

2021 SERBIA JUDICIAL FUNCTIONAL REVIEW

Key Findings and Recommendations

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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
ICT	Information and Communication Technology
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	Standardized Software Application for Prison Administration
SAPO	Standardized Software Application for Prosecution Organization
SAPS	Standardized Software Application for the Serbian Judiciary
SCC	Supreme Court of Cassation
SIPRES	Software System for the Misdemeanor Courts
SPC	State Prosecutorial Council
USD	US Dollars
ZUP	Accounting software

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Objective, Scope, and Structure

- 1. 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.
- 2. 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.
- 3. 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.
- 4. 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.
- 5. 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).
- 6. 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).
- 7. 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

8. 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 in Chart 1 below.

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

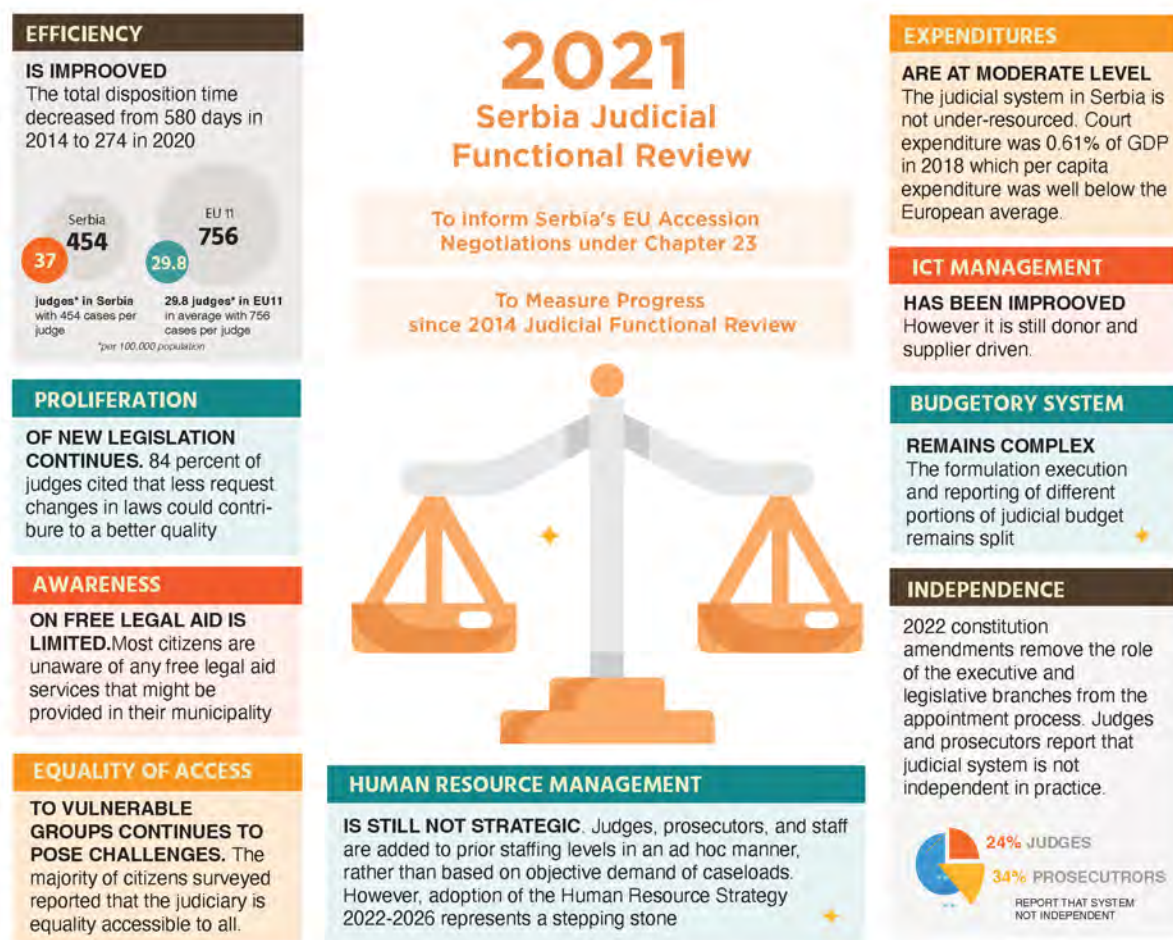
- developing a performance framework that tracks the performance of courts and Public Prosecutor's Offices (PPOs) against a targeted list of key performance indicators.
- ensuring that courts use the full functionality of their case management system to improve consistency of practice and to support evidence-based decision-making;
- 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.

10. 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.

11. 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.

Chart 1. 2021 Serbian Judicial Functional Review



12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

Importance of the EU accession process to the judicial reform in Serbia

17. The EU accession process is the primary driver of legal reforms in Serbia. States that aspire to become EU members must adopt and fully implement EU *acquis* (legal norms).¹ The principle of conditionality ensures that new member states have an opportunity to absorb requirements incorporated in the EU *acquis* to implement the obligations that come with membership.²

18. The rule of law is at the core of the EU. It requires respect for law, equality of citizens, legal certainty, the independence of the judiciary, accountability of decision-makers, and protection of human rights. The rule of law is incorporated in the EU founding treaties and case law of the EU Court of Justice.³

19. Judiciary reform is part of the EU negotiation process, specifically part of Chapters 23 and 24 of the accession negotiations.⁴ Implementing the EU *acquis* in these areas became central during the 2004, 2007, and 2013 enlargements of the EU. During these enlargements, the accession countries had to ensure that their judiciary was independent and impartial, which included guaranteed access to justice, fair trial procedures, adequate funding for courts, and training for magistrates and legal practitioners. At the same time, laws have to be clear, publicized, stable, fair, and protective of human rights. In addition, the candidate country's government and its officials must be accountable under the law and take a clear stand against corruption.

Important dates

- The European Council granted Serbia the status of candidate country in 2012.
- The European Council agreed to launch accession negotiations with Serbia on June 28, 2013.
- On January 2014, the accession negotiations started, and the first EU-Serbia Intragovernmental Conference was held.
- In July 2016, negotiations opened on Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Justice, Freedom and Security.

20. Serbia has been an EU candidate country for ten years, and the accession process and reforms have been slower than expected. On March 1, 2012, the European Council granted Serbia the status of candidate country,⁵ while the opening of Serbia's accession negotiations in January 2014 intensified the work on the alignment of national legislation with EU *acquis*. In July 2016, negotiations were opened on Chapter 23 on Judiciary and Fundamental Rights, and the Action Plan for Chapter 23 was adopted as an opening benchmark and an overarching strategic document. On July 10, 2020, the Government of Serbia adopted a revised Action Plan

¹ M. Cremona, The Union as a Global Actor: Roles, Models and Identity, In: Common Market Law Review, Vol. 41, 2004. pp. 555–573.

² K. E. Smith, Evolution and Application of the EU Membership Conditionality, In: CREMONA, M. (ed.), The Enlargement of the European Union, Oxford: University Press, Oxford 2003. pp.105–140.

³ According to Article 2 of the Treaty of European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

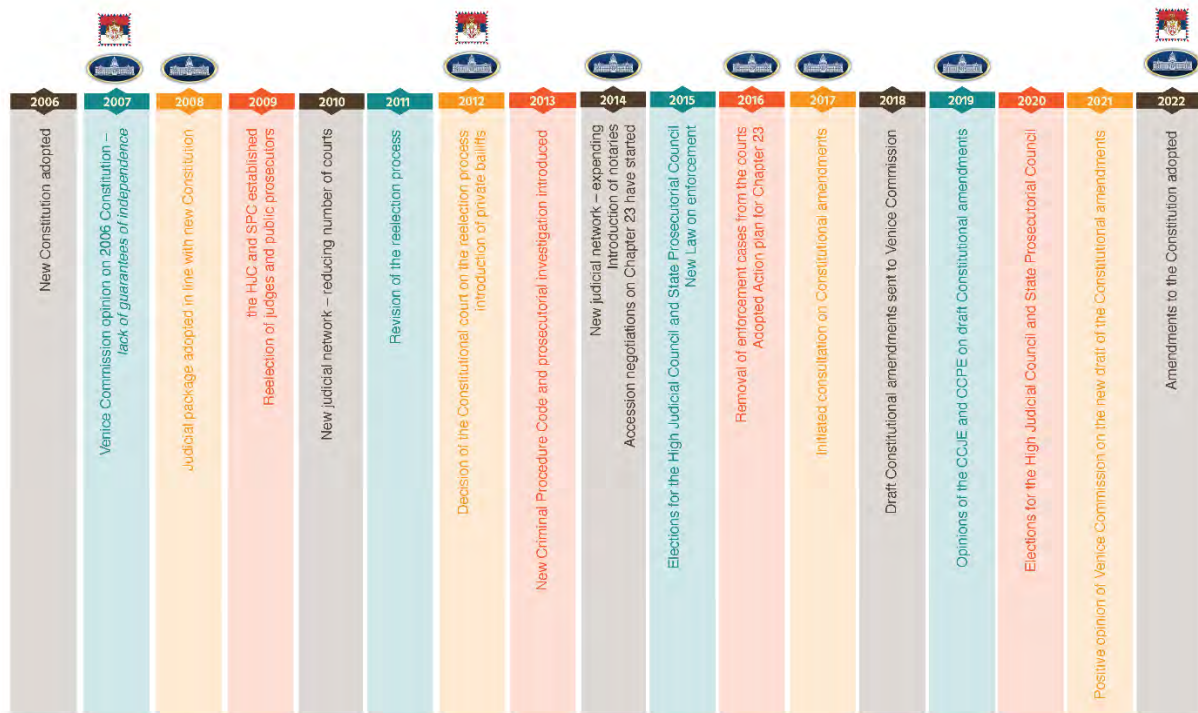
⁴ Chapter 23 relates to the judiciary and fundamental rights. European standards in Chapter 23 include strengthening independence, impartiality and professionalism in the judiciary; adopting and enforcing measures to prevent and punish corruption; and maintaining high standards of protection of human and minority rights. Chapter 24 relates to justice, freedom and security. European standards include 11 thematic areas: external borders and the Schengen system of migration, asylum, visas, police cooperation, judicial cooperation in civil and criminal matters, customs cooperation, and fighting organized crime, terrorism, human trafficking, and illegal drug trafficking

⁵ European Commission, Commission Opinion on Serbia's application for membership in the European Union, Brussels, COM (2011) 668, 12 October, 2011.

to set more realistic goals, as the EU has been placing much greater emphasis on the quality of the implemented reforms in the rule of law area.

21. **The justice reform has been hampered by frequent elections and changes in the government.** Every new management in the MOJ came with a set of new policy objectives, and a lack of stability in policy planning and implementation harmed the overall success of reforms. The relationship between the parliamentary and presidential elections and the main results of the judiciary reform is presented in Chart 2.

Chart 2. Key judicial reforms vs. parliamentary and presidential elections



22. **Prolonged delays in constitutional and legislative reforms significantly postponed progress in the independence and integrity of the judiciary.** Further, the European Commission has raised concerns because officials at the highest levels have exerted pressure on the judiciary through public comments on ongoing court proceedings and individual judges and prosecutors.⁶ The main issues raised by the EU related to the justice reform are presented in Box 1 below.

⁶ European Commission, Serbia 2021 Report, SWD (2021) 288 final, p. 20.

Box 1: Outstanding issues in justice reform

In the coming period, according to EU progress report, Serbia should, in particular:

- strengthen the independence of the judiciary and the autonomy of prosecutors, through amendments to constitutional and legislative provisions related to the appointment, career management, and disciplinary proceedings of judges and prosecutors;
- amend the laws for the High Judicial Council and the State Prosecutorial Council so that they are empowered to fully assume their role to proactively defend judicial independence and prosecutorial autonomy in line with European standards;
- adopt and implement a comprehensive human resources strategy for the entire justice sector together with establishing a uniform and centralized case management system, necessary for a measurable improvement in efficiency and effectiveness of the justice system.

Source: EU Report on Serbia 2021

23. The allocation of resources across Serbia's judicial sector is still not efficient. Despite progress in aligning human resources management procedures with EU standards, there is no evidence of a strategic approach to human resource management in the Serbian court and prosecution systems. The staffing levels for judges, prosecutors, and staff appeared to be set in an ad hoc manner. 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 the Case Management System (CMS) and budget execution systems prevented detailed tracking of expenses per case.

Governance and Management

24. The division of responsibilities between the key governance bodies remains unclear, without much change since 2014. The fragmentation of governance and management responsibilities stalls progress and dilutes accountability 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 laws and bylaws in line with the new Constitution should be prepared and adopted to operationalize the new judicial governance system.

The key governance bodies are still missing a forward-looking approach emphasizing planning, evidence-based analysis, and alternative scenarios to help management bodies adjust organizational performance to changing conditions and needs.

25. Although the number of employees has increased since 2014, the administrative offices of both Councils still have limited capacities in designing and implementing policies and assessing the internal organization of courts and prosecutors' offices to increase productivity and performance. The main administrative responsibilities of the Councils are ministerial: keeping registers on judges and prosecutors and providing administrative support to the work of the Councils and their permanent and ad hoc bodies. The Councils, however, do not have sufficient capacities for policy functions, such as Human Resources Management (HRM) planning and professional development of judges and prosecutors.

26. The MOJ appears understaffed, considering the ambitious agendas set forth by various strategic documents. The current number of staff is not 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 Resource in Judiciary (2022-2026) and the *Strategy* for Development of ICT in Judiciary (2022-2027).

27. After two comprehensive changes in the judicial network (in 2010 and 2014), the organization of courts and state prosecutors' offices remained relatively stable over the past decade. Any future changes should be conducted carefully and gradually based on data-based assessment.

28. Overall, resource planning and management processes have been undermined by the judiciary's frequent and comprehensive policy changes over the past decade and the high level of uncertainty that has followed them. The whole judicial system is continually in flux, with several policy reforms occurring at the same time, year after year.

1. GOVERNANCE AND MANAGEMENT

1.1. Key findings

1. The postponement of Constitutional amendments influenced the pace of the reform of governing bodies. 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, human resources, and physical resources more efficiently. Constitutional amendments and legislative changes were to be completed in 2017.⁷ Prolonged delays in constitutional and legislative reforms to 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.

2. Implementing laws and bylaws are yet to be adopted and are planned for the end of March 2023 and the end of 2023, respectively. In April 2022, the MOJ appointed working groups to revise the laws needed to achieve alignment with the amended Constitution.

3. Under the latest Constitutional changes, several different agencies remain responsible for governing the judicial system. This maintains the complicated governance arrangements which existed as a challenge in the past. The responsible agencies continue to 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 prosecutors and Public Prosecution Offices (PPOs); and the chambers of notaries and enforcement agents plus the MOJ for those professions.

4. As of March 2022, system responsibilities still conflicted and/or overlapped in several key areas. 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). The overlap in responsibility between the MOJ, the HJC, the SCC, and the SPC for setting and implementing significant policies regarding court resources and operations, prevent bodies from being held accountable and jeopardizes the success of reforms.

5. The administrative offices of both Councils have limited capacities to design, develop and implement policies. Human Resources Management (HRM) planning and professional development of judges and prosecutors, both contemplated as key Council responsibilities, suffer as a result. Instead, the primary responsibilities of the administrative offices are not strategic but instead ministerial, primarily keeping registers of judges and prosecutors and providing administrative support to the Councils and their permanent and ad hoc bodies.

6. At 131 total staff, MOJ appears understaffed, considering the ambitious agendas set forth by various strategic documents. The current number of staff is not 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).

⁷ They also appear in the Judicial Development Strategy 2019-2024, adopted in July 2019, and the revised Action Plan for Chapter 23, adopted in July 2020.

7. 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.

8. The management of courts and PPOs faces a number of challenges. In particular, court presidents and public prosecutors are overburdened 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). Through long-standing practice, Court presidents and public prosecutors spend too much of their time directly organizing, allocating, and supervising work in the courts/PPOs, rather than managing those tasks through staff.

9. 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 the delivery of court services. There is also insufficient attention to organizational innovations which could enhance efficiency in the courts/PPOs operation.

10. 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 workloads.

11. 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.

12. The strategic framework for judicial reform 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 with each other. 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 reform results.

1.2. Recommendations and Next Steps

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

The goals of the 2022⁸ 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.² 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

⁸ This recommendation is from the 2014 Judicial Functional Review and is still valid.

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.⁹ Amend the existing rules that retire the Councils *en masse* every five years, replacing them with rotational elections that assist the retention of corporate memory and momentum. (MOJ, HJC, SPC, Assembly – short-term)
- Consider adding a general manager to each Council 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)
- increase human resource capacities of the HJC and SPC by hiring senior professionals in the Councils capable of making policy decisions. (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 improvements¹⁰ consistent with the CCJE standard that data collection is used to evaluate justice in its wider context¹¹ and reside in an independent institution in the judiciary.¹² (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 of reforms most likely to improve system performance from the perspective of court users.¹³ 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 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)

⁹ 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.'

¹⁰ This recommendation is from the 2014 Judicial Functional Review and is still valid.

¹¹ i.e., in the interactions of the judiciary with judges and lawyers, justice and police, case law and legislation, etc.

¹² See CCJE Opinion No. 6 (2004).

¹³ Innovative approaches of the courts are already identified in the SCC Awards program.

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 burden on judges and staff without sacrificing quality. Once the analytical unit is established, ongoing costs will be minimal.

- Establish a working group (comprising business process experts, judges, and staff) to consider areas where re-engineering of processes would provide the greatest benefit. (HJC, Courts – short-term)
- Facilitate colloquia for Court Presidents to exchange information on recent attempts to innovate 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 performance to target audiences.

Improving public awareness would enhance trust and confidence, combat persistent 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)

2. COURT EFFICIENCY

2.1. Key findings

13. From 2014 to 2019, the productivity in Serbian courts improved in many areas, but there were still domains that needed considerable attention. The SCC's competitive Court Rewards Program rewards improvement where it is most needed and puts Serbia at the forefront among European judiciaries in incentivizing court performance.

14. Most clearance rates were over 100 percent due to the implementation of reforms that transferred most enforcement cases to private bailiffs and probate cases to public notaries. 'Bulk' dispositions of enforcement cases made the largest contributions to the favorable clearance rates; without them, the improvements would not have been as remarkable.

15. 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 cases registered in the courts receiving them.¹⁴ The total number of delegations from one court to another is reflected in the SCC's reports. However, individual court reports did not report how many cases were delegated from or to that court.

16. The timeliness of case processing, measured through the CEPEJ disposition time indicator, dramatically and continually improved from 2014 to 2019. 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 2019.¹⁵ The pending stock was reduced by more than 40 percent from 2014 to 2018, from 2,849,360 cases at the end of 2014 to 1,656,645 cases at the end of 2019. In 2020, the average disposition rose slightly to 274 days, and the congestion ratio decreased slightly to 0.75, while the courts ended the year with 1,510,472 unresolved cases.

17. This success was accompanied by remarkable variations by case and court type. Only the Appellate Courts had a reasonable stable caseload throughout the 2014-2019 period. The Higher Courts caseload more than doubled from 2014 to 2019. The number of civil litigious cases in Higher Courts grew rapidly, while incoming criminal cases were stable till 2018 and 2019, when they grew. In 2019 the number of incoming cases in Basic Courts increased by 30 percent compared to 2014, and there was a similar increase in 2017. The most significant contributors to the rise in demand were litigious and non-litigious civil cases.

18. 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.¹⁶ At the outset, the goal was to reduce the backlog as defined in the efficiency chapter to 355,000 cases by the end of 2018, from 1.7 million at the end of 2013; 781,000 backlogged cases were still pending at the close of 2018. The strategy was

¹⁴ In this chapter the term 'inflated' is used to describe caseloads, workloads and dispositions counted more than once, although they refer to a single legal matter or cases that would be considered as single case in other systems.

¹⁵ The congestion ratio is the number of unresolved cases at the end of one year divided by 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.

¹⁶ 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 from the day of the initial action, 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

amended to include a goal of approximately 350,000 backlogged cases by the end of 2020, which was not met. This is attributable to many factors described in the chapter on court efficiency.

19. 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. 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.

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

21. The transfer of administrative tasks and probate cases to public notaries significantly reduced the work of many judges, but the transferred probate cases were still included in statistics about court caseloads, workloads, and dispositions despite the fact that there was little or no court work associated with them once transferred. 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, an increase of 38 percent from 2018.

22. 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 that for similar courts in other countries, but it improved in 2019. While the number of judges in a court is a factor in a court's efficiency, it is not the only one. Adding 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).

23. Dispositions per judge displayed substantial variations over time and between courts. Dispositions per judge continuously increased in the Higher Courts and the Commercial Courts. Those in the Appellate Misdemeanor Court remained stable, while those in the Administrative Court declined sharply in 2018 and recovered in 2019.

24. 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 demonstrates that courts prioritize cases for processing while more complex cases are left in part of the pending stock that may never be resolved.

25. 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.

26. 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. An unduly complex process for scheduling 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. As well as affecting efficiency, 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.

27. Service of process in Serbian courts has improved lately, but avoiding it is still quite easy. Despite the efforts made in this area, the findings of this Functional Review indicate that there are still areas of underperformance that need to be addressed. 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.

28. There also continues to be 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.

29. The advantages of ICT tools to improve courts' efficiency are recognized but still not adequately utilized.

2.2. 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 only in the court where they are received
 - 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 the application of 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 non-compliant practices in the opening of a new case. (MOJ, SCC – medium-term)
- Monitor courts' compliance with newly adopted rules through regular inspections. (SCC – 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 from 2012.¹⁷ (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. (MOJ – 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 displayed variation 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)
- 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

¹⁷ Constitutional Court decision, IUZ no. 51/2012 from 23 May 2013, Official Gazette, no. 49/2013.

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 – 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 asset cases to private notaries. Consider abolishing the right of parties to choose between notaries and courts. (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, SCC – 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.¹⁸

- 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 to increase training and 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 continued 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, 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,

¹⁸ Pertaining to Recommendation 8 from 2014 Functional Review, Efficiency in Justice Service Delivery chapter

efficiency, and timeliness.¹⁹

- 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. (SCC – 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. (SCC – medium-term)

Recommendation 17: Establish preparatory departments.

Judges, court staff, and practicing attorneys acknowledged that preparatory departments in all medium- and large-sized courts²⁰ 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. 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, MOJ – short-term)
- Disseminate information about results to all courts and recognize good performance. (SCC, MOJ – medium-term)

Recommendation 18: Tighten 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/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.

¹⁹ Pertaining to Recommendation 3 from FR2014 Efficiency in Justice Service Delivery chapter

²⁰ Pertaining to Recommendation 3 from FR2014 Efficiency in Justice Service Delivery chapter

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.²¹

Recommendation 19: Consistently impose discipline for delays.

- Develop clear guidelines requiring judges across all courts to discipline 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 considerations such as protection of attorney-client privilege, equal access to technology, and so on. (MOJ, SCC – medium-term)

²¹ Pertaining to Recommendation 3 from FR2014 Efficiency in Justice Service Delivery chapter

3. PROSECUTORIAL EFFICIENCY

3.1. Key findings

30. 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.

31. Prosecutors still lack support on using performance measurement data to improve case management, develop successful funding requests, foster public support, and respond to criticism.

32. Available data for prosecutorial services is far less extensive than it is for courts, and the data reported is 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.

33. Serbian PPOs generally processed cases in a timelier manner in 2018 and 2019 compared to previous years. This was 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, 33 percent in Higher PPOs, and 18 percent in Appellate PPOs.

34. In 2017, the total number of PPO cases carried forward from one year (i.e., backlogs) to the next also started decreasing after three years of consistent increases, but the trend was uneven across types of offices. 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 from 2014 to 2019.

35. Related to backlogs, clearance rates consistently increased from 2014 through 2019.²² 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.

36. 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 statutes of limitations.

37. There is still no concrete data on the age structure of pending cases. Also, the information on aging cases would be very different if 'unknown perpetrators cases' (KTN cases) were included.

38. The congestion ratio, a measure of delay that addresses the ratio of resolved to unresolved cases at the end of a year, could be improved further. 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.

²² Clearance rates are defined by dividing the number of resolved cases by the number of incoming cases.

¹⁹ 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.

39. Serbian PPOs do not track the time to disposition. 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.

40. Across all PPO types, average dispositions per prosecutor were very similar to the trends for caseloads per prosecutor at each level. 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.

41. With the responsibility for investigation transferred from courts to PPOs, prosecutors are concerned that they do not have sufficient resources to process cases efficiently. An increase in prosecutors' responsibilities should be followed by adequate resource allocation, which was not the case in Serbia.

42. Significant and unexplained differences exist in the performance of different PPOs at the same level. Appellate PPOs are the most efficient in disposition times of the three levels of PPOs. Other specialized PPOs and specialized departments in Serbia faced performance issues that are detailed in the chapters on quality and efficiency.

3.2. Recommendations and Next Steps

Recommendation 1: Improve and extend prosecutors' use of CMS.

CMS for PPOs should be fully developed and rolled out, including a detailed, flexible reporting module.²³ 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 duplicated in other Basic and Higher PPOs, for what case types, and the resources necessary to do so. (RPPO, SPC – short-term)
- Obtain the necessary resources for the new departments to operate. (SPC, RPPO – medium-term)

²³ Pertaining to Recommendation 5 from 2014 Functional Review, Efficiency in Justice Service Delivery chapter.

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 avoid skewing prosecutors per case (RPPO, SPC – medium-term)

4. QUALITY

4.1. Key findings

43. The Serbian judicial system continues to struggle to fully comply with ECHR requirements, as evidenced by a large number of cases in Strasbourg. Non-compliance is found in many different case types, with specific problems relating to non-enforcement of final decisions, length of proceedings, protection of property, and lack of effective investigation. In addition, there are challenges in the enforcement of ECtHR judgments. Further actions are needed to establish organized coordination between various state bodies.

44. 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.

45. Citizens and the business sector are highly satisfied with the quality of notary work, suggesting that transferring part of the courts' administrative work to notaries in 2014 was successful. While most members of the public remain satisfied with the quality of court administrative services, a downward trend in satisfaction should be compared with positive public opinion about notaries.

46. There are some concerns by lawyers and prosecutors about impartiality. Prosecutors have complained that 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 and that there is selective enforcement of laws.

47. Because of gaps and ambiguities in legislation and problems in implementation, laws are not applied consistently, unwarranted appeals are filed²⁴, and many lower court decisions are reversed on appeal. About 40 percent of judges, 37 percent of prosecutors, and 46 percent of lawyers believe that laws are ambiguous and inconsistent to a great or some extent. While lawyers' perceptions have improved over time, there has been uneven progress in judges' and prosecutors' perceptions.

48. The proliferation of new legislation continues, often without analyzing the impact on or harmonizing with the existing laws. *Ad hoc* working groups are convened to consider and draft each new law, but sometimes with the 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.

49. Eighty-four percent of judges said that less frequent changes in laws could contribute to a better quality of justice services. For example, the Criminal Code was amended 10 times over the last 15 years. During this period of change, offenses could be charged as both criminal and misdemeanor offenses or as both criminal and commercial offenses. The same incident can burden the courts twice with the procedures and legal remedies relevant to the different case types. This raises issues of inefficiency as well as potentially inconsistent application of laws.

²⁴ On average, Serbian Basic PPOs appealed in 12 percent of cases in 2019 and were successful in only 21 percent of their appeals, indicating prosecutors should have realized at the outset that many of the appeals would not succeed.

50. When new legislation has been enacted, 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). Similarly, there is little public awareness of mediation as an option for dispute resolution. In addition, judicial staff is not sufficiently informed about whistleblower protection in cases where they report corruption.

51. Inconsistent interpretation of laws and inconsistent jurisprudence remain challenges for the Serbian judiciary. Seventy percent of judges and prosecutors and 90 percent of lawyers stated that inconsistent interpretation of laws and inconsistent jurisprudence occasionally happen, if not often. More than 80 percent of lawyers reported that selective implementation of laws and non-enforcement of laws occur frequently, but only about one-third of judges and prosecutors shared this view. Judges' and prosecutors' perceptions have slightly improved since 2013, but lawyers' perceptions have worsened over time, especially in the area of selective enforcement of laws.

52. 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. The courts lack checklists, standardized forms, or templates for routine aspects of case processing. The forms and templates used by PPOs are not being updated system-wide and regularly, 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.

53. 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. There are few examples of specialized case processing for the types of cases that often warrant a tailored approach.

54. 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 working group for coordination and cooperation (Article 25) that consists of representatives of public prosecutors, police, centers for social work, and, if there is a need, representatives of other institutions (educational, employment services, etc.).

55. Lawyers representing criminal defendants 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.

56. 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 to a higher prosecutor, and Serbians have made extensive use of this process.

57. The number of cases concluded by plea bargaining decreased by 8 percent in 2019 due to a 17 percent drop in plea bargains in the Belgrade appellate region. The most common types of plea bargains in 2019 resulted in suspended sentences (about one-half) and imprisonment (about two-fifths). The European Commission recommended that use of plea agreements be carefully balanced and avoid any impression of impunity.

58. 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 crime victims. 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 can buy their way out of the criminal justice system.

59. 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 or when police submit both misdemeanor and criminal charges for the same incident.

60. Serbia's prosecutorial system also remains highly hierarchical, with higher-instance Public Prosecutors authorized to control the work of lower-instance ones. A higher-instance prosecutor can take over any matter from a lower-instance public prosecutor within his or her jurisdiction and can 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.

61. The 2014 Functional Review found that the appeals system is at the heart of Serbia's problems regarding the quality of decision-making. 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.

62. Trust in the appellate system among court users in Serbia has decreased in the past decade. In 2020, 41 percent of the citizens with recent experience in court cases stated that they trust the appellate system, compared to 48 percent in 2013. Court users who received an unfavorable judgment filed an appeal in 84 percent of the cases, an increase of 21 percentage points over the 2014 Functional Review. Serbian Basic PPOs appealed in 12 percent of cases in 2019 and were successful in only 21 percent of these 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. No written policies or guidelines govern the selection of cases to appeal, and appeal rates varied considerably among Basic PPOs, including those of similar size.

63. 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 impossible to generate a report on lodged or dismissed appeals. It is impossible to distinguish between cases appealed from Basic Courts and those from Higher Courts, which are entered in the same registry.

64. It is possible that appeal and reversal rates will decline as the quality of judges' decisions improves. There has been no consistent approach to drafting routine documents, such as orders or judgments. However, 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.

65. Case specialization, discussed in the section on courts' efficiency, can improve quality and result in more efficient use of limited resources.

4.2. 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 advisory groups to think ahead to implementation of new legislation, including which stakeholders might take the lead in implementation, what are the budgetary limitations, 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 for limited 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 (Judicial Training Center, 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 their duties. (SCC, HJC – medium-term).
- Adopt specialized case processing by case types (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 a 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: Improvements to 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. (RPPO – short-term)
- Develop uniform standards for prosecutors' decisions to dismiss criminal complaints, appeal decisions, defer prosecution 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 except in second appeals in the same matter. 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 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

5.1. Key findings

66. 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 applications for fee waivers)²⁵, online law and case status databases, and incentives for mediation. Affordability, information, management, and evaluation of access to legal services could all be improved.

67. 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. Due to court and attorney costs, businesses report that the courts are becoming increasingly inaccessible, and small businesses are the most affected.

68. 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 are no guidelines or standardized forms for judges who grant a waiver, and decisions go largely unmonitored.

69. There is a very limited understanding among members of the public of the court fee waiver program.²⁶ 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 obtaining fee waivers.²⁷

70. Attorney fees are more highly prescribed than in many EU member states. Attorneys are paid per hearing or motion, encouraging protracted litigation and reducing the ability of low-income citizens to pay for legal services.

71. There are concerns regarding the quality control over, and impartiality of ex officio attorneys appointed for indigent clients. To enable equal distribution of cases among ex officio attorneys, the Bar Association of Serbia has introduced a call center and software for tracking.

72. In accordance with the Serbian Constitution and European principles of justice, providing for legal aid and legal support for all case types except commercial and misdemeanor cases where a prison sentence is not envisaged was established in October 2019. Municipal legal aid services receive citizens' requests for free legal aid and decide on their eligibility based on their financial situation. Persons eligible to receive legal aid are those who already receive social benefits or for whom using their own resources for legal aid would render them eligible, children receiving child benefits, and members of certain vulnerable groups.

73. 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.

²⁵ The Central Application for Court Fees was developed in 2020 and has to be seen how it will contribute to accessibility.

²⁶ Court practice assessment – application of court fee waivers rules, YUCOM, MDTF-JSS, 2018, available at: <https://www.mdtfjss.org.rs/archive//file/Analiza%20sudske%20prakse%20oslobadje%20od%20troskova.pdf>

²⁷ Analysis – Court Fee Waiver System in the Republic of Serbia, MDTF-JSS, 2016, available at: <http://www.mdtfjss.org.rs/archive/file/Serbia%20Court%20Fee%20Waiver%20Eng%20-%20Final%208%20Sep%202016%20WITH%20LOGO.pdf>

Not all providers submit data to the Ministry, and satisfaction with services is not tracked or assessed at a central level.

74. 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. To improve cost-effectiveness, the participation of CSOs, legal aid centers, and law faculties should be encouraged.

75. 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. 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.

76. 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 case law. 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 Misdemeanor Appellate Court, which significantly increases access to these among professionals. These improvements in the accessibility of legislation and jurisprudence contribute to increasing court practice quality and consistency.

77. The system for access to information by court users about the courts in general and their own cases has improved. Portal Graveside now enables access to information on the status of ongoing procedures in all courts, including information on the status of cases handled by private bailiffs. In addition, the development of the e-court improved contact with the court and enabled electronic communication. Users directly involved in court cases reported high satisfaction in this respect, suggesting that those with immediate experience have benefited from an updated system. However, compared with 2009 and 2014, a lower percentage overall of citizens and business representatives report that specific court and case information is accessible.

78. 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.

79. 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 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. 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 out of any judgment. (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: Address 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 Legal Aid.

- Encourage Community Service Organizations to refer clients to 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 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)

Recommendation 7: Strengthen legal literacy of self-represented litigants

- Update brochures and guides of basic laws and procedures for self-represented litigants and test them with the use of non-layers (SCC, courts – short term)
- Develop lay formats of legal information specifically tailored for the vulnerable groups, including less educated court users (HJC – short term)

6. INTEGRITY

6.1. Key findings

80. 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 preventing, reducing or eliminating 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."²⁸ This led to GRECO's evaluation of the situation as "globally unsatisfactory".²⁹ However, in March 2022, in the Second Interim Compliance report,³⁰ GRECO concluded that compliance with the recommendations was no longer "globally unsatisfactory" because ten recommendations had been partially implemented.

81. Judicial institutions have not made use of integrity plans. The Law requires such plans for 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.

82. There still were 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.³¹ 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.³²

83. The 2022 Constitutional amendments removed the executive and legislative branches from the process of appointing judges and HJC members. The legislative and policy framework to implement the amendments is pending, scheduled for completion in March 2023.

84. The SPC established the Commissioner for Autonomy in 2017 to report to the public on claims of attempts at or success in undue influence on prosecutors. However, the post was not filled from March 2020, when the term of the first Commissioner expired. The new Commissioner was appointed in April 2021, while the rules of procedure for the Commissioner and needed resources are still missing.

85. The automated, random assignment of cases was the official norm in Serbia's courts by 2018. However, 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

²⁸ 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.

²⁹ Ibid.

³⁰ 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>

³¹ The EU Serbia 2021 Report, p. 21, available at: https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en

³² 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

not randomly assigned, and there still was no automated mechanism for the random assignment of cases in PPOs.

86. 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.³³ The Ministry of Justice introduced an automated system for complaints, but it is not linked with other stakeholders.³⁴ 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.

87. From 2017 to 2022, Serbia made significant progress 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 SPC,³⁵ while "Ethics and Integrity in the Judiciary" was one of the most frequently covered thematic areas within the Judicial Academy'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.

88. 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 were generally not penalized.

89. 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.

90. 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.³⁶ There is also a need for clarity in the grounds for discipline.

91. 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

³³ There was no corresponding obligation for PPOs.

³⁴ Linking of these complaints should take into consideration different monitoring roles of different institutions, i.e., the Ministry of Justice has competence to oversee implementation of the Court Rulebook, while the HJC oversees work of individual judges.

³⁵ In 2018, the HJC and SPC established their Ethical boards as ad hoc bodies. 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 becomes a permanent body.

³⁶ 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>

institutions generally, with the exception of the media. Trust in the judicial system increased both among court users and the general public.

92. 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. 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 Constitutional amendments affecting the membership and duties of the HJC and SPC. These amendments should include new Constitutional provisions that removed 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. (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 office. (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. Key findings

93. Although all institutions made an effort to overcome challenges, key problems with managing human resources – the judiciary’s largest and most impactful resource - remained. However, the recently adopted Constitutional amendments, the upcoming revision of legal frameworks, and the implementation of the Human Resource Strategy in the Judiciary for the period 2022-2026 have the potential to bring about significant positive change in the Serbian judiciary.

94. 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. For instance, notwithstanding the transfer of criminal investigations 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. However, the adoption of the Human Resource Strategy in the Judiciary for the period 2022-2026³⁷ represents a step toward applying a strategic approach to human resources management.

95. Compared with European benchmarks, in 2018, Serbia had one of the highest ratios of judges-to-population and a low number of public prosecutors per 100,000 inhabitants.³⁸ When staffing is considered, Serbia had moderate ratios of staff to judge and prosecutor. However, this indicator should be considered with caution, taking into account that Serbia reported to CEPEJ on permanent employees only, while a significant number of contractors and temporary employees are employed in courts and PPOs. On the other hand, inadequate permanent support staff prevents appropriate delegation of tasks and is financially more costly.

96. 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 2006³⁹ and 2009,⁴⁰ respectively. From 2014 to 2017, the total number of 780 deputy prosecutor positions remained unchanged despite a significant increase in incoming cases. While 60 new deputy prosecutor positions were approved in the Basic, Higher, and Appellate PPOs over the following two years,⁴¹ the methodology for doing so is unclear. Similarly, the number of judge positions has fluctuated over time, with 3,022 positions in 2019, or 87 more than in 2013,⁴² despite the transfer of work-intensive functions from the courts.

97. A 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

³⁷ Adopted in December 2021 (<https://www.vk.sud.rs/sr-lat/strategija-ljudskih-resursa-u-pravosu%C4%91u-za-period-2022-2026-godine>)

³⁸ European Judicial Systems – CEPEJ Evaluation Report, 2020 Evaluation Cycle, CEPEJ.

³⁹ Framework criteria for determining number of judges in courts of general and specific jurisdiction, Official Gazette 61/2006

⁴⁰ Rulebook on PPO Administration, Official Gazette no.77/2004, as amended 52/07,2/08, 11/09 and 44/09

⁴¹ 36 in 2018 and 24 in 2019

⁴² 16 new judge positions were added in first half of 2020

on the Maximum Number of Employees in the Public Sector⁴³, which called for an annual reduction of the number of employees in the period 2016-2019. Under the law, the Government was to define the maximum number of permanent staff for each public institution each year.⁴⁴ Instead, the number of contracted staff gradually increased. In the absence of data showing the reasons for this employment pattern, the next Functional Review should attempt to determine whether contract workers are hired to avoid budgetary restrictions or civil service requirements or possibly as a form of favoritism.

98. 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.

99. Serbia does not have a national career service in the judiciary or prosecution. Judges and prosecutors are appointed to an individual court or PPO and cannot be moved without their consent, notwithstanding system needs.

100. 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.

101. The performance assessment systems designed for judges and prosecutors aim to boost organizational and individual advancement. 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. Although the HJC and SPC have made efforts to align their performance evaluation systems with European standards, the procedures still suffer from excessive rigidity and lack some elements of an effective performance appraisal system.

102. Non-salary compensation is a concern in some courts. On average, "other compensation" equaled only 3 percent of judges' salaries throughout the observed period. However, the share of other compensation relative to salary was as high as 9 percent at the appellate level in 2015. There were wide variations in non-salary compensation among different courts.

103. The Serbian Constitution provides that lay judges may participate in trials, but many stakeholders question the need for continuing the practice. In practice, the duties of lay judges are limited to listening to the proceeding without being engaged in deliberations. The criteria for appointing lay judges are vague, and no formal training is provided for them. Lay judges are entitled to remuneration plus transport costs, which cumulatively impose a financial burden.

104. Serbia is in the group of countries that reported the highest percentage of women in the judiciary. In addition, 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.

⁴³ Official Gazette 68/2015 as amended 81/2016 - Constitutional Court Decision and 95/2018.

⁴⁴ The Law allows institutions to employ an additional 10 percent 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. Recommendations and Next Steps

The majority of the recommendations from the 2014 Functional Review Report were not implemented. 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: Implement a human resources strategy for the entire justice sector.

- Harmonize standards and regulations for hiring, promotion, and disciplinary procedures across the agencies that provide judicial services. (HJC, SPC, MoJ – medium term)
- Impose a hiring freeze for judges/prosecutors and do not fill judicial vacancies until a rigorous and transparent methodology is developed to determine the needed number of judges/prosecutors. If adjustments are required, transfer judges/prosecutors with their consent or promote judges/prosecutors within the system to prevent any increase in the total number of judges/prosecutors. (HJC, SPC – short-term)
- Gradually reduce the wage bill over time by attrition – i.e., by not replacing retiring or departing judges. Consider the age structure of the judiciary when adopting these reforms. (HJC – short-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)
- If needs arise, transfer existing judicial and prosecutor assistants from less-busy to busier courts and PPOs of the same jurisdiction within the same appellate region. (HJC, SCC – medium-term)⁴¹
- 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)
- Create incentives for judges/prosecutors to consent to transfers and to being appointed as substitutes, including financial incentives and consideration in future promotion processes. (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, population, geography, demand for court services, demand by case type, 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 through layoffs or longer-term through attrition. (HJC, SPC, MOJ – short-term)
- Develop a staff reduction program in the courts and PPOs, focusing on rationalizing staff in accordance with the changing mandates of courts and PPOs (i.e., targeting redundancies of bailiffs, private notaries, verification staff, etc.) and reducing or outsourcing ancillary staff whose roles do not contribute to case processing (cleaners, drivers, maintenance staff, carpenters, etc.). (HJC, SPC, MOJ – short-term)
- Offer incentives to staff to move from the courts to the Executive Branch or PPOs as a preferred alternative to layoffs. (HJC, SPC, MOJ – short-term)

- Strictly limit reasons for hiring temporary or contract employees. Standardize 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)
- Freeze all volunteer appointments and phase out the volunteer program 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 retraining. (HJC, SPC – short-term).
- Limit appointments to higher instances to those already in the system. Use the evaluation and promotion system to recognize good performance and incentivize innovation. (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 probation, 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. Reduce the periods of evaluation for probationary judges to ease the administrative burden on evaluation panels; (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, 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, lead 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 performance in their current roles. (JA, HJC, SPC – medium-term)
- Create a training plan and provide government-sponsored 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 efficiency⁴⁵ in accordance with the Bangalore principles.⁴⁶

- 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

⁴⁵ See CCJE Opinion No. 2.

⁴⁶ “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.

- 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 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 without political interference. (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 non-salary compensation for judges, prosecutors, and staff.

- Develop uniform standards for, e.g., meal compensation. (MOJ, HJC, SPC – short-term)
- Examine the reason for 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 MANAGEMENT

8.1. Key findings

105. Efficient organization of financial management and optimal allocation of financial resources are vital for effective service delivery in all segments of the system. Financial management has a significant impact on the efficiency and quality of delivering justice as well as on other auxiliary functions of the judicial system (i.e., human resources, ICT, infrastructure).

106. 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 but relatively low levels compared to other European countries. This held true for both of its main components – the court and prosecution systems.

107. 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.

108. 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 a necessary but 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 harmed 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 these recent changes.

109. Budgeting processes are not linked to performance criteria, and 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.

110. 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 from 2017 HJC uses a poorly maintained BPMIS tool that is inflexible and incompatible with the BPMIS used by the MOF to prepare the state budget (software collecting budget requests from DBBs).

111. 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

112. information systems used within the judicial system⁴⁴ for any of these functions to occur. As in 2014, interoperability between the existing systems remains an issue to be addressed in the future.

113. 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.

114. 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 onward 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.

115. Capital expenditures ('CAPEX) 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 infrastructure 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.

116. 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. 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.

117. 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. 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.

118. 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.

119. 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 initially (i.e. in 2014, 2015 and 2016) brought arrears into the prosecutorial system of similar magnitude in absolute terms. Recently, due to the budget increase and end-of-year interventions, arrears have been kept under control across the prosecutorial system as well.

120. 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 in courts and PPOs.

8.2. 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. Key findings

121. 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.

122. Internally, implementing the Enterprise BUS has allowed for data exchange across judicial systems and 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 the 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.

123. Externally, the adoption of a portal for calendars and decisions of most court types represents a significant advance in access to justice. It 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.

124. 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 report⁴⁷ 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 a score of 2. This placed Serbia's judicial ICT well below the European average; within the region, only Albania has a lower development level (i.e., a score of 3).

125. In governance, CEPEJ found that Serbia continues to lack a system for identifying and optimizing IT innovation. 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

⁴⁷ Use of Technology in European Courts. European Judicial Systems: Efficiency and Quality of Justice, CEPEJ Studies, No. 24.

mandate has been disbanded in favor of ICT planning rooted in individual systems. The Council has not met in almost four years.

126. 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. It is among seven states whose low IT equipment deployment contributed to “greater difficulty in reducing the number of pending cases,” according to CEPEJ.

127. In February 2022, Serbia adopted the IT Strategy in the Judiciary for the period 2022-2027. The purpose was to prepare the judicial system for new challenges and to increase the application of ICT in the judiciary. The accompanying Action Plan includes the estimated cost needed to ensure the financing and implementation of the strategy.

128. 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.

129. 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.

130. 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. 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.

131. 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 audiovisual capacity, a continued lack of capacity in electronic communications, and a lack of public trust in such communications have hindered the wider use of e-filing, electronic data exchange and sharing, and remote hearings.

132. 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. Further, the systems used for preparing and executing court budgets are not linked.

133. While websites are widespread today within the justice system, many still offer only basic functionality. A few notable exceptions offer higher functionality in the form of proactive, automated service delivery.

134. 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 one ICT staff person for every 3.6 other

staff 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).

135. 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. 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)
- 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, 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

