

# 2021 SERBIA JUDICIAL FUNCTIONAL REVIEW

Executive Summary

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The Functional Review Report was prepared by a Core Team composed of Mr. Srdjan Svircev (Senior Public Sector Specialist and Task Team Leader), Mr. Zoran Skopljak (Public Sector Specialist and Co-Task Team Leader), Ms. Ellen Kelly (Justice Reform Expert), Dr. Marina Matic Boskovic (Justice Reform Expert) and Ms. Kate Harrison (Justice Sector Expert). The Bank team was supported by an exceptional group of consultants throughout the process, including Ms. Ana Krnic Kulusic, Ms. Svetlana Djukovic, Dr. Milos Markovic, Mr. Branislav Milunovic, Mr. Mike Perisic, Ms. Ana Arsenijevic, Mr. Jovan Nacic and the survey team at IPSOS Consulting. The team was also supported by Mr. Nenad Milic in the data processing. The production of this report would not have been possible without the excellent support of Ms. Bisera Nurkovic in organizing missions, processing manuscripts and providing valuable insights along the way. Special thanks also go to our translators, Ms. Marija Mitrovic and Mr. Uros Vasiljevic, who worked tirelessly to produce a high-quality Serbian report.

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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:

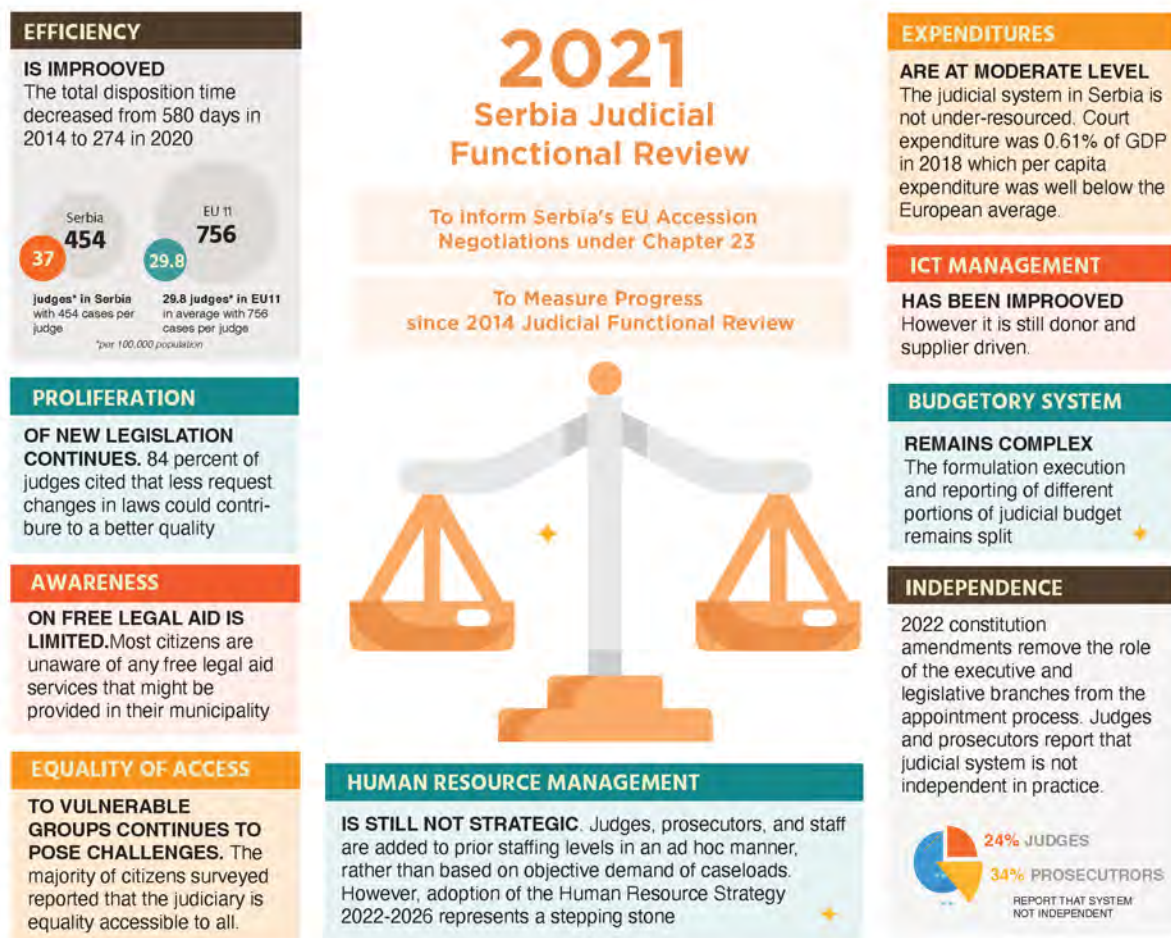
- developing a performance framework that tracks the performance of courts and Public Prosecutor's Offices (PPOs) against a targeted list of key performance indicators.
- ensuring that courts use the full functionality of their case management system to improve consistency of practice and to support 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).<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

19. Judiciary reform is part of the EU negotiation process, specifically part of Chapters 23 and 24 of the accession negotiations.<sup>4</sup> 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,<sup>5</sup> 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 to set more realistic goals, as the EU has been placing much greater emphasis on the quality

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

<sup>2</sup> 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.

<sup>3</sup> 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.

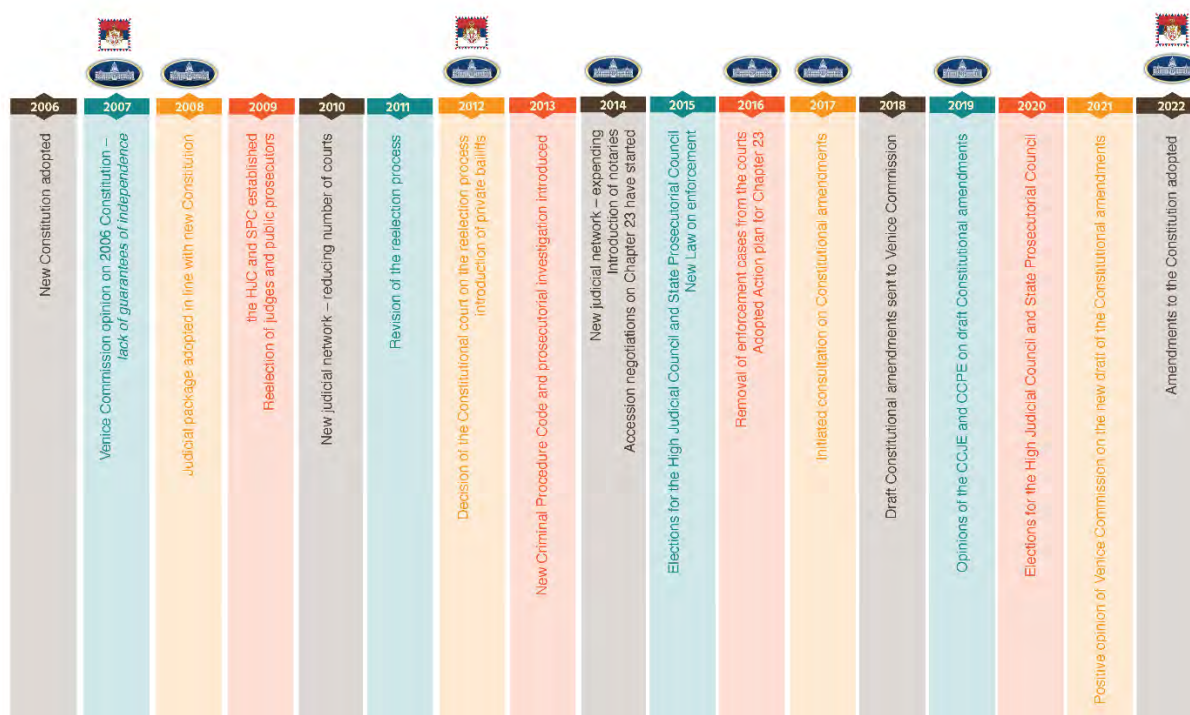
<sup>4</sup> Chapter 23 relates to the judiciary and fundamental rights. European standards in Chapter 23 include strengthening independence, impartiality and professionalism in the judiciary; adopting and enforcing measures to prevent and punish corruption; and maintaining high standards of protection 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

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

of the implemented reforms in the rule of law area. The main issues raised by the EU related to the justice reform are presented in Box 1 below.

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.<sup>6</sup> The main issues raised by the EU related to the justice reform are presented in Box 1 below.

<sup>6</sup> 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.

## Efficiency

29. In comparison to 2014, the efficiency of the judicial system has improved, but there are domains that still need attention. The total disposition time of Serbian courts decreased from 580 days in 2014 to 274 in 2020. The pending stock was reduced by more than 45 percent from 2014 to 2020, or from 2,849,360 cases at the end of 2014 to 1,510,472 cases at the end of 2020. However, these aggregate numbers mask significant variation in the efficiency of different courts.

30. The transfer of administrative tasks and probate cases to public notaries significantly reduced the workload of many judges. However, 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. This inflates the workload of the courts and prevents a clear assessment of resource needs.

31. 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.

32. A backlog of old utility bill enforcement cases has been resolved since 2014, and the Law on Enforcement and Security transferred the responsibility for a significant part of enforcement cases from courts to private bailiffs. Although it was expected that this would dramatically improve Serbia's performance metrics among EU comparator countries, the pending stock of the country's courts increased.

*The efficiency of the judicial system in terms of disposition times and congestion rates has improved significantly since 2014, mostly due to transfer of enforcement to private bailiffs and probate cases to notaries, which reduced the workload of judges. Procedural efficiency is still a challenge for the judiciary.*

33. It was unclear how effective private bailiffs had been in cases that 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 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.

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

35. Dispositions per judge displayed substantial variations over time and between courts, and the workload among judges and public prosecutors is not evenly distributed. A case weighing 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 on equalization of workload.

36. Courts still had too few and inadequate means to sanction parties and their attorneys for delaying a case. In most circumstances, it is not mandatory for judges to discipline expert witnesses, parties, and attorneys for missing deadlines. As well as affecting efficiency, inconsistent application of discipline can affect perceptions of fairness.

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

38. Serbian PPOs generally processed cases in a more timely manner in 2018 and 2019 compared to previous years due to an increase of nearly 25% 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.

## Quality

39. In comparison to 2014, the Serbian judicial system continues to struggle to fully comply with European Court of Human Rights (ECHR) requirements, as evidenced by the large caseloads in Strasbourg. Non-compliance is found in a significant number of case types, highlighting 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 enforcing ECHR judgments, and further actions are needed to establish functional coordination between all various state bodies.

40. There are still some concerns about impartiality. Lawyers perceive that there is selective enforcement of laws and that they do not have access to all the information available to prosecutors and judges. Prosecutors have complained that the police do not cooperate with them during investigations. Further, wealthier people may obtain deferred prosecution by paying a certain amount to humanitarian causes, and decisions to drop prosecutions are sometimes controversial.

*The judicial system still struggles with stability, due to frequent changes of legislation, which influence the coordination of court practices and the perception of impartiality in the system.*

41. The proliferation of new legislation continues to be a challenge for the system. New laws often are adopted without analysis of the impact on or harmonization with existing laws. Ad hoc working groups are convened to consider and draft each new law but sometimes without adequate representation of stakeholders, with limited and vague guidance, and without subjecting proposals to formal analysis. Legislation continues to be routinely passed by the National Assembly under emergency procedures and without sufficient transparency.

42. Eighty-four percent of judges said that less frequent changes in laws could contribute to a better quality of justice services. Criminal prosecution provides an example of the impact of frequently changed legislation on the quality of judicial services. The Criminal Code was

amended 10 times over the last 15 years. The frequent changes resulted in dualism in the criminal justice; for example, during this period of transition, offenses could be charged as both criminal and misdemeanor offenses – or as both criminal and commercial offenses. The same incident burdens the courts twice: once for the misdemeanor offense, with its procedure and legal remedies, and again for a criminal offense, with its procedure and legal remedies. This also raises the issue of violation of *ne bis in idem* rule (double jeopardy).

**43. There is a continuing lack of data about the reasons for dismissals by prosecutors.** Since 2013, Serbian Law has allowed the filing of complaints to higher prosecutors about the dismissal of criminal complaints, which interested parties extensively used.

**44. The lack of official guidelines and political will for cooperation between police and prosecutors impedes the effective investigation of criminal cases.** Prosecutors have no practical means for compelling police to follow their directions. Prosecutors report that this problem occurs particularly in cases with political implications. In addition, when police submit misdemeanor and criminal charges for the same incident, they often do not inform the prosecutor, which leads to duplication in court proceedings.

**45. Serbia's prosecutorial system also remains highly hierarchical, with higher-instance Public Prosecutors authorized to control the work of lower-instance ones.** The higher-instance prosecutors can take over any matter from a lower-instance Public Prosecutor within their jurisdiction and issue mandatory instructions to those lower-instance Public Prosecutors. On the one hand, such oversight could help promote consistent practices; on the other, it may allow selectivity in prosecution.

## Access

**46. As in the 2014 Judicial Functional Review, affordability remains the most serious barrier to access to justice in Serbia for citizens and businesses.** Court and attorney costs represent a significant portion 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, with small businesses most affected.

*All aspects of access to justice (affordability, access to information and physical access) have improved since 2014.*

*Although the Law on Free Legal Aid was adopted in 2019, affordability remains the most serious barrier to access to justice, due to per-hearing or motion attorney payments that protract litigation and low public awareness and lack of budget resources in some local governments.*

**47. Although the 2014 Functional Review raised concerns related to the application of court fee waivers, practice in this arena is still not unified, resulting in inconsistent access to justice services for low-income citizens.** Rules on court fee waivers are not comprehensive, lacking deadlines for submitting a request for exemption and deadlines for the court to decide on the request. There is a very limited understanding among members of the public of the court fee waiver program.<sup>7</sup> There are no guidelines or standardized forms for judges who grant a waiver, and decisions go largely

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<sup>7</sup> 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>



unmonitored. Waivers may improve access to justice in some areas, but their impact cannot be monitored without data.

**48. Attorney fees are still more highly prescribed than in many EU member states. Attorneys are paid per hearing or motion.** This encourages protracted litigation and reduces the ability of low-income citizens to pay for legal services.

**49. Ex officio attorneys may be appointed for low-income clients, but there are concerns regarding their quality control and impartiality. To enable equal distribution of cases among ex officio attorneys, the Bar Association of Serbia introduced a call center and tracking software.**

**50. Access to justice has improved due to the adoption of the Law on Free Legal Aid; however, local governments still have little understanding of how to budget resources for its application, while awareness among citizens is still very low.** In addition, some municipalities do not keep a registry of free legal aid services, making it difficult to monitor the law's implementation. Most citizens are unaware of any free legal services that might be provided in their municipality. 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 and is working to address it.

**51. There has been improvement in the system for access to information by court users about the courts in general and their own cases.** Portal *Pravosudje*<sup>8</sup> now enables access to information on the status of ongoing procedures in all courts (all types and instances), including information on the status of cases handled by private bailiffs. In addition, the development of e-court (*e-sud*) improved contact with the court and enabled electronic communication. On the one hand, compared with 2009 and 2014, a lower percentage of citizens and business representatives report that specific court and case information is accessible. On the other hand, users directly involved in court cases reported a high level of satisfaction in this respect, suggesting that those with direct experience have benefited from an updated system.

**52. Application of mediation is still limited, as well as awareness of it by citizens and businesses.** There is no outreach to potential court users nor intensive training for judges, prosecutors, lawyers, and court staff. There is no special registry for mediation cases that could allow the inclusion of these cases in the judges' evaluation and promotion results.

**53. Equality of access for vulnerable groups continues to pose challenges.** The majority of citizens surveyed reported that the judiciary is not equally accessible to all citizens. Perceived unequal treatment of citizens is primarily based on economic status and party membership, followed by the level of education, ethnicity, sexual orientation, and gender.

*Discrimination and/or exclusion in access to justice can have various consequences for LGBTI justice seekers. These range from inability to access selected public services, giving up on the case, feeling disappointed and discouraged from reaching out to justice authorities in case of future legal problems or concerns, and losing confidence and trust in the justice sector.*

Source: Identifying and understanding barriers to access to justice for LGBTI people in Serbia, World Bank 2022

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<sup>8</sup> <https://portal.sud.rs/sr>

## Integrity

**54. 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.** Effective coordination mechanism for preventing, reducing or eliminating corruption is still lacking.

*Although trust in the judicial system had increased in 2020 compared to 2014, there remains a widespread perception that corruption within the Serbian judiciary is pervasive, and the perception of the extent of corruption is not improving, either within or outside the judicial system.*

**55. 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.

**56. 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.

**57. There are still notable opportunities for the exercise of undue influence on the judicial system.** The 2022 Constitution amendments removed the executive and legislative branches from a role in the appointment of judges and composition of the HJC. However, the legal framework has to be prepared and adopted for the operationalization of the new provisions; this is set for March 2023. Government officials, some at the highest level, as well as members of Parliament, continued to comment publicly on ongoing investigations and court proceedings and about individual judges and prosecutors, while articles in tabloid newspapers targeted and sought to discredit members of the judiciary.<sup>9</sup>

**58. Some attempts have been to prevent undue influence within the HJC and SPC, but the results are still limited.** The SPC established the Commissioner for Autonomy in 2017 to report to the public on claims of undue influence or attempts to impose undue influence on prosecutors but the position remained vacant for extended periods of time.<sup>10</sup>

**59. 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 Agency for Prevention of Corruption (APC). Each court was obliged to collect and submit complaint statistics every six months to the MOJ, SCC, HJC, and its immediately superior court.<sup>11</sup> The Ministry of Justice

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<sup>9</sup> 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](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0115_EN.html)

<sup>10</sup> The post was not filled during the period March 2020, when the term of the first Commissioner expired, through the end of the mandate of the SPC composition in March 2021. A new Commissioner was appointed in April 2022, but the rules of procedure for the Commissioner and needed resources are still missing.

<sup>11</sup> There was no corresponding obligation for PPOs.

introduced an automated system for complaints; however, it is not linked with other stakeholders.<sup>12</sup>

## Human Resource Management

**60. The adoption of the Human Resource Strategy in the judiciary for the period 2022-2026<sup>13</sup> represents a stepping-stone to applying a strategic approach to human resource management.** Nonetheless, despite the Strategy's alignment with EU standards, a strategic approach to HR management in practice is not in place in the Serbian court and prosecution system. For instance, despite the transfer of criminal investigation and more than 38,000 investigation cases from Basic Courts to PPOs, the number of judges significantly increased between 2013 and 2014. At the same time, adequate resources were not assigned to prosecutors' offices to absorb criminal investigations.

**61. Compared with European benchmarks, in 2018, Serbia had one of the highest ratios of judges to population and a lower number of public prosecutors per 100,000 inhabitants.<sup>14</sup>** When staffing is considered, Serbia had moderate ratios of staff per judge and prosecutor. However, this indicator should be interpreted with caution, considering that Serbia reported to CEPEJ on permanent employees only, and a significant number of contractors have been working in courts and PPOs. In addition, having many judges with inadequate support staff prevents appropriate delegation of tasks and is financially more costly.

**62. 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 date from 2006<sup>15</sup> and 2009,<sup>16</sup> respectively. From 2014 to 2017, the total number of 780 deputy prosecutor positions remained unchanged despite a significant increase

*Notwithstanding the transfer of criminal investigation and more than 38,000 investigation cases from Basic Courts to PPOs, the number of judges significantly increased between 2013 and 2014. At the same time, adequate resources were not assigned to prosecutors' offices to absorb criminal investigations.*

in incoming cases. In the next two years, however, 60 new deputy prosecutor positions were approved in the Basic, Higher, and Appellate PPOs,<sup>17</sup> but the methodology by which this was done is unclear. Similarly, the number of judge positions has fluctuated over time, with 3,022 positions in 2019, or 87 more than in 2013,<sup>18</sup> despite the transfer of functions from the courts.

**63. 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

<sup>12</sup> Linking of these complaints should take into consideration the different monitoring roles of different institutions, i.e., the Ministry of Justice has competence to oversee implementation of the Court Rulebook, while the HJC is responsible for monitoring the work of individual judges.

<sup>13</sup> Adopted in December 2021 (<https://www.vk.sud.rs/sr-lat/strategija-ljudskih-resursa-u-pravosu%C4%91u-za-period-2022-2026-godine>)

<sup>14</sup> European Judicial Systems – CEPEJ Evaluation Report, 2020 Evaluation Cycle, CEPEJ.

<sup>15</sup> Framework criteria for determining number of judges in courts of general and specific jurisdiction, Official Gazette 61/2006

<sup>16</sup> Rulebook on PPO Administration, Official Gazette no.77/2004, as amended 52/07,2/08, 11/09 and 44/09

<sup>17</sup> 36 in 2018 and 24 in 2019.

<sup>18</sup> 16 new judge positions were added in first half of 2020.

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.

## Financial Resource Management

**64. Compared to other European countries, Serbia's judicial system is funded at moderate levels.** Serbia's judicial budget as a percentage of GDP was near the top of its peer countries, while its judicial expenditure per capita is among the lowest in Europe (i.e., EUR 29.1 per capita). When these two dimensions are combined, Serbia's judicial system could be described as operating at affordable, although relatively low, funding levels compared to other European countries. This held true for both of its main components – the court and prosecution systems.

**65. The budgetary system of the Serbian judiciary remains unnecessarily complex and fragmented, which 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.

**66. In 2016, judicial institutions became direct budget beneficiaries and were granted access to the budget execution system; this allowed real-time tracking of their annual expenditures and increased transparency of their financial operations.** This was necessary but, in the end, an insufficient step towards achieving judicial institutions' budgetary independence. In practice, the MOJ and HJC/SPC retained full control of the budgets of judicial institutions by simply managing budgetary transfer requests. The issue of lack of flexibility in budget reallocation seems to have been magnified by the recent changes.

**67. 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 relies on limits set by the MOF, and judicial authorities could not provide evidence-based rationales for challenging the MOF limits.

**68. Budget formulation practices have not progressed much since 2014. With the exception of the courts, no budget preparation software links the direct or indirect budget beneficiaries.** Budget preparation and monitoring in the MOJ and SPC are done through an Excel spreadsheet exchange. Since 2017, the HJC has been using a poorly maintained Budget Planning and Management Information System (BPMIS) tool that is inflexible and incompatible with the BPMIS used by the MOF to prepare the state budget for direct budget beneficiaries.

**69. Existing automated case management systems do not allow courts or PPOs to determine their per-case costs, perform effective program budgeting or reduce their arrears and the penalties assessed through enforced collections.** There is not enough automatic exchange of data between the various information systems used within the judicial system for any of these functions to occur. As in 2014, interoperability between the existing systems remains an issue to be addressed in the future.

**70. When compared to other European court systems, Serbia's share of wage-related expenses lies well below the median (approximately 69 percent compared to 74 percent).** However, as the amount of funds spent for other purposes is insufficient overall, judging wage expenses as a ratio of total expenditures does not provide a complete picture. The decrease in the share of wages seen in the period from 2014 onwards is a consequence of the overall increase in capital expenditures on one side and the drop in the overall public sector wage bill in 2015.

*The reduction in the share of the budget that comes from fees has rendered court budgets more stable and more transparent. 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.*

**71. 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. The reduction in the share of the budget that comes from fees has rendered court budgets more stable and more transparent.

**72. 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.

**73. 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 infrastructural investments. However, more needs to be done to resolve the lack of procedures for selecting and prioritizing public investments.

**74. There were large variations in costs per active case across the judicial system and within the courts and PPOs of the same level.** 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.

## ICT Management

**75. 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.

**76. 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 drivers of efficiency. 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.

*In the absence of strong governance structures, the judiciary is struggling with the scope and depth of recommendations to improve ICT processes.*

**77. In February 2022, Serbia adopted the IT Strategy in the judiciary for the period 2022-2027 to ensure the preparation of the judicial system for new challenges and to increase the application of ICT in the judiciary.** The accompanying Action Plan includes the estimated cost of the Strategy to ensure financing and implementation of the Strategy.

**78. ICT investment decisions continue to be donor- and supplier-driven. The justice sector is over-reliant on donors for ICT funding. 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 the EU through an IPA project, but no funding has been allocated to replace the remaining equipment. Inevitably, equipment will become obsolete once again.

**79. Consistent rules and routines for data entry are not in place, rendering the statistical information collected incomplete.** The AVP system, in particular, lacks automated routines ensuring data quality, and there are an inadequate number of mandatory data fields, inadequate field validation, and no 'lock down' of statistics once submitted. Information is thus missing or is not collected in a uniform manner.

**80. 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 regular reports to multiple supervisory bodies (the Councils, the SCC, and the MOJ). These reports overlap but never provide a complete picture on performance and are not shared among the supervising organizations; the systems used for the preparation and execution of court budgets are not linked.

**81. The conclusions of the 2014 Functional Review about ICT staffing are still valid: the percentage of court staff devoted to ICT falls well below the benchmark of 3.6 total staff to ICT staff person 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).**



