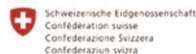






# Serbia Judicial Functional Review

## Executive Summary with Recommendations





*Multi-Donor Trust Fund for Justice Sector Support in Serbia*

# **Serbia Judicial Functional Review**

*Executive Summary with Recommendations*

*October 2014*



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# Acronyms and Abbreviations

A2J	Access to Justice
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AVP	Automated Case Management System
BEEPS	Business Environment and Enterprise Performance Survey
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
CPC	Criminal Procedure Code
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECA	Europe and Central Asia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUR	Euro
FLA	Free Legal Aid
FY	Fiscal Year
GDP	Gross Domestic Product
HJC	High Judicial Council
ICT	Information and Communication Technology
IFMIS	Integrated Financial Management Information System
IMF	International Monetary Fund

IMG	International Management Group
IPSOS	IPSOS Global Market Research
JA	Judicial Academy
JAS	Judges Association of Serbia
LURIS	Software Application for International Legal Assistance
MDTF-JSS	Multi Donor Trust Fund for Justice Sector Support in Serbia, administered by the World Bank
MOJ	Ministry of Justice (formerly the Ministry of Justice and Public Administration, MOJPA)
NBS	National Bank of Serbia
NALED	National Alliance for Local Economic Development
NJRS	National Judicial Reform Strategy
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PAS	Prosecutors' Association of Serbia
PPO	Public Prosecutor's Office
RPPO	Republic Public Prosecutor's Office
RSD	Serbian Dinar
SAPA	Standardized Software Application for Prison Administration
SAPO	Standardized Application for the 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
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USAID SPP	USAID Separation of Powers Project
USAID JRGA	USAID Judicial Reform and Government Accountability Project
USD	US Dollars



## Acknowledgements

The Serbia Judicial Functional Review analyzes the functioning of the Serbian justice system to provide an objective and data rich basis for Serbia's EU accession negotiations under the Chapter 23 of the Aquis Communautaire. The data collection was undertaken in the first half of 2014, and the preliminary findings were discussed with stakeholders and international partners through July, August and September of 2014. This report was funded by the Multi-Donor Trust Fund for Justice Sector Support in Serbia (MDTF-JSS), which has been established with generous contributions from EU Delegation in Serbia, the United Kingdom Department for International Development (DfID), the Swedish International Development Cooperation Agency (SIDA), Norway, Denmark, the Netherlands, Slovenia, Spain, and Switzerland. The full report, including raw data, and more information about the MDTF-JSS is available at [www.mdtfjss.org.rs](http://www.mdtfjss.org.rs).

The Functional Review Report was prepared by a World Bank Team composed of Mr. Klaus Decker (Senior Public Sector Specialist and Task Team Leader), Ms. Georgia Harley (Justice Reform Specialist) and Mr. Srdjan Svircev (Public Sector Specialist). The Bank team was supported by an exceptional group of Serbian consultants throughout the process, including Ms. Marina Matic, Mr. Dragan Obrenovic, Mr. Jovanka Manic, Ms. Olga Sipka and the survey team at IPSOS Consulting. The team was also supported by international consultants in specialized areas at various stages, including Ms. Kate Harrison, Ms. Linn Hammergren, Mr. Alexey Proskuryakov, Mr. Pim Albers and Ms. Maja Hadzi-Jordanova. The production of this report would not have been possible without the excellent support of Ms. Hermina Vukovic-Tasic and Mr. Kornel Drazilov in organizing missions, processing manuscripts and providing valuable insights along the way. Special thanks also go to our translators, Ms. Nives Papovic Ivackovic, Ms. Masa Acimovic and Mr. Dragan Popovic, who worked tirelessly to produce a high-quality Serbian report.

The team also benefited from guidance from World Bank peer reviewers Mr. Paul Prettitore (Senior Public Sector Specialist), Ms. Lubomira Zimanova Beardsley (Senior Counsel) and Mr. Lewis Hawke (Lead Public Sector Specialist). The team worked in close consultation with Mr. Tony Verheijen (Country Manager for Serbia) and under the general guidance of Ms. Ellen Goldstein (Country Director) and Mr. Adrian Fozzard (Practice Manager).

The team would like to thank the Serbian stakeholders for their engagement in the Functional Review process. Particular appreciation goes to officials from the Ministry of Justice, High Judicial Council, State Prosecutorial Council, Supreme Court of Cassation, Republic Prosecutor's Office, judges, prosecutors, and judicial staff for their time, hospitality, and willingness to discuss the issues raised in the Functional Review in a frank and open manner. Their intensive engagement throughout the process improved the depth of analysis and quality of the report. Particular thanks go to the many officials who provided detailed comments on drafts. The team is also grateful to the international partners active in the reform of Serbian judiciary for their support, comments and suggestions.

## Objective, Scope & Structure

*“The accession process today is more rigorous and comprehensive than in the past. This reflects the evolution of EU policies as well as lessons learned from previous enlargements. (...) The rule of law is now at the heart of the enlargement process. The new approach, endorsed by the Council in December 2011, means that countries need to tackle issues such as judicial reform (...) early in accession negotiations. This maximizes the time countries have to develop a solid track record of reform implementation, thereby ensuring that reforms are deeply rooted and irreversible. This new approach (...) will shape the Commission’s work with the enlargement countries.”*

Enlargement Strategy and Main Challenges 2013-2014, European Commission, Brussels, 2013.

**This Functional Review presents a comprehensive assessment of the current functioning of Serbia’s judicial system, along with options and recommendations to inform Serbia’s justice reform initiatives in view of the requirements of Chapter 23 of the Acquis Communautaire.** The Functional Review was jointly requested by the European Commission (EC) and Serbian authorities ahead of the commencement of negotiations for Chapter 23 to better inform the negotiation process, and its design and structure were based on extensive consultations with both parties. The Functional Review provides the basis for the Serbian authorities to develop their Chapter 23 Accession Action Plan and to update the existing Action Plan for the implementation of the National Judicial Reform Strategy 2013-2018 (NJRS). In doing so, the Functional Review also presents an objective baseline of current sector performance, which enables Serbia to assess the impact of future justice reform initiatives.

**The Functional Review comprises an *external* performance assessment and an *internal* performance assessment.** The external performance assessment (Part 1) examines how well the Serbian judicial system serves its citizens in terms of efficiency, quality, and access to justice services. The internal performance assessment (Part 2) examines the inner workings of the system, and how governance and management, financial and human resources, ICT, and infrastructure are managed

for service delivery.<sup>1</sup> The two assessments highlight different aspects of sector performance and should be read together.<sup>2</sup> The Functional Review does not make assessments of Serbia's compliance with European law and is not for the purpose of providing legal advice.

**The structure of the Functional Review follows the indicators set out in the Performance Framework (matrix at Annex 2 of the Functional Review Report), and the content is driven by the relevant European benchmarks, standards and references.** The Performance Framework was developed in close consultation with Serbian and EC authorities, building on European and international best practices for justice sector performance measurement, and specifically tailored to the Serbian context, including the institutional environment, distinctive Chapter 23 challenges, and the prevailing data environment. The Framework's matrix outlines:

- a. performance measurement areas (efficiency, quality, access etc.);
- b. performance indicators, against which assessments are made (indicators correspond to sub-headings throughout the Functional Review Report);
- c. relevant Chapter 23 references; and
- d. data sources within the Serbian system.

**The Functional Review is sector-wide but focuses primarily on the courts because they are the main vehicle for justice service delivery and the primary institutions of justice in Serbia.** The scope includes all types of services and covers litigious and non-litigious aspects of civil, commercial, administrative, and criminal justice. The focus is on the actual implementation and day-to-day functioning of the sector institutions that deliver justice to people, rather than the 'law on the books'. The scope includes other institutions in the sector to the extent that they enable or impede service delivery by the courts, including: the Ministry of Justice (MOJ)<sup>3</sup>, the High Judicial Council (HJC), the State Prosecutorial Council (SPC), the courts, the Public Prosecutor Offices (PPOs), the Judicial Academy, the Ombudsperson's Office, the police, prisons, and justice sector professional

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<sup>1</sup> The internal performance assessment (Part 2) is similar in structure and methodology to a Justice Sector Public Expenditure Review (JPER) or standard Functional Review.

<sup>2</sup> For example, some paradoxes of external performance are explained by the internal workings of the system, such as caseloads which is an issue affecting efficiency and management.

<sup>3</sup> Prior to May 2014, the MOJ was the Ministry of Justice and Public Administration (MOJPA). In this report, it will be referred to as the MOJ.

organizations (such as the Bar, notaries, bailiffs, and mediators).<sup>4</sup> The Functional Review prioritizes aspects within this scope based on data availability, relevance to the achievement of the *Acquis*, and national policy objectives. The reporting period for the Functional Review was January 1<sup>st</sup>, 2010, to June 30<sup>th</sup>, 2014.

**A distinct feature of this Review is its emphasis on data and analysis.** Assessments draw on a mix of quantitative and qualitative data, including statistical analysis of case management, finance and human resource data, a multi-stakeholder perception survey, an access to justice survey, process maps, legal analysis, a desk review, focus group discussions, workshops and key informant interviews. For each assessment made in the Functional Review, multiple sources are triangulated to present the most objective and realistic picture as possible.<sup>5</sup>

**The 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 notes how its implementation links to the NJRS Action Plan and Chapter 23 requirements. In each case, a ‘main’ recommendation is highlighted, accompanied by a series of practical next steps to implement it. Each step also notes the institution that would be responsible for taking the recommendation forward, as well as the other institutions whose collaboration is necessary for effective implementation. Timeframes are indicated for each step, from short term (12 months), medium term (2-3 years) and long term (5 years), commencing from October 2014 in order to synchronize with the NJRS Action Plan.

**The precise prioritization and sequencing of the implementation of recommendations will be made by the Serbian authorities as part of their Chapter 23 Accession Action Plan.** Even so, the Functional Review Team was requested to provide an overview list of top priorities, on which progress would be essential to improve performance in line with European benchmarks. This is provided in the following section, *Overall Conclusions and Priorities*.

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<sup>4</sup> Where a question arose as to whether a certain issue facing an institution falls within the scope of the Functional Review, the test applied was ‘*whether and how the issue contributes, either directly or indirectly, to the delivery of justice services by the courts in Serbia*’.

<sup>5</sup> For further discussion of the Functional Review methodology, see **Annex 1** of the **Functional Review Report**.

## Overall Conclusions and Suggested Priorities

**Overall, Serbia’s judicial system performs at a lower standard than that of EU Member States.** In terms of efficiency, the system struggles with a legacy of bureaucracy and red tape. New cases proceed at an improved pace, and several efficiency parameters are within or close to the range currently found among EU Member States. However, courts are clogged with old cases that go unattended. Arcane processes cause delays, and procedural abuses by parties go largely unchecked. The quality of justice services is affected by poorly drafted legislation, inconsistent jurisprudence and high appeal rates. Rudimentary tools to standardize quality in service delivery, such as templates and checklists for routine procedures, do not exist. The judiciary remains marred by perceptions of corruption and undue influence, and while performance in this area is improving, it continues to lag EU Member States and regional neighbors. Access to justice services is constrained by high court and attorney fees, and attorney fees blow out further due to delays and inefficiencies in case processing. Support for indigent court users is inadequate. Access to basic legal information, such as consolidated legislation and lay formats of basic laws, is insufficient. The prospect of alternative dispute resolution holds promise but remains elusive after a series of failed reforms.

**In recent years, one could reasonably have expected the judicial system to have performed much better than it has.** Workloads decreased dramatically due to reductions in incoming caseloads and increases in resources, including massive and growing arrears and further appointments of hundreds judges and staff. With lighter workloads and more judges and staff, there lay significant opportunities to improve sector performance. However, these opportunities were not realized.<sup>6</sup> In the path towards EU accession, the Serbian judicial system can ill afford to miss such opportunities again.

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<sup>6</sup> For example, during the period when more than 600 judges were stood down in a failed ‘reappointment’ process, clearance rates for most court types and case types remained around 100%. Yet following their return to work by 2013, if workloads among all judges had been maintained, clearance rates should have risen dramatically, resulting in significant backlog reduction. However, this did not occur. Instead, it appears that judges and staff reduced workloads. Clearance rates fell and backlog remained largely unattended.

**Instead, the sector embarked on successive reforms which have caused much upheaval but produced limited results in terms of performance improvement.** These included two network reorganizations, the dismissal and reappointment of more than 800 judges and prosecutors, massive file transfers, changes in roles and responsibilities between actors, and the passage of ill-conceived laws that have quickly become ‘stillborn’ and required successive changes. These efforts consumed the energy of stakeholders and generated much work. However, they have done little to alter performance, which remained lackluster. Meanwhile, simpler reforms that could generate higher impact have not been prioritized, such as critical ICT upgrades, continuing training, lay guides, process simplification and managerial support for Court Presidents. Now, the sector craves stability and requires a more measured approach to reform that focuses on practical improvements to services for users.

**There is excessive variation across courts in terms of service delivery, which undermines access to justice and uniformity in the application of law.** Several courts perform extremely well against many of the agreed indicators in the Performance Framework, but there are pockets of underperforming courts that reflect poorly on the rest of the sector and fail to deliver the services people need. Workloads are not equitably distributed, leaving some courts are very busy, and others demonstrably less so. Court practices differ across the country in areas of importance for court users, such as complaints handling and the application of court fee waivers for indigent court users.

*There are isolated sites of innovation, often in courts outside of Belgrade. However, innovators have rarely been recognized and lessons have not been shared or replicated.*

Progress has been noted in some areas of court management, such as ICT improvements and procedural reforms. However, gains are fragile and have yet to instill changes in behavior among judges, prosecutors, attorneys and court staff. There are isolated sites of innovation in service delivery, often in courts outside of Belgrade, where progress has been made in specific areas, such as backlog reduction, service of process and stakeholder coordination.

However, these innovations have been driven by the personal initiative of individuals or with donor support. Innovators have rarely been recognized and the lessons from innovations have not been shared in a systemic way or replicated in other courts. As a result, averages and generalizations about the Serbian judiciary are misleading. The Functional Review Report attempts to document key variations and inconsistencies across the jurisdiction and possible drivers for these.

**The extraordinary heterogeneity highlights the need for a more consistent and coherent approach to performance management.** The sector lacks a framework to measure and manage performance.<sup>7</sup> Reforms are often initiated in a haphazard manner, without analysis of fiscal or operational impacts, and implementation is rarely monitored. Decision-makers describe how they lurch from crisis to crisis, addressing the symptoms rather than the causes of systemic under-performance, and this is particularly prevalent in human resource and financial management. The fragmentation of governance and management responsibilities stalls progress and dilutes accountability, including in much needed areas such as budget planning, process re-engineering, ICT investments and infrastructure improvements. In a positive development, the quantity and quality of available data has improved significantly in recent years – the next step will be for leaders to use this data to inform decision making and drive performance.

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**Serbia’s judicial sector is not under-resourced, but resources are not allocated effectively nor are they executed efficiently.** The overall level of budgetary funding is consistent with EU averages, both on a per capita basis and as a share of GDP. However, budget planning fails to take account of service delivery needs, recent reforms, or Serbia’s Chapter 23 accession aspirations. The large wage bill crowds out other expenditures, leaving little room for much-needed investments in training,<sup>8</sup> ICT, and infrastructure.<sup>9</sup> Human resources are mismatched with needs – there is an excessive number of judges at the top<sup>10</sup> and low-skilled ancillary staff at the bottom,<sup>11</sup> but a ‘missing middle’ of

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<sup>7</sup> The Functional Review team developed the Performance Framework (at **Annex 2** of the **Functional Review Report**) together with stakeholders for the purpose of the Review. That framework could be adapted by local stakeholders to serve as an ongoing tool for performance management. See Recommendation 1 and next steps.

<sup>8</sup> Despite a huge stock of human resources, there is very little investment in ongoing training and staff development, even in basic areas such as training on the rollout of new laws or the use of case management systems.

<sup>9</sup> The sector is also accumulating massive and growing arrears, largely due to a lack of financial planning and poor commitment control. Meanwhile, disbursements are low in much-needed areas of capital investment.

<sup>10</sup> Serbia has one of the highest judge-to-population ratios in Europe, notwithstanding falling caseloads and the transfer of several functions from courts to external actors.



mid-level specialist staff that will be necessary to support judicial modernization. And despite a huge stock of human resources, there is very little investment in ongoing training and staff development. Resources are not programed jointly, and there is little coordination, and occasional competition, among fragmented stakeholders responsible for different resources. As a result, sector productivity is low and the judiciary represents poor value-for-money for the State. The judiciary is thus poorly placed to argue for a larger resource envelope, and in the current fiscal environment, budget cuts could be expected. The sector will need to learn to ‘do more with less’ through better planning and coordination in resource allocation and execution. Without significant changes in these areas, the sector will be incapable of delivering on the many reforms that will be necessary to meet EU accession requirements.

**Looking ahead, a series of tough decisions will be required to align the sector’s performance with EU benchmarks.** Serbia is entering the negotiation phase for Chapter 23 with a sound knowledge

*Serbia is entering the negotiation phase for Chapter 23 with a sound knowledge base.*

base. With the requisite commitment and will, alignment with EU levels of performance is achievable in the longer term. The Functional Review provides a comprehensive set of recommendations that are administratively and financially feasible, and which align with the NJRS goals and Chapter 23 accession requirements.

**Just as the challenges analyzed in the Functional Review are inter-related, the recommendations are mutually reinforcing.** Serbian authorities can take comfort in that, at this current stage of development, they need not trade off one performance dimension against the other. Improvements in efficiency would yield higher quality of services and vice-versa, and improvement in either would improve access to justice. However, the implementation of recommendations would require a level of coordination among stakeholders that has yet to be demonstrated.

**Of the many findings and recommendations outlined in the Report, the Functional Review team suggests that leaders focus on the following seven priorities which can set the Serbian judiciary on a critical path to performance improvement.** Without significant progress in these seven priority

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<sup>11</sup> Serbia has high staff-to-judge ratio compared with EU Member States, as well as a large scaffolding of temporary staff, contractors and volunteers.

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.

- a. ***Develop a performance framework that tracks the performance of courts and PPOs against a targeted list of key performance indicators.*** The Performance Framework Matrix (at **Annex 2** of the **Functional Review Report**) could provide a starting point for selecting a targeted list of indicators to drive performance. To reduce excessive variation and lack of uniformity, efforts should focus on lifting the performance of the worst-performing courts to the current average, while rewarding high-performing courts. Court Presidents and Heads of PPOs should be required to monitor and report periodically on their performance against a small number of key performance indicators, and onerous reporting in other areas could be reduced. The SCC and RPPO can play a motivational role with courts and PPOs respectively, by recognizing fast-improvers and high-performers through non-financial awards and by showcasing their work. They could also facilitate more intensive dialogue among their respective managers (Courts Presidents, Heads of Departments, Court Managers, and Heads of PPOs etc.) to exchange good practices and apply lessons in the course of addressing key performance challenges. User satisfaction will be an important aspect of performance measurement, so the Councils should prepare to conduct user surveys in the medium term. (See Recommendations 1 and 26 and next steps.)
- b. ***Ensure that courts use the full functionality of their case management systems to improve consistency of practice and support evidence-based decision-making.***<sup>12</sup> Some courts are already using most of the functionality available to them and have seen first-hand the benefits in terms of performance improvement. The SCC could issue instructions to require consistency in practice across all courts. Court staff should be required to enter case data into relevant fields and scan documents to the maximum extent possible. All courts should be required to allocate cases using the existing random case assignment functionality and report on instances when overriding the algorithm was necessary. Scheduling of hearings should be done

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<sup>12</sup> This applies to all case management systems, including AVP (which operates in Basic, Higher and Commercial Courts) and SAPS (which operates in Appellate and Administrative Courts and the SCC). The same could apply to SAPO (for PPOs) and SIPRES (for Misdemeanor Courts) and SAPA (for prisons), once their rollout has been completed.

electronically. With a more consistent approach to case management, Court Presidents could monitor results in their courts through periodic managerial reports, including Ageing Lists. To support courts in meeting these requirements, training would be necessary for Court Presidents, judges and court staff on the functionalities and benefits of systems, in addition to ICT literacy courses. For its part, the MOJ should fund increases in server capacity and critical upgrades to existing systems so that relevant data fields are mandatory and managerial reports are easy to produce. (See Recommendations 6, 25, 49 and next steps.)

- c. ***Develop a comprehensive continuing training program for judges, prosecutors and court staff.*** Despite the massive stock of human resources, the sector invests too little in training and staff development. The Judicial Academy could spearhead the initiative to boost the capacity of the sector's existing human resources and become the hub for learning across the sector. The Academy could start by rebalancing its existing resources (i.e. reducing the budget for initial training activities and increasing the budget for continuing training) and shifting the work programs of its staff more towards continuing training activities. A training needs assessment should be conducted as a priority. Based on it, a comprehensive program of training for judges, prosecutors and court staff could be launched, covering both substantive topics and practical skills, with a particular emphasis on aligning the judiciary with European practice. Tailored trainings should be provided to meet the specific needs of key actors, including Court Presidents, Heads of PPOs, court secretaries and advisors. (See Recommendation 38 and next steps.)
- d. ***Reform procedural laws to simplify the service of process, and start simplifying business processes.*** Service of process is currently a severe bottleneck in case processing across all court types and case types. This could be eased by reducing the number of services that are required in each case and creating a presumption of continual service after the first service. Internal procedures in courts could also be streamlined, applying lessons from the Subotica Basic Court. The MOJ could work closely with courts to analyze options for improving the modality of delivery and incentivizing the performance of servers, applying lessons from the Novi Sad Misdemeanor Court, the Uzice Basic Court and the Vrsac Basic Court. This will likely involve either amending MOUs with the Postal Service or moving away from the Postal Service altogether. Data on frequency, success rates and costs should be collected and monitored. Training should be provided to support judges, court staff and process servers to ensure

effective implementation of a simplified system for service of process. Following reform in this bottleneck, simplification and streamlining of other business processes should be pursued to reduce red tape in courts and PPOs. In the meantime, user checklists could be developed to assist court users to navigate procedures, applying lessons from the Vrsac Basic Court. (See Recommendations 8, 27 and next steps.)

- e. ***Eliminate the backlog of old utility bill enforcement cases.*** Mass resolution of backlogged enforcement cases in Basic Courts is unlikely to change service delivery in real terms because most cases are inactive and enforcement involves little judicial work. However, resolution will be necessary as Serbia embarks on the Chapter 23 process. Clearing the desks of around 1.7 million pending enforcement cases would also signal a fresh start for many courts. This would likely boost morale and dramatically improve Serbia's performance metrics among EU comparator countries. Basic Courts should dedicate more staff and effort to working through the enforcement backlog, applying lessons from the Vrsac Basic Court's evidence-based approach. They should also identify all available opportunities to purge old inactive utility bill cases, applying lessons from Belgrade First Basic Court's experience with Infostan. Meanwhile, Basic and Higher Courts should analyze the backlog of non-enforcement cases using comprehensive Ageing Lists and prioritize the resolution of those cases. Close monitoring and ongoing support from the SCC will continue to be required. Recognition by the SCC of high-performers may also motivate Basic Courts to complete the task. (See Recommendation 2 and next steps)
- f. ***Develop a more realistic budget within the existing resource envelope.*** As the resource envelope is highly unlikely to increase in the tight fiscal environment, performance improvement will require that the sector 'does more with less'. Sector leaders in the HJC, SCC, MOJ, SPC and RPPO could coordinate the preparation of future annual work plans and negotiate trade-offs within the existing resource envelope to prioritize expenditures that boost productivity and performance (such as training, ICT upgrades, process re-engineering and procedural efficiency reforms) and forego expenditures in other areas. Leaders should clarify responsibilities for capital and current expenditure to overcome paralysis and low disbursement in those areas. The HJC and SPC will require technical assistance and some software to assume their functions. For example as a priority, the SPC and HJC should automate their financial management functions to enable greater flexibility in mid-year reallocations of

resources for courts and PPOs. The MOJ, together with the HJC and SPC, should develop a plan to reduce arrears over time, including through better sector coordination and greater commitment control in individual courts and PPOs. (See Recommendations 32, 33, 34 and next steps.)

- g. ***Adjust the resource mix over time by gradually reducing the wage bill and increasing investments in productivity and innovation.*** The HJC should freeze judicial appointments, as the judiciary already has an over-supply of permanent judges, particularly in light of falling trends in incoming cases, shrinking mandates for courts and European benchmarks. The HJC can gradually reduce the number of judges by not replacing retiring judges and promoting judges from within the system where needs arise.<sup>13</sup> For its part, the MOJ should maintain the recruitment freeze on staff positions, phase out the ‘shadow workforce’ of temporary staff and volunteers, and implement a staff reduction program, focused on low-skilled ancillary staff, including registry staff in verification roles. With the savings, the Council and the courts should invest in mid-level technical staff with specialized skills (ICT, research, analysis, court management etc.) to support the creation a modern administration capable of delivering to European standards. The sector also has significant needs for infrastructure improvements and ICT upgrades. The MOJ could start by conducting ICT and infrastructure stock takes and building capacity within its Investment Department. In exchange for progress in the implementation of other Functional Review recommendations, donors may be willing to contribute funds in support of the implementation of this plan. Adjusting the resource mix will require a coordinated approach by sector leaders and the approval of the MOF but it is critical to re-shaping the structure of the judiciary to drive performance. (See Recommendation 24, 25, 35 and next steps.)

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<sup>13</sup> Once appointed permanently, judges cannot generally be removed and may not be transferred without their consent, and they generate high costs, including salaries, allowances, accompanying staff, etc.

## Summary of Findings and Recommendations

### External Performance: Efficiency, Quality and Accessibility of Justice Services

**The delivery of justice services in Serbia is constrained by a combination of efficiency, quality, and access challenges.** From the users' perspective, court and attorney fees are expensive, and the process is long, frustrating, and subject to various vagaries and abuses. By the end, the users may secure a judgment in their favor but still struggle to see it enforced. The service delivery challenges are thus inter-related and mutually reinforcing.

**Below is a summary of the main findings and recommendations related to the *external performance of the judicial system in Serbia*, as measured against the indicators and European benchmarks outlined in the Performance Framework agreed among stakeholders.**

## i. In Context: Assessing Performance in Light of Caseloads and Workloads

**Court performance should be measured in light of the demand for court services including the quantity and nature of cases, workloads, and changes in those factors over time.**

**Demand for court services in Serbia is weaker than EU averages.** When measured relative to population, Serbian courts receive around 13.8 incoming cases per 100 inhabitants, which is slightly lower than the EU average. Meanwhile, Serbia has nearly double the ratio of judges-to-population than the EU average, with over 39 judges per 100,000 inhabitants. As a result, the incoming caseloads per judge in Serbia are approximately half the EU average<sup>14</sup> and are also lower than most EU11 Member States and regional neighbors.

**Caseload figures in Serbia are also highly inflated.** Many matters are counted as a ‘case’ that would

*Incoming caseloads per judge in Serbia are approximately half the EU average and are lower than most EU11 Member States and regional neighbors.*

not be considered as such in other systems.<sup>15</sup> Much of the caseload is composed of cases requiring little judicial work, such as enforcement cases, with a number twice as high as the EU average, and a large number of old inactive cases. Caseload inflation can result in misleading statements about the real demand pressures facing the judiciary. Once case numbers are

sifted and further analyzed, judicial workloads appear to be modest.

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<sup>14</sup> According to the CEPEJ, in Serbia in 2012, the judiciary received on average 350 incoming cases per judge, whereas the EU average was 840. A more conservative EU average, which removes certain outliers, is 453 incoming cases per judge, approximately 30 percent higher than in Serbia.

<sup>15</sup> For example, a criminal investigation counts as one case, then the ensuing trial counts as a separate case. If the decision is appealed, the appeal is a separate case, and if the appeal results in a re-trial then that too counts as a separate case. If the criminal trial raises an issue of compensation to the victim, then the compensation aspects is a separate civil case.

**Caseloads are distributed unevenly among courts and without any clear pattern.** Some small courts are extremely busy, whilst larger ones are less so. Higher Courts and Appeals Courts receive a comparatively small caseload on average. A series of painful reforms and court re-organizations have done little to address the uneven caseload distribution.

*Some small courts in Serbia are extremely busy, whilst larger ones are less so.*

**Demand for court services is also falling significantly.** Declines are most apparent in Basic and Commercial Courts where the number of incoming cases fell by over one-third and one-half respectively from 2010 to 2013. The decline is likely attributable to the transfer of judicial functions to other private or public actors and the decrease in affordability of court services. As a result, workloads are falling and the average incoming caseloads of judges across the court system declined by one-third from 2010 to 2013.

**Even so, judges, prosecutors and staff throughout the system report feeling busy and overburdened with work.** The reasons lie in the systemic problems in the way the system operates that undermine external and internal performance, and not in the numbers of judges, staff, or cases. Therefore it is the systemic problems, and their possible solutions, which are the focus of the Functional Review Report.

*Average caseloads declined by one-third from 2010 to 2013.*



## a. Efficiency in Justice Service Delivery

### i. Main Findings

**System efficiency is a significant challenge facing the Serbian judiciary but is improving in some areas.**

**Production and productivity in courts has improved over the last three years, but more should be done to address pockets of under-performance.** Clearance rates rose and are currently in line with EU averages, but this success is due largely to declines in incoming cases, and given the amount of resources they could have been higher.<sup>16</sup> There is significant variation across courts, but few courts

*If the output of the worst performing courts could be lifted to the current average, productivity would be in line with performance in EU11 countries.*

produced a less-than-100 percent clearance rate by 2013. The average case dispositions per judge are in the acceptable range but vary markedly by court type and court location.<sup>17</sup> Average case dispositions per judge have declined in the last two years in Basic, Commercial, and Misdemeanor Courts, again to due to a reduction in incoming cases and an increasing number of judges. It appears that judges generally

dispose of about the same number of cases that they receive – whether that figure is big or small – without much impact on case backlogs. Many courts resolve fewer cases per judge than could be reasonably expected, and many judges resolve fewer cases than their colleagues. If the output of the worst performing courts could be lifted to the current average, productivity would be in line with

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<sup>16</sup> For example, the judiciary maintained average clearance rates over 100% across most court types and case types during the period when more than 800 judges and prosecutors were absent from work during the failed re-appointment process. Their gradual return to work by 2013 should have significantly boosted clearance rates that year. Combined with falling incoming cases, clearance rates in 2013 could have increased dramatically. Instead, clearance rates remained about the same, and actually fell in all Higher, Appellate, Commercial and Misdemeanor Courts. This suggests that there is much capacity within the system to do more to tackle caseloads.

<sup>17</sup> For example, the Higher Courts currently produce fewer dispositions per judge than the SCC, and judges in the busier Basic Courts dispose of three times the number of cases than their colleagues in the least busy Basic Courts.

performance in EU11 countries. Judges across Serbia would then have more time to contribute to other important functions that support the attainment of Chapter 23 standards, including training.

**In terms of timeliness of case processing at first instance, the picture is also mixed but improving.**

Serbia's pending stock of unresolved cases per 100 inhabitants is high in comparison to EU averages, although this is improving for civil and commercial cases. Congestion rates remain high at around 1.41 and are particularly high in Basic, Commercial, and Misdemeanor Courts. On average, new cases proceed through the system relatively smoothly: as a result the average age of resolved cases is relatively young across all case types. However, backlogs persist because old cases remain 'stuck' and many inactive cases remain on the books. Although the case management systems are capable of producing Ageing Lists of Unresolved Cases, they are not routinely produced and so Court Presidents do not generally analyze them. This is unfortunate because Ageing Lists are perhaps the most useful tool available to track timeliness in case processing. The Functional Review developed an Ageing List for the purpose of this report, and it highlights an alarming number of cases that remain pending after three, five, and even ten years. These old cases are unlikely to meet the timeliness requirements of the European Convention on Human Rights (ECHR) and they thus require particular attention. The time to disposition of resolved cases in days varies markedly by case and court type. The time to case disposition is short in Higher Courts (98 days) but long in Basic Courts (736 days). In civil and commercial litigation, Serbia's time to case disposition is reasonable and in line with EU averages. Whereas in enforcement cases, timeliness is intractably long and far worse than elsewhere in Europe. Unsurprisingly, user perceptions of timeliness remain negative, and the long duration of cases frustrate court users. Furthermore, data on the timeliness of first instance proceedings does not reflect the full user experience, as appeal rates are high and the 'recycling' of cases through re-trials is too common, and this further prolongs the ultimate resolution of disputes for the parties.



**Image of a Registry Office in the Enforcement Department of a Basic Court, 2014.**

**Effective enforcement underpins the justice system, and on this indicator Serbia lags far behind EU Member States.** Enforcement cases comprise much of the backlog and cause most of the congestion and delays in courts. Enforcement departments within courts are often poorly staffed and exhibit low morale. Much of the problem relates to unpaid utility bills, which make up around 80% of the enforcement caseload.<sup>18</sup> While recent reforms will ensure that many new monetary enforcement cases, including utility bill cases, are now channeled to private enforcement agents instead of to

*The successful mass resolution of enforcement cases in the Belgrade First Basic Court could be replicated in other Basic Courts.*

courts, and ongoing monitoring of this profession will be required to ensure their effectiveness in dealing with these cases. Meanwhile, the elimination of the existing backlog of old enforcement cases in courts will require specific measures.<sup>19</sup>

On a positive note, remedies are available. Mass resolution (purging) of cases has proven successful at the Belgrade First Basic Court, and this experience could be replicated in other courts. Targeted evidence-based approaches have also shown some promise in the Vrsac Basic Court. By contrast, enforcement cases that do not relate to utility bills, such as the enforcement of court judgments, proceed relatively smoothly, though there remains room for improvement.

**A range of procedural inefficiencies cause frustration among court users and practitioners and contribute to delays.** Service of process is required at each step of the process, and unnecessary delays here cause a ricochet effect through the system.

*In Serbia, avoiding service of process is relatively easy: on average at least 57% of attempts at service of process fail.*

Avoiding service of process is relatively easy; on average at least 57% of attempts at service of process fail. Stakeholders are unanimous that the Postal Service is ineffective and it has little incentive to improve whilst it charges the courts per attempt of service. Related cases are rarely joined (and even claims and counter-claims are not routinely joined) resulting in

duplication. However, judges are unlikely to change that behavior and join cases more often whilst ever they are monitored on the raw quantity of their resolved cases. Time management in courts is

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<sup>18</sup> At the end of 2013, around 2 million enforcement cases remained unresolved in the Basic Courts, of which around 1.7 million related to unpaid utilities bills.

<sup>19</sup> Some have suggested that private enforcement agents should also be allocated old enforcement cases, but the Functional Review advises against this.

often poor. Hearings are held only in the mornings, despite a lack of courtrooms. Some courts use existing case management software to schedule hearings, while others rely on manual diaries which are less reliable and more time-consuming than their modern equivalents. Routinely, there is a long delay in scheduling the first hearing in a case and an average three-month time lag between hearings. Case processing practices are outdated, including disjointed hearings and the manual exchange of case information. Case files get misplaced and take a long time to transfer from one court to another. Preparatory departments have shown some promise, but many courts have been slow to establish them, often due to lack of space or reluctance on the part of judges to part with ‘their’ assistants.<sup>20</sup> Hearings are often cancelled or adjourned because of the non-appearance of prisoners, attorneys or expert witnesses: this is often due to poor coordination between courts and critical service providers, which is exacerbated by the growing arrears owed to these providers.

*Preparatory departments have shown some promise, but many courts have been slow to establish them.*

An excessive number of hearings do not contribute to resolution of the case, suggesting that judges are not using their powers to actively manage their cases. For their part, attorneys perpetuate procedural inefficiency in the courts, and they have little incentive to change behavior whilst ever they are paid per hearing.

**Procedural abuses by litigants often go unmanaged, as do frivolous claims and appeals.** Trial judges fail to exercise their powers to curtail abuses due to a range of factors, including fear that their decisions may be overturned by appellate courts, their close relationships with attorneys, as well as a general dynamic of torpor within courts. In some areas however, stronger procedural laws, including tougher sanctions, as well as greater clarity from appellate jurisdictions, may assist judges to be more proactive in case management.

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<sup>20</sup> Preparatory departments are designed for medium and larger sized courts, where judicial assistants and court staff work together in a pool to ensure that procedural requirements are met and that cases are ready for hearing.

**Efficiency in the delivery of prosecution services is also a concern, but a lack of data inhibits more detailed analysis in the Functional Review.** The prosecution service is also undergoing profound change in the transition to a prosecution-led adversarial system under the new Criminal Procedure Code (CPC). The transfer of more than 38,000 investigation cases from Basic Courts to PPOs reduced inventory in the courts but created a new backlog for prosecutors, which they are struggling to process. New obligations have also expanded their scope of works, and they are ill-equipped to deal with these. Work processes require review to adapt to this new environment.

**Meanwhile, the efficiency of administrative services<sup>21</sup> is high and improving, but unfortunately many of these functions will soon be taken from courts.** The time required to complete verification tasks has reduced by one-third from 2009 to 2013, and in at least half of all cases, verification can be completed at one location within a half-hour. User satisfaction is often over 70% and has increased



Image of a Queue for Administrative Services at a Basic Court, 2014.

on most aspects between 2009 and 2013. Perceptions of the conduct and competence of staff has also improved. Nevertheless as part of a controversial reform to create private notary services, these tasks are scheduled to be transferred in 2015 from courts to private notaries. It is unclear what problem this aspect of the reforms is seeking to solve, given high existing levels of satisfaction with verification services. If courts were to be able to compete with notaries for basic verification tasks, they would be well-placed to provide good value-for-money services. If courts do lose these functions, significant staff reductions should be expected to follow.

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<sup>21</sup> This includes verification of documents and related services provided by courts.

## ii. Recommendations and Next Steps

1. **Strengthen performance management in courts by recognizing and rewarding higher-performing courts and implementing performance improvement plans for under-performing courts. Intensify dialogue between courts to exchange good practices and experiences through a more intensive program of meetings, workshops and colloquia.**<sup>22</sup> Lifting under-performers to the current average would considerably improve efficiency and consistency of practice, and bring Serbia's performance closer in line with that of EU Member States. These recommendations can be implemented at relatively low cost, using the Performance Framework indicators (at **Annex 2** of the **Functional Review Report**) as an initial reference.

- ✓ Establish a department in the SCC to analyze court performance issues, using the Functional Review and the Performance Framework as a foundation. (SCC – short term)
- ✓ Select a targeted number of indicators that drive court performance and monitor these across all courts. (SCC – short term and ongoing)
- ✓ Acknowledge performance improvements and innovations by showcasing their work at regular symposia and through non-financial rewards of recognition (e.g. Court Staff/President of the Year, Best Performing Court of the Year, Most Improved Court of the Year; Innovator of the Year etc.). (HJC with MOJ – short term)
- ✓ Disseminate individual and institutional good practices and innovations through workshops and colloquia among Court Presidents and heads of departments within courts. (SCC with HJC – medium term)
- ✓ Carry out targeted interventions aimed at assisting those courts facing severe performance challenges to rise to the current averages. (SCC – medium term)

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<sup>22</sup> This recommendation aligns with NJRS Strategic Measure 5.1.2.3: Undertaking of regular periodical efficiency analyses of the judicial network using improved methodology; Strategic Measure 5.1.2.4: Adjusting of the judicial network to the needs, pursuant to the results received from periodical analyses; Strategic Measure 5.1.2.5: Undertaking of correctional measures on the level of individual Courts and PPOs with the goal of improving efficiency of the network of Courts and PPOs as a whole.

2. **Prioritize the implementation of the SCC Backlog Reduction Strategy, targeting in particular the utility bill enforcement backlog through analysis and a coordinated package of incentives.<sup>23</sup> Develop Ageing Lists as a key tool for managing timeliness and backlog reduction, and monitor the progress of each court.** This builds on the work already underway by the Backlog Reduction Working Group. Results here would help bring Serbia's efficiency in line with that of EU Member States. Moderate funds may be needed for staff overtime to address the backlogs. The initial recommendations can be implemented at relatively low cost, although technical assistance may be required for some items.

- ✓ Accelerate the backlog reduction program and adopt the measures proposed in the Best Practice Guide to prevent the recurrence of backlogs. (HJC, SCC – short term and ongoing)
- ✓ Monitor prosecutorial investigations to prevent the accumulation of an investigative backlog. (SPC and RPPO – short term and ongoing)
- ✓ Analyze why the Infostan approach to withdraw inactive utility bill cases was so effective, replicate lessons learned with other utility companies. (SCC liaising with MOF, MOE, Utilities – short term)
- ✓ Establish taskforces in those courts most affected by utility bill backlogs. Re-allocate sufficient staff, particularly judicial assistants, from other departments to these taskforces, and provide them sufficient ICT equipment and software. Court Presidents should provide the necessary leadership and managerial support to enable them to succeed. Develop a comprehensive Ageing List of enforcement cases, and create ambitious yet realistic targets. Closely monitor the results of taskforces and report regularly to the relevant Working Group. Recognize good performers through evaluation, promotion and non-financial recognition and awards. (SCC – short term and ongoing)
- ✓ Create incentives to overcome the stigma that enforcement work is unattractive, such as giving 'bonus points' for the resolution of enforcement cases in productivity norms or considering backlog reduction efforts in evaluation and promotion processes. (HJC, SCC – short term)

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<sup>23</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.6: Design and implementation of unified backlog-clearance program while respecting equalization of the number of cases per judge, establishing a system of on-going horizontal transfer and relocation of judges and public prosecutors, in accordance with the constitution and with adequate stimulation, and efficient monitoring of the of the program implementation.

- ✓ Analyze the non-enforcement backlog with a comprehensive Ageing List. Require that Courts report routinely on resolution of old cases. (SCC – short term)
3. **Monitor the implementation of recent reforms introducing private enforcement agents, including workloads, costs, quality and efficiency of service delivery, and integrity.**
- ✓ Analyze data on the use of enforcement agents to assess their effectiveness and impact on court performance. (MOJ, SCC – short term, ongoing)
  - ✓ Create an internal panel of the Chamber of Bailiffs to process complaints against enforcement agents as a first tier. Incorporate remedial training as a potential sanction for agents. Disseminate information regarding avenues for complaint against enforcement agents. (MOJ, Chamber, JA – medium term)
  - ✓ Conduct a comparative analysis of the cost of enforcement services (including deposits, reimbursable expenses, and fees) in other European jurisdictions, and analyze models and affordability. Consider reducing the enforcement deposit and better regulating reimbursable expenses for enforcement agents. (MOJ – short term)
  - ✓ Introduce caps on the number of outstanding cases per enforcement agent and avoid assigning additional cases if performance standards are not met. (MOJ, Chamber – medium term)
  - ✓ Amend the location from where enforcement agents are appointed from the creditor’s territory to either the creditor’s territory or the territory where the debtor is registered to ease logistical constraints on enforcement. (MOJ – short term)



Image of a Registry Department in a Basic Court, 2014.



4. **Establish preparatory departments in all medium and large sized courts. Monitor their results and exchange experiences.**<sup>24</sup> Judges, court staff, and practicing attorneys acknowledged these departments would be useful, particularly for ensuring that cases are ready for hearing, but the lack of staff or commitment to the process hindered the implementation. Departments can be established in the short term, while evaluating the results will require more time. The cost is moderate with the potential for substantially improved efficiency.

- ✓ Establish preparatory departments in those medium and larger courts that lack them. Collect baseline data on time to disposition and procedural efficiency, and monitor results. (SCC, MOJ – short term)
- ✓ Disseminate information about results to all courts and recognize good performance. (SCC, MOJ – medium term)

5. **Develop and monitor performance statistics in PPOs.**<sup>25</sup> Monitoring the workload, via electronic means wherever possible, should be done in the short term for low cost, while making changes to correct problems will follow, with costs depending on what correction actions are taken.

- ✓ Design more detailed and disaggregated performance statistics for PPOs. (RPPO – short term)
- ✓ Monitor performance statistics in PPOs to prevent backlog from accumulating, and recognize good performers. (SPC, RPPO – medium term)

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<sup>24</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.6: Design and implementation of unified backlog-clearance program while respecting equalization of the number of cases per judge, establishing a system of on-going horizontal transfer and relocation of judges and public prosecutors, in accordance with the constitution and with adequate stimulation, and efficient monitoring of the of the program implementation.

<sup>25</sup> This recommendation aligns with NJRS Strategic Measure 4.2.1.2: Introduction of a centralized data collection and processing system in all PPOs.

**6. Collect and analyze data on procedural efficiency to inform future reforms.<sup>26</sup> Provide practical training to support the rollout of recent procedural amendments. Adjust productivity norms to encourage judges to join related cases.** The CCJE calls for judges to control the timetable and duration of proceedings, from the outset and throughout the legal proceedings. These recommendations can be accomplished in the short term at relatively low cost.

- ✓ Require staff to enter data into existing fields in case management software (AVP and SAPS). Provide training to staff on consistent data entry. Generate regular analytic reports and monitor results. (SCC, Courts, ICT providers – short term. See also ICT Management section)
- ✓ Create new fields in AVP and SAPS, focusing on data needs relating to timeliness, procedural efficiency, and prevention of procedural abuse. (MOJ – short term)
- ✓ Provide training to lower and higher court judges and judicial assistants on issues affecting procedural efficiency, including training to judges on their recently-enhanced powers to manage cases. (HJC, SCC, JA – medium term)
- ✓ Where variations in procedural efficiency exist between Courts, analyze and convene colloquia between courts to share experiences. (SCC – medium term)
- ✓ Analyze the extent of appeals, and procedural abuses; identify causes and develop possible sanctions.<sup>27</sup> (SCC – medium term)

**7. Tighten scheduling practices for court hearings, including by conducting hearings throughout the day and fully utilizing case management software functionality. Collect and monitor data on scheduling patterns, such as reasons for adjournments, to inform future reforms.<sup>28</sup>** Most of these changes could be made in the short term for little cost.

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<sup>26</sup> This recommendation aligns with NJRS Strategic Goal 5.2: Establishing of e-justice; Strategic Guideline 5.3.2: Amendments to the normative framework in a manner that would contribute to the reduction of the duration of court proceedings; Strategic Measure 5.3.3.4: Mandatory education of administrative – technical staff and regulation of the issue of competence in the field of their education; Strategic Measure 4.2.1.3: Conducting trainings for employees in courts and PPOs for working with the centralized data collection and processing system.

<sup>27</sup> This aligns with CCJE Opinion No. 6 (2004), which indicates provision should be made for sanctioning abuse of court procedure.

<sup>28</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.4: Infrastructural investments in courts and prosecution facilities targeted at tackling the lack of courtrooms and prosecutorial cabinets, thereby increasing

- ✓ 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 cancelled and adjourned hearings and the reasons for them. (SCC/Courts – short term)
- ✓ Require that judges close each hearing by setting the next hearing date within a standardized timeframe, with only limited exceptions. (SCC/Courts – short term)
- ✓ Require that all courts use existing case management software to electronically schedule court hearings. Provide training as necessary. (SCC, JA, MOJ – medium term)

**8. Reduce the requirements for service of process and reconsider arrangements for the delivery of service, applying lessons from some Basic and Misdemeanor Courts.<sup>29</sup>** Most of these steps can be taken in the short term at low cost.

- ✓ Monitor the implementation of recent procedural amendments which attempt to close loopholes on service of process. Collect and monitor data on service of process, including attempts and costs, and identify sources of variations. (MOJ, SCC, Courts – short term)
- ✓ Re-negotiate the MOJ's outdated MOU with the Postal Service and pay only for successful service (modelling the experience from Uzice Basic Court). Increase training and awareness among postal officers of their requirements and the sanctions for abuse. Create a plan to monitor results and to report on changes. (MOJ – short term)
- ✓ Work with Courts to build flexibility into their budgets so that they can innovate, for example by contracting with private couriers (like Sloboda which delivered an inexpensive and successful solution in the Novi Sad Misdemeanor Court), or delivery men, as occurs in the Vrsac Basic Court. (HJC, MOJ – medium term)
- ✓ Provide training to judges on new rules and encourage them to take a proactive approach to managing service of process. (SCC, JA – medium term)
- ✓ Amend procedural laws to create a presumption of continual service after the first service of process, with the onus on the party to notify the Court of any change of address, along with sanctions for non-compliance. (MOJ, HJC – medium term)

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the number of trial days per judge, reducing the time between the two hearings and significantly expediting the investigative proceedings.

<sup>29</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.2: Amendments to the normative framework in a manner that would contribute to the reduction of the duration of court proceedings.

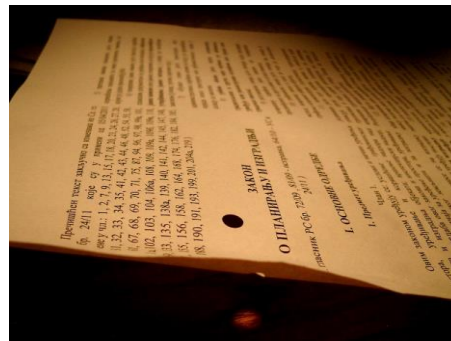
## b. Quality of Services Delivered

As outlined in the Performance Framework, the quality of service delivery covers a range of dimensions ranging from quality of legislation to quality in case processing, decision-making, and appeals. The integrity of the system is also a dimension of quality in the eyes of users. Poor quality has significant implications for efficiency of service delivery as well as for the access to justice services.

### i. Main Findings

**The poor quality of legislation in Serbia causes a range of problems for the courts.** Lack of precision in legislative drafting creates ambiguity which is then exploited by parties. Overlapping and conflicting laws cause inconsistency of practice, while gaps in the law leave judges with little guidance. In all, 21 percent of judges and 19 percent of lawyers report poor quality legislation as the main reason for the poor quality of court services. Only 13 percent of judges and prosecutors considered Serbian laws to be fair and objective.

**Deficiencies in the policymaking and legislative process perpetuate these problems.** There has been a proliferation of new legislation in recent years, often developed without policy analysis, and with limited analysis or buy-in from the stakeholders responsible for their implementation. Ad hoc working groups are convened by the MOJ to consider and draft each new law, and their organizational methods are haphazard. There are too many working groups, and the deliberative process is time-consuming without producing the requisite quality of drafts. Working groups tend to debate concepts rather than conduct analysis based on policy criteria, and they tend not to rely on data to inform decision-making. They do not sufficiently consider the financial and operational implications of proposed legislation, as evidenced by a lack of policy analyses or fiscal impact analyses. Consultation processes are perfunctory. Legislation is routinely passed by the National Assembly under emergency procedures.



**Title: *Rupa u zakonu*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.**

**Following the enactment of new legislation, there has been limited outreach and training to embed new behaviors.** In recent years, many laws have been ‘stillborn’, unable to be effectively

*Many laws have been ‘stillborn’, unable to be effectively implemented and requiring a new working group to start over again. This has created a constant and unproductive ‘churn’ of reform.*

implemented and requiring a new working group to start over again. This creates a constant and unproductive ‘churn’ of reform. Professionals have little time to apply the new legislation before they are revised. Many judges stall their decisions or continue to apply old legislation while waiting for appellate courts to provide guidance on new legislation. There is also evidence of reform fatigue, which is concerning at the outset of the Chapter 23 process. Legislative reform will continue through the accession process, but the quality of the

working group process should be enhanced to prevent the Chapter 23 accreditation process from becoming a merely box-ticking exercise.

**When disputes arise, the application of the law is inconsistent across the country.** More than 80 percent of judges, prosecutors and lawyers express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence. Process Maps highlight that the ‘law in practice’ differs from the ‘law on the books’ in certain cases and at certain locations.

**Current arrangements for case processing present several challenges in terms of quality.** The system lacks a standardized approach to routine aspects of case processing. There are no checklists,

*More than 80 percent of judges, prosecutors and lawyers express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence.*

standardized forms or templates for routine aspects of case processing, nor is there a consistent approach to drafting routine documents, such as legal submissions, orders, or judgments. Meanwhile, there are few examples of specialized case processing for the types of cases that often warrant a tailored approach. Certain types of cases, such as small claims, complex fraud and gender-based violence, can tend to get

‘stuck’ in the system because they lack specialized case processing practices.

**In criminal cases, the quality of decision-making by judges and prosecutors varies.** Some innovations are showing promise, including the use by prosecutors of deferred prosecution<sup>30</sup> and plea bargaining. In deferred prosecution cases, arrangements to implement and monitor sanctions remain weak, causing prosecutors to rely disproportionately on cash payments as sanctions rather than more proactive rehabilitative measures, such as community work or psycho-social treatment. Monitoring is also inconsistently applied across the territory, largely due to the limited geographic reach of the Commissioner, undermining the principle of equality before the law. Plea bargaining procedures could be simplified by giving greater autonomy to Deputy Prosecutors. Sentencing appears inconsistent, and many stakeholders report that it is overly lenient, and prosecutors could play a more constructive role in compiling data on sentencing practices and trends and recommending sentences accordingly. Alternative sanctions could be strengthened by supporting the arrangements for implementing and monitoring sanctions. Alternative sanctions should be particularly encouraged in Misdemeanor Courts, where deferred prosecution and plea bargaining do not occur and the prospects for rehabilitation for minor offenses are high.

*Monitoring of deferred prosecution and alternative sanctions is inconsistently applied across the territory, largely due to the limited geographic reach of the Commissioner. This undermines the principle of equality before the law.*

**More broadly, the Serbian judicial system struggles to fully comply with ECHR requirements, as evidenced by the large caseloads in Strasbourg.** Non-compliance tends to be found in a limited number of case types, highlighting specific problems relating to inconsistent application of the law and non-enforcement of the final decisions against state-owned enterprises. It thus appears that the bulk of Serbia's non-compliance relates to financial complaints against public entities, rather than structural problems in the judicial system. Friendly settlements offer some solution here. In an attempt to



Title: *Serbia 2020*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.

<sup>30</sup> Deferred prosecution is commonly referred to in Serbia as 'opportunity cases'.

comply with the ECHR right to trial within a reasonable time, recent procedural reforms now enable parties to pursue a separate cause of action for delayed proceedings. These reforms are well-intentioned but run a high risk of producing unintended, or even perverse, consequences. Their implementation should be monitored closely and adjustments may be required.

**The appeals system is at the heart of Serbia’s problems in terms of quality of decision-making.**

Appeal rates are very high on average, as are reversal rates<sup>31</sup> on appeal. Rates also vary markedly across court types, case types, and court locations. Without plausible explanation, some courts exhibit appeal rates and reversal rates that are double those of the court adjacent to it. Appeals from Basic Courts to Higher Courts (known as small appellation) are not well monitored in the system and, upon analysis, are particularly alarming. The perceived unfairness of the system,

*Without plausible explanation, some courts exhibit appeal rates and reversal rates that are double those of the court adjacent to it.*

combined with its lack of uniformity and consistency, encourages court users to appeal. Attorney incentives may also play a hand in driving up appeals. At the same time, levels of trust in the appellate system among court users are low. On a positive note, recent procedural amendments to reduce successive appeals (known as the ‘recycling’ of cases) seem to

be working. Nonetheless, appellate judges (notwithstanding their lighter caseloads) continue to remand cases back to the lower jurisdiction for re-trial more often than they are required to, rather than substituting their own judgment. Excessive remands duplicate workloads, inflate case numbers and perpetuate inconsistent practices by failing to provide adequate guidance to lower courts. The SCC plans to improve uniformity in the application of the law through a range of measures, including Certification Commissions. These efforts should be prioritized and augmented with a suite of basic quality-enhancing measures, which together could reduce appeal rates over time.

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<sup>31</sup> Reversal rates are commonly referred to in Serbia as ‘abolishment rates’.

**Meanwhile, corruption remains a challenge for the Serbian judiciary.** Serbia lags EU Member States and neighboring countries on all comparative indices of perceived corruption in the judiciary. Court users admit that they engage in corruption to advance their cases.<sup>32</sup> Bribery of court staff appears to be more common than bribery of judges, who likely rely on more subtle means. In addition to bribes, around 19 percent of users report ‘pulling strings’ to influence the courts. Such informal means are more often used to affect the procedure rather than the outcome, suggesting that improvements in transparency and efficiency in case processing would reduce opportunities for malfeasance. Gift-giving is also common and goes largely unchecked. Surveys indicate that the perceived prevalence of corruption is declining across the system. However, in Misdemeanor Courts, public trust and confidence is falling.

*In addition to paying bribes, around 19 percent of users report ‘pulling strings’ to influence the courts.*

**Perceptions of judicial independence in Serbia remain low.** A significant portion of judges (25 percent) and prosecutors (33 percent) report that the judicial system is not independent, compared with 50 percent for the public and business sector, and 56 percent of lawyers. The same view is reflected in Serbia’s poor rankings in terms of judicial independence on a range of global indices. Notably, perceptions of judicial independence have worsened since 2009, which reduces the credibility of the system and users’ trust and confidence in it.

*25 percent of judges, 33 percent of prosecutors and 56 percent of lawyers report that the Serbian judicial system is not independent.*

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<sup>32</sup> Around 10 percent of court users report that a bribe was solicited when they had dealings with a court. Figures on reported corruption are expected to be significantly under-stated.



## ii. Recommendations and Next Steps

9. **Improve the organizational methods of Working Groups that develop draft policy and legislation relating to the judiciary. Require that working groups identify policy objectives and options, analyze fiscal and operational impacts of policy options, and prepare detailed implementation plans for the rollout of reforms.**<sup>33</sup>

- ✓ Ensure standard terms of reference for working groups, with accompanying checklists for Chairs of working groups. Ensure that working groups articulate precise policy objectives and criteria. (MOJ – short term)
- ✓ Require that working groups analyze the causes for previous policy failures using system data, surveys and assessments of gaps between the ‘law on the books’ and the ‘law in practice’. Require that all working groups conduct fiscal analyses and operational analyses of proposed reforms and policy options. Base recommendations on evidence. Ensure that draft legislation recommended by each working group includes an estimated breakdown of the costs of implementation. (MOJ – short term)
- ✓ Ensure that each working group includes a specialist in legal drafting to ensure consistency and completeness of draft legislation. Conduct training on legislative drafting and interpretation. (MOJ, JA – medium term)
- ✓ Prepare implementation plans for the dissemination and rollout of new legislation and policy, and engage the Judicial Academy to deliver comprehensive training on new legislation for judges, prosecutors and court staff. (MOJ, JA – short term)
- ✓ Disseminate information about reforms through the media and on the websites of courts and the MOJ to inform citizens and court users. (MOJ, SCC – short term)

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<sup>33</sup> This recommendation aligns with NJRS Strategic Guideline 1.3.3: Analysis of the results of implementation of the ‘judicial laws’ and amending them pursuant to the results of the analysis; Strategic Guideline 1.3.4: Analysis of the results of implementation of substantial and procedural laws (Criminal Procedure Code, Civil Procedure Code, Law on Enforcement and Security, etc.).

10. **Implement basic quality-enhancing measures. Standardize formats for routine procedures in Courts, including through the development of templates and checklists.**<sup>34</sup> The CCJE recommends that simplified and standardized formats for documents be adopted to initiate and proceed with court actions.<sup>35</sup> Initial forms can be created in the short term at relatively low cost. Training can be incorporated into existing programs.

- ✓ Develop and require courts to use standardized templates and forms for routine procedures and processes, applying lessons from the Vrsac Basic Court. (SCC – medium term)
- ✓ Provide training on their use to judges, prosecutors, and court staff to enhance consistency in case processing. (SCC, JA – medium term)
- ✓ Disseminate to court users and legal professionals. (SCC – medium term)

11. **Develop pilots in Misdemeanor, Basic and Higher Courts for specialized case processing departments, including a specialized small claims department in Basic Courts with streamlined procedures.**<sup>36</sup> These recommendations can be implemented in the medium term for relatively low cost.

- ✓ Assess the feasibility of establishing small claims departments inside Basic Courts. If successful, start with a number of pilot Courts, and monitor results. Support departments with incentives, such as awards and recognition or consideration in evaluation or promotion, to attract high-quality judges and staff. Develop streamlined procedures and lay guides that could be followed by self-represented litigants. (MOJ, HJC, SCC – short term and ongoing)
- ✓ Create a working group to identify what kinds of cases could benefit from specialized case processing, including for example tax and customs cases in Misdemeanor Courts and gender-based violence and fraud in Basic and Higher Courts. Analyze lessons learned from the Commercial Courts. (MOJ, HJC – medium term)
- ✓ Develop pilot programs in Courts to test the efficacy of specialized proceedings. Monitor results. (MOJ, HJC – medium term)

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<sup>34</sup> This recommendation aligns with NJRS Strategic Guideline 2.7.4: Improve the judgment drafting methodology and achieve uniformity in this area (through initial and continuous training at the Judicial Academy).

<sup>35</sup> See CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

<sup>36</sup> This recommendation aligns with NJRS Strategic Guideline 2.4.1: Changes in the normative framework related to the special character of the right to natural judge in cases of specialization and the possibility of derogation from the automatic case assignment when program for solving case backlog is applied.

12. **Implement and augment existing SCC plans to promote uniformity and clarity of court decisions.**<sup>37</sup> This would enhance quality and perceived fairness in line with CCJE and the Magna Carta of Judges' recommendations for improved quality, accessibility, and clarity of decision-making. Consolidating cases are for the short term while other items are for the medium term. All recommendations require relatively minimal cost.

- ✓ Provide guidance and training to judges at both first-instance and appellate levels on how to join related cases. (SCC, JA – short term)
- ✓ Develop a more standardized approach to judgment writing and train judges on how to apply this approach. (SCC, JA – medium term)
- ✓ Establish a series of colloquia between Court Presidents to discuss emerging issues in law and practice. (SCC – short term)
- ✓ Establish forums of institutional court users at the local level of each Basic Court (police, prosecution, social welfare, lawyers etc.). Meet periodically to ensure effective coordination of cases (applying lessons from the Zrenjanin Basic Court). (SCC – short term)
- ✓ Collect sentencing data by Court and offense; compare across case types and court locations. Provide training to reduce variations in sentencing practices. (SCC – medium term)
- ✓ Compile sentencing tables as a reference guide for prosecutors when developing submissions. Update and elaborate data periodically. (RPPO – medium term)
- ✓ Develop bench books on substantive areas of law topics. (HJC, JA – long term)

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<sup>37</sup> This recommendation aligns with NJRS Strategic objective 2.7: Uniformity of case law.

13. **Improve statistical reporting of appeals (including data relating to decisions confirmed, amended or remanded back to the lower court). Combine analysis of the results with a package of training and incentives for courts and judges to promote quality in decision-making.**<sup>38</sup> The COE recommends that steps should be taken to deter the abuse of post-judgment legal remedies. Improved enforcement will discourage appeals by reducing incentives for attorneys and/or parties to delay final judgment.<sup>39</sup> Recommendations can be implemented in the medium term at relatively low cost.

- ✓ Align statistical data on appeals from Basic Court decisions to enable tracking of small and large appellation and analyze variations. Link the Courts' case management systems to allow cases to be tracked through all appeals, related cases and closure. (SCC, MOJ – medium term)
- ✓ Consider the appeal record of individual judges and prosecutors in the evaluation and promotion process. (HJC, SPC – medium term)
- ✓ Adjust the productivity norms of appellate judges to reward those who replace a lower court decision with their own judgment rather than remand it back to the lower court for retrial. Provide training to appellate judges on the implementation of recent procedural reforms requiring judges to amend decisions at the second appeal. (SCC, JA – medium term)
- ✓ Prepare and deliver training on issues that drive up appeals, including issues of concern under the ECHR<sup>40</sup>. (SCC, JA – short term)
- ✓ Agree to friendly settlements between the state and parties in mass resolution of cases before the European Court of Human Rights. (MOJ – medium term)

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<sup>38</sup> This recommendation aligns with NJRS Strategic Guideline 2.7.1: Improvement of the normative framework in order to regulate the harmonization of court decisions and more precisely define the role of the Supreme Court of Cassation in this area, as well as to fully ensure harmonization with the decisions of the European Court of Human Rights and practice of other relevant international institutions.

<sup>39</sup> Committee of Ministers Recommendation No. R (84) 5, Principle 7.

<sup>40</sup> This recommendation aligns with NJRS Strategic Guideline 2.7.3: Monitoring case law of the European court of human rights and other relevant international institutions, ensuring that their decisions are analyzed, organized and publicly available; Strategic Guideline 3.2.3: Further improvement of the initial training program at the judicial academy; Strategic Guideline 4.1.3: Amendments to the normative framework in terms of civil liability of the judicial office holders.

14. **Develop a high-profile campaign to enhance quality and combat corruption in administrative services in Courts, including the development and monitoring of integrity plans.**<sup>41</sup>

Creating integrity plans, standards, and a task force can occur in the short term, with other recommendations in the medium term, all at relatively low cost. Monitoring, training, and public awareness should be an on-going process.<sup>42</sup>

- ✓ Prepare and deliver training for judges, assistants and court staff on the purpose and content of court integrity plans. Develop integrity plans for all courts and PPOs. Disseminate existing rules on gift giving and provide relevant training. (ACA with HJC, Courts, PPOs – short term)
- ✓ Create a task force to consider performance and integrity improvements in Misdemeanor Courts for which public trust and confidence has been reduced significantly since 2009 and which impact large numbers of litigants. (SCC – short term)
- ✓ Continue to conduct periodic surveys focusing on court user experiences of corruption. Strengthen the survey methodology and expand the survey to provide more detailed and robust findings to inform future anti-corruption reforms within the judiciary. (Courts, ACA – medium term)
- ✓ Target interventions to deal with the most commonly reported forms of corruption, such as petty bribery of court staff. (HJC, SCC, MOJ – medium term)
- ✓ Develop public relations information on the websites and in brochures at the courts regarding the law and policy on gift giving. (HJC, SPC – short term)



**Title: *Mito*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014.**

<sup>41</sup> This recommendation aligns with NJRS Strategic Guideline 2.1.1: Monitoring of the implementation of integrity plans in judiciary which are fully adapted to the judicial system and their improvement.

<sup>42</sup> See also Governance and Management recommendations.

15. **Enhance the capacity of the system to implement and oversee alternatives to prosecution in all locations to ensure equal treatment of defendants across Serbia.**<sup>43</sup> Recommendations can be accomplished by the medium term. Adding staff and enhancing SAPO will require moderate costs, while the other efforts are relatively inexpensive.

- ✓ Consider how recently-enacted Misdemeanor Orders could be used to impose alternative sanctions other than fines. Provide training for Misdemeanor Court judges on the use of alternative sanctions. (Misdemeanor Courts – short term)
- ✓ Expand the number of Offices of the Commissioner to all 26 Higher Court regions to oversee the implementation of deferred prosecutions. Add support staff in Commissioner’s offices to enable monitoring of fulfillment of the terms of deferred prosecution cases, particularly in rehabilitative sanctions, such as treatment and community service. (Office of the Commissioner; RPPO – short to medium term)
- ✓ Streamline the plea bargaining process by providing more autonomy to Deputy Prosecutors to offer plea bargains for cases meeting criteria set by the RPPO. (RPPO – medium term)
- ✓ Design and deliver a training program for Deputy Prosecutors on the processing of plea bargaining and deferred prosecution cases. (RPPO, JA – medium term)
- ✓ Expand the use of alternative sanctions, particularly in misdemeanor cases. (Misdemeanor Courts, Office of the Commissioner – medium term)
- ✓ Collect data from PPOs on deferred prosecution and plea bargains, and any concerns or bottlenecks. Issue additional instructions on deferred prosecution and encourage more proactive rehabilitative efforts. (RPPO – medium term)
- ✓ Add data collection concerning deferred prosecution and plea bargains to the prosecutors’ automated system (SAPO): include number of deferrals and pleas offered, the criminal offense, location, and reasons for any rejections by courts of offered plea bargains. (RPPO – medium term)

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<sup>43</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.1: Wider implementation of the simplified procedural forms and institutes such as plea bargaining, implementation of the principle of opportunity in criminal prosecution and directing parties towards alternative dispute resolution methods (such as mediation) whenever allowed by legislative framework.

## c. Access to Justice Services

### i. Main Findings

**Lack of affordability is the most serious barrier to access to justice services in Serbia.** Court and attorney costs represent a significant proportion of average income in Serbia. Pursuing even a simple case is unaffordable for many. Citizens do their best to avoid the courts: nearly 63% of the general public reported that, if they had a dispute which they thought should be settled in the court, they would decide against pursuing it; and fear of costs was the most common deterrent. Over half of recent court users surveyed considered the court-related costs in their particular case to have been excessive. The schedules for court and attorney fees are also quite complex, so court users struggle to estimate likely costs.<sup>44</sup>



**Title:** *Svetlost pravde obasjaće i mene*, submitted by an entrant to the Justice Competition, World Bank MDTF-JSS, 2014

**Lack of affordability of justice services also causes a drag on the business climate.** Over one-third of businesses with recent experience in court cases reported that the court system is a great obstacle for their basic business operations, and an additional 30 percent reported that courts are a moderate obstacle. Businesses also report that the courts are becoming increasingly inaccessible to them due to high court and attorney fees. Small businesses face particularly challenges in navigating

the court system, including high costs, cumbersome processes, lengthy delays, inadequate enforcement, and constantly changing legislation.

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<sup>44</sup> There is also a cap on court fees, which distorts incentives by encouraging court users to pursue unmeritorious claims in high-value cases.

**On further examination however, it is not absolute costs to users but perceived value for money which undermines access to justice.** Although court users complain about costs (and non-users report that costs deter them), the Multi-Stakeholder Justice Survey found that recent court users who were satisfied with the quality of services delivered were far less likely to consider the costs to be excessive.<sup>45</sup> These data therefore suggest that improvements in quality and efficiency in service delivery could improve access to justice, by increasing the perceived value for money for potential court users, while also improving user satisfaction.

*Over one-third of businesses with recent court experience reported that the court system is a great obstacle for their basic business operations. An additional 30 percent reported that courts are a moderate obstacle.*

**Attorneys play an important role in helping court users to navigate the system, but their fee structure is out of step with European practice and creates perverse incentives which undermine access to justice and efficiency and quality and service delivery.**<sup>46</sup> Self-represented litigants struggle to proceed alone without lay formats, checklists or practical guides, and unsurprisingly therefore, they are less likely to succeed. Attorneys are paid per hearing or motion, which encourages protracted litigation. Fees are awarded based on a prescribed Attorney Fee Schedule, which prohibits from charging less than 50 percent of the rates prescribed. This arrangement is out of step with European practice.<sup>47</sup> Serbia's prescribed fees are also highly inflated and unrealistic, and in practice many attorneys charge less than the mandatory minimum because rates are beyond user willingness to pay. State-appointed attorneys (known as ex-officio attorneys) may be appointed for indigent clients but there are concerns regarding the mechanism for their selection and a lack of quality control.

*The Attorney Fee Schedule is highly inflated and out of step with European practice.*

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<sup>45</sup> 75 percent of court users who reported low quality of services also reported that the costs were excessive; while the 29 percent of court users who reported that quality was high did not consider the costs to be excessive.

<sup>46</sup> 71 percent of citizens with court experience found attorney-related costs to be one of the most insurmountable barriers to access to the judicial system.

<sup>47</sup> The European Court of Justice has held that mandatory minimum fees violate the EC Treaty. Further, 42 of the 47 countries monitored by the CEPEJ allow free negotiation between lawyers and clients.



**A court fee waiver is available for indigent court users but its implementation is haphazard, resulting in inconsistent access to justice for the indigent.** There is very limited understanding among the public of the court fee waiver program. There are no guidelines or standardized forms for judges who grant a waiver and their decisions go unmonitored. Stakeholders report that some Court Presidents informally discourage their judges from waiving fees, as fees are a source of revenue for courts. Waivers may improve access to justice in some areas but without data its impact cannot be monitored.

**Legal aid programs are provided by an incomplete patchwork of services across the country.** Municipal Legal Aid Centers cover around one-third of the country and around one-half of Serbia's total population. Yet, most citizens are unaware of any free legal services that might be provided in their municipality.

**Reforms are currently underway to expand legal aid in line with EU practice by providing both 'primary legal aid' (legal information and preliminary advice) and 'secondary' (legal representation) to the poor and certain vulnerable groups.** While the aims of the reform are admirable, there remains a high risk that these laws, like other reforms in recent years, will become 'stillborn' if fiscal and operational implications are not carefully planned or if implementation

*There remains a high risk that the Free Legal Aid law, like other reforms in recent years, will become 'stillborn' if fiscal and operational implications are not carefully planned or if implementation arrangements are weak.*

arrangements are weak. Despite several years of deliberation in working groups, there remain some concerns with the latest draft of the law. The current draft creates a bias in favor of secondary legal aid, to be provided predominantly by attorneys, while doing little to encourage primary legal aid, which would be provided by CSOs, municipal legal aid centers, and law faculties. Yet, the efficient delivery of primary legal services is likely to have the greatest benefit in terms of increasing access to justice for the largest numbers of Serbian citizens and could be delivered at much lower unit costs. It will be important to ensure that primary legal aid is adequately funded and delivered consistently throughout the country. Meanwhile, proposals for secondary legal aid could be considered more cautiously. A Fee Schedule will also need to be developed for the compensation of service providers for both primary and secondary aid. Based on previous analysis, the fees for these services should be far lower than the current Attorney

Fee Schedule.<sup>48</sup> Quality assurance mechanisms will also be required and this is another area of high implementation risk.

**Recent legislative amendments seek to promote mediation but there are significant implementation challenges.** Due in large part to previously failed reforms, there is limited awareness of mediation among judges, attorneys, court staff, and court users. Among those who are aware of mediation services, few report it to be a useful means of dispute resolution. A significant outreach initiative to potential court users will be required, along with intensive training for judges, prosecutors, lawyers, and court staff. Further incentives should be built in to the institutional framework to encourage the use of mediation and integrate it into the court system.

**Awareness of law and practice is limited, even among professionals.** Judges, prosecutors, and lawyers struggle to conduct research and keep abreast of new legislation, cases, procedures, and practices. Before 2014, the only legal databases with consolidated legislation were maintained by private companies on paid subscription basis. Few courts publish their court decisions, so access to these even among judges is very limited. On a positive note, the Official Gazette recently launched a free online database, and this should improve access to legislation. Efforts to raise awareness and build the capacity among professionals to conduct legal research could reap significant rewards in terms of consistency of practice across the jurisdiction.

*In Serbia, continuous changes in legislation and scarce outreach of reforms combine to prevent the public from understanding their rights and obligations, or how to uphold them in court.*

**Among the public, awareness of law and practice is even more limited.** Continuous changes in legislation and scarce outreach of reforms combine to prevent the public from understanding their rights and obligations, or how to uphold them in court. Businesses report that access to laws – and frequent changes in legislation and regulations – causes uncertainty that affects their business operations. A significant injection of outreach and awareness-raising of legal reforms among the public, particularly among potential court users, is required. Existing court users also struggle to access information related to their own case. Examples exist in Croatia and elsewhere of court

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<sup>48</sup> Further analysis will be required to ensure that service delivery arrangements provide sufficient incentive for high-quality service delivery without inflating costs or creating distortions in the market.

portals which could be applied in Serbia to enable court users to access information related to their case in a manner consistent with privacy laws.

**Women experience the judicial system differently from men in a few ways.** Women report more than men that justice services are inaccessible. More often than men, women find attorney fees to be cost-prohibitive. Women are also more likely to experience barriers to access to justice and inefficiencies in justice service delivery because they are more likely to be parties to certain types of cases, such as custody disputes and gender-based violence, which exhibit specific problems relating to procedural abuse and delay.

**Equality of access for vulnerable groups poses specific challenges.** The majority of citizens surveyed reported that the judiciary is equally accessible regardless of age, socio-economic status, nationality, disability, and language. However, those citizens who are over 60 years of age, live in rural areas or have the least amount of education find the judicial system particularly inaccessible, suggesting that



Image of multi-lingual signs at Vrsac Basic Court, 2014.

targeted interventions are warranted. Individuals with intellectual and mental health disabilities experience serious disadvantage through the process by which they are deprived of their legal capacity. Members of the Roma community, refugees and internally displaced persons also report low awareness of their rights, as well as concerns regarding fair treatment before the courts. For these groups, there is a case for strengthening the dissemination of information to relevant CSOs and community leaders about the functioning of the judiciary and basic legal rights. The experience of the LGBT community is slightly different: though they appear more than

the abovementioned groups to be aware of their legal rights, they remain deterred from filing cases due to fear of reprisal and perceived discrimination.

## ii. Recommendations and Next Steps

16. **Simplify the court fee structure to enable users to estimate likely costs. Remove the cap on court fees. Standardize the court fee waiver process, and collect and analyze data on court fee waivers.**<sup>49</sup> Implementation of this recommendation will align with EU standards and good international practice.<sup>50</sup> The initial steps can be made in the short term for little to moderate costs.

- ✓ Simplify the court fee structure to enhance understanding of likely court costs. Remove the cap of 80,000 RSD on court fees and remove court fees for criminal cases initiated by a private party. (MOJ – medium term)
- ✓ Provide lay formats of information online and in paper brochures about the foreseeable costs and duration of proceedings to enable potential court users to better estimate the costs of their case. (MOJ – medium term)
- ✓ Adopt and disseminate standards for granting fee waivers, and create a standardized fee waiver application form and decision form for use by all courts. (MOJ, SCC – short term)
- ✓ Require staff to enter data on fee waiver requests and decisions in existing fields in AVP. Over time, monitor data fee waivers to encourage compliance with standards. (MOJ, courts – short term)

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<sup>49</sup> This recommendation aligns with NJRS Strategic Guideline: 2.5.2 Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanor cases).

<sup>50</sup> See *Measures for the Effective Implementation of The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Integrity Group, undated.

17. **Remove the Attorney Fee Schedule to enable competition in the market for legal services. Develop a more cost-effective Attorney Fee Schedule to apply only for legal services to the state (e.g., legal aid services and ex-officio attorney appointments). Consider moving away from a pay-per-hearing model.**<sup>51</sup> The CCJE advises that remuneration of attorneys should not be fixed in a way that encourages needless procedural steps.<sup>52</sup> The European Court of Justice has held that mandatory minimum fees violate the EC Treaty. In 42 countries monitored by the CEPEJ, lawyers' remuneration is freely negotiated.<sup>53</sup> Some steps will entail low to moderate costs but they would likely be more than offset by savings in moving from per-hearing payment for court-appointed attorney.

- ✓ Remove the Attorney Fee Schedule and allow attorneys to negotiate their fees freely with clients. Develop a lower Attorney Fee Schedule for legal services provided to the state (see below), which could also apply as the schedule for awarding costs. (MOJ – medium term)
- ✓ Periodically update Bar Association lists to inform the process of selecting ex-officio attorneys, and provide lists to all relevant stakeholders. Clarify the appointment process and re-instate/establish Bar Association hotlines for attorney referrals. Provide parties with information on how to make a complaint about an ex-officio attorney. (MOJ, Bar Associations – short term)
- ✓ Require court staff to enter data on ex-officio attorney appointments into existing AVP fields. Monitor the use of ex-officio attorney appointments by case type, outcome, appeal rate and time to disposition. Compare with data where attorneys were not appointed ex-officio. Over time, use data to inform future reforms of ex-officio appointments. (MOJ, Bar Association – short to medium term)
- ✓ Provide parties with information on how to make a complaint about an ex-officio attorney. Strengthen quality control mechanisms for ex-officio attorneys. (Courts, Bar Associations – long term)
- ✓ Consider whether the mandatory appointment of ex-officio attorneys in certain cases (known as mandatory defense) should be broadened. (MOJ – long term)

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<sup>51</sup> This recommendation aligns with NJRS Strategic Guideline 2.5.1; Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

<sup>52</sup> This aligns with CCJE Opinion No. 6 (2004) on fair trial within a reasonable time.

<sup>53</sup> See *CEPEJ Evaluation Report, 2014* (based on 2012 data). Only Cyprus, Germany, Slovenia and UK-Northern Ireland prevent free negotiation of rates.

18. **Prioritize the passage of an adequately funded, cost-effective Free Legal Aid law that expands the pool of service providers and limits State costs.**<sup>54</sup> International standards establish the right to counsel to protect fundamental rights, and the ECHR calls for state-supported defense for indigent parties when the interest of justice demands it. The law should be passed as a priority, and rollout can occur in the medium term. Potential significant costs can be contained by following these recommendations:

- ✓ Prioritize passage of the draft Free Legal Aid Law. Ensure that the operational and fiscal implications of the draft law are adequately addressed. Cost and provide funding for primary legal aid services and ensure its coverage across the territory. Secure funding to implement any expanded mandates provided in the law. (MOJ, MOF – short term)
- ✓ Develop an Attorney Fee Schedule for the reimbursement of providers of primary and secondary legal aid. Consider a payment mechanism whereby clients receive vouchers for legal aid services and can choose their own provider. (MOJ – short term)
- ✓ Task a Working Group within the MOJ to plan and oversee the rollout of the new law and draft regulations. Provide training to service providers. Establish the proposed quality control mechanism and relevant protocols. (MOJ – medium term)
- ✓ Provide easy-to-read information about court processes in pamphlets and on the web, including guidance on assessing court and attorney fees, and how to make a complaint against attorneys. (MOJ – medium term)
- ✓ Disseminate information to the public about the availability of legal aid services. (MOJ – medium term)
- ✓ Collect and analyze data on the use of legal aid by the public, including the most common case types, the workloads of service providers and the levels of satisfaction of users. (MOJ – medium term)

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<sup>54</sup> This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

19. **Improve services for self-represented litigants, including simple forms and checklists for court users, and lay brochures and guides of basic laws and procedures.**<sup>55</sup> Improved information can enable litigants to proceed smoothly through the system without an attorney, thus improving access to justice, as well as efficiency in the delivery of services.

- ✓ Create fields in AVP to collect data the number of self-represented litigants, their case types, outcomes and times to disposition. Require that staff enter data. Over time, use the data to design more targeted interventions to support self-represented litigants. (MOJ – short term)
- ✓ Building on lessons from Vrsac Basic Court, develop checklists of routine processes for court users and disseminate widely. (Courts – short term)
- ✓ Develop lay information packs for case types that are (or could be) most commonly pursued without an attorney, including guides, flow charts and infographics (MOJ – medium term)
- ✓ Develop/improve registries of allied professionals, such as enforcement agents, mediators and private notaries, to include expertise, geographic area, clear fee descriptions, complaint procedures, and disciplinary actions initiated or fines levied against an individual. Include in the bailiff registry a calculator for assessing likely bailiff fees (similar to the court fee calculator). (MOJ, Chamber of Bailiffs – short term)

20. **Operationalize the new Mediation Law, create incentives for court users and practitioners to opt for mediation, and monitor the results. Conduct intensive training among professionals on mediation and disseminate information to potential court users.**<sup>56</sup> The CCJE recognizes the critical role of judges and lawyers for consensual settlements.<sup>57</sup> EU Member States are required to ensure training and quality of mediators and mediation confidentiality. While some steps can be taken soon, this is a large undertaking requiring considerable time, money, and political will to accomplish.

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<sup>55</sup> This recommendation aligns with NJRS Strategic Guideline 2.5.1: Defining the structure of the standardized system of legal aid through setting up of a normative framework and establishment of institutional support.

<sup>56</sup> This recommendation aligns with NJRS Strategic Guideline 2.5.3: establishment of an efficient and sustainable system of dispute resolution through mediation, by improving the normative framework and conducting the procedure of standardization and accreditation of initial and specialized training program for mediators, as well as by promoting the alternative methods of dispute resolution. Establishment of the register of licensed mediators in accordance with predefined criteria.

<sup>57</sup> CCJE Opinions No. 6 (2004) and 16 (2013). See also, De Pala, Giuseppe and Mary B. Trevor, eds., *EU Mediation Law and Practice*, Oxford University Press, 2012.

In order to encourage mediation, the remuneration structure for attorneys will need to be changed from one based on fees paid for hearings to one based on legal services and case resolution.

- ✓ Develop quality standards for mediators and a certified mediator registry. (MOJ – short term)
- ✓ Raise public awareness of mediation through websites, brochures, and public service announcements. Introduce a Mediation Self-Help Test, applying lessons from the Netherlands, so that parties can determine whether mediation would benefit them. (MOJ – short term)
- ✓ Establish a formal Court-annexed mediation program in all Basic and Higher Courts and standards for determining which cases are appropriate for mediation.<sup>58</sup> Strengthen mediation confidentiality requirements, requiring that judges serving as mediators cannot serve as trial judge in the same case and providing trial judges only with confirmation that mediation was unsuccessful rather than the reasons no settlement was reached. (MOJ, HJC – medium term)
- ✓ Provide incentives to potential users of mediation, including:
  - Lawyers: provide subsidized, tiered training to familiarize attorneys with mediation and those lawyers who decide to become mediators. Require mediators who received subsidized training to provide a specified number of free mediations. Introduce a system of co-mediation and mentoring to enhance mediator skills. (MOJ, Bar Associations – medium term)
  - Judges: develop training and printed materials for Court Presidents and judges about the advantages and mechanics of mediation. Count dispositions achieved through mediation as part of the individual judges' workload. (HJC, JA – medium term)
  - Public: introduce legal aid for mediation<sup>59</sup> and provide a temporary financial stimulus via free mediation hours. Set fees for mediation at less than court litigation fees, reflecting likely lower court costs than through standard litigation. Reduce the mediation fee in small claims cases to bring it more in line with court fees for these cases. (MOJ – medium term)

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<sup>58</sup> For example, civil matters, divorce and/or custody cases, and victim-offender mediation in juvenile cases.

<sup>59</sup> Fourteen EU Member States offer legal aid for cases in mediation. See *CEPEJ Final Evaluation Report 2014* (based on 2012 data), Table 8.2.



- ✓ Create an effective mediation case referral and management system, including: a) criteria for selecting cases; b) procedures for selecting a mediator; c) statistical monitoring and reporting; and d) coordinating activities between the court, litigants and mediators. (HJC – medium term)

21. **Make important cases, consolidated legislation, and information about open and disposed cases freely accessible online.**<sup>60</sup> Implementing this recommendation will advance several CCJE goals.<sup>61</sup> Most of these efforts can be accomplished in the medium term for low to moderate costs.

- ✓ Provide public information about court processes via court websites and brochures and using radio and television public access channels. Start with information about misdemeanor case process for which citizens indicate that the least information is available and the highest demand for information exists. (MOJ, HJC – short term)
- ✓ Publish consolidated legislation online free of charge. For the most commonly-used legislation, provide annotated commentaries. (National Assembly, Official Gazette – medium term)
- ✓ Ensure that parties in pending cases can access the basic registry and scheduling information about their case on the web portal, applying lessons learned from Croatia. (HJC, MOJ – medium term)
- ✓ As discussed further in the ICT resource section, develop common standards on which appellate decisions should be uploaded to searchable public websites. (MOJ, SCC – medium term)

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<sup>60</sup> This recommendation aligns with NJRS Strategic Guideline 2.9.2: improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

<sup>61</sup> CCJE, Opinion 14 (2011), ‘Justice and Information Technologies (ICT)’; Opinion 6 (2004) on Fair Trial Within a Reasonable Time. See also the Magna Carta of Judges (Fundamental Principles) on Access to Justice.

22. **Develop lay formats of legal information specifically aimed at reaching vulnerable groups.**<sup>62</sup> CEPEJ reports 17 EU Member States provide special information to ethnic minorities in line with CCJE recommendations<sup>63</sup> supporting steps to strengthen the public perception of impartiality of judges<sup>64</sup> Further, providing information to designated groups can be made in the short to medium term for low cost.

- ✓ Develop lay formats of legal information specifically tailored for vulnerable groups, including less educated court users, Roma and internally displaced persons. (HJC – short term)
- ✓ Develop court materials including websites in languages other than Serbian consistent with European standards for providing information in other languages. (MOJ – medium term)
- ✓ Organize training programs in non-discrimination and equal treatment for judges and court staff. (HJC, JA – medium term)
- ✓ Consider the feasibility of establishing a victim of crime service, applying lessons from EU Member States. (MOJ – medium term)
- ✓ Conduct a public campaign to raise awareness on the role of, and right to, a court appointed interpreter. (MOJ – long term)

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<sup>62</sup> This recommendation aligns with NJRS Strategic Guideline 2.5.6: Improvement of the normative framework on the basis of results of assessment related to the access to justice of vulnerable and marginalized groups.

<sup>63</sup> Opinion 7 (2005) on Justice and Society.

<sup>64</sup> *CEPEJ Final Evaluation Report, 2014* (based on 2012 data), page 86.

## Internal Performance: Governance and Management of Resources for Service Delivery

Below is a summary of the main findings and recommendations related to the inner workings of the judicial system in Serbia, as measured against the indicators and European benchmarks outlined in the Performance Framework agreed among stakeholders.

### a. Governance and Management

#### i. Main Findings

**Effective management of the judicial system is hindered by difficulties in measuring system performance.** Data are scattered across fragmented information systems with gaps, overlaps, and inconsistencies. Data collection tends to be manual, which absorbs a lot of time and staff resources and is prone to errors. Reports are not often tailored to management needs, and so do not adequately inform decision-making. Analytical capacity across the sector is inadequate, and so the foundation for management decisions remains weak. There is not a single management entity in the system able to substantiate how the system actually performs or use data to identify areas for performance improvement. The system lacks a unified vision of what good performance should look like, or a performance framework around which stakeholders unite to set goals and targets. As a result, it is very difficult for the system to manage for results.

*There is not a single management entity in the Serbian justice system able to substantiate how the system actually performs or use data to identify areas for performance improvement.*

**Effectiveness in strategic management is limited.** The adoption of the NJRS 2013-2018 and its Action Plan represents a significant milestone for the Serbian judiciary. Their content is comprehensive, and progress is being made against several milestones. However, the Action Plan may be overly ambitious and it will be difficult to implement effectively within the five-year timeframe. The NJRS also focuses heavily on enacting legislation more than ensuring the effective implementation of existing and new legislation to change behavior on the ground. Yet the latter is

the more important task and it requires an organizational and managerial approach more than a legal one. The NJRS and Action Plan also lack a clear focus on how reforms will affect court users, who should be the ultimate beneficiaries of the reforms. A Strategy Implementation Commission exists, but lacks a work plan and a secretariat and is not driving reform implementation. In the resulting vacuum, it is not clear among the many fragmented stakeholders who is leading the system's reform effort or driving for performance improvement. At this rate, at best by 2018 Serbia may have enacted relevant legislation but behaviors will not have changed and performance will not have improved on the ground.

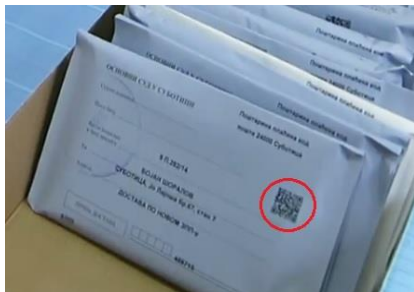
**A range of key governance and management functions are currently being transferred between various bodies.** In the past, these functions were almost entirely entrusted to the MOJ. In the somewhat poorly sequenced and inconsistently implemented transition towards more responsibility for the HJC and SPC, some fragmentation, overlaps and redundancies have occurred and impeded the effective management of system performance. Moving towards the full transition of responsibilities, it will be essential to adequately prepare the Councils for their new functions by the end of 2015.

*It will be essential to adequately prepare the Councils for their new functions by the end of 2015.*

**Limited management capacity in the Councils hinders their ability to meet the challenges ahead.** Each Council has established an organizational plan and taken steps to implement it. Each is able to administer only their most basic requirements. The Administrative Office of the HJC is already sizeable, but many positions are held by junior clerical staff and lawyers who see their roles in narrow terms. The Councils lack managerial capacities to drive performance improvements across the sector. For example, neither institution currently has a system to evaluate or re-engineer work processes, even though such work will be critical to improving system productivity.

**The internal organization within courts needs to be improved if the system is to reach and sustain higher levels of performance.** To date, the Councils have undertaken little work to assess whether the internal organization of each court or PPO is optimal. No analysis has been conducted on how organizational variations affect productivity or other aspects of performance. The Councils do not carry out process re-engineering to produce high-quality outputs more rapidly, with less effort, and at lower costs. The Court Book of Rules provides extensive guidance, but it is outmoded. Current

efforts to update the Book of Rules are focused narrowly on the minimum requirements to comply with the new procedural codes, suggesting that reformers are yet to appreciate the significant benefits to be reaped by simplifying and modernizing processes. Individual Court Presidents use their own systems based on personal initiative or with the support of donors. A simple case-weighting system would assist to equalize caseloads and manage workloads, but much can be done in the meantime through effective monitoring of data from existing systems.



Example of business process engineering in Subotica Basic Court.

**Inside each court, the managerial abilities of Court Presidents are pivotal to success.** Stakeholders

*Greater use of managerial reports from the various case management systems, in particular the analysis of Ageing Lists, would assist greatly.*

report that the performance of an individual court depends largely on its Court President's enthusiasm and willingness to address management issues. However, most Court Presidents have received no training on management and few incentives exist to encourage a modern and proactive approach to management. Courts lack specialized staff to assist in management tasks and often lack basic management tools. Greater use of managerial reports from the various case

management systems, in particular the analysis of Ageing Lists, would assist greatly. The higher performing Court Presidents each seem to have cultivated in an ad hoc manner a small managerial team of skilled mid-level professionals who support him/her to run the court. This model seems to work well and could be replicated. Court Presidents also rarely meet with each other – they could benefit greatly from colloquia aimed at sharing information, generating ideas and replicating innovations.

**A core task for governance and management bodies is to ensure the appropriate mix of system resources to enable performance.**

In Serbia, neither the MOJ nor the Councils have developed the capacity to consider and program resources jointly. This has led to a resource mix that is currently inadequate to bring the system in compliance with EU accession requirements. Continued fragmentation exacerbates this challenge resulting in suboptimal coordination and management of resources, as well as resource planning. When there is a common view, it reveals a strong bias toward adding judges and assistants, while the provision for much-needed provision for other resources is not sufficiently prioritized. To enable transformation, the resource mix must favor spending on ICT, infrastructure, training and innovation, while reducing spending on the large wage bill, particularly on judges and low-skilled ancillary staff. This will require a series of calibrated decisions by the governance and management bodies.

*To enable this transformation, the resource mix must favor spending on ICT, infrastructure, training and innovation, while reducing spending on the large wage bill, particularly on judges and low-skilled ancillary staff.*

**The mechanisms to govern integrity and conflicts of interest are not fully able to address a perceived lack of integrity in the judicial system.** Serbia's random case assignment technology works well to reduce predictability in the assignment of individual cases to specific judges. However, not all courts use the functionality, and those Court Presidents who do use it overrule the system relatively frequently. There is no corresponding technology for allocating files randomly within PPOs. Integrity Plans have been prepared only for some parts of the judiciary. Formal rules on gift-giving to judges, prosecutors, and staff are clear. Yet gift-giving remains prevalent. Complaints are numerous, but grievance redress is scarce. Lessons learned from complaints do not systematically feed these into reform processes.

## ii. Recommendations and Next Steps

23. **Clearly define the governance structure, organization and goals of the Councils and enhance their management capacities to carry out their current responsibilities and prepare for the transition of additional functions.**<sup>65</sup> Because of the short time remaining before the scheduled transfer of these functions on 1 January 2016, many of the recommendations will require prompt implementation. Costs for these items are relatively low, with ongoing costs if a General Manager is hired.

- ✓ Complete the Councils' definitions of their working arrangements and internal rules; create subcommittees or other means of allocating members' responsibilities. (HJC, SPC – short term)
- ✓ Amend the Constitution and relevant legislation in line with Venice Commission and CCJE recommendations to enshrine Council and court independence, including regarding appointments and promotions within the judicial system.<sup>66</sup> In doing so, consider also amending rules on retiring the Council en masse every five years, replacing them with rotational elections that assist the retention of corporate memory and momentum. (MOJ, HJC, SPC, Assembly – medium term)
- ✓ Consider adding a General Manager to each Council to provide managerial oversight, based on a job description that requires prior management experience. (HJC, SPC – medium term)

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<sup>65</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences; Strategic Guideline 1.3.1: Strengthening of professional capacity of the HJC and SPC for the analysis of the results of the reform (hiring of experts of suitable profiles in administrative offices, development of data collection system, training of the members of the HJC and SPC in the field of analytics, statistics and strategic planning).

<sup>66</sup> 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.*'

24. **Create an ongoing strategic and operational planning function in the judiciary to collect and analyze data and plan process improvements.**<sup>67</sup> The CCJE specifies that the goal of data collection should be to evaluate justice in its wider context,<sup>68</sup> and the design of data collection procedures, evaluation of results, their dissemination as feedback, monitoring, and follow-up procedures should reside in an independent institution within the judiciary.<sup>69</sup> Most of these recommendations should be completed in the short term to prepare for transfer of responsibilities from the MOJ. The data gathering and reporting, strategic and operational planning functions will develop over the medium term. The creation of capacity to fulfill these functions will require ongoing and potentially expensive staff costs.

- ✓ Define the Strategy Implementation Commission's work plan. (Commission – short term)
- ✓ Adapt the Functional Review's Performance Framework into a streamlined dashboard-style framework to monitor system performance, with a small number (maximum of 10) of key performance indicators most likely to drive performance enhancements. (Commission, MOJ – medium term)
- ✓ Consider revising the NJRS Action Plan to increase 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. Identify measurable targets. Monitor and document results, especially in the efficiency area. (MOJ, HJC, SPC, Commission – short term)
- ✓ Require all institutions to provide brief and frequent updates on progress against targets. Communicate to stakeholders the baseline results, initiatives and changes in outcomes. (SCC, HJC, SPC – short term)

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<sup>67</sup> This recommendation aligns with NJRS Strategic Goal 1.3: Strengthening of analytical capacities for strategic planning in the HJC and SPC.

<sup>68</sup> I.e., including the interactions of the judiciary with judges and lawyers, justice and police etc.

<sup>69</sup> See CCJE Opinion No. 6 (2004).



25. **Bolster the sector’s capacity to systematically analyze workloads and determine the efficient resource mix to achieve policy objectives.**<sup>70</sup> **Adopt a simple case weighting methodology.**<sup>71</sup> Adding judges and staff to address performance issues is ineffective without a more rigorous evaluation of system needs. These activities should begin in the short term and would be ongoing.

- ✓ Analyze existing caseloads based on managerial reports in the case management systems. Transfer files from busier courts to neighboring less busy courts, when appropriate and preferably during the early phases of case processing. (SCC – medium term)
- ✓ Collect and analyze data about when and why random case assignments are overruled. Supplement data from random case assignments with analytic reports from case management systems to equalize the distribution of caseloads by case type and age. (HJC, SCC – short term)
- ✓ Finalize a simplified case weighting methodology, applying lessons from the USAID SPP pilot. (HJC, SCC – medium term)
- ✓ Refine the weighting of cases over time to continually improve the allocation of resources to meet needs (HJC – long 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

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<sup>70</sup> This recommendation aligns with NJRS Strategic Goal 1.3 Strengthening of analytical capacities for strategic planning in the HJC and SPC; Strategic Measure 1.3.1.2: Strengthening of the capacities of the HJC and SPC in the field of strategic planning and analytics.

<sup>71</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes); Strategic Guideline 5.1.1: Establishment of an efficient system of allocation of judges based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network; respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from the abolished court; introduction of the system of permanent transfer and reallocation of judges (on voluntary basis in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned office after decision of the Constitutional Court of Serbia in 2012; termination of an office of public prosecutor only if the public prosecutor’s office was abolished.

undertake planning and policy analysis functions focusing on the key performance areas. (HJC, SPC – short term)

- ✓ Work with budget and management staff to consider and evaluate relative costs/benefits of proposals, analyze trends, develop ‘what-if’ scenarios and assess optimum resource mix. Provide advice to management on reform proposals. (HJC, SPC – medium term)

26. **Supplement statistics from the automated systems with periodic user surveys.**<sup>72</sup> This is a best practice noted by the EC, CEPEJ and the International Framework for Court Excellence and an important source of information for the judicial system. This measure is not inherently costly although some technical assistance may be needed to develop remedies and programs.

- ✓ Develop a court user survey, building on lessons from the Multi-Stakeholder Justice Survey. Finance the surveys through the HJC and SPC budgets. (HJC, SPC – medium term)
- ✓ Conduct periodic open and/or focus group discussions with users at the local level. Develop exit questionnaires for court users. Consider results in the formulation of policies. (HJC – medium term)

27. **Re-engineer and streamline administrative processes in the courts and PPOs.**<sup>73</sup> Re-engineering can result in more efficient and effective remedies for users, and reduced burden on judges and staff without sacrificing quality. Some tasks should be short term, but the overall effort will be ongoing. Once the analytical unit is established, ongoing costs will be minimal.

- ✓ Expand significantly the initiative to revise the Court Book of Rules. Identify opportunities to re-engineer and streamline processes, not only to align with recent legislative reforms but more broadly to improve efficiency and quality of processes. (MOJ – medium term)
- ✓ 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)

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<sup>72</sup> This recommendation aligns with NJRS Strategic Measure 2.1.3.2: Regular surveys are conducted in order to identify unethical conduct of judges/public prosecutors in cooperation with other institutions.

<sup>73</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.3: Relieving the burden on judges in terms of administrative and technical task, which take a significant portion of their time, by reassigning them to the administrative and technical staff and judicial assistants by ensuring uniformity of administrative and technical procedures through the adoption of the relevant rules of procedure enhancing judiciary integrity.

- ✓ Facilitate colloquia for Court Presidents to discuss attempts to innovate processes, to share challenges and lessons and replications. (HJC, SPC in collaboration with MOJ, Court Presidents for local meetings – short term)

28. **Reduce opportunities for conflicts of interest to arise. Fully implement the plan of the Complaints Handling Working Group and strengthen dissemination.**<sup>74</sup> Offering avenues for court users to complain can be made quickly, with analysis in the medium term. There will be moderate costs for creating the web presence.

- ✓ Require that all Court Presidents use the existing random case assignment software in allocating cases. Require Court Presidents to report on instances when the random assignment is overruled, including the rationale for reach decision. Monitor reports. (SCC – short term)
- ✓ Create fields in AVP to collect data on the exclusions and exemptions of relevant persons (i.e. judges, prosecutors, lay judges, expert witnesses etc.) from cases. Require that court staff enter data on exclusions and exemptions and that Court Presidents monitor trends. (HJC/SCC – medium term)
- ✓ Conduct a large-scale public information campaign to enhance public education on the scope and methods of both complaint and disciplinary procedures. (HJC – short term)
- ✓ Link the outcome of complaints processes to evaluation, discipline and promotion systems for judges and prosecutors. (HJC, SPC – medium term)
- ✓ Provide training for Court Presidents on their key role in complaints handling. Enforce disciplinary proceedings against Court Presidents who do not address complaints lodged or implement findings made. (HJC – medium term)

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<sup>74</sup> This recommendation aligns with NJRS Strategic Guideline 4.2.2: Establishment of a uniform system for the collection, processing and analysis of complaints and petitions relating to the work of judicial office holders.

29. **Disseminate information about system performance to target audiences.** Improving public awareness would enhance public trust and confidence, combat persistent negative reports about the judiciary and demonstrate improvements in service delivery in line with Chapter 23.<sup>75</sup> Costs are relatively low.

- ✓ Improve analytic content of SCC Annual Reports and include summaries in lay formats. 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 – medium term)
- ✓ Provide more detailed and disaggregated data in the annual reports of the prosecution service. (RPPO – medium term)
- ✓ Develop a communication strategy to explain the role and work of the judiciary and the implementation of the NJRS, to address the perception gap between the general public and court users. (MOJ – 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)

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<sup>75</sup> This recommendation aligns with NJRS Strategic Guideline 2.9.1: Promoting the results of the courts and PPOs, regular reporting on the work of the judiciary, readiness to respond to media requests, as well as promotion of the activities of the MOJ through the strategy for communication with the media/public; Strategic Guideline 2.9.2; Improving the transparency of work of the judiciary by establishing public relations offices, info-desks and comprehensive websites.

## b. Financial Management

### i. Main Findings

**The judicial system in Serbia is not under-resourced, measured on either a per capita basis or as a share of GDP.** In 2012, court expenditure was 0.66 percent of GDP, which is higher than any EU Member State monitored by the CEPEJ. Prosecution expenditure was 0.11 percent, which is slightly lower than the EU average.

**Any increase in the judicial budget is highly unlikely in the medium to long term.** Serbia faces a tight fiscal environment, characterized by a double-dip recession, high and growing public debt. The

*In 2012, court expenditure represented 0.66 percent of GDP, which is higher than any EU Member State monitored by the CEPEJ.*

Serbian Government recognizes the need to find savings, including by reducing the wage bill and rightsizing the public sector. It would be difficult for the sector to argue for more resources, particularly given the low levels of efficiency and effectiveness in the use of existing resources. Budget cuts may be expected, and the sector may need to 'do more with less',

including by funding innovations via savings identified within the resource envelope.

**The courts are partly funded by court fees, and this poses some opportunities and some significant risks.**<sup>76</sup> In 2013, the courts collected 10.22 billion RSD in fees.<sup>77</sup> However, collection rates are low, and courts manage to collection only around one-third of the fees due. The courts are not well equipped to play the role of a collection agency, as the lack the legal tools to pursue delinquent debtors<sup>78</sup> and lack the technical capacity to dedicate to fee collection. More concerning, court fee

<sup>76</sup> It is estimated that nearly 43 percent of the total budget of the courts came from court fees. *Draft Comparative Court Budgeting Analysis*, June, 2013, 'Case Study – Court Budgeting Practices in Serbia', World Bank, page 12.

<sup>77</sup> The Treasury allocates 40 percent of all collected court fees to the HJC and 20 percent to the MOJ. The rest is deposited into general consolidated revenue and used for unrelated purposes.

<sup>78</sup> Due to legal requirements, the courts are not able to refuse hearing a case even if the court fees are not paid, and they cannot charge late fees or interest payments. Therefore, it is common for court users not to delay or evade payment.

revenue is declining, and will soon decline rapidly.<sup>79</sup> With the imminent transfer of verification services from courts to private notaries, court fees can be expected to decline by as much as 30 percent by next year.<sup>80</sup>

**Budget planning and resource allocation are not linked to service delivery needs.** Rather, it is based on historical allocations of inputs, which are adjusted rarely in reaction to extraordinary events, such as the reorganization of the court network or emergencies that may disrupt judicial work. Resource allocation is not based on any caseload forecast, performance targets, or objective norms, and the resource allocation mechanism does not provide the courts and the prosecution service with the incentives or opportunities to improve cost-effectiveness.

*Courts manage to collection only around one-third of court fees due.*

**The resource mix favors personnel over all else.** The large wage bill crowds out other expenditures, including in much-needed areas such as training, ICT and infrastructure. From 2010 to 2013, less than 2.5 percent of the court system's budget was spent on capital investments, which is about half the EU average. Given the pressing need for widespread ICT and infrastructure upgrades, a more significant investment is warranted. However, disbursements on capital projects are slow due to limited procurement capacity, and funds earmarked for capital projects are routinely reallocated in supplementary budget processes.

*From 2010 to 2013, less than 2.5 percent of the court system's budget was spent on capital investments, which is about half the EU average.*

**The courts are generating massive and growing arrears.**<sup>81</sup> The main reason for accumulating arrears is poor planning in the budget preparation process and the legislative reform process. Frequently, new legislation imposes increased requirements on courts and other agencies to deliver services or fund costs of legal procedures. However, financial and regulatory impact assessments are not conducted and budgets are not adjusted. Arrears are increasingly impacting service delivery by

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<sup>79</sup> Court fees fell by 12 percent from 2010 to 2013.

<sup>80</sup> Based on unofficial estimates shared by court financial officers.

<sup>81</sup> By the end of 2013, the cumulative arrears reached 3.8 billion RSD exceeding the public prosecution's total budget.

courts, including by causing delays in hearings. Arrears also generate a significant amount of work, as court presidents and financial departments operate in a continuous crisis management mode, including the management of litigation against service providers.

**The lack of automation in the processing of requests for funding reallocation results in excessive budget rigidity, preventing courts and PPOs from adjust funding to business needs.** This rigidity is

*Budget rigidity could be eased with more modern systems and better coordination between stakeholders, consistently with the Budget Law.*

not a requirement from the Ministry of Finance (MOF) but of the HJC, SPC and MOJ respectively, which lack both human and technical capacity to process reallocation requests and so refuse them. The problem could be eased with more modern systems and better coordination between stakeholders, consistently with the Budget Law. Without addressing this problem, it is difficult to see how the sector could unlock the funds necessary to achieve the

transformation required to align with EU benchmarks.

**The divided management authority and lack of clear division of responsibility and accountability over judicial budget poses coordination challenges for financial management.** The budget authority

is split between the Councils (the HJC and the SPC) and the MOJ. While the Councils are responsible for the wage bill for judges and prosecutors the MOJ is responsible for wages for all other staff in courts and PPOs. The division of budget responsibility and accountability in other areas, such as funding for maintenance and capital investments, is not clearly defined which slows progress and disbursements on much-needed capital projects. The authority over other non-financial matters, which may have a major financial impact, is also separated from the budget authority, including decisions that affect the large wage bill.

**Financial systems are fragmented and outdated.** Multiple financial management systems operate simultaneously, and staff are required to enter and transfer data between systems manually. The judicial system lacks a clear cost structure, and there is very little information on unit costs or data that would relate costs to outputs, making analysis of costs per case challenging. There is no alignment between case management and accounting systems, so financial management is unable to inform decision-making or support performance improvements.

## ii. Recommendations and Next Steps

30. **Improve the quality of financial data that decision-makers require for performance analysis and planning.**<sup>82</sup> Implementation of this recommendation would give Court Presidents, judges and managers the information that would allow their greater and more meaningful engagement in court administration, as per good European practice.<sup>83</sup>

- ✓ Ensure interoperability of different financial management systems and establish a centralized data storage management system where financial data needs to be entered only once and is then exported to authorized users. (HJC, SPC, SCC, RPPO, MOJ – medium term)
- ✓ Ensure that information management systems align financial and non-financial data around the core business processes (e.g., once a new case is registered in case management software, it should be reflected in accounting systems). (HJC, MOJ – medium term)
- ✓ Do no further harm to information fragmentation by requiring that any future automation initiative does not exacerbate the existing fragmentation between various systems. (MOJ - short term)
- ✓ Utilize the analytical potential of financial data that are already collected, e.g. by developing a standard methodology for calculating cost-per-case and encouraging courts to improve cost-effectiveness. (HJC, SPC, SCC, RPPO, MOJ – short term)

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<sup>82</sup> This recommendation aligns with the Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes).

<sup>83</sup> This is provided for in: *European Charter on Statute of Judges*, Article 1.6; *Magna Carta of Judges (Fundamental Principles) – Access to justice and transparency*, Article 22; *Recommendation Number CM/Rec(2010)12, Council of Ministers on judges: independence, efficiency and responsibilities*, Articles 40-41.



31. **Strengthen court fee collection. Consider establishing a body within the sector that is responsible for the collection of all court fees.**<sup>84</sup> Implementation of this recommendation would contribute to better collection of court fees and would enable courts with more resources to respond to newly emerging needs.

- ✓ Assess the full budgetary impacts of the transfer of verification services from courts to private notaries. (HJC to lead, MOJ - short term)
- ✓ Consider amendments to Law on Court Taxes and related legislation to enable courts to charge interest and late fees and to refuse hearings to delinquent debtors in certain circumstances. Assess the fiscal impacts. (HJC, SCC – short term)
- ✓ Assess the feasibility of centralizing responsibility for all court fee collection in a specialized organization. (HJC to lead, with MOJ and MOF – medium term)

32. **Strengthen the accounting of financial commitments and expenditures of the courts and PPOs.**<sup>85</sup> Enhanced procedures should ensure that delays in registering new commitments are minimized; and that commitment data is accurate, complete and easily reconcilable with the budgets and shared with decision-makers.

- ✓ Within the public sector accounting framework, strengthen procedures for the accounting and reporting of financial commitments by the courts and PPOs. (MOJ with HJC, SPC – short term)
- ✓ Generate regular reports that present commitment data against budgets. (MOJ with HJC, SPC – short term)
- ✓ Establish a workgroup which will collect and analyze detailed information on arrears within the system. (MOJ with representatives from budget and accounting departments from HJC and SPC – short term)
- ✓ Based on the analysis of arrears work with MOF on settling existing arrears. (MOJ with HJC, SPC, MOF – medium term)

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<sup>84</sup> This recommendation aligns with NJRS Strategic Guideline 2.5.2: Defining the criteria for determining the poverty threshold (in order to abolish or reduce court fees and reduce pecuniary fines in criminal and misdemeanor cases).

<sup>85</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget.

- ✓ Identify options for ensuring that courts and PPOs are informed when their arrears are about to be collected from the accounts of central government agencies. (HJC, SPC, MOJ and MOF – short term)

33. **Allow the courts and PPOs greater flexibility to reallocate funds within their individual budgets to optimize the use of resources and reduce arrears.**<sup>86</sup> If implemented, this recommendation would increase the effectiveness of appropriated resources and reduce the number of instances when the courts have to return unspent funds because the funds' economic classification breakdown did not match their needs.<sup>87</sup>

- ✓ Develop transparent rules and procedures enabling the courts and PPOs to reallocate funds with the approval of the Councils or MOJ respectively, consistently with the Budget Law. (HJC, SPC with MOJ – short term)
- ✓ Prioritize the timely processing of budget reallocation requests, and establish timeliness standards for these processes. (HJC, SPC – short term)
- ✓ Automate the submission of ad hoc reallocation requests by courts and PPOs to their respective Councils to minimize the administrative burden on Councils and enable the Councils to process requests. (HJC, SPC, Courts – medium term)

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<sup>86</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes.

<sup>87</sup> This aligns with *European Charter on Statute of Judges*, Article 1.6.

34. **Clarify the division of financial responsibilities in key areas of the budget.<sup>88</sup> Articulate definitions of capital and current expenditures, and clarify which institution is responsible for each.<sup>89</sup> Clarify the division of financial responsibilities for the costs of legal procedure between the courts and PPOs. Improve coordination with service providers (i.e. prison facilities, attorneys, expert witnesses, and enforcement agents).** Clarity and coordination would improve the effectiveness of resource allocation by the HJC, SPC and MOJ. It would also improve operational efficiency and minimize unnecessary disruptions, reduce arrears and prevent duplication and equivocation among courts and PPOs.<sup>90</sup>

- ✓ Within the existing regulatory framework, develop transparent criteria for defining and distinguishing between capital and current expenditures. The justice sector does not need to wait for a government-wide solution on the distinction between current and capital expenditures, but should one later be articulated, the justice sector could adapt it and be no worse-off. (MOJ, MOF – short term)
- ✓ Incorporate these definitions into regulations to guide the cycle of budget planning and execution within the judiciary in order to prevent duplications in requests and delays in budget execution. (HJC, SPC, MOJ with approval from MOF – short term)
- ✓ Establish a working group to clarify the division of financial responsibilities for the costs of procedure between the courts and PPOs for mandatory expenditures relating to criminal investigation by either adjusting the regulatory framework or by issuing a binding interpretation. (HJC, SCC, SPC, RRPO and MOJ and participation MOF/Treasury and, possibly, of the Judicial Committee of the Parliament – short term)

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<sup>88</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget.

<sup>89</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.1: Strengthening of professional and administrative capacity of the High Judicial Council and SPC for Planning of the budget for Judiciary (Establishing of the number of judges, public prosecutors and assisting staff required by the Judicial system, analysis of the workload and legal changes.

<sup>90</sup> This aligns with *European Charter on Statute of Judges*, Article 1.6.

## c. Human Resource Management

### i. Main Findings

**A strategic approach to human resources (HR) management is not evident in the Serbian judiciary.** To enable the judiciary to transform in line with EU practice, the Serbian judiciary requires a renewed focus on performance, productivity and investment in human potential.

**Serbia has one of the highest ratios of judges-to-population in all of Europe, along with a very high ratio of staff-to-judges.** A lack of planning and constraints in resource deployment explain in part the suboptimal system performance. Key problems with human resources management are as follows:

- a. Judges, prosecutors and staff are added to prior staffing levels in an ad hoc manner, rather than based on objective demand or caseloads;<sup>91</sup>
- b. Staffing complements are set without reference to an overall resource rationalization plan;
- c. There is in effect no national judiciary or prosecution service. Appointments and hiring are localized, resulting in groups of human resources in each court or PPO. Once appointed, judges, prosecutors, and civil service staff cannot be moved without their consent from low to high demand courts, or to other entities that have absorbed functions formerly performed in the courts. Few mechanisms exist to incentivize that consent.
- d. In addition to the large existing staff, large numbers of temporary staff and volunteers create a 'shadow workforce'. Selection is reportedly based on patronage, and their performance goes largely unmonitored. Their net contribution is likely to be marginal, and their presence often distracts more experienced staff from core functions, and turnover is high, resulting in a loss of corporate memory. In all, the shadow workforce destabilizes court operations, impedes integrated resource planning, and inhibits

*Serbia has one of the highest ratios of judges-to-population in all of Europe, along with a very high ratio of staff-to-judges.*

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<sup>91</sup> Judicial appointments should generally be considered very cautiously, recognizing that judges and prosecutors are permanent investments. Once appointed, they are difficult to remove or transfer and generate high unit costs to the system in terms of salaries, allowances, accompanying staff etc.

longer term efficiency.

- e. There is insufficient funding to support other expenditures (such as infrastructure or ICT), which would better support people to perform at a higher standard. Unnecessary rigidities in resource allocation within the sector prevent managers from making positive trade-offs between personnel and other expenditures (such as applying savings from personnel vacancies to cover training or operating costs).

**Setting the appropriate number and properly allocating judges, prosecutors, and staff between courts and PPOs in line with caseload will improve the efficiency of the judiciary and provide more equitable public access.**

The demand/supply balance already suggests overstaffing, and no judicial appointments should be made nor should vacancies be filled until the number of judges falls by

*The demand/supply balance already suggests overstaffing, and no judicial appointments should be made nor should vacancies be filled until the*

attrition. Furthermore, a freeze should be put in place in most areas of staffing and a staff reduction plan be developed, focusing on low-skilled ancillary staff and registry staff that previously performed verification services. The 'shadow workforce' of temporary staff and volunteers should be reduced. The human resources already in the system need to

be used more effectively, and investments should be made in their training. Meanwhile, the Serbian judiciary requires new mechanisms for determining the appropriate level of court staffing, taking into consideration workloads, performance, and the goals of transformation. Consolidating the responsibility for the number and deployment of judges, prosecutors, and non-judge/prosecutor staff should greatly enhance resource planning. The Councils should immediately build their capacities to carry out this critical task.

**The allocation of funding between positions, personnel needs, and other inputs (e.g., technology) needs a significant shift within the overall budget envelope.**

The system needs fewer low-level ancillary staff and should abolish lay judges who drain resources and do not contribute to service delivery. In its place, the system should invest in and foster specialized and analytic roles, such as judicial and prosecutorial assistants, advisors, court managers, court secretaries, planners, IT administrators, and statisticians. Investments in ICT, infrastructure and process re-engineering are needed to enable better skilled people to work to higher standards.

**In particular, judicial and prosecutorial assistants make an important contribution to sector performance, and they deserve special attention in HR reforms.** Currently, they do not receive any formal training, and there are few mechanisms in place for their objective evaluation or promotion. Yet they provide critical support to judges and the court administration in processing cases. Many assistants aspire to work in their role only temporarily as a ‘stepping stone’ to becoming judges or prosecutors. This aspiration is unrealistic (and perhaps always was) in a system that already has an excess supply of judges, falling caseloads and shrinking mandates. Yet their skills and corporate memory are valuable to the sector. The judicial system should create an attractive and viable career path for high-performing assistants to advance to key managerial (non-judge) positions in the courts<sup>92</sup> in a new system that values mid-level management. It should also provide training and re-skilling to enable these judicial assistants to align their aspirations with that of a modern judiciary.

*The judicial system should create an attractive and viable career path for high-performing assistants to advance to key managerial (non-judge) positions in the courts<sup>1</sup> in a new system that values mid-level management.*

**Progress is underway in developing a system for the evaluation and discipline of judges.** Rules for the evaluation of judges and prosecutors were adopted in 2014 after much delay. Although these rules are arguably too lenient and vague, they provide a frame for measuring performance and could be strengthened over time. Further work is also needed to link evaluation to promotion and career progression. Incentives should be built into both systems to encourage judges and prosecutors to develop their skills through continuing training and to demonstrate a track record of performance. An education program with judges and prosecutors may be useful to encourage this kind of cultural change.

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<sup>92</sup> This could include as senior advisers, analysts, court administration professionals, court managers, chiefs of cabinets etc.

*The Academy should focus more on continuing training and lead a large-scale capacity building initiative for judges, prosecutors, assistants and court staff alike.*

**There is an acute need for training and capacity building across the Serbian judiciary.** The Judicial Academy has in the past been overly focused on the initial training of new judges, despite the system already having too many judges, falling caseloads and shrinking mandates. Looking forward, the Academy should focus more on continuing training and lead a large-scale capacity building initiative for judges, prosecutors, assistants and court staff alike. Training could cover all aspects relevant to the transformation to a modern European judiciary, based on a comprehensive training needs assessment.

*Continuing training should cover all aspects relevant to the transformation to a modern European judiciary, based on a comprehensive training needs assessment.*

**Overall, the judiciary needs clearer assignment of responsibility for human resources policy making, more sophisticated management, and better-defined systems for human resources.** It is incumbent on the HJC and SPC to take the lead on most of these matters.

## ii. Recommendations and Next Steps

35. **Impose a hiring freeze for judges and do not fill judicial vacancies until a rigorous and transparent methodology is developed to determine the needed number of judges. If adjustments are required, transfer judges with their consent or promote judges within the system to prevent any increase in the total number of judges. Work within the budget process to re-allocate funds earmarked for the salaries of judicial vacancies to more productive areas, such as mid-level specialist staff, ICT and infrastructure.**<sup>93</sup> The HJC should implement this freeze immediately and maintain it for the medium term until the HJC develops a rigorous methodology to determine the number of needed judges and articulates that methodology. The number of judges needed is likely to be well below the current number of sitting judges, so a process of attrition will be required.

- ✓ Impose a freeze on filling judicial vacancies. If vacancies arise in higher ranks, fill them through promotion of judges from lower ranks. Do not fill the vacancies at lower ranks, given falling demand. (HJC, SCC – short term and ongoing)
- ✓ Gradually reduce the wage bill over time by attrition – i.e. not replacing retiring or departing judges. (HJC – short term and ongoing)
- ✓ If needs arise, transfer existing judicial assistants from less-busy courts to busier courts of the same court level within the same appellate region. (HJC, SCC – medium term)<sup>94</sup>
- ✓ Work within the budget process to re-allocate funding for unfilled judicial positions to other priority expenditures, such as investments in managerial capacity, training, ICT upgrades and infrastructure improvements. (HJC, SCC, MOJ with approval of MOF – medium term)

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<sup>93</sup> This recommendation aligns with NJRS Strategic Guideline 5.1.1: Establishment of an efficient system of allocation of judges based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network; respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from the abolished court; introduction of the system of permanent transfer and reallocation of judges (on voluntary basis in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned to office after the decision of the Constitutional Court of Serbia in 2012; termination of an office of public prosecutor only if the public prosecutor's office was abolished.

<sup>94</sup> See also Recommendation 1 to improve performance management in courts, including through the transfer of files.



- ✓ Request the consent of existing judges to be appointed as substitute judges in courts of the same court level within the same appellate region. Transfer judges temporarily with their consent, where needs arise. (HJC – medium term)
- ✓ Create incentives for judges to consent to transfers and be appointed as substitutes, including financial incentives and consideration in future promotion processes. (HJC, SCC – medium term)
- ✓ Establish a rigorous and transparent methodology at the central level to determine the number of judges needed, taking into account, inter alia, population, geography, demand for court services, demand by case type, domestic legal requirements, recent reforms to court mandates, and the experience of comparator EU Member States. (HJC, SCC – medium term)

36. **Determine staffing objectively and in line with European experience, and adjust staffing when circumstances change.**<sup>95</sup> Reduce temporary employees and ‘shadow’ staff. Costs would be moderate in the short term, but reforms would produce significant savings.

- ✓ Analyze non-judge staffing needs in the courts 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 (i.e. targeting redundancies of land registry staff, verification staff etc.) and reducing or outsourcing ancillary staff whose roles do not contribute to case processing (cleaners, drivers, typists, registry staff, 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 reporting on numbers, roles, and costs of the shadow workforce. (MOJ – short term)
- ✓ Freeze all volunteer appointments and phase out the volunteer program in courts and PPOs. (SCC – short term)

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<sup>95</sup> This recommendation aligns with NJRS Strategic Guideline 1.3.2: Analysis of the Results of work of Courts and PPOs and undertaking of the measures pursuant to the results of the analysis for better deployment of human resources in judiciary (determining the required number of deputies, judges and equitable caseload and allocation of cases.

- ✓ Create formulas for determining funds and number of case processing staff per judge and administrative staff based on units of work (e.g., 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 – short to medium term, with HJC advising prior to 2016.)
- ✓ Create a more sophisticated staffing needs/norms model considering the impact of statutory, administrative, or technological changes on staff needs and include other civil servants and public employees. (HJC – long term)

**37. Establish systems to select, evaluate, and promote the most qualified judges to enhance quality, increase efficiency and public trust in the judiciary.<sup>96</sup> Use the evaluation and promotion system to recognize good performance and incentivize innovation. Develop and apply remedial actions, including mandatory re-training, for low-performing judges.** Implementation of recently-adopted evaluation rules should be the focus in the short term.

- ✓ 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, National Assembly – medium term)
- ✓ Establish criteria and rules for filling vacant Court President positions so that temporary appointments, if necessary, are for only a short duration. (HJC – medium term)
- ✓ Implement the recently-adopted rules on the criteria, standards and procedure for promotion and performance appraisal of judges. (HJC – short term)
- ✓ Consider tightening the rules in the following manner (HJC – medium 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;
  - 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;

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<sup>96</sup> This recommendation aligns with NJRS Strategic Guideline 1.5.1: Encouragement, strengthening and maintaining the quality of human resources in judiciary, especially through improvement of the system of professional evaluation and management of human resources.

- Give preference in promotions to judges who have served in multiple courts or voluntarily worked on backlog reduction in their own or other courts.
- ✓ Provide evaluation panels with sufficient support staff to compile information against evaluation criteria, to facilitate panels in the conduct of performance reviews. (HJC – short term)
- ✓ Conduct an education campaign for judges about the skill enhancement and promotional purposes of evaluations. (HJC – medium term)

**38. Conduct a comprehensive training needs analysis for existing judges, prosecutors and court staff. Re-balance the focus of the Judicial Academy towards continuing training, and design and implement a significant continuing training program for all judges, prosecutors and staff.<sup>97</sup>**

Enhanced continuous training for judges and assistants should commence in the short term. The significant injection of training will require a moderate investment.

- ✓ Reduce the initial training intakes until a transparent and rigorous methodology has been developed to determine the number of needed judges and legal issues raised in the recent Constitutional Court decision have been resolved. (HJC, SPC, JA – short 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 the preparing continuing training activities. (JA, MOJ – short term)
- ✓ Conduct a comprehensive training needs assessment for existing judges, prosecutors, and staff. (JA, HJC, SPC, MOJ – short to medium term)
- ✓ Focus the Academy as a training center 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 court staff to enhance performance in their current roles. (JA, HJC – medium term)
- ✓ Create a training plan and provide government-sponsored training to other employees (e.g., Court Managers, registry staff). (JA – medium term)
- ✓ Raise the standards of the initial training curriculum and evaluation. (JA, HJC, SPC – medium term)

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<sup>97</sup> This recommendation aligns with NJRS Strategic Guideline 3.1.2: Further improvement of continuous training at the Judicial Academy.

39. **Develop effective, efficient, and transparent disciplinary measures to ensure quality of justice and effective access to justice.**<sup>98</sup> Each of these recommendations is relatively inexpensive; reducing the number of complaints could result in the Disciplinary Prosecutor and Commission becoming more cost-effective.

- ✓ Ensure adequate staffing of disciplinary departments in the HJC and SPC, and consider increasing their salaries commensurate with their responsibilities. Reduce delays in the application of disciplinary procedures. Provide training on disciplinary procedures to judges, prosecutors and court staff. (JA, HJC, SPC – medium term)
- ✓ Issue opinions with practical examples of permissible/impermissible conduct, including online FAQs about ethics. (HJC – short term)
- ✓ Analyze the outcomes of complaints processes at a systemic level, and use data to inform future reforms. (HJC – long term)

40. **Consolidate HR policy development in the HJC and promote a professional, properly-managed staff within Courts.**<sup>99</sup> This should conform with the CCJE adjudication standards and promote efficiency<sup>100</sup> in accordance with the Bangalore principles.<sup>101</sup> While some steps could begin immediately, most tasks are medium term. Centralized staffing and performance pay are long term efforts. These tasks are generally low cost, but some require the addition of a moderate number of staff to the HJC.

- ✓ Invest in mid-level analytical staff in the courts with an additional benefit of creating an attractive career path in court administration for judicial assistants and court staff. Consider a regional approach for analytical tasks for smaller courts. (HJC – medium term)

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<sup>98</sup> This recommendation aligns with NJRS Strategic Guideline 4.1.2: Normative Strengthening of Disciplinary accountability of judges, public prosecutors and deputy prosecutors, particularly emphasizing the obligation to adhere to the code of ethics.

<sup>99</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.3: Relieving the burden on judges in terms of administrative tasks which take a significant portion of their time, by reassigning them to the administrative and technical staff and judicial assistants by ensuring uniformity of administrative and technical procedures through the adoption of the relevant rules of procedure.

<sup>100</sup> See CCJE Opinion No. 2.

<sup>101</sup> *'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.

- ✓ Create a detailed position description, specific evaluation process and career path for judicial assistants (from junior to senior assistant and on to advisor). Develop specific evaluation criteria and a rigorous evaluation process for judicial assistants that recognize their contributions to system performance. (SCC in consultation with HJC – short term)
- ✓ Build capacity within the Councils to take responsibility for the use and number of civil servants and employees. Adjust the systematization by reducing the number of court classifications to allow flexible deployment. (HJC, MOJ – short term)
- ✓ Codify that the HJC and SPC (with dedicated HR units) will be responsible for non-fiscal aspects of court employee policy development. (National Assembly, 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– medium term)
- ✓ Identify the source of reluctance in certain courts to utilize Court Managers; raise awareness of the 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 procedures are followed. (HJC– long term)

## d. ICT Management

### i. Main Findings

**The Serbian judicial system does not yet approach ICT as a tool for transformation.** Responsibility for ICT is fragmented. An overall governance group representing primary justice institutions is needed to set ICT policies, prioritize reforms, and conduct long term planning across the judicial system. Without such coordination, ICT investments decisions will be taken on an ad hoc basis and continue to be donor-driven and supplier driven.

**ICT is under-funded and some basic needs are not being adequately addressed.** Hardware is often old; internet connections are uneven across the territory; server capabilities are weak; and many courts lack adequate scanning facilities. ICT literacy is generally low across the judiciary, and basic computer training has not been provided for judges, prosecutors and court staff. Several courts have no ICT support staff, while others do not have enough staff, or have temporary or poorly trained ICT staff. ICT staff turnover is high, and developing in-house ICT capacity will be critical to effective operations and sustainability.

*Hardware is often old; internet connections are uneven across the territory; server capabilities are weak; and many courts lack adequate scanning facilities.*

**The judiciary relies on a variety of unlinked ICT systems for case processing, case management, and document management.** The system used in Basic and Higher Courts (AVP) could readily produce greater functionality than it does currently. However, there has been no training on AVP since its rollout in 2010. Ongoing development has been limited, due to poor budgeting and lack of interest in evidence-based decision-making. New case management systems are being rolled out in different courts, and the process has been deeply fragmented. In many cases, courts continue to rely on hard copies that duplicate existing case management systems, and the systems have yet to instill changed behaviors.

**Automated information exchange is extremely limited across the sector.** The exchange of documents between lower and higher courts, between courts and PPOs, and between courts and external institutions (such as police and prisons) is almost entirely manual, resulting in significant

*The AVP system could readily produce greater functionality than it does. However, there has been no training on AVP since its rollout in 2010.*

inefficiencies, errors, and delays in case processing and delays in receiving funds owed to the court or other parties. Furthermore, ICT remains largely unexplored for sharing information on court practice, accessing services, or facilitating the exchange of documents between legal professionals and the judicial system.

**The judicial system is caught in a ‘vendor lock-in’, where excessive dependence on vendors has heightened costs and risks and undermined in-house capacity.** Vendors are currently responsible for critical tasks throughout the judiciary, from development through to maintenance, and vendors own and control the data. Contracts favor the vendors, in large part because they were not subject to careful negotiation.

**Courts, PPOs and the Councils need meaningful, accurate, and timely statistics generated by the case management system to become more effective in managing overall system performance.** In recent years, significant improvements have been made, particularly to case management systems, and the Serbian judiciary is now a relatively data-rich environment. Data quality varies but is sufficiently reliable to inform decision-making.<sup>102</sup> Yet, data collection requires substantial manual effort, which is time-consuming, inefficient, and prone to errors.<sup>103</sup> This negatively affects daily operations and inhibits the much-needed transition to evidence-based decision-making in the sector.

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<sup>102</sup> For discussion of how data was used in the Functional Review, see **Annex 1 Methodology** of the **Functional Review Report**. The Functional Review team found that the data environment in Serbia is relatively rich relative to comparable jurisdictions. Data across the system contained numerous errors but generally minor ones. However, data were deeply fragmented across the system, and thus required processing, cleaning and triangulation to validate findings. The process highlighted that stakeholders could generally rely on data from existing systems to identify broad trends to inform decision-making, particularly at the individual court level. Unfortunately however, the use by stakeholders of existing data has been limited to date.

<sup>103</sup> For example, the judiciary created a centralized, standalone dashboard application to examine court performance and resources use. However, the courts enter data manually instead of downloading or exporting them from the case management system.

## ii. Recommendations and Next Steps

41. **Develop more robust ICT governance structures to ensure future investments target justice sector goals and meet business needs.**<sup>104</sup> Activities should commence in the short term and require few costs:

- ✓ Establish a strategic cross-institutional ICT Governance Group to include senior managers of relevant institutions. (MOJ, HCC, SCC, SPC, RPPO – short term)
- ✓ Establish an Operational Data Working Group that sits as a second tier in the ICT governance structure to enable front-line managers and staff to provide input to information management reforms. (ICT Governance Group – short term)
- ✓ Establish a technical working group of ICT staff across the sector to discuss detailed aspects of rollout.

42. **To enhance ICT funding: conduct a cross-judiciary technology architecture assessment; establish a long-range budget plan to sustain automation initiatives; and conduct cost- benefit and total cost of ownership (TCO) analyses for all proposed projects.**<sup>105</sup> Costs would be moderate and additional staffing may be required. Activities could begin immediately, but build in the medium term:

- ✓ Conduct a Technology Architecture Assessment to assess the current technology environment across all judicial sector institutions, and develop a blueprint of future Target State Technology architecture including a transition strategy, roadmap, and solution architecture. (MOJ ICT division and Architecture Consultancy – short term, endorsed by ICT Governance Group)



*Title: Efikasna Primena Tehnologije, submitted by an entrant to the Justice Competition, World Bank 2014*

<sup>104</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.3: Ensuring sustainable development OF ICT system through financial management and user support services during entire life cycle.

<sup>105</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.14: Improving the fundraising capacities for ICT and efficient fund management.



- ✓ Establish a defined methodology for conducting business case analyses for proposed projects and analyzing their likely total cost of operations. (ICT Governance Group – short term)
- ✓ Create a complete inventory of ICT hardware and software assets, and ICT HR capacities in the judiciary beginning with information in BPMIS. (MOJ – medium term)
- ✓ Based on the inventory, develop a sector-wide long-range ICT budget plan. (ICT Governance Group in cooperation with MOF – medium term)
- ✓ Review future donor-funded proposals to determine TCO and assess whether the life-cycle costs can be supported with available funding. (MOJ – medium term)

43. **Invest in some ICT management capability, particularly in contract negotiation and oversight.**<sup>106</sup> Effective contract management would increase value for money and reduce excessive, costly reliance on ICT vendors (vendor lock-in). Beginning immediately, contract arrangements for ICT vendor support should be more explicit and benefit the State more. Analysis of services to be brought in-house should begin in the medium term. These activities are likely to result in cost savings, particularly in light of moderate upfront investment in contract analysis and negotiation.

- ✓ Negotiate the terms of future ICT contracts to ensure that the judiciary, and not vendors, own the data and control ICT operations. As they come due, re-negotiate service-level agreements to specify key details.<sup>107</sup> (ICT Governance Group, Directorate for E-Government, Ministry of State Administration and Local Self-Government – medium term)
- ✓ Evaluate which ICT services should be brought in-house by preparing feasibility and cost studies comparing vendor and government-provided services. (ICT Governance Group – medium term)
- ✓ Create a disaster recovery site for data collected by courts and prosecutors. (MOJ – medium term)

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<sup>106</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.7: Achieving sound balance between external and internal services with emphasis on efficiency.

<sup>107</sup> Details should include: level and ownership of source code; how corrective preventative and upgrade maintenance will be provided, and fixed rates for regular maintenance; details of the development services to be provided; effective version release management so there are no conflicting versions; specifics of how help desk services will be provided (online, on the phone, in person) and the times of services for each mode of delivery; a requirement that vendors create trouble tickets and report on most common help desk assistance and interventions; and specific sanctions if contract terms are not met.

44. **Develop a cadre of well-trained local ICT staff with defined responsibilities.**<sup>108</sup> Even with more robust central ICT support services, individual courts require local ICT staff for front-line support which, if not rectified can reduce employee effectiveness and inhibit service delivery. Most of the recommendations in this section can be expected to require mid-range upfront investments (of between 100,000 and 500,000 EUR) and could begin in the medium term after critical ICT operations are stabilized.

- ✓ Develop a staffing plan to add more specialized ICT staff in critical areas<sup>109</sup> with appropriate education and experience and knowledge of court operations.<sup>110</sup> (ICT Governance Group – short term)
- ✓ Establish ICT career streams in critical areas to ensure that the interests of the judicial sector are well managed in partnership with the private sector and other implementation partners. (MOJ – medium term)
- ✓ Create ICT staffing norms within courts and PPOs relative to total number of staff in each location. Hire sufficient and appropriately experienced staff at each court, or regionally to cover a number of smaller Courts. (MOJ, HJC, SPC – medium term)
- ✓ Conduct a needs assessment of ICT staff training needs. Based on the needs assessment, develop a training program for ICT staff. (ICT Governance Group – medium term)

45. **Enhance existing case management systems by ensuring all available functions are used and that sufficient training is provided. Add several critical features and fields that are generally present in case management systems. Improve server performance.**<sup>111</sup> Upgrading AVP software and servers, while more costly, should begin now.

- ✓ Provide training on case management functionality for judges and court staff. Provide specific training on data entry for court staff, applying lessons from the Commercial Courts. (MOJ – short term)

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<sup>108</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.13: Motivating well-performing ICT staff.

<sup>109</sup> Critical areas include project management, enterprise architecture, system integration, application management, infrastructure and operations management, information security, business process analysis, information management, ICT procurement, technical writing, and so forth.

<sup>110</sup> There is also a clear need for trained statisticians, data management professionals, and reporting analysts within the judiciary sector. See discussion in Governance and Management chapter.

<sup>111</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.6: Improving efficiency of ICT operations through performance measurement.

- ✓ Conduct periodic audits of case management system entries to ensure accuracy and consistency. (MOJ – medium term)
- ✓ Develop a cost estimate for identified improvements in AVP that do not require a complete overhaul of the system. (MOJ – short term)
- ✓ Extend functionality of AVP to include electronic document flows. (MOJ – medium term)
- ✓ Investigate causes of slow server communication speed, and upgrade servers and WAN connections where needed to improve the speed of transactions. Replace distributed AVP architecture (where each court has its own server) with larger server ‘farms’, as recommended by the ICT Strategy Report. (MOJ – medium term)

46. **Implement standard (or at least consistent) information management practices across the judiciary to improve the quality of record-keeping and enable sector-wide data analysis.**<sup>112</sup> Resolve problems with the statistical reporting in the judiciary’s automated systems so that data from courts are consistently submitted, accurate and, to the extent possible, generated by the system and not by manual calculations. Low-cost but high-return activities should commence in the short term. Introduction of a statistical umbrella is estimated at three to six months of person effort and should be implemented in the short to medium term.

- ✓ Determine which data fields in AVP should be mandatory and introduce those and greater field validation to AVP to enhance the quality of system data. (ICT Governance Group, MOJ – short term)
- ✓ Evaluate how the dashboard function of BPMIS can be aligned into existing case management systems. (ICT Governance Group, HJC – medium term)
- ✓ Define detailed technical requirements, architecture, and implementation plans for an Information Integration, Data Warehouse and Business Intelligence Solution to support decision-making, management reporting, and access to case file information and history regardless of format and system of record. (ICT Governance Group, MOJ – medium term)<sup>113</sup>
- ✓ Develop and formalize data management mechanisms consistent with ISO/IEC TR 10032:2003 framework to include (ICT Governance Group – medium term and ongoing):

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<sup>112</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.4: Achieving uniformity of ICT services, tools and methods across the entire judicial sector.

<sup>113</sup> This task should follow the overall Technology Architecture assessment

- A sector-wide Corporate Data Model and Data Dictionary to document and maintain business and technical definitions across time and facilitate dialogue with judges, managers and staff.<sup>114</sup>
- Data management processes, including data management roles and responsibility, data ownership and stewardship.
- A data quality management process that includes ongoing maintenance and review of the data across subject areas (see ISO 8000 Standard for Data quality and Master Data).
- Data quality audits on a regular basis, including audits of business processes.

**47. Link the judiciary's ICT systems and share documents electronically wherever possible.<sup>115</sup>**

Establishing standards should begin in the short term and continue into the medium term. These activities will require a moderate investment. The first and most critical of these activities is estimated at 20,000 to 100,000 EUR. Development of data exchange protocols is likely to be in the 100,000 Euro range.<sup>116</sup> While electronic data flows between the courts would be quite costly, improving scanning to allow document sharing is a low-cost alternative.

- ✓ Ensure interoperability by developing and implementing standards required of vendors/ developers. For example, every ICT system needs to be able to export data from particular fields (e.g., parties' names, relevant dates, assigned judge) using XML structures. (ICT Governance Group – short term)
- ✓ Review standards for scanning documents to increase the number and types of documents scanned. Address existing barriers to scanning by increasing the quantity and quality of scanners and strengthening server capability. (ICT Governance Group, MOJ – medium term)

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<sup>114</sup> This also will be the basis for a Metadata registry that will enable a metadata-driven exchange of data internally and externally (see ISO/IEC 11179 standard for representing an organizations data in a metadata registry).The exchange is based on exact semantic definitions of data elements independent of their representation in particular systems.

<sup>115</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.11: Introducing diversified communication channels by using modern ICT tools.

<sup>116</sup> This contrasts to migrating to a single system, which is estimated at a minimum of 500,000 EUR and in excess of 1,000 person days of effort not including associated licenses and communication connections. The judiciary also does not have the specialized staff needed to manage this transition and is unlikely to for the medium to longer term.

- ✓ Develop data exchange protocols to improve interoperability between existing systems. Install middleware to allow integration of data among existing systems. (MOJ – medium term)
- ✓ Install and use middleware to share data between the courts and prosecutors. (ICT Governance Group, MOJ – long term)
- ✓ Expand data exchange protocols and common technical standards to allow interoperability between the judiciary and external institutions, the law enforcement, the National Criminal Sanction database, and financial institutions. (MOJ – long term)

48. **Capitalize on e-justice by moving beyond providing information about the system to providing specific case information and allowing two-way interaction (e.g., paying fees, completing forms).**<sup>117</sup> Doing so will also allow Serbia to take advantage of the European Justice Portal as a one-stop shop for citizen access. The cost of implementing the short-and medium term recommendations is estimated in the ICT Strategy Report at less than 20,000 EUR:

- ✓ Evaluate the e-filing pilot,<sup>118</sup> make changes as needed, and expand to other Courts.<sup>119</sup> Upon expansion, shift resources in courts from data entry to tasks which support the modest costs of implementing e-filing. (ICT Governance Group – medium term)
- ✓ Create common look-and-feel standards for all court websites. Improve existing websites or create new websites for all first instance courts to move from basic functionality to providing dynamic, case-specific information and allowing two-way interaction, including forms to be downloaded for completion. (HJC, SCC – medium term)
- ✓ Develop common standards about appellate decisions to be uploaded to the public websites. (SCC – medium term)
- ✓ Prepare to participate in the EU’s e-justice strategy prescribing a European Justice Portal as a one-stop shop for citizen access. (ICT Governance Group – long term)

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<sup>117</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.13: Increasing the level of information available across judicial sector.

<sup>118</sup> Implementation at the pilot courts required only that two personal computers, two printers, one reader and scanner for each court, a smart card for each participant, and a shared time stamp account.

<sup>119</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.15: Improving of the functionality and coverage of the judicial sector by ICT systems.

49. **Require new and continuing employees to demonstrate computer literacy and provide staff with relevant ICT training.**<sup>120</sup> Computer literacy requirements should be introduced in the short term with training in case management systems implemented in the medium term. Costs of this item are unknown but are likely to be moderate.

- ✓ Require that all future job classifications in the sector require a minimum level computer software and word processing skills. (MOJ, HJC, SPC, Courts – short term)
- ✓ Provide ICT literacy course to judges, prosecutors and court staff. Offer ICT refresher courses on-site in courts. (MOJ, HJC, SCC – short term)
- ✓ Develop a training program focusing on case management system training. Distinguish between ICT specialists, super-users, and other employees to tailor ICT needs to different staff, including on the benefits of information management (case data capture and quality) and how statistical reporting can assist their work. (HJC, SPC, Judicial Academy – medium term)

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<sup>120</sup> This recommendation aligns with NJRS Strategic Guideline 5.2.9: Improving ICT competencies of end users, ICT staff and management.

## e. Infrastructure Management

### i. Main Findings

**The overall condition of justice sector infrastructure is very poor.** The new court network brings Serbia to the EU average of number of court locations per 100,000 inhabitants. However, most facilities are between 30 to 60 years old and have received only minimal maintenance for the last 20 years or more. Electrical installations in many judicial facilities are so dire that they are unable to support much needed investments in ICT. It is clear that significant investments in infrastructure will be required to enable the system to perform in a manner that is consistent with European standards.

*Most facilities are between 30 to 60 years old and have received only minimal maintenance for the last 20 years or more.*

**The insufficient capacity of existing infrastructure affects service delivery.** There is a lack of courtrooms in courts and interview rooms in PPOs. Poor working conditions are identified by many stakeholders as a significant reason for reduced quality of court services. Courts commonly occupy buildings designated as cultural heritage sites, which makes maintenance and renovation difficult and expensive. In addition to maintenance challenges, some buildings were not designed to be courts and do not provide a functional space. In many cases, two or three judges share a single office space and use this 'chambers' as their courtrooms, creating concerns for privacy and security. Despite this, existing courtrooms are not used optimally. Hearings are held only in the mornings and schedules could be tighter to maximize the use of this scarce resource. The lack of space also creates obstacle to reforms that would improve service delivery, such as the establishment of preparatory departments.



Image of cramped workspace in a Misdemeanor Court, 2013.

**Management of judicial infrastructure is ineffective.** Data are only partially available and the system lacks basic information, such as the number of facilities under its control and confirmation of their ownership. Responsibilities were split between the MOJ for facilities, and the HJC and the SPC for operating costs. This is now consolidated with the MOJ. The MOJ's Investment Department, which is currently in charge, has insufficient capacity in terms of staff, skills and funding to perform its functions. At the same time, the Councils lack staff dedicated to this task and do not yet have a plan for how to build their capacity for this purpose. The disbursement rates for capital expenditures are low, and funds are routinely lost or reallocated in the supplementary budget process to meet other needs, such as payment of arrears.

*The sector lacks basic information, such as the number of facilities under its control and confirmation of their ownership.*

**There are no design standards or maintenance protocols for courts and PPOs.** This results an inadequate number, size, and type of courtrooms and PPOs as well as inadequate access for people with limited mobility and sub-optimal working conditions in judicial facilities.

*Disbursement rates for capital are low, and funds are routinely lost or reallocated in the supplementary budget process to meet other needs, such as payment of arrears.*



## ii. Recommendations and Next Steps

50. **Conduct an inventory of all buildings in the judiciary, clarify ownership of each building and assess its current condition.**<sup>121</sup> This activity can commence in the short term and continue in the medium term for moderate costs.

- ✓ Confirm that the MOJ (and not the HJC) is responsible for maintaining the inventory and secure funding through the state budget to prepare the inventory. (MOJ, HJC, MOF – short term)
- ✓ Conduct the inventory, applying lessons from the USAID-funded JRGA project for the Misdemeanor Courts. Include basic information, such as ownership of buildings, and an assessment of conditions. (MOJ with HJC, SPC – medium term)

51. **Based on the inventory, create an adequately-funded infrastructure plan that enables multi-year implementation. Closely monitor the implementation of the plan to ensure that budgets are fully executed in accordance with the plan.**<sup>122</sup> These items can be accomplished in the medium and long term. Overall costs for full implementation will be significant, but donors may be willing to provide support, particularly if the judiciary makes progress in the implementation of other recommendations outlined in this Review.

- ✓ Increase the capacity of the Investment Department by re-allocating staff within the MOJ (or from other ministries) and provide relevant training. (MOJ – short term)
- ✓ Develop, regularly update and continuously implement a long term investment strategy for renovation of facilities. (MOJ, HJC, SPC, with international assistance – medium to long term)

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<sup>121</sup> This recommendation aligns with NJRS Strategic Guideline 1.2.2: Analysis and division of competences between the HJC and SPC on one side and the MOJ on the other in regards to competences related with the budget; Strategic Guideline 1.2.3.

<sup>122</sup> This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry's assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

52. **Ensure the maximum use of scarce courtrooms and investigative chambers.**<sup>123</sup> Maximizing use of courtrooms can be done quickly, without funds.

- ✓ Expand the daily court schedule to ensure that hearings take place throughout the day using facilities to their maximum capacity. (Court Presidents with Court Managers – short term)

53. **Develop guidelines with minimum rules for design and maintenance standards for Courts and PPOs.**<sup>124</sup> An expert team or working group should develop terms of reference for developing design and maintenance guidelines. IMG developed a ‘Model Court Guideline’ that can be used as a baseline for design and operation standards. Standards for the number, size and configuration of courtrooms and chambers are needed to determine each facility’s requirements.<sup>125</sup> The standards should reflect full use of existing space. Tasks commence in the medium term and involve moderate costs.

- ✓ Conduct a functional analysis of the current needs of users. (MOJ in coordination with HJC, SPC – medium term)
- ✓ Develop the design and maintenance guidelines. (MOJ through external consultants – medium term)
- ✓ Form an infrastructure team with appropriate background and experience representing the primary institutions to set standards for number of needed courtrooms and chambers, as well as appropriate size and configuration standards taking into account the profile of the Court/PPO and the physical limitations of each facility. (MOJ, HJC, SPC – medium term)
- ✓ Secure state and international funding support. (MOJ – long term)

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<sup>123</sup> This recommendation aligns with NJRS Strategic Guideline 5.3.4: Infrastructural investments in courts and prosecution facilities targeted at tackling the lack of courtrooms and prosecutorial cabinets, thereby increasing the number of trial days per judge, reducing the time between the two hearings and significantly expediting the investigative proceedings.

<sup>124</sup> This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry’s assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.

<sup>125</sup> *Recommendation Number CM/Rec(2010)12, Council of Ministers on judges: independence, efficiency and responsibilities.*

54. **Improve access to courthouses and PPOs to persons with physical disabilities.**<sup>126</sup> Improved information can be provided and initial assessments conducted in the short term at low cost.

- ✓ Provide physical layout information on court websites, including information about restrictions to accessibility. (HJC, SCC – short term)
- ✓ Conduct a campaign to raise awareness among judges and staff about access limitations for those with physical disabilities, applying lessons from the current campaign in Leskovac Basic Court. (HJC – short term)
- ✓ Assess structural impediments for persons with physical disabilities and evaluate the effectiveness of signs and markers. (MOJ – medium term)
- ✓ Improve court and prosecutor facilities to accommodate the needs of persons with physical disabilities. (MOJ– long term)

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<sup>126</sup> This recommendation aligns with NJRS Strategic Guideline 5.1.6: Development of infrastructural investment planning procedures based on the level of priority to enable the Ministry’s assessment of a clearly defined and prioritized list submitted by the HJC and the SPC.



