not consistently describe the development services to be provided. They also do not ensure adequate and accessible technical support, detail preventative and corrective maintenance, or provide a clear description and state ownership of source code, specifics of release management, or maintenance of trouble logs. Some system users indicate there was little consultation with users before systems went live, or that feedback was provided but was not incorporated. Similarly, while some contracts specify the precise hours and form of helpdesk assistance, the Commercial Courts lack access to helpdesk services, and SAPS users report only modest helpdesk assistance.

885. Reliance on disparate vendors by individual institutions may be reduced through the planned use of a centralized Helpdesk. However, plans for a full-scale help desk and support organization and a centralized public tender for software maintenance with a multi-level Help Desk and Support organization, have not moved forward.

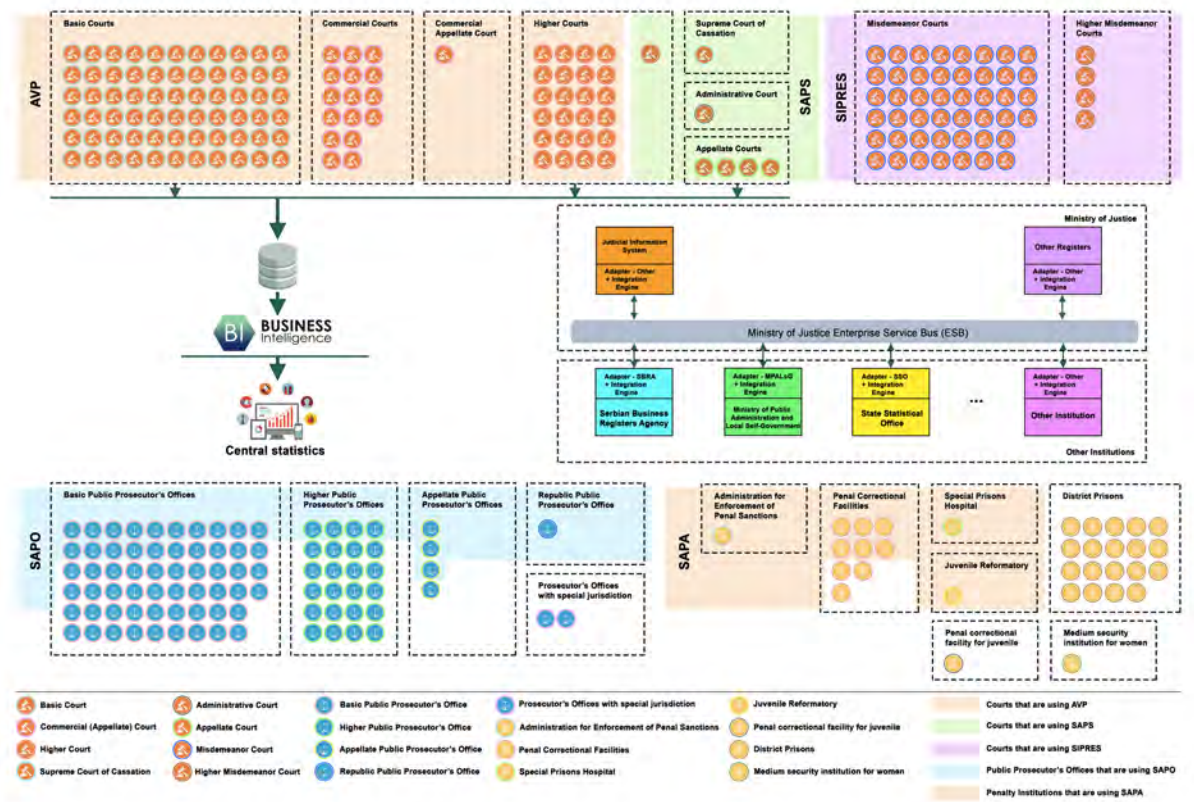
886. MoJ considered centralized outsourcing and maintenance of local ICT equipment for a number of courts but has not moved forward with those plans. Individual courts enter into contracts on their own. This follows on efforts to improve contracts for maintenance and support of ICT equipment by the first Basic Court in Belgrade contracted with a specialized external supplier of printers and scanners; this company is solely responsible for proper functioning, including servicing, parts, and support, with specific Service Level Agreement (SLA) details. This arrangement has relieved the court of the mundane and repeated need for printer servicing and replacement and still proved to be around 30 percent less expensive.

887. The MoJ needs to significantly expand its ICT staffing and its mission to ensure the correct deployment of ICT resources. The ICT Strategy Report recommends considering a public-private partnership to develop and maintain ICT systems, but the sector does not appear ready for this. The governments of many countries – in the European Union and elsewhere – are increasingly using public-private partnerships as a means of innovative tools, financing, and providing public infrastructure services. Effective public-private partnerships require significant government capacity and engagement in system preparation, design, implementation, and monitoring. Even if such partnerships were created, a robust judiciary governance structure would be needed to ensure that the cost savings from the partnerships do not come at the expense of public-interest objectives. Ownership of intellectual property must be considered as well. Finally, in the pandemic era and in the midst of budget cuts, developing a public-private partnership in justice presents a significant hurdle.

9.3. Effectiveness of Electronic Data Exchange and Back-Up

888. The judiciary relies on a variety of unlinked ICT systems for case processing, case management, and document management, and automated information exchange remains limited across the sector. There have been steps forward in the electronic exchange of documents between courts and PPOs, courts and external institutions, and legal professionals as well through the PIS (Judicial Information) system and several other platforms. However, the exchange of documents between lower and higher courts, between courts and PPOs, and between courts and external institutions (such as police and prisons) is still primary manual resulting in significant inefficiencies, delays, and errors.

Figure 166: Overview of different IT systems used in the judiciary sector in Republic of Serbia



889. However, positive changes include the introduction of a system for integrated data collection and storage for all justice institutions, which leads to more uniform data collection, clearer data definitions and more transparent linkage between data. Nonetheless, the Rulebook on data entry remains unfinished; information is missing, is not collected in a uniform manner, and data entry rules are not standardized. Each of these would further lead to more accurate and relevant statistics. Existing fragmentation in the data necessarily leads to the establishment of different methodologies in the process of decision-making, which leads to inconsistent decisions. A comprehensive model would ensure system-wide uniformity in the data collected, clear data definitions, and the transparent linkage between data.

890. MoJ is pursuing enhancing efficiency, access, quality, and the introduction of information exchange protocols through the Enterprise Service Bus (ESB). MoJ has developed justice interoperability standards and selected architecture to allow integration between various applications. The advantages are numerous: easy plugged-out or plugged-in applications, ease of protocol conversion, and the ability to establish a network to cluster services together to achieve scalability. However, the ESB's central role in orchestrating all systems on the network and more than 6,000 users makes it vulnerable as a single point of failure, and MoJ needs to assure proper maintenance to preserve efficiency and data availability.

891. Another current effort to allow information exchange, by expanding the on-line availability of common registries to justice systems users (see: Justice Information System - PIS, in the Appendix), is being fully used throughout the judiciary. JIS speeds proceedings in court cases and enforcement procedures, resulting in both time and cost savings for the citizens as well as the judicial system. The

courts have quickly adapted to the advantages that PIS offers for quick and reliable access to data and reduced duration in parts of the court procedure. This will increase efficiency and allow justice system users to conform to all legal requirements when performing their daily tasks (e.g., checking a person's previous criminal history when a prosecutor is asked to arraign them by police).

892. Manual record-sharing between general first instance courts and the Appellate Courts is accompanied by some scanned court pleadings. However, since documents of a given type are not consistently scanned, paper files are still provided to the Appellate Courts. Some courts are more successful than others – in the Basic and Higher Courts in Novi Sad, around 60-70 percent of documents are scanned. Scanning is generally a task for administrative clerks, trainees, and interns.

893. A number of factors inhibit the optimal use of scanning technology; at this time, only Commercial Courts are fully scanning entry documents. In other courts, indexing of scanned documents is seriously hampered by insufficient server capacity. Lower quality scanners also limit the number of pages that can be scanned at a time. Serbian law requires that electronic records that are made available to the public must be made anonymous by removing names, addresses, and any other personal information, requiring significant staff resources.

9.3.1. Electronic Exchanges between Courts and Prosecutors and between Prosecutors' Offices

894. The systems in place in courts and PPOs are not interoperable. Most information is mailed or hand-delivered by prosecutors to the courts. This process causes delays in case processing and significant duplicate data entry by court staff. This interoperability is provided by the functionalities of the Enterprise Service Bus (ESB).

895. Only 15 PPOs are currently using the SAPO application; others continue to work manually. Information is currently exchanged in writing, which causes delays. When the rollout of SAPO is complete, all PPOs will operate on the same system, and exchange should be available. This should result in great efficiency in internal dealings between PPOs.

9.3.2. Electronic Exchanges with Other Institutions

896. Currently, the use of email (with crypto protection) still dominates the electronic exchange, but increasing direct access to various registries, i.e., data kept within other state institutions and other organizations of interest (banks, APR, etc.) will greatly reduce use of paper and increase efficiency and data accuracy in upcoming years. The expanded use of Enterprise Service Bus (ESB) contributes to directly linking various systems currently running within the justice sector.

897. The Misdemeanor Courts are well-positioned to exchange information with law enforcement and local government authorities through their registries of sanctions and unpaid fines.⁶⁵¹ The registries are housed in the MOJ Data Center, to which all Misdemeanor Courts are connected and where they can upload data. Data exchange protocols between the Misdemeanor Courts and the traffic police, the Business Registers' Agency, the Department of Payments within the Treasury, and the

⁶⁵¹ For a discussion of the potential for the Misdemeanor Courts' fine registry to apply to unpaid utility bill enforcement, see the Efficiency Chapter.

Central Register of Compulsory Social Insurance are particularly important to the effectiveness and efficiency of misdemeanor procedures.

898. The PIS (Justice Information) system discussed above allows justice institutions' staff to access registries from outside the judiciary, such as those of the National Statistics Agency, Ministry of Interior, Ministry of Public Administration and Local Self-Government, and others. The list of registries is constantly being expanded. The number of PIS active users is more than 6,000, and MoJ had, by the end of March 2021, recorded over 8,000,000 electronic queries to other state bodies using this system.



Table 49: Electronic queries from the Justice Information System

Registry	Number of queries
Business Registers Agency	58,071
CROSO	1,528.549
Misdemeanour records	28,215
Register of persons deprived of liberty	82,602
Birth registry	1,883.316
Mol-residence	1,939.340
Business Registers Agency - Persons	26,055
Republic geodetic authority	1,973.579
Participants in proceedings	0
Pension and disability Insurance Fund	88,912
Opportunity	48,011
Register of natural persons	16,498
National Bank of Serbia	218,591
Criminal records	107,066
Register of legal entities	788
Tax administration	2,436

899. Communications between courts and financial institutions have been automated through the use of PIS. In 2018, a protocol between the National Bank of Serbia and MoJ defining the electronic exchange of data was established, and systems to do so were implemented.

900. Electronic communication between prosecutors and law enforcement is also rare. These groups collect and maintain data differently, and there is no electronic linkage in their common data. For example, the information from the National Criminal Sanction database maintained by the MOI is only available to prosecutors upon written request, slowing the work of prosecutors. Stakeholders report that this causes delays at the investigation stage during initial interviews and when considering deferred prosecution. This is also the case for the Directorate for Penal Sanctions (UIKS) and Commissioner for Alternative Sanctions.

901. The EU E-CODEX project has created common technical standards to improve interoperability between legal authorities within the EU and cross-border access of citizens and businesses throughout Europe. The Serbian judiciary needs to document its technical standards and compare them with those under development by the EU so the newly-developed Serbian standards will comply with E-CODEX requirements.

9.3.3. Electronic Exchanges between Courts and Legal and Allied Professionals

902. The flow of documents between both the courts and PPO's and legal professionals has been automated, but the absence of an organized campaign to promote its use by MoJ and barriers related to electronic signatures have impeded it from being widely adopted and used. Electronic submission of filings to the court or a PPO allows a significant reduction in data entry by court staff, enhances access for lawyers to court documents with 24-7 availability of e-filing, and eliminates postal costs for attorneys and printing costs for the courts. The e-Sud application for the Administrative Court (<https://esud.sud.rs/home/#/login>), should facilitate the creation, administration, and monitoring of the case flow to end-users. e-Sud is a web-based application where organizations or individuals in possession of a valid and verifiable electronic signature can directly send their applications to the court and later track the flow of the case. Current practice shows only a small number of active users and electronic submissions by the general public: 122 users electronically exchange files with Administrative Court, and initial acts prevail. However, court costs have been notably reduced and access to justice enhanced. An awareness campaign from the MoJ needs to be conducted to expand its use. In addition, towards the end of 2017, an Active Directory was established for the basic, higher, and commercial courts, containing over 12,000 potential users.

903. E-filing is at the pilot stage in three courts, and a regulatory structure to allow e-filing for all case types is established. USAID created a protocol, a user's manual, and workflow diagrams created secure signature protections in excess of legal requirements and purchased a limited amount of equipment needed by the courts for e-filing. The selected court and a few private lawyers have agreed to file and receive documents electronically, using a special court e-mail address and electronic signature cards from the post office.

904. Potential impediments to expanding e-filing include the absence of:

- a. qualified electronic signatures and time stamps on electronic documents.
- b. comfort by courts even though hardcopy PDFs of documents will continue to be provided by attorneys.

- c. adequate printing capacity in the courts, which limits the size of attachments sent electronically
- d. ICT literacy among attorneys. However, familiarity and comfort with the system is likely to increase once the benefits are understood and internet penetration continues to rise.
- e. an effective promotion campaign from the MoJ.
 - f. trust, concerns about the security of information submitted online.
- g. user infrastructure and skills (e.g., computers, internet).
- h. a complete legal framework (especially for nonresident persons).

905. There is also a preference among some filers for direct Interaction with court staff.

9.3.4. Audiovisual Recordings

906. **The audiovisual recording (A/V) feature has the potential to save significant amounts of time for judges, prosecutors, and staff, allowing more hearings to be held each day and reducing backlogs.** A/V systems also aid judges and prosecutors in recalling the facts of the case at the next hearing and improve transparency, efficiency, and quality of the courts while ensuring a more complete and accurate record for appeals courts to review. The new CPC allows the use of audiovisual technology. However, those benefits need to be balanced against the cost and the operational changes required

907. **Implementing the A/V recording feature would also facilitate mutual legal assistance across Europe by way of video-conferencing.** The CCJE further recommends that member States develop A/V capability to facilitate holding secured hearings and remote appearances of witnesses or experts.

908. **A/V equipment would be particularly useful in criminal cases.** In cases where the defendant is a flight risk, the costs and security concerns of prison transfers are already high, and investment in the equipment may therefore be warranted. In sensitive cases, including those involving children or vulnerable groups, security concerns may also be mitigated by the use of audiovisual equipment. The judicious allocation of A/V equipment to large courts and large prisons, such as Sremska Mitrovica and Zabela, might therefore be cost-effective while helping improve quality and access. At the moment, only two courts in Belgrade have the necessary equipment for audio-visual recording,⁶⁵² which substantially increases the costs of any required A/V hearing, for example, with foreign institutions. Transporting criminal defendants from different prisons to Belgrade for hearings also represents a serious risk to the public.

909. **Costs for a mid-range system span from 10,000 to 20,000 EUR per courtroom, a cost likely to be reduced if several systems are purchased simultaneously.** These costs represent the initial investment in A/V recording equipment and the proprietary operating software only. In the interim, it is recommended that at least simple audio recording systems be purchased and used in all courts through gradual acquisition of hardware and training so that all court hearings are available and delivered to interested parties on reliable audio media, thus replacing court stenographers, whose notes are notoriously unreliable. “Skype for Business” was recently tested as the A/V link at Sremska

⁶⁵² Organized Crime of the Higher Court in Belgrade is equipped to conduct hearings via videoconferencing. However, this method is used only for taking statements from individuals under witness protection located outside Serbia.

Mitrovica court and PO, as a simple and non-expensive A/V tool, thus demonstrating that more affordable solutions are available in ICT.

9.3.5. Security and Disaster Recovery

910. Adopted in 2019, the Act on the Security of the Information and Communication System aims to ensure an adequate level of system security. It delineates security powers and responsibilities and provides that resources for the information and communication system reside under the authority of the Ministry of Justice.

911. Backup procedures have been strengthened. MoJ recently issued instructions for standardized AVP local backup procedures at each institution using distributed AVP CMS systems. Other CMS systems are installed and managed centrally within MoJ data centers, where the regular backup is a standard process.

912. Significant progress in a remote backup of systems and data has been made. In 2017, a central Disaster Recovery site was established in the city of Nis, some 200 km from Belgrade. Regular systems backups are stored on a seven-day schedule. AVP, the most heavily-used CMS system, is still a locally installed application, complicating the backup process, but steps are being taken to further expand the backup and disaster recovery systems.

913. The judiciary continues to lack business continuity planning – a thorough system of prevention and recovery from potential threats. This type of plan ensures that personnel and assets are protected and are able to function quickly in the event of a disaster.

914. Security of manual files remains a concern. Some courts are holding files in insecure locations. In some exceptional instances, large piles of files line corridors of public access areas of courts and PPOs.

9.4. Effectiveness of Primary Case Management Information Systems

9.4.1. Case Management Functionality

915. Many of the judiciary's case management systems provide strong functionality, adequate data quality controls, and rigorous security measures. However, AVP, the system used by a majority of courts, lacks some key features of modern systems, suffers from the use of inefficiently distributed architecture, has inadequate data entry and quality controls, and is not being used to its maximum effectiveness. Since its introduction in 2010, AVP has increased court efficiency by streamlining workload and reducing manual record keeping. The AVP system operates in Basic and Higher Courts:

- allows the entry of all basic case processing information (e.g., filing dates, parties, judges assigned, history of actions, and court fees), streamlining work;
- incorporates all Basic Court functions from initial filings through to archiving;
- reflects the courts' actual business processes (does not require extensive workarounds for daily operations);
- uses pull-down menus/validation routines whenever possible, enhancing data accuracy;

- allows individuals at the lowest appropriate level to enter data (instead of relying on judges, for example);
- can produce notices, forms, or standardized orders;
- links to the central application for court fees. This linkage will soon be made to the commercial court application as well.

916. AVP lacks several critical features that would enhance both court and user efficiency and enhance case management by individual courts. Significant examples of these missing functionalities include:

- a. user alerts of filing deadlines, identification of next steps, and notices on overdue events;
- b. producing calendars: currently, calendars are produced manually after courts send regular mail to attorneys about proposed dates, and attorneys return objections and alternative dates by regular mail. This creates a significant delay and unnecessary work for court staff;
- c. tracking the time between events and activities: while data to do so are in the system, report tracking durations between events/activities are not among the system's standardized reports;
- d. tracking reasons for continuances and other system delays;
- e. Central registry of attorneys appearing in court to allow the analysis of the distribution of cases to attorneys.

917. The failure to use take advantage of AVP's functionality is due primarily to the absence of training on the AVP system since its rollout in 2010. Typists have not been trained in how to use standardized forms. Instead, many forms are produced in Microsoft Word templates or on typewriters. Also, interviewees indicate that standardized forms are not used due to significant variations in individual judge practice.

918. The AVP system has not yet changed daily work in many courts, from reducing the use of paper to using online versions of documents. The AVP system lacks robust document management functions, particularly electronic document flow for open cases, which is not in place for either the general jurisdiction or the Commercial Courts. All documents are provided to those who need them in paper format, rather than electronically viewing and forwarding the documents to the next person in the queue. This is more of an operational than an ICT issue, related to discomfort among judges and other users to review documents online. However, even when this barrier is overcome, the functionality for automatically processing workflow would need to be built into the system.

919. As of 2017, MoJ achieved a uniformity of all AVP systems installed at the courts, ensuring that the courts will operate the same version of the software with the same features and operational characteristics. Every update to AVP is agreed upon between all court users through the Sectoral Sub-committee on AVP, and installed across the board. This represents a significant advance since 2014 when new case management systems were being rolled out in individual courts in a deeply fragmented manner.

920. Data management is thus becoming less fragmented, reducing the need to enter the same data or manually copy it multiple times. Recently introduced Oracle BI tools allow for collecting data from all courts to produce standard or customized reports. AVP provides local reports using data that is available in each court. It has implemented more than 200 specific reports, primarily in accordance with

the Court Rules of Procedure. However, the quality of these reports is questionable and very often disputed since they are highly dependent on the quality of data entered in the system.

921. AVP is at an exceptionally low level in terms of data integrity. Problems relate to inconsistent practices in data entry as well as failure to capture wholesale changes in the law. After the many upgrades, technical improvements, and development activities made to AVP, there is still an inadequate number of mandatory data fields, inadequate field validations, and little or no training in proper data entry. In addition, periodic audits are missing, directly targeting the quality and consistency of the data entered within the AVP system. AVP does not possess possibilities for direct communication and data exchange with any other IT system in the Serbian judiciary sector due to its distributed architecture and the outdated technology used for its implementation. The introduction of the Enterprise Bus does not overcome these deficits.

922. AVP also uses and internally manages catalogs that are legally under the domain of other institutions in the country.⁶⁵³ In order to reduce human error and improve data integrity, AVP would need to be directly linked with other institutions that keep basic registers in order to increase the accuracy of data. This is not technically feasible given AVP's architecture.

923. The distributed architecture used by AVP is sorely out of date. Opportunities for interconnecting AVP with other systems are minimal. AVP also can run only on specific versions of the Internet Explorer (IE) browser and does not fully support newer browsers. This represents a serious limitation and security issue as well because of discontinued support from Microsoft regarding Internet Explorer in 2015.

924. AVP's distributed architecture also requires a large number of local servers and properly trained local staff to maintain and manage them.

925. Replacing many small servers by a larger server (also known as virtualization) would result in significant improvements in efficiency and flexibility. Fewer and larger servers would provide more flexibility in expanding or rearranging court operations, reduce the need for local IT staff, lower operational and maintenance costs, and reduce energy consumption by up to 90 percent. This change in the number and size of servers would also support the integration of different databases through middleware, as the data will be coming from fewer places. The hardware costs of this solution are not high, estimated at between 20,000 and 100,000 EUR and requiring between 50 to 250 working days of effort. However, until applications are centralized, consolidating servers requires linking a number of disparate applications together.

926. AVP lacks necessary measures for personal data protection and appropriate ISO standards. Personal data within the database is not encrypted and is easily readable by anyone who has access to the database. AVP does create a log file with a history of information on who accessed which data at what time but without information about the responsible person dealing with data logs and access. Measures need to be taken to prevent unauthorized persons from accessing, copying, disclosing,

⁶⁵³ For example, the register of citizens, register of business entities, register of lawyers, register of enforcement agents.

altering or erasing personal The system also needs to be amended to record which personal data have been processed or communicated, at what times, and from and to whom.

927. Building on AVP, SIPRIS is the emerging case management system for the commercial courts and provides more flexibility, better statistics capability, and links to other internal and external systems (justice PIS system, courts practice database, National Post, etc). Other key functionalities above and beyond those of AVP, which commercial courts have been using since 2008, are barcode technology to register filings for court cases, which speeds the process of scanning and routing filings to court dockets. Decisions of the first instance courts are automatically linked to those of the appellate courts.

928. SIPRES, a single, automated, central information system developed and implemented for the misdemeanor courts and the Appellate Misdemeanour Court, allows, among other things, a publicly accessible website with a registry of all unpaid fines that have been sanctioned by any one of these courts. Data entry is better than that in AVP since it is more highly regulated: SIPRES thus includes 95 percent of data for each case, compared to 70-80percent of data entered for the cases in SAPO and AVP. Implementing the electronic data exchange between SIPRES and other systems is a good example of how basic national registers can be used to prevent data duplication and improve data quality. However, there is still incomplete functionality, including automatic reporting on case status and statistics.

929. SAPO has been implemented in 15 of 90 Public Prosecutors' Offices (PPOs) through a pilot project of the European Delegation, with the remainder planned for mid-2021. SAPO is designed to be modular, is based on Enterprise Content Management, and provides full support for digitizing documents within the prosecutor's offices. The existing platform ensures easy compatibility and functional integration with the SAPS system but also with other systems within the Justice Sector.

930. SAPO utilizes a centralized archive of all cases and documents of all prosecutor's offices and digitalizes the case archive with all external and internal documents and acts. These functions provide more efficient reporting and improved transparency.

931. However, as with the general jurisdiction courts and AVP, PPOs are not fully using all of SAPO's capabilities. Further enhancements are recommended for this system, costing approximately EUR 3,9M over five years from the project plan through IPA 2017. It is recommended that the current approach of workflow hard-coded in forms be replaced with a workflow engine. Special modules within SAPO to are also needed in the new anti-corruption PO departments.

932. SAPO suffers from functional deficiencies that affect data quality and statistical reporting:

- Inability to designate more than one main criminal offense per one person.
- Lack of recorded connection between data on money laundering and predicate criminal offenses.
- Inadequate procedure for case integration in the e-record.
- Inadequate procedure for recording the legal recharacterization of criminal offenses.
- Inadequate recording of criminal information for transferred cases.
- Lack of marking the concrete act of criminal offenses and linking it with the accomplices.

933. Currently, there is no Rulebook (instruction) on data entry that regulates information and steps required to enter data into SAPO. This results in different and incompatible data and records being kept by Registry Offices in the PPOs.

934. Data protection and data security in SAPO are at a very high level. Also, personal data in the database is encrypted, and even users who have direct access to the database cannot see it. These features ensure that only the appropriate users have access to specific data, either at an individual user, group, or role level.

9.4.1. User Satisfaction with Case Management Information Systems

935. Users indicate a general satisfaction with the speed, user-friendliness and responsiveness of these systems. Delays appear to be caused by hardware (e.g., slow servers) rather than application issues and do not generally rise to the level of interrupting operations. Less experienced users point to the need for more training.

936. Since the last Functional Review, application-specific help desks have improved. The Ministry is considering creating a Help desk function in order to provide a central location for all ICT-related issues and inquiries. The case management system and related software, staffed by IT specialists and lawyers, provide telephone support during the court's working hours. Additionally, an online system for reporting errors and requests (ticketing system) is provided to users in court 24 hours a day, seven days a week. All requests are submitted through the ticketing system on the Internet site set up by the supplier for this purpose. The ticket contains a screenshot and a detailed explanation of how the problem is reproduced. As with other parts of ICT human resources, the absence of funding and adequate ICT positions remains a barrier.

9.5. Effectiveness of Systems for Management Purposes

937. Courts, PPOs, and the Councils have enhanced meaningful, accurate, and timely statistics generated by the case management system, allowing the judiciary to become more effective in managing cases. In recent years, significant improvements have been made, particularly to case management systems and operational rules⁶⁵⁴, and the Serbian judiciary is now a relatively data-rich environment.

938. Through the use of several new ICT tools, such as Oracle BI, both councils are able to access reasonably accurate, standardized statistical reports concerning case management across the sector as well as some customized reports. Standard reports include those on:

- The total workload of the court
- Judge's workload report
- Structure of unresolved cases by date of initial act and date of receipt
- Structure of resolved cases by the date of the initial act and date of admission
- Length of decision making,

⁶⁵⁴ During 2016 and 2017 the Supreme Court of Cassation, with assistance from the EU, developed case weighting formulas according to which 80percent of cases are defined as standard and 20percent as more difficult cases, based on time studies. The algorithm analyses and distributes new cases to judges on an objective basis.

- Average duration of unresolved cases in court,
- Average duration of resolved cases in court,
- Unresolved cases at the end of the reporting period,
- Unresolved old cases according to the date of the initial act and the date of receipt at the end of the reporting period.

939. For example, a report on the total number of cases received and resolved by the court allows each court to capture a picture of its clearance rate and the relationship between received, resolved, and unresolved cases.

940. The ongoing fragmentation of information flows is manifested by the following:

- case information is not integrated with resource management information, e.g., when cases are registered in the case management system, they are not automatically registered in the accounting system;
- courts are required to give multiple supervisory bodies (the Councils, the SCC, and the MOJ) regular reports that overlap but never provide the whole picture on performance and are not shared among the supervising organizations; and
- the systems used for the preparation and execution of court budgets are not linked.

941. In addition, there are an inadequate number of mandatory data fields, inadequate field validation, and no 'lock down' of statistics once submitted data submitted, in particular in AVP. Data submitted to the SCC from AVP are inconsistent, may be incorrect, and can be changed by courts after submission. Further, there is little training in proper data entry, and there are no periodic audits of the quality and consistency of the data entered. As a result, the data submitted to the SCC contain a number of missing or changed entries which can render certain reports meaningless.

942. The organization of case types and classification of case information in AVP also impedes meaningful statistical data analysis. For example, there are currently 70 separate case types, and in an effort to revise the book of rules (see Management section), the MOJ is considering adding more. Further, AVP classifies criminal cases by the most severe offense for which a defendant is accused and by only one defendant, so other charges and defendants are masked. These shortcomings impede the analysis of criminal case processing.

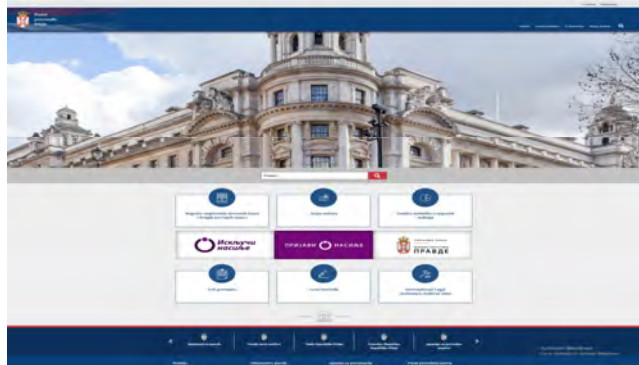
9.6. Data to Support Decision Making by and Access to the Judicial System

943. A newly-designed version of the Web portal for the entire Serbian Judiciary currently contains the following key elements:

- The map of all courts in Serbia
- Courts Statistics and Hearing Schedules
- The Registry of Unpaid Court Fines and other Monetary Sums
- Court case flow
- A Link to the Notary Public Site
- International Legal Assistance / Judicial Atlas
- A Link to the Ministry of Justice, and links to a few other relevant institutions (National Assembly, Serbian Government, Company Registry Agency, etc.)
- Report Violence site

This initial look will be expanded by a number of other functional links over time.

944. Electronic access to legal research tools and international law sites is open to all judges. All government sites are on the so-called unrestricted ‘white list.’ Judges’ access to the internet is otherwise limited because of bandwidth costs and security reasons. However, other sites can properly be accessed with prior approval from the Department for Joint Services.



945. A new database, “Court Decisions and Practice” to support judicial decision-making, has been established, with over 17,000 court decisions uploaded. All courts are able to contribute to this database. It has an “open” and internal component, where decisions can be searched using any criteria (<https://sudskapraksa.sud.rs/sudska-praksa>). The database includes decisions, analyses, and bulletins of case law from the following courts: Supreme Court of Cassation; Supreme Court of Serbia (before judicial reform); Appellate Courts; Constitutional Court; Higher courts; Administrative Court; Appellate Commercial; Appellate Misdemeanor; European Court of Human Rights in Strasbourg; European Court of Justice in Luxembourg; UN Court of Justice; Inter-American Court of Human Rights.

9.7. Quality of e-Justice to Support Access to Court Users

946. The EC Directorate-General for Information, Society, and Media offers standards for evaluating the online availability of public services on a five-point scale:

- Level 1: information – provides access to general information;
- Level 2: one-way interaction – provides specific information; forms required for service requests can be downloaded;
- Level 3: two-way interaction – electronic forms can be completed through the site;
- Level 4: transaction – full electronic case handling of a procedure (e.g., payments);
- Level 5: personalization – proactive, automated service delivery.

947. A number of new, valuable initiatives have been implemented that improve the quality of e-justice and make information more readily available across the spectrum.

948. A portal for calendars and decisions of the first instance courts, appellate courts, supreme court of cassation, an administrative court, commercial courts, misdemeanor courts, appellate misdemeanor court, and enforcement officers have been developed by the MOJ and allows parties to see the status of their cases. These portals represent a significant advance in access to justice, and have enhanced legal certainty and increased transparency.

949. The use of websites is widespread today within the justice system; however, many still offer only basic functionality. There are a few notable exceptions offering higher functionality (e.g., Level 3: two-way interaction). There is still a lot to do to provide citizens with full electronic case handling of procedures or personalization – proactive, automated service delivery. In order to allow direct input of

various acceptable documents into the judicial system by users, a solution to the problem of using qualified electronic signatures and time stamps on all documents, regardless of the type and level of judicial institution, is needed.

950. The European e-justice strategy prescribes a European Justice Portal as a one-stop-shop for citizen access. Simpler procedures (payments, small claims) would be automated and accessible from anywhere within the EU. Serbia should prepare to participate in this venture. The e-government group at the Ministry of Justice is striving to create a new Justice portal as a one-stop-shop for all citizens' needs.

951. The Ministry of Justice has developed a central platform for developing judicial websites, a set of standards for all justice system websites (otherwise known as Common Look and Feel standards, CLF), and a process by which these sites are established and maintained. These efforts have reduced costs for web hosting, improved internet presentations by the judiciary, increased website security, insured internet presentations against system crashes and failures, and ensured that courts' internet presentations are harmonized with applicable regulations and adjusted to current IT standards. To date, some 40 courts have applied, and it is expected that this process will expand to cover most of the institutions in the justice sector. The website of the biggest court in the country (First Basic Court) is available on this new platform: <https://prvi.os.sud.rs>.

952. The Commissioner for Data Protection ruled that electronic portals should be searchable only by case number. The result is suboptimal, as the requirement prevents lawyers and enforcement agents from seeing all pending court cases at once, impeding efficiency and reducing the general public's access to case information. Stakeholders could develop a practical solution to this problem that protects privacy while improving transparency, efficiency, and access, consistent with European practice. For example, in Croatia, the judiciary provides the case number and the initials of each party, allowing users to access information while protecting their privacy. This Croatian portal example could provide useful lessons for Serbia.

9.8. ICT Staffing and Training

9.8.1. Adequacy of Staffing

953. Nearly 20 percent of Misdemeanor Courts and 10 percent of Basic Courts have no ICT support staff. When software questions or minor maintenance needs arise, courts rely on non-technical staff that gained some knowledge of the systems from their day-to-day activities. With no ICT training, the ad-hoc volunteers for these tasks will remain unfamiliar with many of the system features.

954. The inadequacy of ICT staff affects service delivery. More significant issues are queued behind all other requests to vendors. In some courts, there is generally adequate local ICT court staff to handle immediate issues (e.g., fixing equipment problems, loading software) but not enough to ensure the effective use of systems or provide analytical support to the courts. This impedes the courts' ability to use technology to its fullest, understand their operations, or reengineer their processes to ensure that judges and staff engage in productive activities.

955. According to the Gartner Group, the leader in assessing technology planning, government agencies worldwide allocate an average of 3.6 percent of their employees to the ICT function. In comparison, the courts in Serbia fall far below that level at 1.8percent (see Table 50).

956. Even after four years, the conclusions of the 2014 Functional Analysis are still valid, with both an uneven average ICT staff in various types of courts (between 0.8 and 3.5), as well as total percentage of ICT staff well below the benchmark of 3.6.

Table 50: 2020 Court Information Technology Staff (Benchmark = 3.6 percent)

Court Type	# of Courts	# Authorized Judges/Staff	# of ICT Staff	Average # ICT Staff Per Court	ICT Staff as Share of Judges/Staff per Court
Basic Courts	66	6,513	84	1.3	1.3percent
Higher Courts	25	1,922	55	2.2	2.9percent
Appellate Courts	4	747	10	2.5	1.3percent
Commercial Courts	16	892	22	1.4	2.5percent
Misdemeanor Courts	45	2,276	32	0.7	1.4percent
Total	156	12,350	203	1.3	1.64percent

957. Prosecutor Office ICT support coverage is similarly unsatisfactory as only 38 (i.e., 44 percent) of offices across the system employ an ICT staff person. Assistance may be provided by basic or higher court IT personnel who are hosts of the building. This presents challenges to the independent functioning of the court and prosecutorial services. Other prosecutor’s offices receive remote assistance from the closest office, which employs a qualified person. The Republican Public Prosecution (RJT) itself has only two staff-related in any form to ICT.

958. Another important benchmark is the ratio of the number of supported workstations per ICT technician; the number of workstations that are supported by a technician is much higher in Serbia than the widely accepted standard of 40 PCs per technician. This is especially true in larger institutions (e.g., the First Basic Court in Belgrade).

Table 51: Number of supported workstations in basic courts per ICT technician:

Basic court	Number of PC	Number of ICT staff	# supported workstations to an ICT technician
First basic court	648	3	216
Third basic court	319	2	160
Valjevo	96	2	48
Kragujevac	196	4	49
Leskovac	140	2	70
Nis	200	3	67
Zrenjanin	97	2	49
Novi Sad	458	4	115
Subotica	123	3	41
Sabac	131	2	65

959. Other courts lack specialized ICT-trained staff. An additional 28 percent of the Basic Courts and 53 percent of the Misdemeanor Court IT technicians only hold a high school diploma. Network administration, server administration, and website development is outsourced.

960. There is an insufficient distinction in the tasks carried out by different IT positions; instead, ‘everyone does everything.’ The Belgrade First Basic Court began assigning distinct ICT responsibilities (e.g., network administrator, server administrator, end-user support, e-mail support, website development), but these distinctions are not reflected in systematization approved by the MOJ, and no other courts follow the First Basic Court’s model. This results in extreme limitations in career growth within the courts. It may also explain the reported high turnover of ICT staff. This situation has not changed since the 2014 Functional Review.

9.8.2. Adequacy of ICT Training

961. With basic training in computer literacy, the sector could significantly increase its efficient use of technology. Computer literacy helps enhance efficiency, workflow, and overall experience within the workplace. Employees can produce more in a shorter amount of time, freeing up resources to do more. Many judges, prosecutors, and court staff have not received the most basic computer literacy training to familiarize themselves with computer hardware or relevant software. Stakeholders report that many judges are unable to do basic word processing, send emails or run searches in the case management systems or legal research databases. As a result, notwithstanding the availability of computers, many judges continue to dictate their orders or correspondence to typists and then manually and repeatedly correct them before finally proofing and signing the document. Judges also rely heavily on judicial assistants and court staff – who similarly have received no such training but who may acquire such skills by virtue of younger age or previous employment.

962. The website for Judicial Academy (<http://www.pars.rs/en/>), which was created to provide a systematic approach and choice training in various disciplines related to the justice system, does not contain any specific description or program for ICT training, either for the ICT professionals in the justice system or for end-users, which represent 90percent of all employees. With the ever-increasing centrality and use of ICT in the justice system, the Academy should actively pursue mass, basic ICT education of end-users and specific training for those managing Case Management Systems.

963. There is no systematic, formal training or opportunity for ICT staff, especially in some of today’s most important ICT disciplines (network management, cloud architecture, etc.) ICT employees receive no application-specific training when first hired or any ongoing training. There have been several different efforts to train court staff in specialized topics related to ICT, such as ISO 2700 standards. There seems to be a widespread fear that ICT staff with such training would leave justice for better opportunities elsewhere, and this kind of training is generally expensive, exceeding budget capabilities. Interviews about training ICT staff confirmed that given the uncompetitive pay, trained ICT staff are likely to move to other employment.

964. Instead, ICT staff is largely left to their own devices, relying on online fora for answers. A proposal to establish a sector-wide ICT Online Forum (IOF), where ICT staff from different institutions can freely exchange ideas and experience or ask for assistance, has been abandoned.

965. Further, basic computer and software skills are not included as minimum requirements in job classifications for civil servants in the courts. Including this basic requirement, ECLD training and training in Windows server administration would reap benefits in terms of greater proficiency among new hires in the medium term. The Serbian judiciary should learn lessons from others in the region by making a concerted effort to specifically train civil servants in ICT (an example of mass training of all court employees has occurred in Bosnia-Herzegovina, using commonly known European Computer Driver's License – ECDL curriculum).

966. ICT training for judges and staff occurs when a new system is implemented (and is usually funded by the donor that funded the system), but it is not offered to new employees or available as refresher courses. For example, training on AVP, arguably the most commonly used and essential system, has not been conducted since its initial rollout in 2010. More frequent training and advanced follow-up training could yield efficiency dividends.

967. A training assessment based on survey responses of court employees needs to be conducted by the Judicial Academy. Training needs to differentiate between IT specialists, super-users who can help other court employees with simpler ICT problems, and other employees.

9.9. Recommendations and Next Steps

Recommendation 1: Recommit the enhanced ICT governance.

- Create a dedicated Chief Information Officer function at the Ministry level to enhance the visibility of ICT issues and their contribution to overall justice sector efficiency. (MOJ – short-term)
- Strengthen relationships with the Government Office for ICT and contract for the use of existing government infrastructure – for example, utilize the data center in Kragujevac and wide area network connections. (MOJ, HJC, SPC, Court Presidents, Heads of PPOs – short-term)
- Reinvigorate the e-Justice Department at MOJ and the Judicial ICT Sectoral Council by transforming their role from donor project coordination to key responsibility for ICT strategic planning and management. (MOJ – medium-term)
- Create and commit funds to a multi-year strategic financial plan for sector-wide ICT support. (MOJ - long-term)

Recommendation 2: Plan for continuous improvement and replenishment in ICT hardware, software, and human resources.

- Within six months, update the inventory of IT hardware, software, and human resources in the judiciary, utilizing data provided by courts to HJC through BPMIS. (MOJ, HJC, SPC – short-term)
- Finalize and implement plans to tender a request to vendors for a full-scale help desk and software maintenance. (MOJ, HJC, SPC – short-term)
- Assess the possibility of introducing speech to text programs in courts and PPOs. (MOJ, HJC, SPC – short-term)
- Centralize ICT infrastructure support and maintenance through a justice sector-wide organization, which could contribute to lower overall costs, more rational distribution of equipment to those in most need, and the ability to realize quantity discounts. Outsource discrete aspects of infrastructure support, such as desktops, printers, and scanners. (MOJ, HJC,

SPC – medium-term)

- Follow the “evergreening process” – i.e., replace one-quarter of equipment every year, in order to spread the cost of replacement equally over the years, instead of one large budget expense every fourth or fifth year. (MOJ, Court Managers – medium-term)
- Properly classify all ICT positions, clarifying the level of authority, seniority, and pay levels for all ICT specialist positions (telecommunication and database specialists, analysts, web specialists, etc.) across the technology spectrum. Ensure that compensation and career growth opportunities are commensurate with the private sector. (MOJ, HJC, SPC – medium-term)
- Conduct a comprehensive training assessment for judicial system ICT staff and provide sustainable, regular ICT training. Pay special attention to the needs of the staff working on the maintenance of IT equipment. (MOJ, HJC, SPC – medium-term)
- Expand the role of the Judicial Academy to include a complete, standard curriculum of ICT training with a mandatory annual component for certain justice system employees, including judges and prosecutors. (MOJ, HJC, SPC – medium-term)

Recommendation 3: Build capacity for improved data quality in case processing, statistical reporting, and judicial decision-making.

- Adopt the Rulebook on Data Entry to ensure consistent data management across agencies. (MOJ, HJC, SPC – short-term)
- Improve procedures for scanning paper documents, including confidentiality and searchability. Procure higher-quality scanners and increase server capacity. (MOJ, HJC, SPC – short-term)
- Roll-out the e-Sud e-filing application to courts of general jurisdiction using SAPS and to misdemeanor courts using SIPRES. (MOJ, HJC, SPC – short-term)
- Document technical standards under the EU E-CODEX project and compare them with those under development by the EU so the newly developed Serbian standards will comply with E-CODEX requirements. (PPOs – short-term)
- Prioritize replacement of AVP, whose architecture prevents it from being updated in a satisfactory manner, with Super SAPS. Ensure that the replacement system is supported by features that AVP lacks, such as consistent use of drop-down menus, clear and consistent data definitions, mandatory fields, field validation, and lock-down of statistics once submitted. (MOJ, HJC, SPC – medium-term)
- Add several data elements needed for analysis that are not currently tracked across case management systems – appeal rates, overall times to disposition across instances, and adjournments. Introduce automatic routines to eliminate double-counting of cases. (MOJ, HJC, SPC - medium-term)
- Use existing case management systems to identify enforcement and substantive cases with the same debtor and multiple enforcement cases involving the same parties and causes of action to allow judges to determine if case consolidation would be appropriate. (MOJ, HJC, SPC – medium-term)
- Develop an internal database of prosecutorial practice, accessible to all prosecutors’ offices and connected to the Judicial Academy’s database (e-Academy) and the case law database. (MOJ, HJC, SPC – medium-term)
- Implement the central system for case management (SAPO II) in all prosecutors’ offices, enabling connectivity between prosecutors’ offices. Implement software-based automated case distribution in all prosecutors’ offices. (MOJ, SPC, Heads of PPOs – medium-term)
- - Increase direct access to various registries, i.e., data kept within other state institutions and other organizations (banks, APR, etc.). (MOJ, HJC, SPC – medium-term)
- Adopt data exchange protocols between the Misdemeanor Courts and the traffic police, the Business Registers’ Agency, the Department of Payments within the Treasury, and the Central Register of Compulsory Social Insurance. (MOJ, HJC, SPC – medium-term)

- Adopt protocols to link data used by prosecutors, law enforcement institutions, etc. (MOJ, PPOs – medium-term)
- Acquire more lower-cost audio-only technology to be used when access to in-person hearings is limited and when due process considerations do not require more costly audiovisual communication. (MOJ, HJC, SPC – short-term)
- Determine where it is cost-effective to expand the use of costly audiovisual technology, such as for remote hearings internationally or in lieu of a prisoner transfer. (MOJ, HJC, SPC – medium-term)
- Consider replacing many small servers with a larger server (virtualization). (MOJ, HJC, SPC – medium-term)

Recommendation 4: Create an ICT Security Standards Roadmap to support the security standardization work of the judiciary.

- Identify existing published security standards, standards in development, and areas where a need for standards has been identified but where work has not yet been initiated. (MOJ – short-term)
- Undertake measures to prevent unauthorized persons from accessing, copying, disclosing, altering, or erasing personal data. (MOJ, HJC, SPC – short-term)
- Ensure proper maintenance of ESB due to its central role in connecting all systems and users (MOJ – short-term)- Improve the security of paper files by moving files from unsecured into secure areas. (MOJ, HJC, SPC – short-term)
- Engage in business continuity planning to ensure that critical information and systems are backed up. (MOJ, HJC, SPC – medium-term)

Recommendation 5: Create an ICT Communication Plan (MOJ, HJC, SPC – medium-term) to include:

- Identify stakeholder communication requirements, identifying key external and internal stakeholders and their different requirements and needs for communication;
- Develop communication methods and technologies, including meetings, emails, newsletters, conferences, web presence, etc. Establish the most convenient and effective means of communication for each key stakeholder;
- Develop a communication matrix, summarizing communication types, objectives, medium, frequency, owner, etc. for each audience and stakeholder type;
- Develop communication standards to simplify the overall communication effort and apply standard templates and formats.

