RESULT ORIENTED REVIEW OF DELIVERY OF JUSTICE IN MONTENEGRO
Result Oriented Review of Delivery of Justice in Montenegro

June 2019

GOV
The World Bank is implementing a number of activities aimed at strengthening judicial system in Montenegro. The Resulted Oriented Review of Delivery of Justice in Montenegro analyzes the function of the judicial system to provide an objective and data rich basis to Montenegro authorities on efficiency, quality and access to justice, governance and management over the system, as well as available resources and their influence on system performance.

The Analysis was prepared by the World Bank team, composed of Mr. Srdjan Svirc, (Senior Public Sector Specialist and Task Team Leader), Ms. Ellen Kelly (Consultant) and Dr. Marina Matić Bošković (Justice Reform Expert). The Bank team was supported by an exceptional group of regional consultants throughout the process, including Ms. Ana Krnić Kulušić (Justice Reform Expert), Ms. Svetlana Djukovic (Human Resource Management Expert), and Dr. Miloš Marković (Financial Resource Management Expert).

This Review was requested by Ministry of Justice, and the team would like to thank stakeholders for their engagement in this analysis. Particular appreciation goes to officials from the Ministry of Justice, Supreme Court, Judicial Council, Supreme State Prosecutor Office, Council and Administrative Offices, as well as prosecutors, judges and attorneys for their time, hospitality, and willingness to discuss issues in an open manner. Several stakeholders provided detailed comments on drafts, and this improved the quality of the Analysis. The team is also grateful to the international partners for their support and suggestions.

The production of this report would not have been possible without the support of the Institute Alternative and the Center for Civic Education who supported extensive data collection process. Special appreciation goes to Ms. Boba Vukoslavovic and Ms. Mira Kovacevic for organizing missions and processing manuscripts.

The team would like to thank the valuable guidance of Dr. Linn Hammargren in the development of the methodology and outline of the Review.

A special thanks is due to Ms. Margaux Veronica Roussel for her diligent proofreading of the report.
# Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AO</td>
<td>Administrative Office</td>
</tr>
<tr>
<td>BSL</td>
<td>Budget System Law</td>
</tr>
<tr>
<td>CCJE</td>
<td>Consultative Council of European Judges</td>
</tr>
<tr>
<td>CCPE</td>
<td>Consultative Council of European Prosecutors</td>
</tr>
<tr>
<td>CEPEJ</td>
<td>European Commission for the Efficiency of Justice</td>
</tr>
<tr>
<td>CMS</td>
<td>Case management system</td>
</tr>
<tr>
<td>CPC</td>
<td>Criminal Procedure Code</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ENCJ</td>
<td>European Network of Councils for Judiciary</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUD</td>
<td>European Union Delegation</td>
</tr>
<tr>
<td>EUR</td>
<td>Euro</td>
</tr>
<tr>
<td>FMIS</td>
<td>Budget execution software</td>
</tr>
<tr>
<td>FR</td>
<td>Functional Review</td>
</tr>
<tr>
<td>GRECO</td>
<td>Group of States Against Corruption</td>
</tr>
<tr>
<td>HR</td>
<td>Human Resources</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and communication technology</td>
</tr>
<tr>
<td>JC</td>
<td>Judicial Council</td>
</tr>
<tr>
<td>KTR</td>
<td>Various criminal cases which have not reached the formal investitive stage</td>
</tr>
<tr>
<td>MoF</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MoI</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>MoJ</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>PC</td>
<td>Prosecutorial Council</td>
</tr>
<tr>
<td>SRJ</td>
<td>Strategy for Reform of the Judiciary</td>
</tr>
<tr>
<td>SPO</td>
<td>State Prosecutor Office</td>
</tr>
<tr>
<td>SSPO</td>
<td>Supreme State Prosecutor Office</td>
</tr>
<tr>
<td>TNA</td>
<td>Training Needs Assessment</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>OBJEKTIVE, SCOPE AND STRUCTURE</td>
<td>1</td>
</tr>
<tr>
<td>1. OVERALL CONCLUSIONS AND PRIORITIES</td>
<td>4</td>
</tr>
<tr>
<td>2. GOVERNANCE AND MANAGEMENT</td>
<td>9</td>
</tr>
<tr>
<td>General Findings</td>
<td>9</td>
</tr>
<tr>
<td>2.1. Key judicial governance bodies or Governance of Judiciary in Montenegro</td>
<td>12</td>
</tr>
<tr>
<td>2.1.1. Composition of the Judicial Council and the Prosecutorial Council and appointment of their members</td>
<td>15</td>
</tr>
<tr>
<td>2.1.2. Powers of the Councils</td>
<td>16</td>
</tr>
<tr>
<td>2.1.3. Managerial Capacities in the Councils</td>
<td>20</td>
</tr>
<tr>
<td>2.1.4. Structure and Capacities of the Ministry of Justice</td>
<td>24</td>
</tr>
<tr>
<td>2.2. Effectiveness of Organizational Management</td>
<td>27</td>
</tr>
<tr>
<td>2.2.1. Internal organization of courts and State Prosecution Offices</td>
<td>27</td>
</tr>
<tr>
<td>2.2.2. Managing caseloads and workloads</td>
<td>31</td>
</tr>
<tr>
<td>2.3. Effectiveness in Resource Management</td>
<td>33</td>
</tr>
<tr>
<td>2.4. Effectiveness in strategic management</td>
<td>35</td>
</tr>
<tr>
<td>2.4.1. Development of strategies and their implementation</td>
<td>35</td>
</tr>
<tr>
<td>2.4.2. The perception of the judicial reform process by key stakeholders</td>
<td>35</td>
</tr>
<tr>
<td>2.5. Effectiveness of Integrity Mechanisms</td>
<td>38</td>
</tr>
<tr>
<td>2.5.1. Independence</td>
<td>38</td>
</tr>
<tr>
<td>2.5.1.1. Perception of independence</td>
<td>38</td>
</tr>
<tr>
<td>2.5.1.2. Legislative guarantees of independence</td>
<td>40</td>
</tr>
<tr>
<td>2.5.2. Perception of Judicial Integrity</td>
<td>42</td>
</tr>
<tr>
<td>2.5.2.1. Perceptions of impartiality and fairness</td>
<td>42</td>
</tr>
<tr>
<td>2.5.2.2. Perceptions of Integrity</td>
<td>45</td>
</tr>
<tr>
<td>2.5.2.3. Perceptions of trust and confidence</td>
<td>46</td>
</tr>
<tr>
<td>2.5.2.4. Perception of corruption</td>
<td>49</td>
</tr>
<tr>
<td>2.5.2.5. Extent of reported corruption</td>
<td>50</td>
</tr>
<tr>
<td>2.5.3. Integrity Building Mechanisms</td>
<td>52</td>
</tr>
<tr>
<td>2.5.3.1. Random Case Assignment</td>
<td>53</td>
</tr>
<tr>
<td>2.5.3.2. Integrity plans</td>
<td>55</td>
</tr>
<tr>
<td>2.5.3.3. Gift-giving rules</td>
<td>57</td>
</tr>
<tr>
<td>2.5.3.4. Recusals (Exemptions and Exclusions)</td>
<td>58</td>
</tr>
<tr>
<td>2.5.3.5. Disciplinary offences</td>
<td>59</td>
</tr>
<tr>
<td>2.6. Recommendations</td>
<td>61</td>
</tr>
<tr>
<td>3. EFFICIENCY AND EFFECTIVENESS OF JUSTICE SERVICES</td>
<td>64</td>
</tr>
<tr>
<td>General Findings</td>
<td>64</td>
</tr>
<tr>
<td>3.1. Demand, Efficiency/Effectiveness, Timeliness and Productivity of Courts in Montenegro</td>
<td>66</td>
</tr>
<tr>
<td>3.1.1. Workloads and Caseloads</td>
<td>66</td>
</tr>
<tr>
<td>3.1.1.1. Overall workloads</td>
<td>67</td>
</tr>
<tr>
<td>3.1.1.2. Workloads by Court Type</td>
<td>69</td>
</tr>
<tr>
<td>3.1.1.3. Demographic Differences and Caseloads per Judge</td>
<td>74</td>
</tr>
<tr>
<td>3.1.2. Productivity of the Courts</td>
<td>78</td>
</tr>
<tr>
<td>3.1.2.1. Case Disposition</td>
<td>78</td>
</tr>
</tbody>
</table>
7.2.1. Budget Levels and Sources ............................................................................................................. 160
7.3. Budget Structure ............................................................................................................................... 165
  7.3.1. Effectiveness of Budget Execution ............................................................................................... 171
    7.3.1.1. Analysis of cost per case ......................................................................................................... 171
  7.3.2. Barriers to the Efficient Utilization of Resources ........................................................................ 173
  7.3.3. Analysis of Arrears and Forced Collection .................................................................................. 174
7.4. Recommendations ............................................................................................................................. 177
8. HUMAN RESOURCE MANAGEMENT .................................................................................................. 181
   General Findings .................................................................................................................................. 181
   8.1. Human resource methodology and staffing levels ................................................................. 182
      8.1.1. Methods used to set staffing levels ......................................................................................... 182
      8.1.2. Numbers of judges, prosecutors and their staff .................................................................... 184
      8.1.3. Temporary staffing ................................................................................................................. 188
      8.1.4. Staffing Ratios .......................................................................................................................... 191
      8.1.5. Distribution of staff among the subcategories and its impact on performance .................. 194
      8.1.6. Impact of vacant positions ...................................................................................................... 196
   8.2. Recruitment, Evaluation and Promotions of Judges and Prosecutors ........................................ 198
   8.3. Disciplinary procedure .................................................................................................................. 202
   8.4. Training ......................................................................................................................................... 204
   8.5. Gender equity ............................................................................................................................... 206
   8.6. Age structure ................................................................................................................................. 206
   8.7. Salary of Judges, Prosecutors and Administrative Staff ............................................................ 207
   8.8. Recommendations ....................................................................................................................... 211
9. ICT MANAGEMENT ............................................................................................................................. 215
   General findings .................................................................................................................................. 215
   9.1. Benchmarking analysis .................................................................................................................. 216
   9.2. Governance of ICT ....................................................................................................................... 216
   9.3. Equipment ..................................................................................................................................... 218
   9.4. Electronic communication ............................................................................................................ 219
   9.5. Case Management Systems Functionality .................................................................................... 221
   9.6. Recommendations ....................................................................................................................... 222
10. Infrastructure Management ................................................................................................................. 224
    General Findings ............................................................................................................................... 224
    10.1. Existing Infrastructure Stock ..................................................................................................... 225
    10.2. Physical Condition of Judicial Facilities .................................................................................... 228
    10.3. Management of Judicial Infrastructure ...................................................................................... 230
    10.4. Recommendations ..................................................................................................................... 232
List of Figures

Figure 1 - Roles and Responsibilities of the Ministry of Justice vis-à-vis Courts ........................................... 14
Figure 2 - Roles and Responsibilities of the Ministry of Justice vis-à-vis State Prosecution Offices ... 14
Figure 3 - Roles and Responsibilities of the Judicial Council vis-à-vis courts ........................................... 17
Figure 4 - Roles and Responsibilities of the Prosecutorial Council vis-à-vis SPOs .......................................... 17
Figure 5 - Overview of Judicial Council’s commissions and their tasks ......................................................... 19
Figure 6 - Overview of Prosecutorial Council’s commissions and their tasks .............................................. 19
Figure 7 – Organizational Structure of the Judicial Council ......................................................................... 21
Figure 8 – Organizational Structure of the Prosecutorial Council ................................................................. 22
Figure 9 – Organizational Structure of the Ministry of Justice ..................................................................... 25
Figure 10– Organization of Courts in Montenegro ......................................................................................... 28
Figure 11 - Organization of Prosecutorial Services in Montenegro ............................................................... 29
Figure 12 - Judges’ Perception of the most important Judiciary Reform Issue .............................................. 36
Figure 13 - Prosecutors’ Perception of the most important Judiciary Reform Issue ...................................... 36
Figure 14 - The Lawyers Perception of the most important Judiciary Reform Issue .................................... 37
Figure 15 - The perception of the Judiciary Reform Effects ......................................................................... 38
Figure 16 - WEF Global Competitiveness Report, Judicial Independence in the EU and Montenegro, 2016-2017 ........................................................................................................................................... 39
Figure 17 - The perception of the independence of the Judiciary ................................................................. 39
Figure 18 ......................................................................................................................................................... 40
Figure 19 - General perception of fairness of judiciary ................................................................................. 42
Figure 20 - Citizens and business sector: general perception of fairness of courts by users of court services without experience of a court case and with experience of a court case ........................................................................... 42
Figure 21 - User of court services with experience of a court case perception of fairness of their own court case compared to perception of fairness of judiciary in general ........................................................................... 43
Figure 22 - Perception of fairness in concrete court case depending on judgement ..................................... 43
Figure 23 - Perception of fairness of judiciary in concrete court case ............................................................ 44
Figure 24 - Percentage of filed appeals among participants in a court case whose judgement was against them depending on assessment of fairness of the trial ........................................................................... 44
Figure 25 - Perception of reasons for inadequate fairness of judiciary ......................................................... 45
Figure 26 - Perceptions of Factors that Undermine the Integrity of the Judicial System among Judges, Prosecutors, and Lawyers ............................................................................................................................... 46
Figure 27 - Citizens’ trust in institutions ......................................................................................................... 46
Figure 28 - Citizen Perceptions of Factors that Undermine Trust in the Judicial System ............................... 47
Figure 29 - Perception of the media influence on the integrity of courts and prosecutor’s offices .... 47
Figure 30 - Perception of NGO influence on the integrity of courts and prosecutor offices .................. 48
Figure 31 - Judges perception on contribution of control bodies to the integrity of judges .................................. 48
Figure 32 - Prosecutors perception on contribution of control bodies to the integrity of prosecutors .................................. 49
Figure 33 - Perception of corruption in the judiciary among judges, prosecutors and lawyers, citizens and business sector representatives ..................................................................................................... 49
Figure 34 - General perception on the presence of corruption in state institutions .................................. 50
Figure 35 - Providers and users of services and lawyers who reported that someone had suggested an informal means to influence case outcomes...

Figure 36 - Share of judges, prosecutors and lawyers who report the following sources as having attempted to resort to undue means to affect their work...

Figure 37 - Perception of the presence of corruption in administrative court services...

Figure 38 - Users and providers of administrative services — the experiences with suggesting usage of informal means aimed at more efficient completing of an administrative court task...

Figure 39 - Users and providers of administrative services — accepting of informal means aimed at more efficient completing of an administrative court task...

Figure 40 - Experience with disciplinary liability...

Figure 41 - Incoming Cases by Court Type...

Figure 42 - Incoming First Instance Cases per 100 inhabitants...

Figure 43 - Total Incoming Cases...

Figure 44 - Incoming Cases by Court Type...

Figure 45 - Incoming Cases by Case Type in Basic Courts...

Figure 46 - Incoming Cases by Case Type in Commercial Court(s)...

Figure 47 - Incoming Cases by Case Type in High Courts...

Figure 48 - Incoming Cases by Case Type in Appellate Court...

Figure 49 - Incoming Cases in Administrative Court...

Figure 50 - Incoming Cases in the Supreme Court...

Figure 51 - Incoming Cases by Court...

Figure 52 -Incoming Cases by per 100 Inhabitants...

Figure 53 - Incoming Caseload per Judge by Court Type...

Figure 54 - Cases Resolved by Basic Courts and Delegated Cases...

Figure 55 - Average Dispositions per Judge...

Figure 56 - Clearance Rates by Court Types...

Figure 57 - Clearance Rates by Basic Court...

Figure 58 - Clearance rates of 1st instance cases...

Figure 59 - Unresolved Cases from 2013 to 2017 (excluding Misdemeanor)

Figure 60 - Unresolved Cases at the End of Year...

Figure 61 - Congestion Ratio...

Figure 62 - Unresolved old cases (as defined by Judicial Council of Montenegro)...

Figure 63 -Age of Unresolved Cases at the End of 2017...

Figure 64 - Disposition times of 1st instance cases...

Figure 65 - Average Percentage of Cases Assessed as Lasting Longer Than Necessary by Practitioners and Court Users...

Figure 66 - Percentage of Citizens and Business Sector Representatives Who Believed Their Court Cases Lasted Longer Than Necessary, By Type Of Cases...

Figure 67 - Number of Months from Filing the Case to the First Hearing...

Figure 68 - Judges’ Views on Factors Reducing Efficiency of Their Courts...

Figure 69 - Percentage of Judges, Prosecutors and Lawyers Who Believe That Given Circumstances Have Been Occasional or Frequent Reasons for the Extended Duration of Cases in Which They Participated During the Past 12 Months...
Figure 70 - Judges, Prosecutors and Lawyers who Believe the Following Have Been Occasional or Frequent Reasons for Cancelling Hearings .................................................................................................. 99
Figure 71 - Judges, Prosecutors and Lawyers who Believe the Following Are Occasional or Frequent Reasons for Hearings not Contributing to Case Solution .................................................. 99
Figure 72 - Number of Cases Received by Public Prosecutors per 100 Inhabitants according to CEPEJ in 2014 ........................................................................................................................................ 101
Figure 73 - Cases Received by Prosecutors per 100 Inhabitants in Montenegro 2010-2014 According to CEPEJ ....................................................................................................................................... 102
Figure 74 - Received Criminal Complaints from 2014 to 2017 .................................................................................................................................................... 102
Figure 75 - Received Criminal Complaints per SPO from 2014 to 2017 ..................................................................................................................................................... 103
Figure 76 - Received Criminal Complaints per Prosecutor in SPOs from 2014 to 2017 ............................................................................................................................... 104
Figure 77 - Received KTR cases in SPOs 2014-2017 ............................................................................................................................................................... 106
Figure 78 - Indictments form SPOs, 2014 to 2017 ............................................................................................................................................... 108
Figure 79 - Indictments per SPO from 2014 to 2017 ............................................................................................................................................... 108
Figure 80 - Resolved Criminal Complaints (Adults, Legal Entities and Responsible Persons in Legal Entities) in 2017 .................................................................................................................................. 109
Figure 81 - Received, Resolved, Indicted and Unresolved Criminal Complaints from 2014 to 2017 . 110
Figure 82 - Indictments Processing from 2014 to 2017 ........................................................................................................................................ 111
Figure 83 - General perception of quality of work of courts ........................................................................................................................................ 117
Figure 84 - General perception of the quality of the work of state prosecution ........................................................................................................ 118
Figure 85 - Perception of precision and clarity of laws – Judges, prosecutors and lawyers .......... 119
Figure 86 - Reasons for which the quality of court services was not better that were assessed as very important ...................................................................................... 119
Figure 87 - The major reason why the quality of judicial services was not higher ....................... 120
Figure 88 - Percentage of judges, prosecutors and lawyers who think that the mentioned problems occur occasionally or frequently in the enforcement of laws .......................................................... 120
Figure 89 - Number of Appeals Submitted and Cases Resolved from 2014 to 2017 (excl. Misdemeanor Courts) ........................................................................................................................................ 123
Figure 90 - Percentage of filed appeals in individual court cases .................................................. 127
Figure 91 - Trust in appellate system ............................................................................................ 127
Figure 92 - Rendered Judgments – Defendant Found Guilty per SPO 2014-2017 ......................... 129
Figure 93 - Percentage of Judgments – Convictions and Appeals Filed by Basic and High SPOs 2014 – 2017 ....................................................................................................................................... 129
Figure 94 - Perception of the quality of the work of bailiffs ........................................................... 130
Figure 95 - Perception of the quality of work of court experts ..................................................... 131
Figure 96 - Percentage of citizens, business sector representatives, judges, prosecutors and lawyers who think that judicial system is accessible or very accessible in terms of defined aspects .......... 134
Figure 97 - Average costs in Euros of actual concrete court cases based on data obtained from the citizens and business sector ........................................................................................................ 136
Figure 98 - Citizens – evaluation of the amount of cost of court processes in relation to the quality of court services ................................................................................................................ 136
Figure 99 - Percentage of the citizens with and without experience of a court case who think the judicial system is inaccessible for specified reasons ........................................................................ 136
Figure 100 - Percentage of representatives of business sector with and without experience of a court case who think that judicial system is not accessible ..................................................................... 139
Figure 134 - Ratio of Prosecution Staff to Prosecutor, Montenegro and EU, 2014 CEPEJ data
Figure 135 - Shadow workforce, composition and as compared to total workforce
Figure 136 - Contractors and Absentee Rates – 2017
Figure 137 - Budgeted staff per judge by category of staff, 2017
Figure 138 - Budgeted staff per prosecutor by category of staff, 2017
Figure 139 - Ratio of Employees to Judge by Category of Staff, 2016
Figure 140 - Employee to Prosecutor Ratio by Category of Staff, 2017
Figure 141 - Vacant permanent staff positions in courts by category of staff, 2017
Figure 142 - Vacant staff positions in prosecution offices by category of staff, 2017
Figure 143 - Number of Trainees by Category of Staff, 2014-2016
Figure 144 - Citizens and business sector representatives: the satisfaction with infrastructure in judiciary
Figure 145 - Recurrent Building Maintenance Expenditures in Courts (in 1,000 Euro), 2014-2017
Figure 146 - Recurrent Building Maintenance Expenditures in SPOs (in 1,000 Euro), 2014-2017
List of Tables

Table 1 -Incoming Cases by Case Type in Basic Courts from 2014 to 2017 .............................................. 70
Table 2 -Average Incoming Caseload per Judge in Basic Courts 2017 ......................................................... 77
Table 3 -Total Disposed Cases (Resolved and Delegated) by Court and Case Type from 2014 to 2017 ......................................................................................................................... 79
Table 4 -Average Disposition per Judge in Basic Courts 2017 ................................................................. 82
Table 5 -Average Disposition per Judge in Misdemeanor Courts 2017 .................................................... 83
Table 6 -Unresolved Cases at the End of the Year by Court and Case Type from 2014 to 2017 .......... 88
Table 7 -Percentage of Cases by Duration in Months, According to Citizens and Business Sector Representatives in Their Cases .......................................................................................... 93
Table 8 -Enforcement Cases Processed by Bailiffs from 2014 to 2017 ............................................. 96
Table 9 -Review of Perpetrators of Criminal Offenses in Basic SPO in Podgorica from 2014 to 2017 .............................................................................................................................................. 101
Table 10 -Received Criminal Complaints per Prosecutor in SPOs from 2014 to 2017 ......................... 105
Table 11 -Estimated Appeal Rates per Court Type from 2014 to 2017 ................................................ 123
Table 12 -Confirmation Appeal Rates per Court Type from 2014 to 2017 ............................................. 124
Table 13 -Confirmation Rates per Court from 2014 to 2017 ................................................................. 125
Table 14 -Modification and Reversal Rates per Court in 2017 ............................................................. 126
Table 15 -Divorce Costs as a Share of Average Income ..................................................................... 137
Table 16 -Total expenditure of the Montenegro justice system (2014-2017), in EUR ........................ 156
Table 17 -Approved versus Requested budget of the courts system (2014-2016), in EUR ............... 159
Table 18 -Court fees collected per court and per active case (in EUR), 2014-2017 ............................ 164
Table 19 -Amount of liabilities settled through enforced collection, 2014-2017 ............................... 174
Table 20 -Arrear levels in courts, 2014-2017 ......................................................................................... 176
Table 21 -Number of judges, prosecutors and staff in courts and SPOs, 2016 and 2017 ................ 187
Table 22 -Budgeted and filled positions in courts .................................................................................... 188
Table 23 -Budgeted and filled positions in prosecution offices ............................................................. 188
Table 24 -Shadow workforce in courts ................................................................................................. 189
Table 25 -Shadow workforce in SPOs .................................................................................................... 190
Table 26 -Basic Courts’ disposition rates compared to staffing patterns, 2017 ........................................ 195
Table 27 -Disciplinary initiatives and sanctions imposed by offence type, 2014-2017 ..................... 203
Table 29 -Percentage of Women in Leadership Positions in 2017 ..................................................... 206
Table 30 -Age Structure of Judges and State Prosecutors in 2017 ......................................................... 207
Table 31 -Age structure of Court Presidents and Heads of SPOs in 2016 ............................................. 207
Table 32 -Salary Coefficients in the Judicial System .............................................................................. 208
Table 33 -Net Salary Expenditures of Prosecutors, 2014-2017 (in EUR) ............................................. 209
Table 34 -Judge Salaries and Other Expenditures in 2017 (in EUR) ..................................................... 210
Table 35 -Other Compensation to Courts’ Administrative Staff in 2017 (in EUR) ............................. 211
Table 36 -Requested versus approved ICT budget for 2016 .............................................................. 218
Table 37 -Geographic Locations of Basic and Misdemeanor Courts and number of inhabitants in courts’ territory .................................................................................................................... 225
Table 38 - Geographic Locations of Basic Prosecutions and Number of Inhabitants on Prosecution's Territory

Table 39 - Judicial Facilities (available data only), as of mid-2017

Table 40 - Recurrent Building Maintenance Expenditures in SPOs (in 1,000 Euro), 2014-2017

Table 41 - Infrastructure budget and expenditures of Judicial and Prosecutorial Council, 2014-2017

Table 42 - Judicial Authorities' Assessment of Immediate Repairs to Facilities
List of Boxes

Box 1 - Managerial and Judicial Functions of Court Presidents in the Netherlands .......................... 11
Box 2 - Authorities of the Secretariat of the Judicial Council and the Secretariat of the Prosecutorial Council .................................................................................................................. 23
Box 3 - Introduction of preparatory departments ................................................................................. 31
Box 4 - Case weighting methodology as a tool for ensuring equal distribution of cases ................. 33
Box 5 - The rules pertaining to development of integrity plans.......................................................... 56
Box 6 - Court Statistical Data in Montenegro ....................................................................................... 67
Box 7 - Misdemeanor Courts Jurisdiction and their Statistical Data .................................................... 71
Box 8 - Legislative Changes Concerning the Administrative Court ..................................................... 73
Box 9 - The Effects of Implemented Reforms .......................................................................................... 78
Box 10 - Case Assignment to Bailiffs..................................................................................................... 95
Box 11 - 2016 was the fifth year of full application of the new Criminal Procedure Code and the prosecution-led adversarial system .................................................................................. 103
Box 12 - The Special State Prosecutor’s Office .................................................................................... 106
Box 13 - Indictments as a part of criminal proceedings ....................................................................... 110
Box 14 - the CEPEJ scoring system for ICT development .................................................................. 216
OBJECTIVE, SCOPE AND STRUCTURE

1. This Functional Review presents a comprehensive, results-oriented assessment of the functioning of Montenegro’s judicial system from 2014 through 2017, and the country’s compliance with the requirements of Chapter 23 (Justice and human rights) of the European Union’s Acquis Communautaire. The Functional Review was requested by Montenegro’s Ministry of Justice (MoJ). It presents an assessment of sector performance to enable Montenegro to assess the impact of future justice reform initiatives. More specifically, the Functional Review (FR) is intended to assist Montenegro authorities in developing its Strategy for the Reform of the Judiciary 2019-2023, and an accompanying Action Plan.

2. To attain the accession standards reflected in Chapter 23, Montenegro has adopted several strategies. The most recent of these include the Strategy for the Reform of the Judiciary (2014-2018), the Strategy for Information and Communication Technologies in the Judiciary (2016-2020), the Strategy for the Development of Human Resources in Judiciary (2016-2020), and the Strategy for the Execution of Criminal Sanctions (2017-2021). The Strategy for the Reform of the Judiciary (SRJ) was accompanied by an Action Plan for its implementation. However, Montenegro never developed a well-defined monitoring and evaluation framework or a clear set of results indicators to track achievements reached during implementation of the strategy. Consequently, this Review focuses more directly on Montenegro’s compliance with the judicial and prosecutorial reform requirements of Chapter 23 itself and European Union (EU) and Council of Europe (CoE) best practices.

3. The Functional Review was conducted following the structure of other Functional Reviews conducted by the World Bank in the region and includes elements of both external and internal performance assessments. The Review first examines the governance of the system, followed by an assessment of its external performances in terms of its efficiency, quality and the access to justice it provides. The internal performance portions of the Review focus on how human resources, financial matters, information technology, and infrastructure are managed and how they influence the external performance of the system.

4. The Review’s analyses draw on a mix of quantitative and qualitative data collected by or obtained from the Judicial Council, Prosecutorial Council, Ministry of Justice, Supreme Court, Supreme State Prosecutor Office, and Ministry of Finance; statistical analyses of case management; finance and human resource data; and key informant interviews. The focus throughout this Review

---

1 The SRJ’s description of its approach to achieve its goals stated: “The Reform of the Judiciary principally relies on measures set out in Action Plans for Chapters 23 and 24 [Justice, freedom and security] for negotiations between Montenegro and the EU. In addition to the reform areas described in Action Plans for Chapters 23 and 24, the Strategy also covers other reform areas in the justice sector. Therefore, the Strategy contains guidelines on: improving criminal and civil law, improving judicial management and administration; further harmonization and publication of the case law; improving transparency of the work done by judicial institutions; improving infrastructure and security systems of judicial buildings; developing rules and practice applicable on vulnerable categories of persons; further development of international and regional judicial cooperation; capacity building of judges and public prosecutors and employees in judicial institutions in the area of implementation of the European Union law etc. Moreover, one part of the Strategy is focused on strategic guidelines, the aim of which is reform and further development of judicial institutions and other institutions working with the judiciary.”
has been to present the most objective and realistic picture possible, to help Montenegro continue its progress towards aligning the performance of its judicial system with that of EU Member States, and to improve the performance of the system for the benefit of the users of the system.

5. **Consistent with other Functional Reviews conducted by the Bank, the recommendations of the Result Oriented Review of Delivery of Justice in Montenegro found at the end of each chapter are designed to be specific and actionable.**

6. Montenegro’s human resource and financial capacities should be sufficient, nevertheless, to achieve proposed recommendations, Government of Montenegro and judicial authorities must decide which recommendations to adopt and how to fund and sequence them. Each recommendation is accompanied by a series of implementation steps to achieve a specific result. Each step also suggests which institution(s) should be responsible for taking the recommendation forward, and other institutions whose collaboration would be necessary for effective implementation. Suggested timeframes are indicated for each step, ranging from short term (12 months), to medium term (2-3 years) and long term (5 years). The FR assumes implementation of the recommendations starting in 2019 to coincide with the anticipated beginning of Montenegro’s new judicial reform strategy.

7. **The period covered by this Review saw several significant developments regarding judicial and prosecutorial reforms.** Montenegro and the EU opened negotiations on Chapter 23 in December 2013, Montenegro’s Parliament adopted its 2014-2018 SRJ in April 2014, a new system for judicial appointment was introduced in October 2016, and a rationalization of parts of the judicial network occurred from 2013 to 2015. Other developments during the period included the establishment of the Prosecutorial Council in 2013, the introduction of private bailiffs in 2014, the merger of the two commercial courts in 2015, the creation of the Center for Training in Judiciary and State Prosecution as an autonomous body in 2015, and the Government’s adoption of an Information and Communication Strategy for 2016-2020. This last strategy was designed to create a unified judicial information/case management system.

8. **Montenegro had many other issues to contend with from 2014 to 2017, including the country’s accession to NATO,** which impacted the reform initiatives. The Montenegro 2019 Report of the European Commission described the country’s political situation from October 2016 to February 2019 as “fragmented, polarized and marked by lack of genuine political dialogue. Limited progress was made in re-establishing the political dialogue in Parliament in the course of 2018 with the temporary and partial return of majority of the opposition parties to Parliament and the establishment of the temporary parliamentary committee. However, following the detention of one opposition Member of Parliament in late 2018, and the allegations of corruption and illegal political party

---

2 Not all countries face the same challenges in implementing reforms. Montenegro, with its population of less than 700,000 people, has relatively few professionals to ensure that reforms on paper are translated into system improvements on the ground. Montenegro also has a significantly lower GDP than other small countries within the EU and the CoE. For example, Montenegro’s estimated GDP per capita in 2017 was USD 7,782.84, while Luxembourg, with an estimated 2017 population of 583,455, had a 2017 GDP per capita of USD 104,103.04; Latvia had a 2017 estimated population of 1.94 million and a 2017 GDP per capita of USD 15,594.29, and Lithuania had an estimated 2017 population of 2.89 million and a 2017 GDP per capita of USD 16,680.68. These discrepancies complicate comparisons of Montenegro’s reform results to the results of other CoE members.

3 Montenegro first approached NATO about becoming a member in 2009, and it was invited to start NATO accession talks in December 2015. The foreign ministers of NATO member states signed the accession protocol for Montenegro in May 2016, and it joined the alliance in June 2017.
financing (the ‘envelope affair’) in early 2019, the opposition largely returned to boycotting Parliament. These allegations also triggered mobilization of citizens though regular street protests...”

9. This Report is structured as follows: Section 1 presents the overall conclusions and priority recommendations from the Functional Review; Section 2 presents Governance and Management over the system; Section 3 presents Efficiency and Effectiveness of justice services; Section 4 presents Quality of justice services; Section 5 Access to justice services; Section 6 Presents Financial resource management; Section 7 presents Human resource management, Section 8 presents ICT management and Section 9 presents Infrastructure management.

---

1. OVERALL CONCLUSIONS AND PRIORITIES

1. European integration process shaped judicial reform activities in Montenegro. Under the framework of Chapter 23 based on Action plan adopted by Government of Montenegro, the EU established a comprehensive set of 45 interim benchmarks. It is only once the interim benchmarks have been met sufficiently, that the closing benchmarks are identified. To close the negotiation with the EU, Montenegro needs to demonstrate a solid track record of judicial reforms and existence of an independent judiciary with capacities to efficiently perform its tasks of maintaining and safeguarding the rule of law is a cornerstone of these policies.

Governance and Management

2. The composition of the Judicial Council from 2014 to 2017 did not meet EU criteria for ensuring the independence of the Council. The Judicial Council (JC) was made up of the Minister of Justice and the President of the Supreme Court as ex officio members, as well as eight elected members. Four of the eight were judges elected by their peers, while the remaining four were elected from among distinguished lawyers by a qualified majority of the Parliament. The CCJE\(^6\) Consultative Opinion 10 (2007), GRECO’s\(^7\) recommendation and case law of the European Court of Human rights\(^8\) acknowledge that a judicial council may have a mixed composition of judges and non-judges, but only if most of its members are judges elected by their peers, which was not the case in Montenegro. The CCJE and GRECO also recommend that the chair of the Judicial Council be a judge, but in Montenegro the chair had to be one of its non-judge members.\(^9\)

3. Some of the delays in implementation of reforms may have been unavoidable based on the number, scope and timing of strategies and action plans in play. Other factors affecting coordination of the various strategies were the administrative and management burdens posed by compliance with the EU accession process (particularly related to Chapter 23 of the Acquis), and by the lack of clear, coordinated result indicators to track reform gaps and results. The Ministry of Justice also was understaffed considering the ambitious agendas set forth by the Program of Accession of Montenegro to the European Union, the Action Plans for Chapters 23 and 24, the SRJ for 2014 to 2018, the Strategy for the Execution of Criminal Sanctions (2017-2021) and the Strategy for Information and Communication Technologies in the Judiciary (2016 - 2020) (the ICT Strategy).

4. The distribution of responsibilities between the governing bodies and courts/prosecution offices also hampered effective coordination and performance of judicial functions. Almost all aspects of governance of the system depended on policies and decisions of agencies beyond the Judicial Council, Prosecutorial Council, courts and State Prosecutors’ Offices, particularly the MoJ, the Ministry of Finance (MoF), the Center for Training in Judiciary and State Prosecution, the Human Resource Management Authority, the Government Property Administration and the Government.

---


\(^6\) The Consultative Council of European Judges is an advisory body of the Council of Europe on issues relating to the independence, impartiality and competence of judges.

\(^7\) The Group of States against Corruption is the Council of Europe body competent to monitor States’ compliance with the organisation’s anti-corruption standards.


\(^9\) Law on the Judicial Council.
5. Montenegro showed improvements in both efficiency and productivity between 2014 and 2016, but it remained well below EU averages on several performance indicators, and the improvements that were seen came at substantial costs to the system. Montenegro’s case clearance rates of slightly more than 100 percent allowed some reductions in case backlogs and congestion and disposition times improved, although the improvements were not consistent even among courts or prosecution offices of the same jurisdiction levels. Examining 2014 data in 2016, the European Commission for the Efficiency of Justice (CEPEJ) concluded Montenegro’s was the second most expensive judicial system in Europe based on GDP. Even after 2014, the total expenditures for courts (excluding the Misdemeanor Courts which became part of the judiciary only in 2015) grew to more than EUR 30 million in 2016, for this country of fewer than 700,000 people.

6. Available data provided no objective rationale for increasing the number of judges and increasing levels of court staff and judicial expenditures. The judicial system’s gross expenditure grew rapidly in the period from 2014 to 2017, primarily within the court system. The most significant increase was seen in 2016 when the total budget rose by EUR 5.78 million because of the EUR 1.89 million purchase of a building for the Administrative Court. Most of the remaining increase was due to a sharp rise in the courts’ wage bill of nearly 18 percent in 2016.

7. Inconsistencies in performance and expenses could not be explained by available data or by analyses done by any institution in the system. Example No. 1: the variation across courts for the share of annual budgets spent on wages was around 20 percent. Example No. 2: there was a general although not universal trend of increasing costs per active case during the period, but even within the same categories of courts there were striking differences. While most of the variations were due to differences in wage and service costs, available data did not explain why such wide variations occurred among courts at the same jurisdiction levels.

8. The number of incoming cases reaching the courts declined, but the number of judges in the system did not decline even after investigations were transferred to prosecutors, probate cases were transferred to public notaries and new enforcement cases were assigned to bailiffs. Examining 2016 data in 2018, CEPEJ reported an EU average of 22 judges per 100 inhabitants, while Montenegro had more than double the number of judges to inhabitants or 41 judges per 100,000 inhabitants. In addition, the number of non-judge, permanent court staff grew by 6 per cent each year starting in 2014. There also was a clear upward trend in the absolute number of prosecutors’ staff.

9. Data about many human resource aspects of Montenegro’s judicial system were not available for all four years of the period being reviewed, and much of the data that were available were not disaggregated sufficiently for all review criteria to be examined. When data were not available for all four years, this chapter uses the most recent available data as the basis for analysis; in most instances, this was data for 2017 or 2016. The chapter also uses the most recent data available when the patterns of data did not change from one year to the next. Again, in most of these situations it is data from 2017 or 2016 that is used.

---

10. There were shortages in the numbers of staff positions assigned to monitoring all aspects of the system’s performance, and few positions required staff to have the management experience they needed to work effectively. For example, authorized staff for the Judicial Council’s Department of Internal Audits consisted of the department head and two other employees, and the Prosecutorial Council (PC) had one staff position for statistical reporting and data analysis. It was also clear that any training provided from 2014 to 2017 on management skills did not compensate for the lack of management experience among the system’s leaders and key staff members. Similarly, the problems posed by the number of and inconsistencies among the many strategies for reforming parts of the judicial system were aggravated by the lack of experience, and the lack of training in strategic planning for judges, prosecutors, the JC and PC and their key staff members.

ICT

11. The case management system (CMS) used in courts (PRIS) needed to be replaced, and it was not used in prosecutors’ offices at all. PRIS initially was designed to be used by both courts and prosecutors, but because of unresolved ownership issues it was never rolled out to include prosecutors. In 2016, it was decided that PRIS would be replaced by a completely new system as detailed in the ICT Strategy, because PRIS was based on outdated technology and vendor support had been discontinued for all its main software components. However, no new CMS system was in place by early 2019.

12. The ICT budget for the period under review fell far short of the funding expected in the ICT Strategy. For example, in 2016 the ICT budget request was EUR 2 million while the approved budget was only EUR 210,000. The total budget estimate for a successful ICT strategy implementation was EUR 6.7 million according to the ICT Strategy.

Financial Management

13. Liabilities settled through enforced collection reached an alarming 20 percent of the court system’s budget by 2017, increasing from slightly less than EUR 3 million in 2014 to EUR 6.1 million in 2017. These invoices were not tracked appropriately in the courts’ accounting systems, and the fragmented nature of the payment of court expenses meant no steps were taken to eliminate the extra expenses triggered by the enforced collection process.

Quality

14. It was not clear how much trust Montenegrins had in the integrity of the judicial system. A 2016 survey conducted for the World Bank indicated more than 60% of users and 29% of lawyers believed that corruption was present in the judiciary, although 59% of citizens mainly or fully trusted the judiciary and very few judges and prosecutors surveyed believed corruption was present in the judiciary. None of those surveyed who were employed in administrative court services admitted that corruption was present in their departments, but during the same survey 20 to 30 percent of users of these services believed that corruption is present. Of the 20 to 30 percent of citizens who reported resorting to informal means in trying to influence court employees, 83 percent mentioned

---

11. Although the EU Justice Scoreboard does not ask directly about perceptions of corruption in the judiciary, skepticism about the independence of the judiciary is not unusual in many EU states. See Figure 55 of the Scoreboard, at https://ec.europa.eu/info/sites/info/files/2018_eu_justice_scoreboard_quantitative_data_web_ok.pdf.
“pulling strings”, 29 percent gave a present, and approximately 20 percent used “services for a service”.

15. **The survey results were consistent with the power of rumor often found in smaller societies.** Overcoming that power required much more extensive outreach efforts than any portion of the judicial system made during the review period. The reluctance to challenge any existing arrangement also is particularly strong in smaller countries such as Montenegro, because reforms can affect so many personal relationships.

16. **The perceptions of judges and prosecutors about information about the judicial system were at odds with the opinions of court users, who generally were disappointed with the amount and type of information available.** For instance, more than 70 percent of the judges questioned perceived bulletin boards as main sources of information for court users, and one in four judges identified brochures and leaflets as sources of information. However, there was a pronounced lack of free resources available to prospective and actual court users about procedural and substantive legal provisions.

17. **The Functional Review team suggests leaders and international development partners focus on the following five priorities to achieve the greatest performance improvements in the long run.** Most of these priorities affect several different aspects of the system’s operations, e.g., governance, efficiency, human resources or financial management. Since the needs underlying these priorities are so fundamental to the system, if the priorities are not addressed the system will stagnate instead of progressing.

i. **Amendments to the Montenegrin Constitution and any applicable laws are necessary to bring the organization of the Judicial Council in line with EU criteria for council membership and leadership.** This is to ensure independence of the judiciary, which is one of the principal values on which the EU is built. It is unlikely that Montenegro could join the EU without making these changes.

ii. **Training on all aspects of the formulation, administration and management of performance-based budgeting and reporting should be provided as soon as possible to all members of the Judicial and Prosecutorial Councils, the heads of their departments, court presidents, heads of prosecutor offices, and all Council and Ministry of Justice staff whose job duties include formulating, monitoring or assisting with implementation of the many reform strategies affecting the judicial system.** The current practice of formulation and approval of the budget for judiciary is ineffective and is based on historical data. The training may be repetitive for some participants, however, results to date indicate those responsible for drafting and executing the strategies need more analytical tools to achieve success. Since the elements of performance-based budgeting and reporting are not unique to Montenegro, experts or vendors who have delivered similar training elsewhere could provide it more quickly than similar training could be delivered by Montenegro’s official Center for Training of Judges and Prosecutors and considering the lack of planning and management skills noted throughout the system, there is a need for speed. Training of the system’s leadership also
should contribute to increased use of evidence-based management throughout the system, including the rationalization of its court network.

iii. **Montenegro should optimize its number of courts, judges, prosecutors and their staffs to make the system more productive and less of an economic burden.** With such wide variations in the efficiency and consumption of resources among courts and prosecutors’ offices, a detailed comparison between the highest- and lowest-performing units would demonstrate improvements in efficiency and effectiveness that could be made in the very near term. Moreover, even if social or political considerations mean that the Government of Montenegro decides not to cut the high numbers of personnel in its judicial system, the country’s citizens, as well as donors, would benefit from the accurate information about the cost of those choices. Those costs cannot be estimated without an objective and standardized measure of judicial workload, otherwise known as case-weighting. Many judicial leaders in Montenegro already are familiar with case-weighting in principle, but they have not used it to determine the need for judicial and prosecutorial attention among different types of cases and the appropriate numbers of judges, prosecutors and staff within the system.

iv. **Montenegro needs to accelerate the planning, funding and installing of new case management systems for courts and prosecutors to track all aspects of the handling of individual cases, and the efficiency and costs of cases throughout the system.** The systems should be designated as the only data source for the courts and prosecution offices, in line with practices adopted in other countries across Europe. These systems have been planned and included in Montenegrin reform strategies for years, but they still are not in place. Their features should include links to the system’s financial management software; this would allow more accurate predictions of the system’s total case-related expenditures and revenues in the form of court fees.

v. **The judicial system should take all necessary steps to reduce the significant amounts it pays for the enforced collection of invoices, since those costs represent unnecessary financial burdens on the system.** These steps would have to be coordinated across several institutions, including the Ministries of Justice and Finance, the Judicial and Prosecutorial Councils, and all courts and prosecutors’ offices. One of the most effective tools for encouraging these reforms would be including the incidence of enforced collections in the performance evaluations of judges and prosecutors – particularly the evaluations of court residents and heads of State Prosecutor Offices (SPOs) – and in the criteria for the consideration of their possible promotions.
2. GOVERNANCE AND MANAGEMENT

General Findings

18. The key judicial governance bodies in Montenegro are the Judicial Council, the Prosecutorial Council and the Ministry of Justice. Traditionally, the MoJ was the main governance body; however, to strengthen the independence of the judiciary from the executive, the two Councils were established in the last decade. The Judicial Council was established in 2008 and the Prosecutorial Council in 2013 to assume several responsibilities which were previously held by the MoJ and the Supreme Court.

19. The division of responsibilities between the key governance bodies for the period under review was not completely clear. For example, in 2015 the Councils assumed responsibility for determining the number of judges/prosecutors from the MoJ, but the MoJ still determined the criteria for establishing these numbers. The JC and PC also assumed responsibility for the ICT system in the judiciary. However, according to the ICT Strategy, this responsibility will be transferred back to the MoJ. And while the Councils have assumed the financial management role from the MoJ, there have been plans to delegate many of these responsibilities to the courts and SPOs, once the courts and prosecutions become recognized as independent spending units with access to the Treasury information system (SAP), as discussed in more detail in the Financial Management chapter.

20. The composition of the Judicial Council did not ensure the Council’s independence. The Judicial Council is comprised of the Minister of Justice and the President of the Supreme Court as ex officio members, as well as eight elected members. Four of them are judges elected by the Conference of Judges, while the remaining four members are elected by a qualified majority of the Parliament from among distinguished lawyers. The CCJE\(^\text{12}\) Consultative Opinion 10 (2007), recommendations of GRECO\(^\text{13}\) and the case law of the European Court of Human Rights\(^\text{14}\) acknowledge that a judicial council may have a mixed composition of judges and non-judges, but only if most of its members are judges elected by their peers, which is not the case in Montenegro. Moreover, the fact that the Minister of Justice is one of the Council’s ex officio members could lead to the placement of undue political pressure on the other Council members. Contrary to CCJE and GRECO’s recommendations that the chair of the Judicial Council should be a judge, Montenegro’s current constitutional arrangements stipulate that the chair of the JC will be elected from among its non-judge members, which also posed a risk for politicization of this important judicial governance body.

21. The Councils had a wide range of powers to carry out both “traditional” and “new” council functions. The traditional functions include powers related to judicial selection, appointments, promotions, professional evaluations, mobility and dismissals, training of judges, and disciplinary and ethical measures. The new functions include competences relating to court administration, court management and budget matters. The PC also had both traditional and new functions although its powers were somewhat weaker with respect to the appointment and dismissal of the Supreme State Prosecutor than the authority of the JC over its own president and the President of the Supreme Court.

---

12 The Consultative Council of European Judges is an advisory body of the Council of Europe on issues relating to the independence, impartiality and competence of judges.
13 The Group of States against Corruption is the Council of Europe body competent to monitor States’ compliance with the organisation’s anti-corruption standards.
The JC could appoint and dismiss its own President as well as the President of the Supreme Court, while the PC only proposes the Supreme State Prosecutor to Parliament.

22. **Both Councils had Secretariats with limited capacities for strategic policy design and implementation.** The Secretariats’ main responsibilities included keeping the registers on judges and prosecutors and providing administrative support to the work of the Councils and its commissions. However, the Councils did not have sufficient capacities for many policy functions, such as HRM planning and the professional development of judges and prosecutors. Each Council had only four staff to deal with human resource issues for all courts/SPOs, meaning 318 judges and 120 state prosecutors. The Councils also had very limited numbers of personnel to deal with financial planning and budget execution.

23. **The MoJ is understaffed considering the ambitious agendas assigned to it in various strategic documents and anticipated transfer of responsibilities from the councils.** Only 21 percent of the approved position were filled in the ICT Directorate, while some departments were merged. These agendas are contained in the Program of Accession of Montenegro to the European Union, the Action Plans for Chapters 23 and 24, the SRJ for 2014 to 2018, the Strategy for the Execution of Criminal Sanctions (2017-2021) and the Strategy for Information – Communication Technology of Judiciary (2016 -2020).

24. **The organization of courts and SPOs throughout the country was relatively static.** Although the rationalization of the judicial network has been one of the judicial reform priorities, little has been achieved so far.

25. **Court presidents and the heads of SPOs were overburdened with administrative tasks and do not support of professional managers.** Individuals in these roles were authorized to organize the work in their offices, allocate various tasks and monitor their execution. In addition, they were expected to spend around 30 percent of their time as a judge/prosecutor. Court presidents also were responsible for dealing with complaints made by parties; requests for speeding up the procedure (so called “control requests”); certain human resource and financial management matters, and requests for legal aid (see the discussion of legal aid requests in Access to Justice Services, below).

---

15 More details are available in para 63 and 64.
In the Netherlands, Presidents manage the court along with the Court Management Board and a court manager appointed by the Judicial Council. The Board selects and recruits both judicial and administrative personnel. However, as far as the judges are concerned, they make a proposal to the Judicial Council, which has the last word, even though most of the time it entrusts the court’s decision. The Board can also fire the administrative personnel according to the law for civil servants. It can also give some minor fringe benefits only to the administrative personnel. ICT is in charge of the Judicial Council. The President is in charge of its implementation in the court. They can, through and with the agreement of the heads of the court sectors, fix timeframes for the pace of litigation within their managerial functions, based on acceptable standards. Presidents have a limited disciplinary power over judges, since they can give only a formal warning.

In the Netherlands, Presidents (or the Management Board of the court on the proposal of the President) do assign cases to the sector. They determine which kind of cases will be handled by which sector based on the specialization of cases by sector. About 80 percent of their time is dedicated to managerial activity and 20% to judicial ones. They can set priorities as a general rule not for specific judge’s roster. They can promote the setup of local rules of practice and the guarantee of consistent interpretation of the law.

Source: M. Fabri, Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States, Council of Europe, 2013

26. Efforts to assess the internal organization of courts and prosecutors’ offices to increase productivity and performance were limited. The Councils’ Secretariats did not have the human and technical capacity to deal with improving the internal organization of individual courts/SPOs or how to improve the delivery of court services.

27. Case weighting methodology still had not been introduced, and workload among judges and prosecutors was not evenly distributed.

28. The strategic framework for judicial reform was fragmented and the objectives and measures envisaged in various strategic documents were not well aligned. The strategic framework for the period under review included: the SRJ for 2014 to 2018 and its Actions Plans for 2014-2016 and 2017-2018; the Strategy for Information and Communication Technologies in the Judiciary 2016-2020; the Strategy for Management and Development of Human Resources in Judicial Institutions 2016-2018; and the Medium-Term Plan for the Rationalization of the Court Network for the period 2017-2019.

29. The SRJ and the two Action Plans were comprehensive but not accompanied by additional resources for its implementation. Generally, the Action Plans were not paired with clear indicators to track meaningful results.

30. Although the PRIS judicial information system assigned cases to judges through random case assignment most of the time, its use was not universal. Random case assignment apparently was not implemented in smaller courts and it was not used in the Misdemeanor Courts. In addition, the legal framework did not guarantee random case assignment when a case was reassigned from the original judge.

31. During the period under review, Montenegro made significant efforts to strengthen the judicial integrity system through different integrity-building mechanisms. These mechanisms
included ensuring the implementation of the principle of random case assignment; introduction and implementation of integrity-building plans, defining some of the rules on gift-giving and strengthening the rules on recusals. Most of judicial institutions developed integrity plans in 2016, but their results were not evident by the end of 2017. In line with the legal requirements, 45 judicial institutions developed integrity plans in 2016, and their initial reports on the plans’ implementation were submitted in 2017.

32. **The statutory prohibitions on gift-giving were not adequately reflected in the Ethical Codes and applicable rules of procedure.** According to the Law on the Judicial Council and Judges and the Law on State Prosecution, acceptance of a gift is a serious disciplinary offense. However, the Court Rules of Procedure and the Rules of Procedure of the Councils do not contain any rules governing gift-giving. The Code of Ethics for Judges and the Code of Ethics for Prosecutors contain rules governing the procedure for judges and prosecutors to reject gifts. The Codes also contain details about the duties of judges and prosecutors to report gifts and maintain records about them, but do not define the value of permitted gifts. These gaps do not meet the applicable European legal transparency standards.¹⁶

33. **Montenegrins had mixed views on the integrity of the judicial system.** In a 2016 survey¹⁷, 59% of citizen respondents trusted the judiciary to at least some extent, but more than 60% of court users and 29% of lawyers believed that corruption was present in the judiciary.

34. **There was insufficient data regarding recusals within the judicial system from 2014-2017.** Details on recusals were supposed to be maintained by the courts but they did not have to be reported to the Councils, so there was no unified information on recusals for the Functional Review team to analyze.

35. **The disciplinary systems for judges and prosecutors were complex and were not invoked often.** The definitions of offenses triggering disciplinary sanctions included relatively few types of behavior,¹⁸ and few disciplinary sanctions were imposed on holders of judicial functions during the reviewed period. In addition, data regarding the processes for discipline of court and prosecution staff were not accessible for review as they are kept within the judicial institutions and not published.

### 2.1. Key Judicial Governance Bodies in Montenegro

36. **The key judicial governance bodies in Montenegro are the Judicial Council, the Prosecutorial Council and the Ministry of Justice.** Relations among Governance Bodies and challenge with overlapping responsibilities are described in General Findings. The division of responsibilities between the MoJ and individual courts from 2015 to 2017 is presented in Graph number 1 below. Graph 2 illustrates the split of responsibilities between the MoJ and SPOs.

---


¹⁸ See Articles 109 and 110 of the Law on State Prosecution and of the Law on Judicial Council and Judges.
37. The distribution of responsibilities between the governing bodies and courts/SPOs posed a risk for effective coordination and performance of judicial functions. This risk was visible in a number of areas, including HRM and financial management. The Councils were responsible for determining the number of judges/prosecutors, while the numbers of administrative staff were established by the courts’ presidents and SPO heads through the rulebooks on internal organization and systematization. The rulebooks had to be approved by the MoJ, the MoF, the Human Resource Management Authority (HRMA) and the Government. The Councils also were responsible for the recruitment and selection of judges/state prosecutors and their promotions, disciplinary sanctions and termination of employment. Recruitment and selection of administrative staff, on the other hand, was done by the HRMA in cooperation with the courts/SPOs. The court presidents/heads of SPOs were responsible for performance appraisal, disciplinary sanctions and termination of employment of administrative staff.

38. Starting in 2015, the Councils were responsible for some aspect of budget preparation and execution for the entire court and prosecutorial system, but the fact that the courts and SPOs were not independent spending units for budgetary purposes impaired their financial accountability. This problem was expected to be resolved once the courts and prosecutions become recognized as independent spending units with the access to SAP, scheduled to be implemented in 2019.

39. Other institutions, such as the MoF, HRMA, the Government Property Administration and the Center for Training of Judges and Prosecutors also affected the performance of the judicial system during the period under review. The MoF was responsible for negotiating the judiciary budget with the Councils and for monitoring its execution. The HRMA was involved in the recruitment and selection of administrative judicial staff, as discussed above. The Center for Education of Holders of Judicial Functions was responsible for organizing and conducting the initial training of judges and prosecutors, and continuous trainings for lawyers, notaries, and bailiffs. Finally, the Government Property Administration was responsible for the management of judicial infrastructure.

---

19 For more details, see the chapter on Human Resource Management.
20 For more details, see the chapter on Financial Management.
21 It is responsible for the announcement of vacancies of administrative staff and for forming a recruitment and selection committee, which is comprised of one of its members of staff, one of the members of staff of the court/SPOs and an independent expert in the area of judicial/prosecutorial expertise.
22 See the chapter on Infrastructure Management for details, below.
Figure 1 - Roles and Responsibilities of the Ministry of Justice vis-à-vis Courts


Figure 2 - Roles and Responsibilities of the Ministry of Justice vis-à-vis State Prosecution Offices

2.1.1. Composition of the Judicial Council and the Prosecutorial Council and appointment of their members

40. The Judicial Council has a President and nine members. Those members are the Minister of Justice and the President of the Supreme Court as *ex officio* members, and eight elected members. Four of the elected members are judges selected by the Conference of Judges, of which all judges and court presidents are members, while the remaining four are elected by a qualified majority of Parliament from among distinguished lawyers. The Judicial Council’s President is elected by the JC from among its non-judge members, but the Minister of Justice cannot be the President of the Council.\(^{23}\)

41. The Prosecutorial Council consists of a President and 10 members. The Law on State Prosecutor’s Office, adopted in early 2015, stipulates that the PC is made up of the Supreme State Prosecutor, who is the President of the Council, and the following 10 members: five state prosecutors elected by the Conference of State Prosecutors, four distinguished lawyers elected by the Parliament of Montenegro, and one person appointed by the Minister of Justice from among employees of the MoJ.\(^{24}\)

42. The Councils’ members did not have enough managerial expertise to succeed in their roles. Members’ familiarity with management principles would have been a considerable advantage in interacting with the Councils’ administrative offices and interpreting the information and recommendations. Judges and prosecutors acquired most of their management experience on the job. Due to the nature of their jobs, court presidents and heads of SPOs had the most management experience, but the legal framework precluded court presidents and the heads of SPOs from serving on the Councils.

43. The Presidents of both Councils oversaw carrying out a number of tasks aimed at ensuring the effectiveness of the Councils’ work. In addition to convening and chairing their Council’s sessions, the Presidents were responsible for the overall performance of their Council and its Secretariat. The Presidents had significant numbers of administrative functions that could be delegated to the General Secretary of each Council.\(^{25}\) The Presidents also had important roles in representing the Councils.

---

\(^{23}\) The Montenegrin Constitution stipulates that the duration of the Judicial Councils’ mandate is four years but does not refer to the duration of the mandate of its individual members. The mandates of the JC members expired in early July 2018. As the opposition parties in Montenegrin Parliament were boycotting the work of the Parliament in 2018, it was highly unlikely that they would vote for any ruling coalition proposal. This threatened to bring about the blockade in the appointment process and the obstruction of the work of the whole judiciary. To prevent the potential stalemate, the Parliament adopted amendments of the Law on the Judicial Council and Judges by which it extended the duration of the mandate of individual members of the Council until the new ones are appointed. The adoption of the amendments was supported by the Venice Commission.

\(^{24}\) The appointment of new members of the PC faced some obstacles but was successfully accomplished in April 2018. The mandate of the sitting members expired in January 2018. Six state prosecutors and the one employee of the Ministry of Justice were appointed in January 2018. However, the Parliament failed in two attempts to vote on a list of four renowned lawyers for the remaining members. For this reason, the Law on State Prosecution was amended in February 2018 to allow Parliament to vote on individual candidates. Four renowned lawyers were appointed as members of the Prosecutorial Council in April 2018, completing the appointment process.

\(^{25}\) Presidents of the Councils manage the work of their Council, sign all the Council’s documents and act as its financial principal, authorizing all the payments for the Council and Secretariat. The Councils’ Presidents also cooperate closely with the Secretary Generals of the Councils in the day-to-day management of the institutions. Presidents have the right to propose the candidate for a General Secretary to the Council members. At the end of the year, the Secretariats prepare an annual report on the work of the Councils and internal audit reports, which need to be approved by the President. See the Law on Judicial Council and Judges, *Official Gazette* Nos. 11/2015, 28/2015 and 42/2018; Article 7 of the Rules of
before Parliament and other institutions: they had the right to participate in the working sessions of Parliament in which the budget proposals for their Council were discussed and to present their annual reports to the Parliament.

2.1.2. Powers of the Councils

44. The Councils had a wide range of powers to carry out both “traditional” and “new” functions in line with the CCJE Recommendation and other international standards. According to the CCJE, traditional functions include competences for appointment of judges and other human resource management functions. The new functions refer to authorities related to management and budget matters. The CCJE encourages attributing both traditional and new functions to governing councils. 26

Montenegro’s legal framework included all aspects of the traditional functions such as powers in judicial and prosecutor’s selection, appointments, promotions, professional evaluations, mobility and dismissals, training of judges and prosecutors, and disciplinary and ethical measures. It also included new functions such as competences regarding court and prosecutor administration, management and budget matters. The PC also encompassed both traditional and new functions although its powers with respect to the appointment and dismissal of its head were somewhat weaker than in the case of the JC. While the Judicial Council was authorized to appoint and dismiss its own president and the President of the Supreme Court, the Prosecutorial Council could only propose the Supreme State Prosecutor, whose name was submitted to the Parliament.

---

Figure 3 - Roles and Responsibilities of the Judicial Council vis-à-vis courts


Figure 4 - Roles and Responsibilities of the Prosecutorial Council vis-à-vis SPOs

45. The Councils’ independence from the executive may have been jeopardized by their limited financial powers. The Councils were direct budget users entitled to plan and propose budget funds not only for their work, but also for the work of courts and public prosecutors. The Councils were in a relatively weak negotiating position vis-à-vis the MoF since they were not part of the Government. Although the MoJ may have been better placed than the Councils to negotiate the court budget vis-à-vis the MoF, the CCJE favors frameworks in which the Councils have extended financial competences.

46. The Councils’ financial position also was undermined by their insufficient budget preparation and negotiation capacities. In the budget preparation process, the Councils usually gathered and simply totaled the financial proposals of the courts and SPOs without setting reasonable budget ceilings or determining judicial financial priorities (see the chapter on Financial Management for details and a discussion of the implications of this practice).

47. In line with the CCJE and GRECO recommendations, from 2015-2017 the Councils established several commissions to support their efficient performance and to avoid conflicts between their different functions. These commissions were established as permanent bodies in different branches of the Councils. The JC established commissions, (see Figure 5 below) whose work was supported by a joint EU and European Council project which started in 2016. Similarly, several commissions were created within the PC (see Figure 6 below). Their creation complied with GRECO recommendations for operational arrangements that prevent an overconcentration of powers in the same hands of different functions to be performed by members of the PC. The effectiveness of the work of both Councils’ commissions, however, were not apparent by the end of 2017.

---

27 While the JC is entitled to propose budgetary funds for its work and the work of courts, the PC proposes funds for its work and the work of public prosecution offices. See Article 31 Law on the Judicial Council and Judges, Article 74 of the Law on Courts and Article 179 of the Law on Public Prosecution.

28 Opinion no.10(2007) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society. This Opinion has been adopted by the CCJE, Strasbourg, 23 November 2007, para. 75, p. 8.

29 The EU and the Council of Europe are implementing a three-year Joint Co-operation Programme “Horizontal Facility for the Western Balkans and Turkey”, which was launched in Podgorica on 24 November 2016. Through the joint program EU and Council of Europe provides assistance to the authorities of the Western Balkan states, including Montenegro, in achieving greater compliance with the European standards in three key areas: ensuring justice, fighting corruption, economic and organized crime, and in combating discrimination and protecting the rights of vulnerable groups. One of the main objectives of the project is to strengthen the capacity of the Judicial Council of Montenegro, especially commissions founded by the Council regarding the application of codes of ethics for judges, the system of integrity of judges, as well as their disciplinary responsibility.

Figure 5 - Overview of Judicial Council’s commissions and their tasks

Figure 6 - Overview of Prosecutorial Council’s commissions and their tasks
48. The Councils took limited steps to increase the transparency of their operations during 2015-2017. These steps generally were limited to the publication of some information on the Council’s websites and did not include any other outreach activities. The conclusions and decisions reached during the Councils’ sessions were available on their websites. The websites also included vacancy announcements for judges and prosecutors, annual reports on the Councils’ performance and the overall state of the judiciary and biannual plans for the purpose of filling vacancies and press releases, but they did not include decisions on promotions, appointments or disciplinary proceedings. The commissions of the Councils did not post the minutes from their sessions online.

2.1.3. Managerial Capacities in the Councils

49. Both Councils established their Secretariats as administrative offices, but they were not fully staffed even by 2018. The CCJE and other EU and Council of Europe bodies have emphasized the need for the Councils, as governance bodies, to have administrative offices that would enable successful fulfilment of their administration and management-related tasks. Both Councils adopted rulebooks on internal organization and systematization of their respective Secretariats. The Secretariat of the JC filled 41 out of 54 planned positions, while the Secretariat of the PC filled 16 of 26 planned positions, in accordance with the Rulebook on Internal Organization and Systematization. The organizational chart of the Secretariats of the Judicial Council and Prosecutorial Council are presented in Figure 7 and Figure 8 below.

---


Figure 8 – Organizational Structure of the Prosecutorial Council
The Councils’ Secretariats accomplished a number of administrative tasks from 2014-2017, although they had limited capacities related to the design and implementation of policies. Their main administrative responsibilities included keeping registers on judges and prosecutors and providing administrative support to the work of the Councils and its commissions (see Box 2). The Councils, however, did not have sufficient capacities to devote to policy analysis functions, such as HRM planning and professional development of judges and prosecutors. From 2015-2017, each Councils planned to have only four staff members to deal with HRM issues for all courts/SPOs. The Councils also had very limited number of personnel dealing with financial issues.

Box 2 - Authorities of the Secretariat of the Judicial Council and the Secretariat of the Prosecutorial Council

<table>
<thead>
<tr>
<th>Secretariat of the Judicial Council:</th>
<th>Secretariat of the Prosecutorial Council:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carries out expert, financial, administrative, IT, analytical and other tasks of the Judicial Council and activities of mutual interest to the courts, including the following:</td>
<td>Carries out expert, financial, administrative, IT, analytical and other tasks of the Prosecutorial Council and activities of mutual interest to all SPOs, including the following:</td>
</tr>
<tr>
<td>- keeps records of data on judges and lay judges and other registers, including those on administrative and financial data pertaining to the members of Judicial Council;</td>
<td>- keeps records of data on public prosecutors and heads of public prosecution offices and other registers, as well as taking care of its regularities and other registers;</td>
</tr>
<tr>
<td>- performs administrative tasks for the Conference of Commission for Monitoring the Implementation of the Code of Ethics for Judges, Lottery Commission for Regulatory Affairs and other commissions established in line with Article 26 of the Law on the Judicial Council and Judges;</td>
<td>- performs administrative tasks for the Conference of Public Prosecutors, the Commission for the Code of Ethics for Public Prosecutors and other commissions established in line with Article 36 of the Law on Public Prosecution;</td>
</tr>
<tr>
<td>- provides administrative support in relation to sessions of the Judicial Council;</td>
<td>- provides administrative support in relation to sessions of the Prosecutorial Council;</td>
</tr>
<tr>
<td>- proposes to the Judicial Council the Act on Internal Organization and Systematization upon preliminary received opinion from the Ministry and competent authorities and proposing the amendments to the Court Rules of Procedure;</td>
<td>- proposes to the Prosecutorial Council the Act on Internal Organization and Systematization upon preliminary received opinion from the Ministry and competent authorities;</td>
</tr>
<tr>
<td>- prepares the draft plan of vacant positions for judges and drafts of annual and periodical reports and submits them to the President of the JC and to the courts; prepares statistical reports on the work of the Secretariat and the JC;</td>
<td>- prepares the draft plan of vacant positions for public prosecutors and drafts of annual and periodical reports on the work of the PC and SPOs and submits them to the President of the PC; prepares statistical reports on the work of the Secretariat and the PC;</td>
</tr>
<tr>
<td>- carries out tasks related to information and communication technology and multimedia, such as maintaining all communication and computer</td>
<td>- carries out tasks related to information and communication technology, such as maintaining all computer equipment in SPOs and providing support</td>
</tr>
</tbody>
</table>
equipment in courts, preparing strategic documents related to application of information and communication technology in courts and audio-visual equipment;

- carries out financial and accounting related tasks, such as preparing budget proposal for the JC, controlling financial operation of courts, preparing the financial plan, making the draft of necessary funds for courts and the JC, distributing funds to the courts, monitoring payment of court fees;

- provides opinions on draft legislation in the fields of judiciary;

- acts upon requests for free access to information;

- performs internal auditing related tasks and submits them to the President of the Judicial Council.

to users in everyday operation of software applications, preparing and presenting audio visual materials;

- carries out financial and accounting related tasks, such as preparing budget proposal for the PC, the Secretariat of the PC and for each SPO respectively, controlling financial operation of SPOs, preparing financial plan, distributing funds to the SPOs, performing analytical and financial tasks pertaining to overseeing of funding PPOs;

- acts upon requests for free access to information

51. The Councils did not have a general manager or an administrative director from 2014-2017. Instead, each Council had a Secretary whose role was focused mainly on administrative tasks and who had only a limited level of authority. Both Secretaries were lawyers by training and experience. Sectors and departments established within the Secretariat were run by heads who were in charge of coordinating and overseeing the work of their respective employees, and who reported to the appropriate Secretary. The selection criteria for these positions, except for the Secretary of the Secretariat of the Prosecutorial Council and the Head of the Department for Information-Communication Technologies and Multimedia of the Judicial Council’s Secretariat, did not include prior management experience.

52. Beginning in 2016, the MoJ included eight organizational units and one administrative authority, the Institution for Enforcement of Criminal Sanctions. Five of the organizational units were directorates headed by Directors General. Each directorate was comprised of two to three units, which in turn were headed by their respective managers. Apart from the directorates, the MoJ had a Department for Internal Audit, the Cabinet of the Minister, and the Service for Human Resources, Public Procurement and Clerical and Financial Operations (see Figure 9 below).

53. The Institution for Enforcement of Criminal Sanctions is an administrative body within the MoJ, which only indirectly affected the operation of the judiciary. It has been an administrative authority within the MOJ since 2012. The mandate of the Institution for Enforcement of Criminal

---

Sanctions was limited to the enforcement of different types of criminal sanctions. According to the applicable Rulebook on Internal Organization and Systematization of the MoJ, there were eight units within the Institution, including four units pertaining to different types of prisons and one unit for training of its staff.

Figure 9 – Organizational Structure of the Ministry of Justice
The MoJ appeared to be understaffed during the period under review, considering its reform responsibilities. For instance, in 2017, the MoJ had 62 full-time employees and there were another 490 employees within the Institution for Enforcement of Criminal Sanctions. These numbers were much lower than envisaged in the rulebook on internal organization and systematization, which called for 126 employees for the MoJ and 576 employees for the Institution for Enforcement of Criminal Sanctions. There was no data available about the number of MoJ consultants or temporary staff, but from the data that were available the staffing pattern in 2017 did not appear to be sufficient to accomplish all tasks for the MoJ set forth by the Program of Accession of Montenegro to the European Union, the Action Plans for Chapters 23 and 24, the Strategy for the Reform of the Judiciary (2014-2018), the Strategy for the Execution of Criminal Sanctions (2017-2021) and the Strategy for Information – Communication Technology of Judiciary (2016 -2020).

In 2017, some organizational units of the MoJ were restructured to accomplish goals and to execute activities specified in strategic documents. The former Directorate for Judiciary was divided into two separate directorates: the Directorate for the Organization of Judiciary, Criminal Law and Supervision and the Directorate for Civil Law and Supervision. This was done to improve the supervision of the work of courts, SPOs and notaries and to speed up the codification of civil law. In addition, the ICT Service became the Directorate for ICT of the Judiciary and Data Security, to perform centralized management of ICT. As of 2018, only 21% of the approved positions were filled in the ICT Directorate, a situation which did not meet the needs of the Strategy for Information – Communication Technology of Judiciary (2016-2020). Finally, the former department in charge of planning, programming and implementing internationally funded projects was merged with the Directorate for International Judicial Cooperation and Projects. A 2017 report concluded this merger was not accompanied by the allocation of appropriate resources for the implementation of such an ambitious task.

The majority of employees in the MoJ had legal backgrounds and were well-placed for the implementation of legal/normative tasks, but the analytical capacities of the MoJ were almost non-existent. Those interviewed for the Functional Review reported that the civil servants engaged in legislative drafting had appropriate qualifications, having passed the bar exam and relevant government experience.

---

34 Report on the Performance and State in Administrative Fields falling under the Competence of the Ministry of Justice with the Administrative Body within the Ministry of Justice for 2017, p. 4.
35 Ibid., p. 4.
36 Rulebook on the Internal Organization and Systematization of the Ministry of Justice with the Administrative Body within the Ministry of Justice, August 2017.
37 Ibid., p. 117.
38 Ibid., p.119.
40 Ibid., 118.
2.2. Effectiveness of Organizational Management

2.2.1. Internal organization of courts and State Prosecution Offices

57. The organization of courts was established by the Law on Courts adopted in 2015. The major changes introduced by this Law were the establishment of Misdemeanor Courts and the establishment of one Commercial Court for the whole territory of Montenegro. Currently, Montenegro has 15 Basic Courts of general jurisdiction, two High Courts, three Misdemeanor Courts, one Higher Misdemeanor Court, a Commercial Court, one Appellate Court, the Administrative Court and the Supreme Court (see Figure 10 below). There are 13 Basic Prosecutor’s Offices, two High Prosecutor’s Offices, the Special State Prosecutor’s Office and the Supreme State Prosecutor’s Office (see Figure 11 below).

58. Although reducing the number of courts through the rationalization of the judicial network has been a judicial reform priority, little was achieved during 2014-2017. Judicial reform strategies for 2007-2012 and 2014-2018 envisaged the rationalization of the judicial network as one of their priorities. In December 2016, the Government adopted a new Medium-Term Plan for the Rationalization of the Judicial Network for the period 2017-2019, but its results could not be determined by the end of 2018. The responsible bodies for the implementation of the rationalization plan included the JC, PC, MoJ and the Montenegrin Government and Parliament, since a new network would require legislative changes.41

---

Annex 1 of this Review contains a detailed description of the organization of Montenegro’s judiciary, and a history of the more recent reforms of the system.

---

41 For example, the Law on Judges would need to be amended regarding the minimum number of judges per court. The Law on State Prosecution would have to be amended to reflect the changes introduced by the Law on Courts, since SPOs are established for the area of one or more Basic Courts.
Figure 10– Organization of Courts in Montenegro
Figure 11 - Organization of Prosecutorial Services in Montenegro

Supreme State Prosecutor’s Office

Higher Prosecutor’s Office in Podgorica
- Basic SPO in Podgorica
- Basic SPO in Cetinje
- Basic SPO in Niksic
- Basic SPO in Bar
- Basic SPO in Ulcinj
- Basic SPO in Herceg Novi
- Basic SPO in Kotor

Higher Prosecutor’s Office in Bijelo Polje
- Basic SPO in Kolasin
- Basic SPO in Bijelo Polje
- Basic SPO in Pljevlja
- Basic SPO in Berane
- Basic SPO in Rozaje
- Basic SPO in Plav

Special State Prosecutor’s Office
59. The key management of courts/SPOs consists of court presidents, the head of the SPOs and, for larger courts and SPOs, the secretary generals. Court presidents and the heads of SPOs also are expected to spend around 30 percent of his/her time as a judge/prosecutor. Secretary generals are to ensure administrative and logistic support is available to their court or SPO. The internal organization of courts and SPOs is governed by the book of rules.

60. Administrative tasks left court presidents and the heads of SPOs with insufficient time for managing the performance of the staff and courts or offices. Court presidents and SPO heads were responsible for organizing the work of their courts and SPOs, allocating tasks and monitoring their execution. They also were responsible for certain HRM and financial management matters (e.g. annual leave requests for employees, issuing payment orders, etc.). Court presidents also had to deal with legal aid requests and the complaints of parties about judicial proceedings and requests to speed up the processing of a case. Court presidents and SPO heads will have even greater duties once the financial management responsibilities are fully delegated to the courts and SPOs.

61. Prior management experience was not required for top managers in the judicial system. The lack of management requirements and the lack of formal management trainings for the leadership of courts and SPOs were identified as a problem by the Strategy for Management and Development of Human Resources in Judicial Institutions, for the period 2016-2018. During 2014-2017, Secretaries in courts and POs had to have prior experience as an advisor, but advisors also were not required to have management experience. Managerial experience also was not a requirement for court presidents, provided successful candidates proposed an adequate work program and his/her performance as a judge was evaluated as adequate.

62. Major systemic changes have reduced the need for so many judges. These changes included the introduction of prosecution-led investigations beginning in 2011. This shift significantly reduced the workload of criminal judges, and this led to reductions in the number of criminal judges and increasing the number of judges assigned to civil and labor cases. For example, in the Basic Court of Podgorica, the number of criminal law judges was reduced from 16 in 2009 to only 6 in 2018. The introduction of bailiffs and widening the scope of work of notaries also reduced the need for judges to deal with execution and non-litigious cases. SPOs, on the other hand, had to increase the number and capacities of their staff to meet the needs of the prosecution-led investigation.

63. Systemic efforts to assess the relationship between the internal organization of courts and their productivity and performance were limited. The Judicial Council Secretariat did not have the human and technical capacity to oversee the improvement of the delivery of court services. Instead, it focused on assessment of the economic and organization viability of small courts and attempted to determine the minimum number of judges which a court needed to be economically viable. This is an important issue, because small institutions cannot lower their operating costs without disregarding

---

43 In April 2015, the Amendments to the Law on the Extra-Judicial Procedure were adopted creating the conditions for transferring probate cases from the basic courts to notaries. In March 2014, the Minister of Justice adopted a decision which stipulated the beginning of public enforcement activities, whereas the first public enforcement officers have begun their work in April this year.
legally required management systems, e.g., for budgeting, accounting, procurement, personnel, or audits.

64. **The need for specialization of judges and prosecutors in certain types of cases sometimes conflicted with procedures to ensure impartiality, especially in smaller courts and SPOs.** The courts and prosecutors’ offices did have judges and prosecutors who specialized in certain types of cases. However, the requirements of random case assignment meant judges and prosecutors could not always limit their caseload to their areas of expertise. Balancing the need for specialization and ensuring random case assignment was especially challenging in smaller courts, such as Zabljak, Kolasin and Plav which had only three judges each.

65. **Insufficient attention was paid to organizational innovations which could assist in achieving efficiencies in the operation of the courts/SPOs.** Examples of organizational innovations in other countries appear in Box 3 below.

### Box 3 - Introduction of preparatory departments

Organizational innovations which have produced about positive results in some countries include the introduction of preparatory departments. The main purpose of these departments is to ensure that parties are well prepared for hearings, in terms of bringing needed documentation and ensuring the parties understand the procedures. Preparatory departments have been an efficient way to ensure that cases are ready for hearing, while at the same time reducing the administrative burden on judges. Such departments are usually composed of judicial assistants devoted to verifying that procedural requirements have been met, researching cases and finding examples of court practice for judges, drafting court decisions, and calculating court fees. France created a special judge (juge de mise en état) to prepare civil cases for adjudication, and common law countries often assign preparatory work to qualified non-judge court staff.

All court personnel should have access to detailed data about court performance and duration of process. For example, in Denmark (Esbjerg District Court) – court statistics are used internally by the court’s manager for evaluation and monitoring of the time for processing each case and the court’s productivity. In Finland (Turku Regional Administrative Court) – statistics are produced monthly and sent by e-mail to all judicial staff. Each court publishes annual reports that contain information about timeframes and applied strategies.


2.2.2. **Managing caseloads and workloads**

66. **Workload among judges and prosecutors was not evenly distributed.** The highest caseload per judge in 2016 was recorded in the Niksic Basic Court, which had almost double the caseload in the Pljevlja Basic Court, which had the lowest. The variations among SPOs in caseload per prosecutor were also significant, so some SPO received twice the caseloads of others. The highest number of caseload per prosecutor in Basic SPOs in 2016 was received in in Kotor (149), and the lowest in Bijelo Polje (73).

---

44 Caseload is defined as number of criminal complaints show number of files received by police, citizens or state bodies as a beginning in the process. Prosecution office can dismiss criminal complaint, decide not to prosecute, deferred prosecution, decide to prosecute.
67. Despite initial efforts, the case weighing methodology still had not been introduced, which resulted in uneven distribution of workloads within courts/SPOs. Initial case weighing efforts were undertaken in 2015, when a pilot measurement of the workload of judges and the average time for deciding specific cases was carried out in nine courts. Based on the findings, the MoJ adopted framework criteria for determining the number of judges and prosecutors in each court/SPO. The criteria include the inflow of cases over three years and the number and types of cases, considering some elements such as the complexity of cases, average time required to process specific cases, etc. Similar efforts were undertaken in the SPOs. Despite all these efforts, the case weighing methodology was not implemented. Montenegro planned to have this methodology implemented in 2020, pending modification to the case management information system (PRIS) on which it relies. The State Prosecution was expected to discuss a new methodology in 2019.

68. Unfilled positions produced uneven distribution of workloads. The number of judges and prosecutors and their staff were based on framework criteria introduced in 2015. Based on these criteria, the Judicial and the Prosecutorial Councils adopted a plan for the number of judges and prosecutors in each court/SPO for two subsequent years. Although the plans were well designed, the process of filling vacancies has been slow. Until all the vacancies are filled, the inflow of cases must be handled by existing staff. For example, the SPO of Podgorica, which has the highest caseload per prosecutor office, had four vacancies. In 2019, they have announced two vacancies internally in accordance with existing recruitment procedures. There were two applicants for these positions, but their superiors did not agree to their transfer. Hence the vacancies remained unfilled. The existing SPO staff had to handle all the incoming cases. To improve quality, it would be important to ensure that all existing vacancies are filled in a reasonable period.

69. To reduce the backlogs, courts can ask the Supreme Court to re-assign a certain number of cases to other courts. This practice has shown good results, especially in larger courts such as the Basic Court in Podgorica, which managed to significantly reduce its backlog in 2017.

70. The Montenegrin judiciary needs to address the apparently uneven caseloads of judges and prosecutors. The first step would be the further development of the case weighting methodology based on the results of the EUROL I project. (For advantages of developing case weighting methodologies see Box 4 below). The development should rely on the participation of all key stakeholders within the judiciary.

45 Montenegro Case Weighting Study, Final Report with Recommendations, October 2015, EUROL Project in partnership with the TAIEX and IMG.
46 Rulebook on framework criteria for determining needed number of judges and staff in court, Official Gazette, No. 17/15.
48 Rulebook on framework criteria for determining needed number of judges and staff in court, Official Gazette, No. 17/15.
A case weighting methodology would improve the system’s ability to allocate workloads among judges and staff. In its simplest form, case weighting looks only at the time invested by the major professionals (judge, prosecutor, or defender) involved in resolving the types of cases covered. It may also track input by support staff and/or do its analysis by tracking the time devoted to each step involved in processing each case. A classic case weighting analysis uses time logs to register time invested in each case type and/or event and then weights the cases accordingly.

Case weighting would assist court Presidents to compare true workloads between judges in the same court. When an individual court handles a range of case types that require very different amounts of effort, the Court President can apply the weights, compare workloads, and assign and re-allocate cases accordingly.

Case weighting would also assist the Judicial Council to compare workloads between courts of the same type (i.e. between all Basic Courts). When the same type of courts handles a range of case types that require very different amounts of effort, the system can compare workloads between different courts of the same type.

Despite of all its advantages, the case weighting methodology should not be treated as a panacea for all efficiency problems in the judiciary, but as a useful tool which should ensure that the distribution of human and material resources match the demand for services. There are different ways to design the case weighting methodology, in accordance with country needs and context.49

2.3. Effectiveness in Resource Management

71. Coordination and management of resources in the judiciary was hampered by the division of responsibilities between the Councils and the MOJ on resource planning and expenditures. Since 2015, the MOJ has determined the criteria for the number of judges and prosecutors, while the Councils have been in charge of establishing the number of judges and prosecutors. While the Councils also are in charge of judicial budget planning and execution, including capital investments in IT, the MOJ makes policy proposals on the number of courts and SPOs and their networks, which has huge implications on both operational and capital expenditures. The capital budgeting procedure is different from the one for current expenditure and involves high-level prioritization by a committee chaired by the Montenegro’s Prime Minister (see chapter on Financial Resource Management for more details). This division of responsibilities resulted in a lack of coordination in resource planning and management.

72. There was an obvious under-investment in infrastructure and safe working conditions for judges and prosecutors. As pointed out in the chapter on Financial Resource Management, the highest share of resources was allocated to salaries, while infrastructure and ICT were consistently under-funded. The problems created by such allocation were evident in the perceptions of judges and prosecutors themselves. According to a 2016 World Bank survey, judges were the least satisfied with

premises and equipment (51% satisfied and as much as 45% dissatisfied), safety at work (55% satisfied, 38% dissatisfied), and safety out of work (57% satisfied, 42% dissatisfied). Only half of the prosecutors were satisfied with the premises and equipment and even fewer were satisfied with safety at work and out of work (less than a half of them were satisfied, at 42% and 44% respectively).

73. **New investments in the ICT system were planned, but with a number of uncertainties.** In June 2016, following an assessment of the current situation, an ICT strategy for replacing PRIS and an accompanying action plan were adopted. These activities should have been followed by drafting a tender for procuring new software. Full implementation of the strategy was foreseen for 2020. There was, however, no detailed plan on alternative solutions to be put in place until the strategy\(^{50}\) has been fully implemented and the new judicial ICT system with all its functionalities has been introduced.

74. **Efficiency in the use of resources was further undermined by the lack of correlation between the ratio of judge and prosecutors to auxiliary staff and the size of the courts/SPOs, as discussed in the Human Resources Management chapter.** Staffing patterns varied widely, and the use of contracted and voluntary employees contributed further to variations. The court presidents/heads of SPOs propose the number of non-judicial/prosecutorial staff, and must obtain the opinions of the MoJ, MoF and HRMA before sending the proposal to the Government for final approval. None of the mentioned institutions, however, had the capacity and authority to determine appropriate judge-to-auxiliary staff ratio and impose necessary limits.

75. **Lack of administrative support had a negative impact on the effectiveness of the work of SPOs.** The prosecutors believe that the available administrative support, where one typist is supporting two prosecutors, is not sufficient to ensure optimal work efficiency. This issue was raised during interviews with SPOs staff and confirmed by the results of the judicial perception survey.\(^{51}\) The World Bank survey, carried out from December 2016 to February 2017, showed that 74 percent of prosecutors think that their efficiency is not optimal due to the shortage of administrative staff.

76. **The joint lack of capacity of the MoJ and the Councils to consider and program resources to support key policy changes posed another significant problem.** For example, the introduction of prosecution-led investigation in SPOs in 2011 was well planned in terms of training of prosecutors, but it did not include appropriate assessments of the needs for adequate work space and administrative support. This was particularly relevant for the biggest prosecutorial office, the SPO in Podgorica. In the future, ICT investments (e.g., for better access to legal research, the use of templates, dictation software and the automation of analytical reports) should reduce the need for large numbers of unskilled ancillary staff, but they might require the addition of mid-level ICT specialists, training for all staff, etc. However, there was no joint process for the planning of such comprehensive changes.

77. **The lack of direct involvement of courts/SPOs in budget preparation and execution was a major issue for efficient planning and the utilization of resources.** As mentioned in the chapter on Financial Resource Management, budget planning and execution for courts and SPOs was carried out by their superior, direct budget users – the Judicial and Prosecutorial Councils. As a result, courts and

\(^{50}\) ICT Judicial Strategy 2016-2020, available at: [https://sudovi.me/podaci/sscg/dokumenta/5551.pdf](https://sudovi.me/podaci/sscg/dokumenta/5551.pdf)

SPOs were not sufficiently aware of their spending limits, which created problems in the day-to-day financial management. The Councils also did not have strict budget appropriation limits for individual courts/SPOs.

78. The delegation of the authority for budget planning and execution from the Councils to individual institutions also will require additional training for resource planning. Once the individual courts/SPOs acquire the authority to manage their budgets, each will need to obtain a license for accessing the SAP system. As the cost of one license is EUR 500, the overall amount for introduction of this policy change would be around EUR 130,000.

2.4. Effectiveness in strategic management

2.4.1. Development of strategies and their implementation

79. The strategic framework covering the judicial system included several documents that were not fully aligned. These were the SRJ for 2014 to 2018 with its Actions Plans for 2014-2016 and 2017-2018; the Strategy for Information and Communication Technologies in Judiciary 2016-2020; the Strategy for Management and Development of Human Resources in Judicial Institutions 2016-2018 and the Medium-Term Plan for the Rationalization of the Court Network for the period 2017-2019.

80. The SRJ and its Action Plans were comprehensive but not followed by additional resources needed for timely and successful implementation. The key strategy objectives were to strengthen independence, impartiality, and accountability; strengthen efficiency; to develop the Montenegrin judiciary as part of the European judiciary, and to strengthen accessibility, transparency and trust in the judiciary. To achieve these objectives, the Strategy outlined 21 strategic guidelines, 174 measures and more than 300 activities for their implementation. The SRJ and associated Action Plans provided a list of goals but did not prioritize them.

81. The Council for Monitoring of the Implementation of the SRJ was the competent authority in charge. The Council was made up of the Deputy Prime Minister, the President of the Judicial Council, the Supreme State Prosecutor, the President of the Prosecutorial Council, representatives of the MoJ, Judges’ Association, Bar Association, Notaries’ Association and Bailiffs’ Association. The work of the Council was supported by the Secretary General who managed the operational team that gathered the data on implementation of the Strategy and assisted with the preparation of reports.

82. The Action Plans did not have well-defined monitoring and evaluation frameworks with clear sets of result indicators. The Action Plans contained a list of measures which needed to be undertaken but no outcomes against which the progress could be measured. According to the Report on the implementation of the SRJ and Action Plans for the period of 1 August 2016 - 31 January 2017, 124 of the 133 Action Plan measures were in the process of implementation, but only two measures had been implemented, two were partially implemented and five had not been implemented. This framework was not sufficient to determine how or if real reforms were occurring.

2.4.2. The perception of the judicial reform process by key stakeholders

83. There was a lack of general consensus on judicial reform priorities and issues within the judiciary. According to the results of the World Bank survey, a considerable percentage of judges and prosecutors (42% and 47%, respectively) could not or were not willing to specify any one issue as the top priority for the judiciary reform (See Figures Figure 12 and Figure 13 ). For 17 percent of judges
and 19 percent of prosecutors, financial status was viewed as one of the most important issues in the judiciary reform. Twenty percent of lawyers named independence of judiciary as one of the key priorities. A much smaller share of judges and prosecutors viewed independence as one of the key issues (7% of judges and 11% of prosecutors). See Figures Figure 14 and Figure 15.

Figure 12 - Judges’ Perception of the most important Judiciary Reform Issue52

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial status (standard, housing issues...)</td>
<td>17%</td>
</tr>
<tr>
<td>Additional training</td>
<td>10%</td>
</tr>
<tr>
<td>Improvement of legal regulations</td>
<td>9%</td>
</tr>
<tr>
<td>Better working conditions</td>
<td>8%</td>
</tr>
<tr>
<td>Greater independence</td>
<td>7%</td>
</tr>
<tr>
<td>Equal workload/ work standards</td>
<td>5%</td>
</tr>
<tr>
<td>Optimum number of judges</td>
<td>5%</td>
</tr>
<tr>
<td>Greater efficiency/ work organization</td>
<td>5%</td>
</tr>
<tr>
<td>HR policy/ strengthening of capacities</td>
<td>5%</td>
</tr>
<tr>
<td>No answer</td>
<td>42%</td>
</tr>
</tbody>
</table>

Figure 13 - Prosecutors’ Perception of the most important Judiciary Reform Issue53

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial status (standard, housing issues...)</td>
<td>19%</td>
</tr>
<tr>
<td>Strengthening of HR capacities/ quality</td>
<td>17%</td>
</tr>
<tr>
<td>Upgrading of working conditions</td>
<td>12%</td>
</tr>
<tr>
<td>Additional training</td>
<td>11%</td>
</tr>
<tr>
<td>Greater independence of judiciary</td>
<td>11%</td>
</tr>
<tr>
<td>Higher quality laws</td>
<td>10%</td>
</tr>
<tr>
<td>Respecting/ upgrading the reputation of judiciary</td>
<td>6%</td>
</tr>
<tr>
<td>No answer</td>
<td>47%</td>
</tr>
</tbody>
</table>

52 Question: What do you think is the most significant issue of the reform of the judiciary in the upcoming period?) Multiple responses, open-ended Base: Total population of judges.

53 What do you think is the most significant issue of the reform of the judiciary in the upcoming period?) Multiple responses, open-ended Base: Total population of prosecutors.
84. A majority of court service providers and lawyers had high expectations with regard to the reforms. Judges, prosecutors and lawyers, as well as business sector representatives, expected a positive influence of the reforms on seven key observed aspects (efficiency, the quality of working conditions, the quality of work of the employed, accessibility, fairness, integrity, and more rational spending of budget funds). These expectations were rather high, especially as they covered all reform areas. As opposed to providers of court services and lawyers, expectations of the general population of citizens regarding the upgrading of these aspects of the judiciary were significantly lower; less than 50 percent of citizens expected improvement of the observed aspects, as shown in Figure 15. The highest expectations were associated with working conditions in general: about two-thirds of court service providers, business sector representatives and lawyers expected the reforms to produce positive results and bring positive changes in working conditions, while these expectations were shared by 44 percent of citizens (Figure 15). Expectations about more rational spending of budget funds were the lowest: positive changes in this area were expected by about half of legal experts and business sector representatives, and only 35 percent of citizens.

Figure 14 - The Lawyers Perception of the most important Judiciary Reform Issue

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of judiciary</td>
<td>21%</td>
</tr>
<tr>
<td>Expertise of judges and court staff</td>
<td>18%</td>
</tr>
<tr>
<td>Quality HR policy</td>
<td>13%</td>
</tr>
<tr>
<td>Leveling of court practice</td>
<td>8%</td>
</tr>
<tr>
<td>Increasing the number of judges</td>
<td>6%</td>
</tr>
<tr>
<td>Equality of the parties to the proceeding</td>
<td>5%</td>
</tr>
<tr>
<td>Legal reforms</td>
<td>5%</td>
</tr>
<tr>
<td>Increasing the efficiency of judiciary</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>5%</td>
</tr>
<tr>
<td>No answer</td>
<td>15%</td>
</tr>
</tbody>
</table>

54 What do you think is the most significant issue of the reform of the judiciary in the upcoming period? Multiple responses, open-ended; Base: Total population of lawyers.
2.5. Effectiveness of Integrity Mechanisms

2.5.1. Independence

Judicial independence is a fundamental element of an effective justice system. Independence is vital for upholding the rule of law, the fairness of judicial proceedings and the trust of citizens and businesses in the legal system.

2.5.1.1. Perception of independence


---

\(^{55}\) The Global Competitiveness Report assesses the competitiveness landscape of 138 economies via over 15,000 respondents. Its definition of independence includes influences on judicial decision-making from members of government, individuals and companies.
87. A significant percentage of judges and prosecutors surveyed in 2016 considered the judiciary independent, but half of them believed that it was not fully independent. Lawyers and court users were more skeptical about the independence of the judiciary. Around 50 percent of the members of the general public, business sector, and lawyers viewed the judicial system as not independent.

Survey question: To what extent is the judicial system in Montenegro truly independent from the executive authorities (politics)? Please rate its independence on a scale of 1 to 4, where 1 is “not independent” and 4 is “fully independent”. Base: Total population of the five target groups.
88. The percentages of citizens and business sector representatives who believed that the judiciary was independent are equal, whether they had experience with a court case.

![Figure 18](image)

2.5.1.2. Legislative guarantees of independence

89. The guarantees of structural independence require rules, including those on the appointment and career of judges and prosecutors, accountability and allocation of cases. As recognized by the Venice Commission, choosing the appropriate system for judicial appointments is one of the primary challenges faced by the new democracies, in which concerns related to the independence and impartiality of the judiciary often persist. Therefore, explicit constitutional provisions are needed to discourage political abuse by other state powers in the appointment of judges.\(^5\)

90. In July 2013, the Parliament adopted amendments to the Constitution designed to enhance the independence of the judiciary. The amendments were designed to reduce political influence on the appointment of prosecutors and high-level judicial officials through more transparent and merit-based procedures and increased majority thresholds for Parliamentary votes. The amendments altered the systems for the appointment and dismissal of the President of the Supreme Court, the composition and competences of the JC, and the appointment and dismissal of the Supreme State Prosecutor and prosecutors.

\(^5\) European standards (Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe) provide that the authority taking decisions on the selection and career of judges should be independent of executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers. Its decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Decisions should be based on merit/ability, integrity and experience. In order to assure this, mandatory written exams should be introduced at the entry level and a national pool of vacancies should be established. Furthermore, an unsuccessful candidate should be entitled to know why he or she failed to secure an appointment and to challenge the decision before a court.
91. The main reforms were in line with the recommendations of the Venice Commission; however there still was room to improve legislation to meet European standards about the independence of the judiciary.

92. The composition of the Judicial Council was not fully consistent with the recommendations of the CCJE, the recommendation of the Group of States against Corruption and case law of the European Convention on Human Rights. The CCJE Consultative Opinion 10 (2007), GRECO’s recommendation and the case law of the European Court of Human rights acknowledge that a judicial council may have a mixed composition of judges and non-judges, but only as long as a majority of its members are judges elected by their peers, which is not the case in Montenegro. The European association of judges - MEDEL also has recently pointed to this shortcoming in the composition of the Council. The CCJE’s Opinion and GRECO’s Evaluation Report further state that a minister should not be a member of the JC, but the Montenegrin JC includes the Minister of Justice as its ex officio member. Furthermore, contrary to the CCJE and GRECO’s recommendations that the chair of the JC should be a judge, the current constitutional arrangements stipulate that the chair of the Council should be elected from among its non-judge members.

93. The composition of the Prosecutorial Council is in line with international standards. According to European best practices, the PC should be composed of a majority of state prosecutors elected by their peers. The current composition of the Montenegrin Prosecutorial Council complies with this recommendation as six members out of 11 are prosecutors. One of the members of the PC is an employee of the Ministry of Justice, while the four remaining members are renowned lawyers.

94. The method of appointment of members of the Prosecutorial Council does not, however, provide sufficient guarantees against undue influence. The method of appointment of renowned lawyers to become members of the PC is problematic for two primary reasons. First, the process of their appointment does not provide sufficient guarantees against undue influence since there are no restrictions regarding the political engagement of the renowned lawyers, so they could even be deputies or members or officials of political parties. Second, the renowned lawyers can be chosen by a simple majority of the Parliament. The Committee for the Political System, Judiciary and

---

58 CDL-AD(2013)028 Opinion on the draft amendments to three Constitutional provisions related to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, Endorsed by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013); CDL-AD(2012)024 Opinion on two sets of draft amendments to the Constitutional provisions relating to the Judiciary of Montenegro, adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012).


61 European Magistrates for Democracy and Freedom (Magistrats Europeens sur la Democratie et les Libertes-MEDEL)


63 Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, This Opinion has been adopted by the CCJE, Strasbourg, 23 November 2007, p.3.

64 See revised Article 127 of the Constitution.

Administration, which initially determines the proposal for election of the four renowned lawyers, also decides by a simple majority rule.

### 2.5.2. Perception of Judicial Integrity

#### 2.5.2.1. Perceptions of impartiality and fairness

**Perceptions of fairness diverged depending on the type of respondent.** Compared to users of judicial services and lawyers, judges and prosecutors in the 2016 survey\(^6\) assessed the fairness of the judiciary much more positively. While 56 percent of the general population, 58 percent of lawyers and 63 percent of representatives of the business sector evaluated the judiciary as fair, positive endorsements were offered by 95 percent of judges and 93 percent of prosecutors.

![General perception of fairness of judiciary](image)

**Participation in a court case had a negative impact on perceptions of judicial fairness of courts.**

![Citizens and business sector: general perception of fairness of courts](image)

---


\(^6\) Survey question: *How fair is the judicial system in Montenegro, i.e. treating equally all participants in the proceedings* Base: Total population of five target groups.

\(^6\) Survey question: *How fair is the judicial system in Montenegro, i.e. treating equally all participants in the proceedings?* Base: citizens and business sector with experience and without experience of a court case.
97. However, court users with experience in court cases evaluated the fairness of their own trial more positively than the fairness of the judicial system in general.

Figure 21 - User of court services with experience of a court case perception of fairness of their own court case compared to perception of fairness of judiciary in general

98. Evaluations by court users were apt to be biased by the outcome of the judgment in their case. However, the majority of those for whom the judgment was not favorable still evaluated the trial as fair, and around 15 percent of citizens and 24 percent of business sector said it was fully fair.

Figure 22 - Perception of fairness in concrete court case depending on judgement

99. There were variations in the perceptions of fairness by case and court types. Perceptions of fairness differed between civil and criminal cases, with more respondents evaluating the civil judiciary as ‘fully fair’ in comparison to the criminal system. Forty-one percent of the representatives of the

---


business sector who participated in commercial cases perceived them as fully fair compared to 19 percent in civil cases.

Figure 23 - Perception of fairness of judiciary in concrete court case

100. Attitudes towards fairness had a significant influence on court users’ decisions to file an appeal against the decision in their case. Among court users who received a decision that was not in their favor but who reported the trial as fair, only 7 percent filed an appeal. However, where court users reported the outcome as unfair, 53 percent of the public and 39 percent of business sector users filed an appeal. The response of court users to perceived unfairness was rational, but it also highlighted how improvements in perceptions of fairness might reduce the number of appeals and improve quality and efficiency.

Figure 24 - Percentage of filed appeals among participants in a court case whose judgement was against them depending on assessment of fairness of the trial

---

71 Survey question: Notwithstanding the outcome of the court proceedings, what do you think of the first-instance proceedings themselves? Did you have a fair trial? Scale from 1 to 4: 1. Yes, fully, 2. Yes, mainly, 3. No, mainly, 4. Not at all) Base: General population and business sector with experience of a court case.

72 Base: General population and business sector with experience of a court case whose judgement was against them (Citizens: 50% of population with experience of a court case; Business sector: 44% of population with experience of a court case)
101. Most judges and prosecutors agreed that the primary reason for unfairness lay in unclear laws, inconsistent interpretations, and insufficient accessibility to all citizens. Politicization also was cited among the primary reasons by lawyers. More lawyers and court users than judges and prosecutors cited politicization and corruption as influencing unfairness.

Figure 25 - Perception of reasons for inadequate fairness of judiciary

2.5.2.2. Perceptions of Integrity

102. Survey participants reported that the judicial system lacked integrity in the delivery of justice, though the term may have meant different things to different types of stakeholders. For judges, prosecutors, and lawyers, several factors undermined integrity. A striking 85 percent of lawyers, 55 percent of judges, and 57 percent of prosecutors reported integrity was primarily undermined by differing decisions made by courts in similar situations. However, more than 70 percent of judges and prosecutors also reported that sensational media reports also undermined the integrity of the judiciary. The length of proceedings and mild penalties for corruption also were cited as possible influences.

---

73 Multiple responses; Most frequently mentioned reasons (What is the chief reason why you did not grade fairness of the judicial system better? And the second most important reason?) Base: Judges, prosecutors and lawyers who did not rate the fairness with the highest score (46% of judges, 55% of prosecutors; 94% of lawyers).
2.5.2.3. Perceptions of trust and confidence

103. The judiciary was one of the less trusted institutions in Montenegro. According to the Justice Survey, only 59 percent of the citizens trusted the judicial system. There was no difference between citizens with and without experience of a court case.

---

Survey question: To what extent do the following factors undermine the integrity of the judicial system in Montenegro? Base: total population of judges, prosecutors and lawyers.

Survey question: How much do you trust the following sectors and institutions? Base: Total population of citizens.

---

46
104. A variety of factors undermined citizen trust in the judicial system. Over 70 percent of respondents selected corruption, conflict of interest, political influence, non-transparent personnel policies, inadequate penalties for corruption, the content of court decisions, the selective initiation of cases, and the length of proceedings as causes for their lack of trust in the judicial system. Over 60 percent also named the partiality of judges and sensational media reports. Several of these factors are within the judiciary’s control and align with the goals of the SRJ suggesting that continued efforts to improve performance could improve trust and confidence over the medium to longer term.

Figure 28 - Citizen Perceptions of Factors that Undermine Trust in the Judicial System

105. Most judges and prosecutors believed that the media, as an external control mechanism, had a negative influence on the integrity of courts and of prosecutor’s offices. The influence of NGOs was perceived somewhat more positively, but almost half of judges and prosecutors considered their influence as negative.

106. The opinions of lawyers were more varied, and the influence of NGOs as a control mechanism was perceived positively by a somewhat higher percentage of that group.

Figure 29 - Perception of the media influence on the integrity of courts and prosecutor’s offices

---

76 Survey question: To what extent did the following factors undermine the trust of citizens/ business sector representatives in the judicial system in Montenegro. Base: Total population of citizens and of business sector representatives.

77 Survey question: What influence have the media had on the integrity of the courts as a mechanism of external control? What influence have the media had on the integrity of the prosecution as a mechanism of external control? Base: Total population of judges, prosecutors and lawyers.
Most judges and prosecutors believed that the JC and PC contributed to the integrity of judges and prosecutors, while their opinions about the contribution of other bodies were not as positive.

Survey question: To what extent do the following means of control help integrity of judges? Base: Total population of judges.
2.5.2.4. Perception of corruption

While almost all providers of court services believed there was no corruption in the judiciary, more than 60 percent of users and 29 percent of lawyers disagreed. Between users with experience of a court case and those without, there were no differences regarding the perception of the presence of corruption in the judiciary. In addition, a considerable percentage formed their attitude based on information from the media and other sources (39 percent citizens and 47 percent of business sector representatives).

Figure 33 - Perception of corruption in the judiciary among judges, prosecutors and lawyers, citizens and business sector representatives

---

80 Survey question: To what extent do the following means of control help integrity of prosecutors? Base: total population of prosecutors.

81 Survey question: How present is corruption in judiciary in Montenegro? Base: total population of judges, prosecutors, citizens, of business sector representatives and lawyers.
Citizens and business sector representatives believed that there was more corruption only in healthcare, the police and media than in the judiciary.

**Figure 34 - General perception on the presence of corruption in state institutions**

### 2.5.2.5. Extent of reported corruption

Among those with experience with a court case, approximately one in 10 citizens and business sector representatives reported receiving suggestions that some informal procedures would increase their chances of winning. A similar number of judges, but only three percent of prosecutors, reported that someone tried to influence their work in some informal way. Finally, majority of lawyers claimed that they had been asked to influence the course of proceedings in some irregular way over the past 12 months.

**Figure 35 - Providers and users of services and lawyers who reported that someone had suggested an informal means to influence case outcomes**

---

*Survey question: How present is corruption in the following sectors and institutions in Montenegro? Base: total population of citizens and of business sector representatives.*
110. Attempts to unduly influence the judiciary reportedly came from a range of sources and via a range of means. In the Justice Survey, judges and prosecutors were asked about situations in which an individual tried to resort to informal means to affect their work, although the same questions were not posed to court staff and lawyers. It should be noted that few respondents seemed to distinguish in their answers the difference between being offered or requesting a bribe and negative press coverage. This may be a result of how the question was asked, but it is still concerning that criticism may have been regarded as the equivalent of a bribe.

Figure 36 - Share of judges, prosecutors and lawyers who report the following sources as having attempted to resort to undue means to affect their work.

111. None of those employed in administrative court services admitted that corruption was present in their departments. However, 20 to 30 percent of users of these services believed that corruption was present.

Figure 37 - Perception of the presence of corruption in administrative court services.

---

84 Survey question: To what extent do the following factors undermine the integrity of the judicial system in Montenegro? Base: total population of judges, prosecutors and lawyers.

85 Survey question: To what extent is corruption present in the court administrative services? Base: citizens and business sector representatives with experience of administrative court services and the employed in administrative court services.
112. Of the 20 to 30 percent of citizens who reported resorting to informal means, 83 percent mentioned “pulling strings”, 29 percent gave a present, and approximately 20 percent used “services for a service”.

Figure 38 - Users and providers of administrative services – the experiences with suggesting usage of informal means aimed at more efficient completing of an administrative court task

Figure 39 - Users and providers of administrative services – accepting of informal means aimed at more efficient completing of an administrative court task

2.5.3. Integrity Building Mechanisms

113. Over the past decade, noticeable efforts were undertaken to strengthen the judicial integrity system through different integrity-building mechanisms. These mechanisms included ensuring the implementation of the principle of random case assignment; introduction and implementation of integrity building plans; adoption of rules on gift-giving, and adoption of rules on recusals and disciplinary offenses. The development and use of each of these mechanisms is analyzed below.

86 Survey question: Users: Did anyone (lawyer, court employee) suggest that your administrative task would be completed more quickly if you resorted to informal means (made an additional payment, offered a gift, pulled strings…)? Employed: In the past 12 months, have you found yourself in a situation in which a client tried to resort to informal means to affect your work? Base: citizens and business sector representatives with the experience of administrative court services and the employed in administrative court services.

87 Survey question: Users: Have you ever found yourself in circumstances in which you resorted to informal means (made an additional payment, offered a gift, pulled strings…) to have your administrative task completed more efficiently? Employed: In the past 12 months, did you find yourself in a situation in which you accepted some form of compensation for your work from a client? Base: citizens and business sector representatives with experience of administrative court services and the employed in administrative court services.
2.5.3.1. Random Case Assignment

The principle of random case assignment was automatically applied by courts through the judicial information system (PRIS). Rules governing random case assignment were introduced by the Law on Courts of 2002 and the Court Rules of Procedure of 2004. Their implementation, however, was postponed until 2013 when PRIS provided new functions related to electronic random case assignment, based on an algorithm. Prior to 2016, the name of the assigned judge was not provided until the next day, as the PRIS software used to make random case assignments during the night. In 2016, an improved procedure was introduced so cases were assigned to judges as soon as the claims-initiating court proceedings were submitted. In the case of higher instance courts, the allocation of cases was not immediately verifiable by appellants. The higher instance courts were, however, bound to notify the parties about the judicial panel to which appeals were assigned upon the request of a party. This enabled requests for a recusal to be filed in due course.

Court presidents were responsible for ensuring that random case assignment rules were applied. The distribution of cases was done by the court administration headed by the court president. The violation of random case assignments constitutes a ground for dismissal of a court president. In addition, an ICT employee of the Judicial Council Secretariat was in charge of creating and maintaining the algorithm for random case assignment as well as for maintaining its confidentiality. Oversight function was accomplished by the MoJ’s judicial inspections.

Random case assignment did not appear to be implemented uniformly in smaller courts. Those interviewed by the FR team reported that certain judges were assigned to particular groups of cases on an annual basis, especially in smaller courts. Although that practice facilitated specialization of a judge in a certain field, it went against the principle of random case assignment.

---


91 Ibid., 79.

92 Article 126 of the Law on the Judicial Council and Judges.

93 Articles 57 and 64 of the Court Rules of Procedure.

94 Article 50 of the Law on Courts.


96 This applies to the following three judge courts: Basic Court in Plav, Žabljak i Kolašin See inter alia Annual assignment schedule of the Basic Court in Plav for 2016: http://sudovi.me/podaci/ospl/dokumenta/2854.pdf and Annual assignment schedule of the Basic Court in Kolašin for 2017, pp. 1-2, http://sudovi.me/podaci/oskl/dokumenta/4632.pdf. It was reported that the President of the court in Plav decides in 70% of the total number of criminal cases, the judge from Žabljak decides in almost all cases related to ownership of real estate. See Report on Implementation of Action Plan for Chapter 23, Network for Affirmation of Non-Governmental Sector, MANS, 2017, p. 18. It was, however, reported that even in some courts which have a moderate number of judges, it happens that only one judge was assigned to adjudicate particular group of cases on an annual basis. The Basic Court in Kotor has 15 judges in total, while at the beginning of 2016 it counted only 9 judges. See Annual assignment schedule of the Basic Court in Kotor, no. I-2-Su.1/2016, 11.01.2016.; Report on Implementation of the Strategy for the Reform of the Judiciary, Human Rights Action (HRA) and CeMI, 2017, p. 76.
117. The issue with the lack of random case assignment in smaller courts was identified by the SRJ, the Action Plan for its implementation and the Action Plan for Chapter 23. The Action Plan for Implementation of the SRJ envisaged that smaller courts with three/four judges should adopt annual assignment schedules during the first quarter of 2018,\(^97\) in line with the principle of random case assignment. The new Court Rules of Procedure also stipulate that courts with a small number of judges should prepare an annual assignment schedule to enable distribution of cases in compliance with the principle of random case assignment.\(^98\) Furthermore, the Action Plan for Chapter 23 and the strategy for the rationalization of the courts network for 2017-2019 called for adoption of amendments to the Law on Courts to enable application of the principle of random case assignment in smaller courts. The amendments were planned to be adopted in March 2019.\(^99\) The effects of these measures and rules are, however, yet to be seen.

118. The legal framework does not guarantee random case assignment in case of termination of a judge’s office and the reassignment of a case to a new judge. The Law on Courts stipulates that cases which were allocated to a judge whose office has been terminated for any reason are to be randomly assigned to a new judge.\(^100\) The Law, however, does not specify the conditions and procedures under which the registration of this type of cases should be conducted. There are no provisions regulating at what point the case of a judge whose judicial office was terminated is going to be reassigned to a new judge. This leaves room for abuses in the random case assignment system. Civil society organizations which monitor the implementation of the SRJ claim that in these situations the random case assignment rule is often violated, as these types of cases are regularly assigned to new judges without using PRIS and the algorithm for electronic random assignment of cases. The groups claim that these types of cases were assigned “manually” in the PRIS instead.\(^101\)

119. The time of receipt of a claim which initiated a court proceeding is not recorded, which could have posed a threat to effective implementation of the random case assignment principle.\(^102\) According to the findings of the Commission for the Control of the Random Case Assignment, there was a widespread practice of not recording the time of the receipt of claims which initiate court proceedings. The recording of a time of receipt is required only in cases determined by the law, or when ordered by a court president or an individual judge.\(^103\)

120. Random case assignment may be compromised further when the same claim has been filed multiple times by the same person. PRIS is not capable of automatically identifying repetitive claims, which allows claimants to file the same claim multiple times, choose the judge they prefer to take their case, and withdrawing the other claims.\(^104\) To address this risk each judge must inform the PRIS staff when a case assigned to him/her has been withdrawn. This allows the PRIS staff to make sure


\(^{98}\) Court Rules of Procedure, 2016, Article 12 para. 5.


\(^{100}\) Articles 34 and 36 of the Law on Courts.


\(^{103}\) Article 134 of the Court Rules of Procedure.

that an identical claim was not submitted already by the same claimant. The new ICT strategy did not address this problem.\textsuperscript{105}

121. The Supreme Court’s practice of reassigning a large number of cases between courts, with the aim of reducing the backlog in the most overloaded courts, poses a risk for interfering with the right to a fair trial.\textsuperscript{106} The PRIS system is not used in the case of reassignment of a case to another court. For this reason, there is no effective mechanism to ensure that the electronic random case assignment method was applied in these re-assigned cases.\textsuperscript{107}

122. The distribution of cases in Misdemeanor Courts was not conducted in line with the electronic random assignment scheme. Misdemeanor Courts were established in accordance with the Law on Courts in 2015. From 2014 to 2017, Misdemeanor Courts still lacked the adequate LAN/WAN infrastructure and technical conditions to apply the electronic random case assignments.\textsuperscript{108} Instead, the distribution of cases followed the alphabetical order of judges’ last names.\textsuperscript{109} The Action Plan for Implementation of the SRJ provided that annual assignment schedules in line with the principle of random case assignment would be adopted in Misdemeanor Courts by the end of 2018, however this is yet to be implemented.\textsuperscript{110} The Action Plan for Chapter 23 and the Strategy for Information – Communication Technology of Judiciary also called for the electronic random assignment scheme to be applied in Misdemeanor Courts when the new information system replacing PRIS became operational in those courts, tentatively scheduled for 2019.\textsuperscript{111}

123. Prosecution offices did not allocate cases in line with the principle of random case assignment. Assignment of cases in SPOs was based on two other principles. According to the first, case allocation should follow the alphabetical order of prosecutors’ last names, while the second rule stipulated that cases were allocated to prosecutors on duty. The second rule took precedence over the first and was needed because prosecutors’ supervision of investigations could require urgent decisions. Although these principles did not undermine prosecutorial impartiality, they may have had a negative effect on balancing the workload of prosecutors, especially in SPOs with a high inflow of cases, such as the SPO in Podgorica, as discussed in a previous section.

2.5.3.2. Integrity plans

124. According to the Law on Prevention of Corruption, all courts and SPOs were required to develop integrity plans by April 1, 2016. This obligation also applied to the Judicial and Prosecutorial Councils. Integrity plans require each institution to identify its potentially vulnerable points of

\textsuperscript{105} Ibid, p. 29.


\textsuperscript{109} Article 58 of the Court Rules of Procedure.


\textsuperscript{111} Semi-annual report on Action Plan for Chapter 23, January 2018. 1.2.1.3.3; Strategy for Information – Communication Technology of Judiciary, p. 9.
corruption, assess the risks, determine preventive measures for reducing the risk of corruption, and apply self-control in the implementation of its competences. After submission of integrity plans to the Agency for Prevention of Corruption, judicial authorities were also required to submit the report on the implementation of the respective integrity plan to the Agency, to enable the Agency to give recommendations for the improvement of each integrity plan.\footnote{Articles 75-77 of the Law on Prevention of Corruption.}

125. Most of judicial institutions developed integrity plans, but since the plans were developed only recently it was not possible to assess their effectiveness. Forty-five of 56 judicial institutions developed integrity plans in 2016; reports on implementation of the plans were submitted in 2017.\footnote{52 people participated in these trainings. Annual Work Report of the Agency for Prevention of Corruption, 2017, p. 44; See Article 113 of the Law on Prevention of Corruption. http://www.antikorupcija.me/media/documents/IzvjeStaj_o_radu_Agencije_z_a_2017._godinu.pdf} The Action Plan for Implementation of the SRIJ called for new integrity plans for judicial institutions to be adopted during the second quarter of 2018, but because of the institutional blockage of the JC this is postponed for the 2019.

Box 5 -The rules pertaining to development of integrity plans

The procedure for the development of an integrity plan is regulated by the guidelines for developing and implementing an integrity plan of the Agency for Prevention of Corruption.\footnote{Guidelines for developing and implementing an integrity plan, Official Gazette, No. 78/2015.} Preparation of an integrity plan requires that a head of the concerned state authority or a responsible person within that state authority determines a chair and members of a working group for the development of an integrity plan. A head of the concerned state authority informs all employees about their duty to actively participate in the preparation of the integrity plan and provide necessary support to the working group. Based on the assessment and rank of the identified risks, the working group prepares a report and drafts an integrity plan which are to be presented along with the supporting documents to the head of the state authority by the chair of the working group. Based on the conducted review, the respective head signs a decision on adopting the integrity plan or, alternatively, requires additional activities or measures to be taken by the working group. The head of the state authority informs employees that the integrity plan is adopted, while the given decision should be submitted to the Agency for Prevention of Corruption within 15 days of its adoption. The same person who was responsible for the development of the integrity plan is responsible for its implementation and the head of the state authority appoints him as an integrity manager.

126. Several trainings on building integrity were organized starting in 2016. Two trainings were organized in 2016 for judges, court presidents, heads of SPOs and state prosecutors.\footnote{Center for Training in Judiciary and Public Prosecutor’s Office. Report on the work of the Center for Training in Judiciary and Public Prosecutor’s Office in 2016.} In 2017, several trainings were conducted for strengthening the integrity of members of the Judicial and Prosecutorial Councils and of the employees of the Secretariats of the Judicial and Prosecutorial Councils,\footnote{Annual Work Report for the Prosecutorial Council and State Prosecution, 2017, p. 6; Annual Work Report for the Judicial Council, 2017.} by concentrating on using integrity plans as mechanisms for preventing corruption and breaches of integrity in the judiciary. Those trainings were organized jointly by the Council of Europe and the
European Union for the members of both Councils and the administrative staff of their Secretariats. The following trainings to build integrity were conducted for judges and prosecutors in the course of 2017: trainings on corruption related crimes organized by the Center for Training in Judiciary and Public Prosecutor’s Office; workshops on ethics and preventing conflict of interest organized jointly by the training center and the Council of Europe, within the Project on the Fight against Economic Crime in Montenegro (AEC – MNE) that is part of the Horizontal Facility for Western Balkans and Turkey; trainings on whistleblower protection in civil and criminal legal matters, organized within the same project, and trainings on European and international standards of ethical conduct and disciplinary liability of judges and prosecutors organized as part of the same project. The Action Plan for Implementation of the SRJ envisaged the organization of trainings for judges, prosecutors and judicial staff on the purpose and content of the integrity plans through 2018. Although integrity building trainings were a positive development, their effectiveness could be hampered if the analytical and monitoring skills of the competent authorities are not strengthened as well.

2.5.3.3. Gift-giving rules

127. The statutory framework governing gift-giving in the judiciary is well established. According to the Law on the Judicial Council and Judges and the Law on State Prosecution, acceptance of a gift is a serious disciplinary offence. The Law on Prevention of Corruption prohibits the acceptance of gifts and regulates them as a ground for liability in a more detailed manner compared to the Law on the Judicial Council and Judges and the Law on State Prosecution. It stipulates that any public official, including judges and prosecutors, may not accept a gift except for protocol and appropriate gifts. An appropriate gift constitutes a gift which value does not exceed EUR 50. To avoid abuses, it establishes limits applicable to situations when more than one appropriate gift is received within a year. The Law on Prevention of Corruption also contains rules governing the procedure for judges and prosecutors to reject gifts and the duty to report and maintain records of gifts. The Law on Civil Servants and State Employees prescribes rules on gift-giving for court staff. This law places the same EUR 50 limit on the value of a gift. It also contains almost identical rules governing the procedure for court staff to reject gifts, and the duty to report and maintain records of gifts. In addition, it contains very similar provisions for disciplinary liability.

128. The statutory rules on gift-giving were not adequately reflected in the Ethical Codes and applicable rules of procedure. The Court Rules of Procedure and the Rules of Procedure of the Judicial Council and Prosecutorial Council did not contain any rules governing gift-giving. The Code of Ethics for Judges and Code of Ethics for Prosecutors, on the other hand, did contain rules governing the procedure for judges and prosecutors to reject gifts and the duty to report and maintain their records. On the other hand, they did not specify a value for permissible gifts. This was not in line with legal transparency standards. Furthermore, it was not clear from the Law on the Judicial Council and Judges and the Law on State Prosecution and the respective Codes of Ethics whether the acceptance of a gift

120 Articles 16 to 20 of the Law on Prevention of Corruption.
121 Articles 72 and 73 of the Law on Civil Servants and State Employees.
constituted grounds for disciplinary liability or if there were certain situations in which only ethical misconduct rules applied to an acceptance of a gift.

2.5.3.4. Recusals (Exemptions and Exclusions)

129. There were two mechanisms in place for the recusal of judges: exclusions and exemptions. Exclusion rules require that a judge be disqualified from hearing a case if the judge is a party to the proceeding, a shareholder to a company that is a party, a family member of a party, or if the judge had previously participated in the case. Exemptions are more general and apply where circumstances would give rise to doubt to the impartiality of the presiding judge; the judge may be disqualified where such doubt can be shown. When a party submits a written motion to exclude a judge, the judge is required to suspend proceedings, make a statement about the motion, and notify the Court President who is authorized to decide on the merits of the motion, based on the information contained in it. However, when a motion to exempt a judge is submitted, different rules apply, and the judge can carry out a limited scope of activities when there is a risk of delay if he or she does not act. Judges’ decisions on both exemption or exclusion are not subject to appeal.

130. There was insufficient data regarding recusals within the judicial system during the period under review. This problem was attributable to some extent to the fact that details on recusals were maintained by the courts but not reported to the Councils. The Supreme Court reviewed the application of disqualification procedures for the period 2012-2014, as provided in the Action Plan for Chapter 23. According to available data, up to 2016 the number of approved motions to exempt or exclude judges was on the rise. During the first half of 2016, 888 motions for recusals of judges were filed and 70 percent of the total number of filed motions were approved, compared to the 631 motions approved in 2015.

131. The legal framework governing recusals of judges needed additional improvements. Modifications of the legal framework of recusals of judges and prosecutors were made in line with the Action Plan for Chapter 23 in 2015. However, the rules governing the failure of judges to meet their recusal-related obligations still were not adequate. More specifically, the Law on the Judicial Council and Judges stipulates that a judge commits a disciplinary offence if he/she has failed to seek recusal in the circumstances where it was mandatory at least three times in one calendar year. The rationale for this rule was unclear, as it provides a wide leeway for breaching the recusal rules. The Law on State Prosecution was more advanced in this respect. It prescribes that a prosecutor is to be held liable for committing disciplinary offence if he/she has failed to seek recusal in circumstances where it was mandatory only once.

123 Article 38 of the Code on Criminal Procedure and Article 69 of the Law on Civil Procedure. The Law on Civil Procedure also provides the possibility for exemption of expert witnesses and recorders. Article 43 of the Criminal Procedure Code stipulates that provisions on exemption of judges shall be applied accordingly for the exemption of state prosecutors, recorders, interpreters and expert witnesses. However, the head of the prosecution office is entitled to decide on exemption of prosecutors.

124 Article 73 of the Law on Civil Procedure Law and Article 41 of the Criminal Procedure Code.

125 They are usually reported to the higher court and not to the Councils or to any other system that would enable monitoring or tracking.


Disciplinary offences

132. Disciplinary offences for judges, prosecutors and their administrative staff are governed by different pieces of legislation, setting forth separate legal regimes for each category. The disciplinary offences and procedures for judges and prosecutors are determined by the Law on the Judicial Council and Judges and the Law on State Prosecution respectively, while the disciplinary framework applicable to court and prosecution staff is governed by the Law on Civil Servants and State Employees. The holders of judicial office are subject to disciplinary measures defined at three levels: minor, severe, and most severe disciplinary offences, while the court and the prosecution staff are liable for minor and severe disciplinary offences. The Judicial and Prosecutorial Council both have a disciplinary panel in charge of rendering first instance decisions establishing minor or severe disciplinary offences of judges/prosecutors. The Councils are authorized for deciding on the most severe disciplinary offences of the holders of judicial functions. Decisions establishing disciplinary violation of holders of judicial office can be appealed to a panel of judges of the Supreme Court. Regarding court and prosecution staff, court presidents/head of SPOs are in charge of rendering first-instance decisions involving minor disciplinary violations, while the Government Disciplinary Commission decides on severe disciplinary violations. The final decision of the Disciplinary Commission can be challenged before the Administrative Court.

133. Disciplinary offences of judges and prosecutors are narrowly defined. The criteria for disciplinary liability for committing minor, severe and most severe disciplinary offences are set so high it makes the initiation of disciplinary proceedings very difficult. Furthermore, the wording of a number of disciplinary offence rules leaves room for avoiding disciplinary liability by judges and prosecutors, as they prescribe that disciplinary liability exists only if the given offences were committed “without a justified reason.”

134. The disciplinary system is complex and ineffective. The disciplinary prosecutor plays only a limited role in disciplinary proceedings. He/she is responsible for investigating submitted motions but is not entitled to file a motion for establishing disciplinary liability. Only a court president, an immediately superior court president, a president of the Supreme Court and the Commission for Monitoring the Implementation of the Code of Ethics is authorized to file the disciplinary motion. In addition, the procedure for filing a disciplinary motion is overly complex, since the competent authorities need to file the disciplinary motion with the Councils, who then forward it to the disciplinary prosecutor. Any decision establishing a disciplinary violation can be appealed before a panel of judges of the Supreme Court. Finally, the existing legal framework allows for duplication of proceedings, as it does not prohibit parallel disciplinary proceedings and proceedings for ethical misconducts.

135. In practice, a very low number of disciplinary sanctions were imposed on holders of judicial functions. In 2017, motions for establishing disciplinary liability were submitted only for one judge.

---


129 See Articles 110 of the Law on the Judicial Council and Judges and the Law on State Prosecution. Judges or prosecutors have been rarely found to have violated the Code of Ethics, and even then disciplinary proceedings have not been initiated. Network for Affirmation of Non-Governmental Sector, Report on Implementation of Action Plan for Chapter 23, Podgorica, February 2017, p. 20.

and one prosecutor, who were sanctioned for committing a disciplinary offence. In the course of 2016, no sanctions were imposed on judges and prosecutors, while only one motion was filed for establishing disciplinary liability of a judge. Track records related to the enforcement of disciplinary accountability for judges and prosecutors also were still very limited. This shortcoming was recognized in the Action Plan for Implementation of the SRJ, which called for measures to keep the records and reporting on disciplinary liability of holders of judicial functions.

136. **Aggregate data regarding the disciplinary processes for court and prosecution staff were not available.** The Action Plan for Chapter 23 provides that implementation of provisions pertaining to disciplinary liability of civil servants and state employees should be monitored to strengthen citizens’ trust in public administration and prevent corruption. However, the data on disciplinary processes for the court and the SPOs’ staff still was not accessible.

137. **The 2016 World Bank’s perception survey showed a considerable portion of the courts’ and prosecutors’ support staff knew an employee who had been subject to disciplinary liability.** According to the survey results, four in ten employees knew a colleague who has been held disciplined. However, only one in five had heard of such a case in the past 12 months. (Figure 40)

![Figure 40 - Experience with disciplinary liability](image)

**Table: Experience with disciplinary liability**

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Ever</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the past 12 months</td>
<td>42%</td>
<td>80%</td>
</tr>
<tr>
<td>Ever</td>
<td>58%</td>
<td>20%</td>
</tr>
</tbody>
</table>

131 Disciplinary proceedings initiated against one judge resulted in the statutory minimum sanction, while the proceedings initiated against one prosecutor resulted in a 20% salary reduction for 3 months, *ibidem*.


2.6. **Recommendations**

138. Montenegro needs to amend its Constitution and any applicable laws to bring the organization of the Judicial Council in line with EU criteria for council membership and leadership. Since the independence of the judiciary is one of the principal values on which the EU is built, as a practical matter it also is necessary that Montenegro ensure full independence of the justice system. More specifically, Montenegro should:

- Ensure that the membership of Judicial Council comprise of judges as majority, that its chair is elected from its judge members, and that the *ex-officio* participation of the Minister of Justice in the Council is eliminated. (MoJ, Judicial Council – short term).
- Amend the applicable legislation to ensure their professional qualities and impartiality of selection criteria for the non-judicial members of the Judicial and Prosecutorial Councils. (MoJ, Judicial and Prosecutorial Councils – short term).

139. The distribution of responsibilities between the MoJ, Councils, courts and SPOs also poses risks to the effective coordination and performance of judicial functions, reform strategies and the EU Accession process. To correct this situation, Montenegro needs to:

- Streamline the chain of authority for developing, amending, implementing and coordinating the various reform strategies. Assigning responsibility for these roles is a political process, but the result should be clear and well-publicized.
- Delegate the responsibilities for managing the court and SPO budget operations from the Councils to individual courts and SPOs (as also recommended in the Financial Management chapter). (MoJ and Judicial and Prosecutorial Councils – short term).
- Determine what the numbers and qualifications of additional staff should be for the MoJ’s Directorate for ICT of the Judiciary and Data Security, since the Directorate will become responsible for centralized management of ICT once the Councils’ powers pertaining to judicial information systems are transferred to the MoJ. (MoJ – short term).
- To preserve more institutional memory among the members of the Prosecutorial Council, amend the Law on the Prosecutorial Council so its members have staggered terms. (MoJ, Prosecutorial Council – short to medium term).
- Amend the position descriptions of the Council Secretaries to include responsibility for managing the performance of the Secretariat and their employees. The administrative tasks currently assigned to the Secretaries should be transferred to the appropriate Directors within the Councils. (Judicial and Prosecutorial Councils – short term).
- Establish separate analytical units within the MoJ and Judicial and Prosecutorial Councils, to the extent they don’t exist already. Further expand the job descriptions for analysts in the MoJ and the Secretariats of the Councils, to include responsibilities for aspects of performance-

---

137 2019 EU Progress Report.

138 The need for training members of the Councils, their staffs and the staff of the MoJ on strategic management and performance monitoring skills are addressed in recommendations for the Financial Management chapter; those measures also would contribute greatly to improving the governance and management of the judicial system as a whole.

139 In June 2016, an ICT strategy for replacing PRIS and the accompanying action plan were adopted. See Activity 7.2.1. of the *Action Plan* for the Implementation of the *Strategy of Information – Communication Technology of Judiciary 2016 -2020*, Ministry of Justice, [www.gov.me/ResourceManager/FileDownload.aspx?rId=252389&rType=2](http://www.gov.me/ResourceManager/FileDownload.aspx?rId=252389&rType=2), 05.05.2018.
based budgeting, strategic development and performance auditing. Performance assessments for these positions should include the successful completion of these duties. (Judicial and Prosecutorial Councils and MoJ – short term)

140. Improving the perceptions of citizens and court users about judicial operations should be easier in Montenegro than it is in many other countries, due to its relatively small population. Making more information more accessible to those working in the system also would improve its governance and management and contribute to building the integrity of its operations. To achieve increased transparency, Montenegro should:

✓ Require the MoJ and the Councils to publish well-indexed sets of all laws and rules pertaining to their operations (even those promulgated by other institutions) on their respective websites. These rules should include the rules that specify the type of information they cannot or will not make available to the public. The rules should include the legal bases for those restrictions. (MoJ and Judicial and Prosecutorial Councils - short term).

✓ Require the Councils to publish the agendas for their meetings on their websites before the meetings are held. (Judicial and Prosecutorial Councils – short term).

✓ Require the Councils to publish the minutes for their meetings on their websites within defined periods after the meetings are held. (Judicial and Prosecutorial Councils – short term).

✓ Require the Councils to publish decisions of their institutions about the promotions and appointments of judges and prosecutors to the maximum permissible extent, and to make the decisions available on their websites within a specified time after the decisions are made. (Judicial and Prosecutorial Councils – short term).

✓ Require the Councils to publish disciplinary decisions to the maximum permissible extent within a specified time after the decisions are made. Even if the public release of information about the individuals involved is not permitted by laws or rules, the Councils should publish an expurgated account of each complaint, the evidence considered, the decision reached and its rationale. (Judicial and Prosecutorial Councils – short term).

141. Preserving random case assignments is a challenge for judges in smaller courts in all jurisdictions, and the Judicial Council should survey how other systems have tried to address this challenge, to see if any of those measures should be incorporated in the rationalization of the court network proposed in this Review. Other measures Montenegro should take to build the integrity of its judiciary include:

✓ Adopting rules specifying at what point a case should be reassigned to a new judge when the judicial office of the original judge has been terminated; the goal of these rules would be to avoid abuse of mishandling of the random case assignment system. (MoJ, Judicial Council – medium term).

✓ Establishing systems to ensure that multiple cases filed to obtain the assignment of a desired judge is identified. Initially, responsibility for identification of these cases would have to be included in the position descriptions of one or more members of the staff of each court, but eventually the new case management software should be programmed to select these cases. At the same time, applicable laws or rules should be amended to require the consolidation of
Adopting any additional legislative, regulatory and technical provisions necessary to ensure the random assignment of all cases handled by all courts, from Misdemeanor Courts to the Supreme Court. The provisions should allow exceptions recognized by EU institutions, e.g., to allow random assignments to be made within the civil and criminal divisions of larger courts, or the assignment of cases on particular issues to judges with expertise on those issues. (MoJ, Judicial Council and Supreme Court – short term).

✓ Amending the Law on the Judicial Council and Judges to clarify that the single failure of a judge to seek recusal in circumstances which made recusal mandatory (rather than three failures under current law) is sufficient to incur disciplinary penalties. (MoJ, Judicial Council – medium term).

✓ Requiring court presidents to report recusals to the Judicial Council at least quarterly, and the Council’s public admonition of courts which fail to do so. (Courts, Judicial Council – medium term).

✓ Adjusting the definitions of minor, severe and most severe disciplinary offences by judges and prosecutors to lower the bar for offenses in each category. (MoJ – medium term).

✓ Conducting periodic surveys of the experiences and perceptions of court users about corruption with the court system. These surveys should form part of the basis for additional interventions to reduce corruption, or the perception of it, within the court system. (Agency for Prevention of Corruption, Judicial Council, Supreme Court – medium term and continuing).

✓ Publishing the rules governing the duties and behavior of administrative staff on the websites of courts and SPOs. (Judicial and Prosecutorial Councils, courts and SPOs – short term).

✓ Amending the Ethical Code and applicable rules of procedure to incorporate the statutory rules on gift-giving, and publishing the rules on the websites of courts and SPOs. (Judicial and Prosecutorial Councils – short term)

✓ Promoting ethical conduct in the judiciary by publishing examples of permissible/impermissible conduct of judges, prosecutors and judicial system staff on the websites of the Judicial andProsecutorial Councils. (Judicial and Prosecutorial Councils – short term and ongoing).
3. EFFICIENCY AND EFFECTIVENESS OF JUSTICE SERVICES

General Findings

142. Efficiency of justice services has several dimensions (i.e. workloads and caseloads, productivity, timeliness in case processing, procedural efficiency), and while Montenegro’s judicial system improved some of them, it lagged in others. The situations for Montenegro’s courts and prosecution are treated separately here. Efficiency is used here as it is by CEPEJ, meaning the guarantee of a fair trial within a reasonable period of time; this is a definition other might use for effectiveness.

143. One basic dimension of efficiency is service output (production), both absolutely and as compared to demand. During the 2014-2017 period, production in courts slightly improved in many areas, but areas of under performance remained. Clearance rates (resolved cases/incoming cases) mostly remained over 100 percent due largely to declines in the number of incoming cases, increases in the number of judges, and the implementation of reforms which transferred enforcement and probate cases from the courts to private bailiffs and public notaries. Given the amount of financial and human resources invested in the sector, clearance rates could have been higher. There was significant variation across courts, but few courts produced a rate under 100 percent by 2016. While clearance rates declined for all court types in 2017, they were still above 100 percent.

144. A second dimension of efficiency – productivity measured as the average case dispositions per judge – was on the low end of the acceptable range overall and varied significantly by court and court type. Average case dispositions per judge declined from 455 in 2014 to 424 in 2017 in Basic Courts due to the reduction in incoming cases and the increased number of judges. It appears that judges generally resolved about the same number of cases that they received without much impact on backlogs.

145. In terms of timeliness of case processing using the CEPEJ disposition time indicator, the results were somewhat mixed but improving. This study could not use averages based on the real duration of cases since these statistics cannot be calculated from the judicial PRIS case management system. However, congestion rates remained well under 0.50, indicating reasonable performance.

146. Although aging lists of unresolved and resolved cases were produced to help the courts create and monitor backlog reduction plans, they were not routinely used for these purposes by Court Presidents. CEPEJ disposition time indicator results varied noticeably by case and court type. For example, average disposition times were only 20 days in the Supreme Court in 2016 and 242 days

---

140 This indicator does not use real disposition times but rather makes estimates on the basis of accumulated backlog. Most experts in judicial statistics do not use it for this reason, but given the lack of available data, the indicator was the only tool available for the team to use, for insight into disposition timeliness.

141 Congestion rates are calculated here as the number of unresolved cases at the end of one year/the number of resolved cases during the same year. Congestion rates are particularly useful indicators to examine if there are larger numbers of cases carried over from one year to the next, or to more than one year.
in Misdemeanor Courts. The disposition times for civil and commercial litigation, as expected, were the longest and 48 days above EU averages.¹⁴²

147. **User perceptions of timeliness remained negative, discouraging court users from seeking court services.** Furthermore, the available data on timeliness of first instance proceedings did not cover the life span of all cases, since appeal rates were relatively high in Montenegro (as discussed in the Quality of Justice Service chapter), and cases often went through re-trials after appeals, which further prolonged the final resolution of the cases.

148. **Montenegro showed improvements in both efficiency and productivity between 2014 and 2016, but it remained well below EU average on several performance indicators, and the improvements that were seen came at substantial costs to the system.** Montenegro’s case clearance rates of slightly more than 100 percent allowed at least some reductions in case backlogs, and congestion and disposition times improved somewhat, although the improvements were not consistent even among courts or prosecution offices at the same jurisdiction levels. Examining 2014 data in 2016, the CEPEJ concluded Montenegro’s was the second most expensive judicial system in Europe based on GDP. With expenditures at 0.74 percent of the GDP, Montenegro ranks second among the 46 European countries analyzed in the report.

149. **The introduction of bailiffs in 2014 caused a significant number of new enforcement cases to be redirected from courts.** However, transferring enforcement cases to bailiffs, as well as transferring probate cases to public notaries did not improve disposition times for disposition of the courts’ remaining caseload. Moreover, the redirected probate cases were still counted by the courts as new filings and dispositions. Continuous monitoring of bailiffs and notaries is required to ensure their effectiveness in dealing with these cases. Meanwhile, the courts were left with the backlogs of old enforcement cases that were already in the courts.

150. **A series of procedural inefficiencies caused frustration among court users and practitioners and contributed to delays.** Management of hearings in courts was often rated as poor with many inefficient or adjourned hearings. An excessive number of hearings did not contribute to resolution of the case, suggesting that judges were not using their powers to actively manage their caseloads appropriately or effectively.

151. **The efficiency of prosecutors also was a concern, but the lack of disaggregated data constrained a deeper, more detailed analysis in the Functional Review.** In 2011 the prosecution service started a transition to a prosecution-led adversarial system under the new Criminal Procedure Code (CPC), and these changes expanded their duties.

152. **As opposed to courts, SPOs report their caseloads by perpetrators – adults, juveniles, unknown or legal entities – which posed challenges in tracking statistics for the whole criminal chain (police, prosecutors and courts).**

153. **The uneven distribution of cases among prosecutors indicates resources need to be redistributed.** The variations among SPOs in received criminal complaints per prosecutor were significant and caused some SPOs to receive more than twice the load of others. In 2017, the highest number of criminal complaints received per prosecutor in Basic SPOs was in Kotor (120), and the lowest in Pljevlja (55). In Montenegro, 1.62 cases were received per prosecutor per 100 inhabitants

---

¹⁴² CEPEJ EU averages in this study are averages calculated using CEPEJ data for 28 EU Member States.
while the EU average was almost double at 3.55.\textsuperscript{143} Caseloads per prosecutor were also at the low end of the EU range. According to the PC, the reduction in the number of received cases was caused by a continuous decline in the number of filed criminal complaints, but no data was available to explain the reasons for this decline.

154. Like courts, prosecution offices also increased the number of prosecutors and staff and their expenditures without a growth in production or productivity. The clearance rate of SPOs was slightly over 80 percent in 2014 as reported by CEPEJ, indicating that backlogs were growing. However, according to CEPEJ this was in line with the majority of other countries. The Montenegrin statistical data for prosecutors do not support calculation of clearance rates after CEPEJ’s analyses of the rates in 2014. Montenegro’s SPOs also carried a large caseload deriving from so called “various criminal cases,” known in the system as KTRs. These cases often were dismissed for lack of sufficient information or because of a determination that no crime had been committed, but their volume and impact on SPOs’ performance were significant, and prosecutors reported the cases demanded a fair amount of their attention and effort.

155. Even though the inflow was steady and there were fewer indictments issued by prosecutors the number of unresolved criminal complaints grew each year from 2014 to 2016. Unresolved criminal complaints are cases in which the prosecutor receives the criminal complaint but does not decide whether to dismiss it or take further procedural actions (such as investigation, direct indictment, deferred prosecution or indictment). Prosecutors indicated that in most of these cases they must determine whether there were grounds for further action, and in some cases initial examination needed to be done before they decide whether to ask for an indictment. The number of unresolved indictments (presented to the courts without a resolution) fell from 3,655 to 2,693 in the period from 2014 to 2017; simultaneously the number of resolved indictments also fell from 5,104 to 3,751. Indictments were considered resolved once they were finally confirmed or rejected by the court.

3.1. Demand, Efficiency/Effectiveness, Timeliness and Productivity of Courts in Montenegro

3.1.1. Workloads and Caseloads

156. Performance of courts can be measured and assessed based only on knowledge of the demand for court services, including the type and quantity of cases, court workloads and their variations over time. An assessment of court performance thus begins with a court’s caseload and proceeds to consideration of the types of cases and the processes used by the court to resolve them. Evaluation of courts’ performance needs to address not only the absolute numbers involved, but their contextual significance. As a result, in this Functional Review demand is compared to population, incoming cases are compared to the number of judges, resolved cases to the number of incoming cases, etc. This analysis disaggregates cases by types where possible, to achieve a fair understanding of how courts in Montenegro were performing individually and as a part of the judicial system.

\textsuperscript{143} For detailed data see CEPEJ 2016 report, p. 220.
3.1.1.1. Overall workloads

157. In 2017 Montenegrin courts received 164,031 incoming cases. These included both small matters and complex ones.

158. The year 2016 was the first in which Misdemeanor Courts were fully operational. The Misdemeanor Courts received 55,567 cases, or 36 percent of the systems’ total number of incoming cases in 2016; these numbers grew in 2017 to 62,387 incoming cases or 38 percent of the total inflow.

Box 6 - Court Statistical Data in Montenegro

There are three sources of court statistical data in Montenegro; Supreme Court Annual Reports, Judicial Council Annual Reports and individual courts’ annual reports. The Supreme Court and the Judicial Council reports contain nationwide data, partially disaggregated by court types, courts and case types. Additionally, individual courts submit annual reports on their work. However, these reports do not use a uniform methodology and often quote diverse figures for the same categories of information. Moreover, individual courts’ reports published for each year are not unified either in form or content, which makes any analysis or comparison challenging.

What causes reporting discrepancies and what can be done to mitigate them? Different and frequently altered reporting methodologies, different selection of cases included in reports, changes over time to tables, using narrative rather than numerical tables, data set changes, etc. This all can be seen in the reports that were presented to the team and/or publicly available. There is no foolproof way to prevent reporting discrepancies, but the system does not provide standards and protocols that can be used to minimize them. The system also needs to vet their application.

For this report the team focused on the Judicial Council Annual Reports for 2014 to 2017. Nevertheless, all available sources were analyzed and compared. In cases when the team found differences in the national level reports, they were caused by different methodologies or were within the margin of error. The largest discrepancies were found in courts’ individual reports.

Finally, all reports demonstrated signs of caseload inflation, caused by recording peripheral filings (e.g., delegations to another court or agency) as cases, and including probate cases in the normal caseloads even though they were delegated to notaries from 2014 to 2016 (the practice was abandoned in 2017). This practice of counting as peripheral findings as cases, also seen elsewhere in the region, complicates comparisons of individual caseloads with those in the rest of the EU.

159. Demand for court services grew slightly over the four-year period. Excluding misdemeanor cases there were 101,644 incoming cases in 2017, which was a 5 percent increase compared to 2014 and approximately 11 percent more than in 2015.

160. Basic and Misdemeanor Courts received the highest number of cases, together accounting for 75 percent of all incoming cases in 2017. These first-instance courts are for most parties the first and possibly the only contact point of court users with the judicial system. Except for High Courts, which received over 16,000 cases, and the Administrative Court which reached almost 13,000 new cases, other court types received well below 10,000 cases. Figure 1 displays the breakdown of incoming cases across court types in 2017.
161. CEPEJ (2016) reported that the overall demand for justice in non-criminal cases in Montenegro was lower than the EU average. According to CEPEJ, Montenegro received 6.5 non-criminal cases per 100 inhabitants in 2014 while the EU average was 11.37. However, for civil, commercial and administrative law cases, Montenegro was above the EU average for cases per 100 inhabitants and for civil, commercial litigious and administrative law cases, the demand for justice was 1.6 times higher than in the EU, as shown by Figure 2. Nonetheless, it is probable that the respective differences were due in part to the diversity in the treatment of cases among the legal systems in Council of Europe Member States and the methodologies used for reporting to CEPEJ.144

For example, in response to the CEPEJ 2016 (2014 data) Questionnaire, Montenegro reported 9,324 non-litigious cases while at the same time Croatia reported 759,028 and Slovenia reported 587,442. Although these countries are larger in size and population, that still does not justify the difference of 60 or 70 times more cases per 100 inhabitants. In Croatia and Slovenia the majority of these cases were land registry and company registry cases, which in Montenegro those were entrusted to administrative bodies and not to courts.145

The number of all incoming types of cases per 100 inhabitants in Montenegro remained stable from 2014 to 2017, at around 15 to 16.\textsuperscript{146} Although Montenegro witnessed a slight drop in 2015 to 14.81, in 2016 and 2017 the number grew to 15.72 and 16.39, respectively. In 2016 there also were 8.96 incoming misdemeanor cases per 100 inhabitants, a number which grew to 10.06 in 2017. These ratios corresponded to incoming cases as shown in Figure 3. There was no single cause for the variation in the number of incoming cases by court or case type. For example, there were fewer incoming criminal cases in Basic Courts but at the same time there also were more incoming litigious cases. The number of incoming misdemeanor cases is not included in Figure 43, below.

Figure 43 - Total Incoming Cases from 2014 to 2017 (excluding Misdemeanor)

3.1.1.2. Workloads by Court Type

Differing trends were visible when disaggregating data by court type. While in Basic and Commercial Courts the demand decreased, in High, Appellate, Administrative and the Supreme Court (which received fewer cases in general) more cases were received each year (see Figure 44).

Figure 44 - Incoming Cases by Court Type from 2014 to 2017 (excluding Misdemeanor)

\textsuperscript{146} Incoming cases per 100 inhabitants were calculated by the WB team based on statistical reports and Census of Population, Households and Dwellings in Montenegro 2011, according to which the population of Montenegro in 2011 was 620,029. The report is available at \url{https://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje(1).pdf}.
Basic Courts were affected the most by incoming litigious cases, which took up 46 percent of their incoming caseload. While the number of first instance criminal cases fell, the number of civil cases increased mostly due to litigious cases. In addition, although bailiffs were introduced in 2014, new enforcement cases still were logged into the system so by 2017 these cases made up 13 percent of all incoming cases, only five percent less than in 2016. There also was a significant portion of enforcement cases remaining in the courts but identified as such in the PRIS case management system, and consequently not visible in the following figure and table. Disaggregated incoming cases by case type are presented in Figure 45 and Table 1 - Incoming Cases by Case Type in Basic Courts from 2014 to 2017.

Figure 45 - Incoming Cases by Case Type in Basic Courts from 2014 to 2017

Table 1 - Incoming Cases by Case Type in Basic Courts from 2014 to 2017

<table>
<thead>
<tr>
<th>Case Type</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal 1st Instance</td>
<td>4,559</td>
<td>3,878</td>
<td>3,587</td>
<td>3,484</td>
</tr>
<tr>
<td>Criminal Other</td>
<td>12,636</td>
<td>8,521</td>
<td>9,390</td>
<td>8,691</td>
</tr>
<tr>
<td>Civil Litigious</td>
<td>25,045</td>
<td>28,586</td>
<td>27,555</td>
<td>28,528</td>
</tr>
<tr>
<td>Civil Non-Litigious</td>
<td>7,872</td>
<td>8,131</td>
<td>8,666</td>
<td>3,505</td>
</tr>
<tr>
<td>Other Litigious and Non-Litigious</td>
<td>2,687</td>
<td>2,771</td>
<td>3,086</td>
<td>9,116</td>
</tr>
<tr>
<td>Enforcement</td>
<td>12,095</td>
<td>9,146</td>
<td>11,371</td>
<td>7,936</td>
</tr>
</tbody>
</table>

Source: JC Annual Reports for 2014 to 2017

Misdemeanor Courts, as the second busiest, received 62,387 cases in 2017, or 38 percent of the incoming cases in all courts. More than half of these cases were received in Podgorica’s Misdemeanor Court, while the lowest number was received in the Higher Misdemeanor Court of Montenegro (2,140 cases). Most of the courts’ caseload related to traffic matters and to lesser offences related to public order, family violence, corruption and taxes.

Misdemeanor cases filed by the Agency for Prevention of Corruption for violating the provisions of the Anti-Corruption Law, Financing of Political Entities Law and Lobbying Law.
Misdemeanor Courts in Montenegro have jurisdiction over a plethora of misdemeanor offences. A misdemeanor offence in Montenegro is an act that constitutes a violation of public order established by law for which a sanction is prescribed. More simply, these are less serious offences than criminal ones. A misdemeanor complaint is always made by an authorized state bodies such as the police, state inspectors or state agencies, while the defendant can be a natural or a legal person. The Misdemeanor Act contains procedural rules for these cases, while misdemeanor offences are prescribed in numerous material laws that cover domains ranging from public law and order, traffic, tax and other inspections to electronic communications and competition. The sanctions foreseen by law(s) are prison (60 days maximum) or fines of different amounts depending on how serious the misdemeanor is or how it impacts society. Not surprisingly, penalties are lower for minor traffic misdemeanors and natural persons and higher for serious misdemeanors committed by legal persons (e.g., competition cartels may be fined 1 to 10 percent of company’s annual income).

Misdemeanor Courts were still operating without any case management and/or reporting system. The reports are produced manually by court staff. This was time consuming and prone to errors. There are three possible solutions for this problem: PRIS could be modified for use in Misdemeanor Courts; Misdemeanor Courts could wait for the planned new case management system for the judiciary to be developed, or a third, stand-alone case management system could be developed and procured. At this point, the third option is least likely, so an in-depth analysis should be conducted to choose between the first two options. Implementing PRIS would be quicker but in the long run more expensive and waiting for the new system would require several more years of manual reporting.

166. In the Commercial Court(s)\textsuperscript{148} incoming cases fell by 47 percent from 2014 to 2017, mostly due to the reduction in new enforcement cases. This reduction was caused primarily by legislative changes that removed new enforcement cases from the court system, as noted above. However, the Commercial Court(s) received lower numbers of other types of cases as well, as shown in Figure 46.

Figure 46 - Incoming Cases by Case Type in Commercial Court(s) from 2014 to 2017

\footnotesize{\textsuperscript{148} In 2015 the Commercial Courts in Podgorica and Bijelo Polje merged into one Commercial Court of Montenegro.}
In High Courts the number of incoming cases grew by eight percent during the observed period, reaching approximately 16,500. Criminal first instance cases, special first instance criminal cases and juvenile cases remained below 300 entries annually. Other criminal cases such as criminal panels, indictment controls and investigating judges cases fell by 20 percent in 2016 but again grew in 2017. However, the largest and mostly consistently increasing part of the courts’ backlog, comprising more than 60 percent, were second instance civil cases. This was due primarily to the larger number of cases resolved by the Basic Courts, (see Figure 47).

The Appellate Court, in general, had few incoming cases but those numbers increased slowly through the observed period. This increase was particularly evident in 2016 when both second instance civil and criminal cases grew significantly. The inflow of appellate civil cases was larger by 399 cases from 2015 to 2016, which consequently caused the backlog of this case type to grow. However, the increased number of incoming criminal second instance cases (reportedly four times greater in 2016 than 2014) apparently was caused by changes in the reporting methodology, since it coincided with the virtual disappearance of the case type labeled as “Other”. Moreover, the combined backlog of the respective cases types remained almost non-existent over three years (fewer than 10 cases) For incoming appellate cases by case type see Figure 48.

---

149 These are organized crime, corruption, war crimes and terrorism cases.
150 These are peripheral matters in which judges or panels of judges decide on different procedural questions outside of trial, e.g. on a defendant’s appeal during investigation.
151 From 2014 to 2017 resolved litigious cases and small claims in Basic Courts grew by 30 percent, which probably caused a larger inflow of appeal cases in High Courts.
Although stable in 2014 and 2015, the number of incoming cases in the Administrative Court increased by 30 percent in 2016 and then almost tripled in 2017. While the significant 2016 increase appeared in the annual reports of both the Judicial Council and the Administrative Court,\textsuperscript{152} the reports provided no explanation for this phenomenon. Both reports simply stated that the number of incoming cases grew, leading to more backlogs even though the administrative judges were disposing of more cases. A partial explanation may lie in the constant expansion of the Administrative Court’s jurisdiction in many different domains, e.g. social, pension and labor rights. The legislative changes in 2017 described in Box 8 below also caused the caseload to increase, but the primary cause of the three-fold increase in the number of incoming cases were the 6,561 cases generated by the termination of certain maternity benefits.\textsuperscript{153} Nevertheless, even without these one-time cases the growth in demand in 2017 was 32 percent over 2016, and compared to 2014 the number of incoming cases was 71 percent higher in 2017.

\textbf{Figure 49 - Incoming Cases in Administrative Court from 2014 to 2017}

\begin{center}
\begin{tikzpicture}
\begin{axis}[
    width=\textwidth,
    height=0.5\textwidth,
    title={Incoming Cases in Administrative Court from 2014 to 2017},
    xlabel={Year},
    ylabel={Number of Cases},
    xtick={2014,2015,2016,2017},
    xticklabels={2014,2015,2016,2017},
    ytick={3657,3656,4759,12828},
    yticklabels={3,657,3,656,4,759,12,828},
    ymajorgrids=true,
    grid style=dashed,
]
\addplot+[mark=none,smooth] table[row sep=crcr]{
2014 3657
2015 3656
2016 4759
2017 12828
};
\end{axis}
\end{tikzpicture}
\end{center}

\textit{Source: JC Annual Reports for 2014 to 2017}

\textbf{Box 8 - Legislative Changes Concerning the Administrative Court}

\begin{quote}
On 1 July 2017 amendments to the Administrative Procedure Act and Administrative Dispute Act came into force, which enlarged the jurisdiction of the Administrative Court. The Court now decides on the legality of administrative acts and other administrative actions that determine or otherwise affect the rights, obligations and legal interests of a natural or legal person. Actions addressed by the court include administrative contracts, protection of users of services of general interest, etc. The 2017 expansion of jurisdiction almost tripled the number of incoming cases (from 4,759 in 2016 to 12,828 in 2017).

The Administrative Court’s inability to deal with its workload affected the results of the whole court system as described in detail below. Although dispositions per judge improved over time, partially due to overtime work, the Court could not meet the increased demand caused by case inflation and the increasing number of public hearings the parties requested. Also, in 2017, one
\end{quote}


\textsuperscript{153} More than 6,500 mothers of three or more children filed a lawsuit with the Administrative Court after the Government decided to terminate their rights to monthly compensation.
judge left the Court, and the position had not been filed by the time the FR team was conducting its analysis. Nevertheless, the solution to problems facing the Court should not be sought solely in an increase in the number of judges and staff. The reasons for these bottlenecks should be thoroughly analyzed and solutions identified.

170. In the Supreme Court the number of incoming cases grew by 50 percent from 2014 to 2017. This jump was caused by civil cases in 2015. While in 2016 the number of incoming cases was slightly lower, in 2017 the number returned to 2015 values. As High Courts and the Appellate Court resolved more civil cases from 2014 to 2017, more cases became eligible for Supreme Court revision, which could be the main reason for the 2015 and 2017 increases. Figure 11 below displays the number of incoming cases from 2014 to 2017 by case type. Although it appears that the number of incoming civil cases dropped by more than half and the number of “other” cases exploded, a change in reporting methodology probably means that impression is misleading. Although the Supreme Court and Judicial Council made no reference to the methodology change in their reports, when compared to 2015 reports data shows that the cases under registry for various civil cases “R” were excluded from civil cases and included into “other” cases in 2016 and 2017 reports.

Figure 50 - Incoming Cases in the Supreme Court from 2014 to 2017 by Case Type

3.1.1.3. Demographic Differences and Caseloads per Judge

171. Performance indicators show that smaller courts can have higher demand for their services than courts in larger cities. Thus, the smallest, the Basic Court in Zabljak, received almost 70 percent more cases per 100 inhabitants than the Basic Court in Podgorica, which is the capital of Montenegro and by far the largest city. Moreover, for cases filed per 100 inhabitants, Podgorica came only ninth, after various larger and smaller towns such as Kolasin, Cetinje and Berane. For details see Figure 12. Although even “small courts” usually had enough judges to avoid being overwhelmed by their workloads, some small courts (e.g. Plav with three judges and Rozaje with five) had among the highest caseloads per judge.
Figure 51 - Incoming Cases by Court from 2014 to 2017

Source: JC Annual Reports for 2014 to 2017

Figure 52 - Incoming Cases by Court per 100 Inhabitants in 2017

Source: JC Annual Reports for 2014 to 2017 and WB Calculations
172. **Incoming caseloads per judge varied by court and by year.** The 10 percent fall in average incoming caseloads per judge in 2015 was caused by the decrease in incoming cases, combined with an increase in the number of judges in the same year. If all incoming cases were divided by the total number of judges, Montenegro would have had 385 cases per judge in 2014, 347 cases per judge in 2015, 373 cases per judge in 2016 and 400 cases per judge in 2017. In 2015 the total number of incoming cases decreased by 5,234 cases while at the same time the number of judges grew by 13. In 2016 the number of incoming cases returned to 2014 values but since the number of judges remained at the 2015 levels, the caseload per judge grew again. In 2017 the number of judges was reduced by seven, however, the number of incoming cases in the same period grew by approximately 4,000, which resulted in an increased workload for remaining judges. Nevertheless, by excluding the obvious outlier – the Administrative Court – the caseload per judge would actually be lower than in 2016.\(^{154}\) Misdemeanor Court judges received on average 1,114 cases in 2017, which was 14 percent more than in 2016.

![Incoming Caseload per Judge by Court Type from 2014 to 2017](image)

*Source: JC Annual Reports for 2014 to 2017 and WB Calculations*

173. **In Basic Courts the average incoming caseload was 430 cases per judge in 2017; however, there were significant variations among individual courts.** The highest caseload was recorded in Rozaje and was more than double the caseload in Pljevlja. As Table 2 demonstrates, the differences in caseloads were not closely related to court size. Although the Basic Court in Podgorica was the largest, it came in third for highest caseload per judge. Interestingly, the Basic Court in Zabljak, with only two judges, came in fourth.

---

\(^{154}\) By excluding the Administrative Court for this calculation, the caseload per judge would amount to 365.
Table 2 - Average Incoming Caseload per Judge in Basic Courts 2017

<table>
<thead>
<tr>
<th>Basic Court</th>
<th>Incoming Cases</th>
<th>No. of Judges</th>
<th>Incoming Caseload per Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bar</td>
<td>3,909</td>
<td>10</td>
<td>391</td>
</tr>
<tr>
<td>Berane</td>
<td>4,733</td>
<td>9</td>
<td>526</td>
</tr>
<tr>
<td>Bijelo Polje</td>
<td>4,328</td>
<td>11</td>
<td>393</td>
</tr>
<tr>
<td>Cetinje</td>
<td>1,906</td>
<td>5</td>
<td>381</td>
</tr>
<tr>
<td>Danilovgrad</td>
<td>1,514</td>
<td>4</td>
<td>379</td>
</tr>
<tr>
<td>Herceg Novi</td>
<td>2,381</td>
<td>6</td>
<td>397</td>
</tr>
<tr>
<td>Kolasin</td>
<td>1,126</td>
<td>3</td>
<td>375</td>
</tr>
<tr>
<td>Kotor</td>
<td>5,542</td>
<td>16</td>
<td>346</td>
</tr>
<tr>
<td>Niksic</td>
<td>5,574</td>
<td>15</td>
<td>372</td>
</tr>
<tr>
<td>Plav</td>
<td>1,325</td>
<td>3</td>
<td>442</td>
</tr>
<tr>
<td>Pljevlja</td>
<td>1,761</td>
<td>6</td>
<td>294</td>
</tr>
<tr>
<td>Podgorica</td>
<td>19,914</td>
<td>41</td>
<td>486</td>
</tr>
<tr>
<td>Rozaje</td>
<td>3,752</td>
<td>5</td>
<td>750</td>
</tr>
<tr>
<td>Ulcinj</td>
<td>2,313</td>
<td>6</td>
<td>386</td>
</tr>
<tr>
<td>Zabljak</td>
<td>912</td>
<td>2</td>
<td>456</td>
</tr>
</tbody>
</table>

Source: JC Data and WB Calculations

174. **Looking at the number of incoming and active cases, and whether Montenegro has too many judges, it could distribute its caseload more equitably.** Over the short run, the ideal would be to move all courts toward an equitable average, while over the longer run, the question should be how many judges the country needs to deal efficiently and effectively with present and future demands. Determining the longer-term number of judges for proper operation of the courts requires looking at what judges do with the cases they currently receive (judicial productivity), clearance rates, and the accumulation of backlogs, as discussed below.
Reforms implemented between 2014 and 2017, or shortly before, strongly influenced Montenegrin courts and their productivity.

The introduction of bailiffs in April 2014 and the transfer of probate cases to public notaries in May 2015 caused substantial numbers of new cases to be redirected from courts. Although court statistics counted probate cases filings as new entries (and their redirection to notaries as case resolutions) until 2017, they obviously required little work on the part of courts. While the establishment of Misdemeanor Courts caused over 50,000 cases to be transitioned into the judicial system, their judges and staff were transferred as well, so the impact of those transitions on productivity is unclear. Finally, legislative changes concerning Administrative Court jurisdiction and proceedings which came into force in 2017 proved to have a substantial impact on that respective court and the judicial system in total, as discussed in Box 3, above.

3.1.2. Productivity of the Courts

175. This section reviews three basic indicators commonly used to measure judicial productivity and efficiency: total case dispositions, dispositions per judge, and clearance rates. These indicators are actionable, meaning they can inform policy and reforms to improve results. Also, they enable objective comparison of different courts, court types, and individual judges. Each indicator is explained below. Whenever possible, variations between the types of courts, courts of the same type and types of cases are examined.

3.1.2.1. Case Disposition

176. Case disposition is an absolute number of disposed (resolved) cases annually, used as a measure of system productivity. Although this indicator cannot be used for comparative purposes because it produces absolute numbers which should only be considered in context, its tracking is essential for assessing performance and for management decisions in all single court systems. Variations in the number of dispositions overall or by court and/or case type can signal problems, indicate a need for redistribution of resources, and be used to assess the impact of reforms. For example, the introduction of bailiffs and public notaries should have been reflected in increased dispositions of “other” case types due to the release of courts’ resources.

177. As shown in Table 3 below, total annual dispositions varied considerably across court types. In Montenegro, total annual dispositions are calculated as a sum of cases resolved by the courts and cases delegated to other courts or public notaries. The inclusion of delegated cases as part of the ordinary workload is a questionable practice, since delegation requires little judicial work. When delegated cases are excluded, the production by Basic Courts, in which most cases enter the system, was reduced considerably.
Table 3 - Total Disposed Cases (Resolved and Delegated\(^{155}\)) by Court and Case Type from 2014 to 2017

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>65,443</td>
<td>63,433</td>
<td>63,871</td>
<td>61,679</td>
</tr>
<tr>
<td>Criminal 1st Instance</td>
<td>4,874</td>
<td>4,322</td>
<td>4,001</td>
<td>3,604</td>
</tr>
<tr>
<td>Criminal Other</td>
<td>15,023</td>
<td>8,656</td>
<td>9,480</td>
<td>8,821</td>
</tr>
<tr>
<td>Civil Litigious</td>
<td>21,314</td>
<td>26,087</td>
<td>26,458</td>
<td>28,578</td>
</tr>
<tr>
<td>Civil Non-Litigious</td>
<td>7,826</td>
<td>9,118</td>
<td>8,778</td>
<td>3,640</td>
</tr>
<tr>
<td>Other Litigious and Non-Litigious</td>
<td>2,614</td>
<td>2,915</td>
<td>3,066</td>
<td>7,992</td>
</tr>
<tr>
<td>Enforcement</td>
<td>13,792</td>
<td>12,335</td>
<td>12,088</td>
<td>9,044</td>
</tr>
<tr>
<td>High Courts</td>
<td>15,289</td>
<td>15,241</td>
<td>16,760</td>
<td>15,411</td>
</tr>
<tr>
<td>Criminal 1st Instance</td>
<td>271</td>
<td>218</td>
<td>245</td>
<td>267</td>
</tr>
<tr>
<td>Criminal Other</td>
<td>2,761</td>
<td>2,087</td>
<td>2,275</td>
<td>2,658</td>
</tr>
<tr>
<td>Criminal 2nd Instance</td>
<td>2,281</td>
<td>1,996</td>
<td>1,863</td>
<td>1,414</td>
</tr>
<tr>
<td>Civil 2nd Instance</td>
<td>8,851</td>
<td>9,491</td>
<td>10,496</td>
<td>9,420</td>
</tr>
<tr>
<td>Other</td>
<td>1,125</td>
<td>1,449</td>
<td>1,881</td>
<td>1,652</td>
</tr>
<tr>
<td>Commercial Court(s)</td>
<td>9,824</td>
<td>6,104</td>
<td>7,461</td>
<td>5,223</td>
</tr>
<tr>
<td>Misdemeanor Courts</td>
<td>n/a</td>
<td>n/a</td>
<td>61,556</td>
<td>72,201</td>
</tr>
<tr>
<td>Higher Misdemeanor Court</td>
<td>n/a</td>
<td>n/a</td>
<td>2,053</td>
<td>2,140</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>1,759</td>
<td>1,722</td>
<td>1,986</td>
<td>1,808</td>
</tr>
<tr>
<td>Criminal</td>
<td>259</td>
<td>205</td>
<td>881</td>
<td>892</td>
</tr>
<tr>
<td>Civil</td>
<td>917</td>
<td>858</td>
<td>1,091</td>
<td>906</td>
</tr>
<tr>
<td>Other</td>
<td>583</td>
<td>659</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>3,318</td>
<td>3,311</td>
<td>4,199</td>
<td>4,806</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>2,911</td>
<td>4,378</td>
<td>4,229</td>
<td>4,242</td>
</tr>
<tr>
<td>Criminal</td>
<td>313</td>
<td>270</td>
<td>400</td>
<td>303</td>
</tr>
<tr>
<td>Civil</td>
<td>2,162</td>
<td>3,637</td>
<td>1,584</td>
<td>1,614</td>
</tr>
<tr>
<td>Administrative</td>
<td>364</td>
<td>426</td>
<td>438</td>
<td>595</td>
</tr>
<tr>
<td>Trial Within Reasonable Time</td>
<td>55</td>
<td>31</td>
<td>48</td>
<td>51</td>
</tr>
<tr>
<td>Other</td>
<td>17</td>
<td>14</td>
<td>1,759</td>
<td>1,679</td>
</tr>
<tr>
<td>TOTAL excl. Misdemeanor</td>
<td>98,544</td>
<td>94,189</td>
<td>98,506</td>
<td>93,169</td>
</tr>
<tr>
<td>TOTAL incl. Misdemeanor</td>
<td>n/a</td>
<td>n/a</td>
<td>162,115</td>
<td>167,510</td>
</tr>
</tbody>
</table>

Source: JC Annual Reports for 2014 to 2017

178. In 2015, after public notaries took over probate cases from Basic Courts, the number of delegations jumped significantly. Five times more cases were resolved by delegation in 2015. In 2016, out of 7,391 total pending probate cases, 5,943 or 80 percent were solved by delegation to public notaries. However, as the number of delegations grew and courts’ resources were freed of probate cases, the number of cases resolved by courts still dropped each year (see Figure 54); instead of resolving more complex cases and reducing backlogs, the courts resolved fewer cases. In 2017 probate cases delegated to public notaries and cases delegated to other courts. In practice the majority of cases labelled as delegated were delegated to public notaries from 2014 to 2016. In 2017 the practice of designating cases delegated to public notaries as resolved cases was abandoned.

\(^{155}\) Cases delegated to public notaries and cases delegated to other courts. In practice the majority of cases labelled as delegated were delegated to public notaries from 2014 to 2016. In 2017 the practice of designating cases delegated to public notaries as resolved cases was abandoned.
cases delegated to public notaries were no longer counted as dispositions, which caused the number of delegations to drop to more realistic values.

Figure 54 - Cases Resolved by Basic Courts and Delegated Cases from 2014 to 2017

179. The number of delegated litigious cases in Basic Courts more than quadrupled in 2015 compared to 2014. In 2014, a total of 411 litigious cases were delegated to another court, and in 2015 this number increased to 1,820. Cases delegated to other courts are first recorded in the initial court, disposed by delegation, and then again recorded and resolved in the receiving court. The available data did not enable further disaggregation by court, but it is likely that these delegations were done to unburden busier courts and provide faster service to the parties. Moreover, delegation of cases to less burdened courts was seen in the SJR for 2014-2018 as a measure for increasing efficiency and reducing backlogs.

180. The Appellate, Administrative and the Supreme Courts showed stable or rising dispositions during the observed period, whereas Commercial Court dispositions fell. Dispositions in the Commercial Courts fall from 9,824 cases in 2014 to 6,104 in 2015 (the year the courts were merged). These numbers rose to 7,461 in 2016 and dropped again to 5,223 in 2017. However, while a drop in incoming cases allowed the Commercial Court(s) to keep up with demand, the Appellate, Administrative and Supreme Courts were still accumulating backlog despite increased dispositions.

3.1.2.2. Dispositions per Judge

181. Disposition per judge is measured by dividing the number of resolved cases by the number of judges. This indicator enables comparisons between courts of the same type and between judges.

182. Dispositions per judge across types of courts showed significant variations over time. Basic and Commercial Courts had the largest and most significant declines; the largest increases were reported by the Misdemeanor Courts and the Administrative Court. Other courts remained relatively stable. The causes of these variations were complex and unclear, and probably related to a

---

combination of legislative changes, reorganizations, and some exogenous factors. For calculating these averages only cases resolved by judges were taken into consideration and delegated cases were excluded. The results are shown in Figure 55.

Figure 55 - Average Dispositions per Judge from 2014 to 2017

![Average Dispositions per Judge from 2014 to 2017](image)

**Source: JC Data and WB Calculations**

183. **After a decline in 2015 and 2016, average dispositions per judge in Basic Courts started rising in 2017.** Variations between individual courts were significant as detailed for 2017 in Table 4 below. There was no clear pattern to these variations and the reasons for them were diverse and differed from court to court. In general, courts with higher numbers of incoming cases per judge also disposed of more cases per judge. This was true for the in Basic Courts in Zabljak, Rozaje, Niksic and Berane. It may be that these judges tried to resolve roughly as much as they received. Also, experience from other countries show that larger caseload per judge often encourage judges to focus on less complex cases which can be disposed of more quickly, and to postpone work on more complex ones. This cherry-picking effect may explain some of the Zabljak, Rozaje, Niksic and Berane results.
Table 4 - Average Disposition per Judge in Basic Courts 2017

<table>
<thead>
<tr>
<th>Basic Court</th>
<th>Incoming Cases</th>
<th>Disposed Cases</th>
<th>Disposed by Delegation</th>
<th>No. of Judges</th>
<th>Incoming per Judge</th>
<th>Disposition per Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bar</td>
<td>3,909</td>
<td>3,948</td>
<td>0</td>
<td>10</td>
<td>391</td>
<td>395</td>
</tr>
<tr>
<td>Berane</td>
<td>4,733</td>
<td>5,047</td>
<td>0</td>
<td>9</td>
<td>526</td>
<td>561</td>
</tr>
<tr>
<td>Bijelo Polje</td>
<td>4,328</td>
<td>4,284</td>
<td>0</td>
<td>11</td>
<td>393</td>
<td>389</td>
</tr>
<tr>
<td>Cetinje</td>
<td>1,906</td>
<td>1,969</td>
<td>0</td>
<td>5</td>
<td>381</td>
<td>394</td>
</tr>
<tr>
<td>Danilovgrad</td>
<td>1,514</td>
<td>1,456</td>
<td>363</td>
<td>4</td>
<td>379</td>
<td>364</td>
</tr>
<tr>
<td>Herceg Novi</td>
<td>2,381</td>
<td>2,560</td>
<td>0</td>
<td>6</td>
<td>397</td>
<td>427</td>
</tr>
<tr>
<td>Kolasin</td>
<td>1,126</td>
<td>1,086</td>
<td>0</td>
<td>3</td>
<td>375</td>
<td>362</td>
</tr>
<tr>
<td>Kotor</td>
<td>5,542</td>
<td>5,502</td>
<td>411</td>
<td>16</td>
<td>346</td>
<td>344</td>
</tr>
<tr>
<td>Niksic</td>
<td>5,574</td>
<td>6,197</td>
<td>0</td>
<td>15</td>
<td>372</td>
<td>413</td>
</tr>
<tr>
<td>Plav</td>
<td>1,325</td>
<td>1,384</td>
<td>0</td>
<td>3</td>
<td>442</td>
<td>461</td>
</tr>
<tr>
<td>Pljevlja</td>
<td>1,761</td>
<td>1,789</td>
<td>3</td>
<td>6</td>
<td>294</td>
<td>298</td>
</tr>
<tr>
<td>Podgorica</td>
<td>19,914</td>
<td>18,145</td>
<td>69</td>
<td>41</td>
<td>486</td>
<td>443</td>
</tr>
<tr>
<td>Rozaje</td>
<td>3,752</td>
<td>3,767</td>
<td>0</td>
<td>5</td>
<td>750</td>
<td>753</td>
</tr>
<tr>
<td>Ulcinj</td>
<td>2,313</td>
<td>2,145</td>
<td>0</td>
<td>6</td>
<td>386</td>
<td>358</td>
</tr>
<tr>
<td>Zabljak</td>
<td>912</td>
<td>891</td>
<td>0</td>
<td>2</td>
<td>456</td>
<td>446</td>
</tr>
</tbody>
</table>

Source: JC Data and WB Calculations

184. **Misdemeanor Courts produced an average of 1,237 disposed cases per judge in 2017, but with much variation between courts.** The Misdemeanor Court in Budva reached 1,737 disposed cases per judge and the Misdemeanor Court in Podgorica reached 1,423, while the Misdemeanor Court in Bijelo Polje had only 871 disposed cases. Judges in these three courts all resolved more cases than they received, and the difference in the numbers of disposed cases can be explained primarily by the size of their workload. Judges in the Misdemeanor Court in Bijelo Polje received significantly fewer cases and did not have sufficient workloads to catch up with the disposition numbers of their colleagues in Podgorica and Budva. It also is possible that cherry picking enabled the judges with larger workloads to pick the easier cases and achieve higher scores.

185. **The Misdemeanor Court in Bijelo Polje, where judges received 808 cases on average, was over-resourced compared to Budva and Podgorica, in which judges received an average of 1300 to 1500 cases each.** Specifically, Misdemeanor Court in Budva, with 11 judges, had the same resources as the court in Bijelo Polje, with 11 judges, but handled approximately 50 percent more incoming cases and achieved better clearance rates. All Misdemeanor Courts accomplished clearance rates of more than 100 percent; the standouts were Podgorica with 119 percent and Budva with 125 percent, while the judges in Bijelo Polje recorded clearance rates of 116 percent. See Table 5. Due to the lack of detailed reports and the fact that Misdemeanor Courts were new to the system, the FR team could not conduct any additional analysis on these figures.
### Table 5 - Average Disposition per Judge in Misdemeanor Courts 2017

<table>
<thead>
<tr>
<th>COURT</th>
<th>Incoming Cases</th>
<th>Disposed Cases</th>
<th>No. of Judges</th>
<th>Incoming per Judge</th>
<th>Disposition per Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misdemeanor Court Podgorica</td>
<td>34,593</td>
<td>38,429</td>
<td>27</td>
<td>1281</td>
<td>1,423</td>
</tr>
<tr>
<td>Misdemeanor Court Budva</td>
<td>16,766</td>
<td>19,112</td>
<td>11</td>
<td>1524</td>
<td>1,737</td>
</tr>
<tr>
<td>Misdemeanor Court Bijelo Polje</td>
<td>8,888</td>
<td>9,578</td>
<td>11</td>
<td>808</td>
<td>871</td>
</tr>
</tbody>
</table>

Source: JC Data and WB Calculations

186. High Courts remained relatively steady in dispositions per judge even as their numbers of judges increased. After a sudden drop in 2015, in 2016 the average disposition per judge returned to 2014 values. It is however notable that in 2015 the High Court in Podgorica acquired six new judges, and it acquired one more in 2016. However, with seven more judges in 2016 compared to 2014, the High Court in Podgorica only managed to maintain the same dispositions per judge it had in 2014. In 2017, the High Court in Podgorica lost three judges and witnessed an increase in the caseload per judge, but also had a slight increase in the dispositions per judge. This supports the conclusion that both courts and judges focus primarily on resolving approximately as many cases as they receive.\(^\text{157}\)

187. The Appellate Court displayed far lower dispositions per judge than other courts, but these rates increased from 135 in 2014 to 166 in 2016 before falling again to 139 in 2017. It is not unusual for higher instance courts to dispose of fewer cases. Although not all observers agree, one of the explanations offered for this is that appellate judges decide in panels of three or five and it often may take longer for a panel to agree on a decision than it takes an individual to write one. It also is to be expected that, generally, more complex cases end up before the Appellate Court. Despite these considerations, it is still concerning that the Appellate Court had a 2017 clearance rate of only 80 percent, which was about 10 percent lower than in previous years.

188. The Commercial Court averaged 348 dispositions per judge in 2017. After 2016 when the average rate of disposed cases increased by 19 over 2014, it dropped again. Informants interviewed for this Review reported the drop was caused primarily by the lower caseloads of judges, who then had fewer cases of higher complexity. Since Commercial Courts went through a significant reorganization, future trends in the Commercial Court of Montenegro should be closely monitored to ensure sustainable positive results in the future.

189. In 2016, the general jurisdiction of Basic Courts exhibited lower dispositions per judge than the specialized Commercial Court(s), and dispositions for the Appellate Court were lower than those of the Supreme Court. As noted above, there was reduced demand and more judges for the Basic Courts compared to Commercial Court(s). Although there were more available judicial resources after the introduction of public enforcement agents and public notaries, Basic Courts did not improve their handling of their remaining caseloads. On the other hand, the incoming workload and hence the dispositions of the Supreme Court were significantly higher than those of the Appellate Court, so here once again dispositions approximately matched the numbers of increasing cases.

\(^\text{157}\) Criteria for evaluation of judges provides incentives for judges to have high clearance rate.
3.1.2.3. Clearance Rates

190. Clearance rates measure the number of resolved cases as a percentage of the number of incoming cases. Clearance rates are among the most commonly used indicators to monitor court performance. They show whether a court is keeping up with its incoming caseload or generating backlogs. A clearance rate below 100 percent indicates that backlogs are being generated, while a clearance rate above 100 percent indicates backlog reduction.

191. Clearance rates calculated for all courts from 2014 to 2016 (excluding Misdemeanor Courts) remained just over 100 percent until 2017, when they dropped to 92 percent. From 2014 to 2016 the total backlog of cases fell by nine percent, while 2017 produced a backlog growth of 26 percent. These numbers include delegated cases as disposed cases, as already explained. With misdemeanor cases included, the clearance rate for 2017 was 102 percent. Clearly, not all types of courts managed to reach the 100 percent clearance rate (see Figure 56).

![Figure 56 - Clearance Rates by Court Types from 2014 to 2017](image)

Source: JC Annual Reports for 2014 to 2017 and WB calculations

192. Clearance rates for all Basic Courts from 2014 to 2017 were 100 percent or slightly higher. Clearance rates of more than 100 percent were largely due to a drop in the numbers of incoming cases and increased numbers of delegated cases, rather than truly improved judicial performance. Moreover, the number of cases resolved by courts excluding delegations fell by 13 percent in 2016 in comparison to 2014. The highest clearance rate was recorded in Berane’s Basic Court in 2016 at 120 percent; although both its number of incoming and resolved cases fell, case dispositions were sufficiently high to produce this result. Six Basic Courts -- Bijelo Polje, Kolasin, Kotor, Podgorica, Ulcinj and Zabljak -- did not reach 100 percent in 2017 although most of their results were close to it. Available data did not identify any specific cause for the relatively poorer results of these courts, since they had no substantial changes in their numbers of judges or even in their caseloads.
193. In High Courts, the clearance rates were at least 100 except for Bijelo Polje in 2015, but these results dropped in 2017. The High Court in Podgorica, with almost three quarters of all resolved cases, raised its clearance rate to 107 percent in 2016, thus reducing its backlog to under 2,000 cases. But in 2017 its clearance rate fell to 92 percent and produced an accompanying backlog growth of almost 50 percent, due to the court’s increasing caseload and decreasing dispositions.

194. The Appellate Court lowered its clearance rate in 2017 to 80 percent, resolving around 460 fewer cases than it received. This caused the backlog to more than triple, from 182 cases at the end of 2016 to 643 cases at the end of 2017. The drop was caused by a significant, 46 percent increase in incoming second instance civil cases in 2016 (see Figure 15), an increase that continued in 2017.

195. The Commercial Court improved its clearance rate to 113 percent in 2017. These results matched the “pre-merger” results from 2014. Overall, the Commercial Court produced very good results even though it lost one judge in 2015 due to the merger of the Commercial Courts in Podgorica and Bijelo Polje. The Commercial Court resolved more cases than it received even in 2016 when the number of incoming cases grew compared to 2015. Nevertheless, the high clearance rate in 2017 was caused primarily by the 32 percent drop in the number of incoming cases (mostly enforcement cases), and dispositions also fell by 30 percent. However, the Commercial Court also had higher numbers or ratios of court advisors and staff than other courts. The extra staff also affected the cost per case, which nearly doubled to EUR 210 between 2014 and 2016.

196. In 2017 the highest clearance rate of 119 percent was registered by the Misdemeanor Courts and the lowest, of 37 percent, by the Administrative Court. The Administrative Court produced low

---

158 There were 0.75 court advisor per judge in the Commercial Court, while in the Basic Court there were 0.52 court advisors per judge. Considering that court advisors work actively on cases, this ratio surely contributed to Commercial Court’s results.
clearance rates and increasing backlogs, although the number of judges increased by one in 2015 and dispositions per judge increased significantly in both 2016 and 2017. On 1 July 2017 amendments to the Administrative Procedure Act and the Administrative Dispute Act came into force, expanding the jurisdiction of the Administrative Court still further (see Box 3, above). As expected, this caused additional increases in the number of incoming cases and triggered serious efficiency problems for the Court. In 2017, the clearance rate of the Administrative Court also was heavily influenced by more than 6,500 filed cases for maternity benefits, as discussed above.

197. The Montenegrin clearance rates for first instance civil and commercial litigious cases were lower than EU averages but were higher for first instance criminal cases, according to data from CEPEJ for 2014. Although Montenegro has more than twice the EU average for judges per 100,000 inhabitants, the clearance rates for civil and commercial litigious cases and administrative cases were still significantly lower than the European average.

![Figure 58 - Clearance rates of 1st instance cases according to CEPEJ 2016 report](image)

Source: CEPEJ report 2016

3.1.3. Timeliness in Case Processing

198. Timeliness is an important aspect of judicial performance, a cornerstone of the right to a fair trial\(^{159}\) and an EU concern regarding Chapter 23 of the pre-accession negotiations. In this study, timeliness is addressed through three indicators: pending (carried-over) cases, congestion rates, and case age structure and disposition time.

3.1.3.1. Number of Pending Cases

199. The pending cases indicator counts the number of unresolved cases carried over from one year to the next. It can also be referred to as pending stock or backlog. However, Montenegro is one of the countries which uses the term “backlog” only for pending cases over a certain age.\(^{160}\) The

---

\(^{159}\) As defined by Article 6 of the of the European Convention on Human Rights, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. See http://www.echr.coe.int/Documents/Convention_ENG.pdf.

\(^{160}\) Backlog is defined as all cases pending more than 3 years. The World Bank team used same definition as Montenegrin legislator.
existence of pending cases is inevitable, as no court can resolve all cases entering each year — some enter too late or are too complex to process before the year’s end. It becomes problematic when the numbers of pending stock continue to grow and include many older cases.

200. **At the end of 2017 there were 71,661 unresolved cases in all courts in Montenegro.** Without misdemeanor cases, there were 40,780 unresolved cases. This was a 14 percent increase compared to 2014 as shown in Figure 59 below.

![Figure 59 - Unresolved Cases from 2013 to 2017 (excluding Misdemeanor)](image)

*Source: JC Annual Reports for 2014 to 2017*

201. **Basic Courts had 60 percent of all unresolved cases at the end of 2017.** This percentage would of course be lower if the Misdemeanor Courts’ 30,881 unresolved cases were also included. Also, in 2017, the Appellate Court was left with around 650 and the Supreme Court with around 450 unresolved cases.

![Figure 60 - Unresolved Cases at the End of Year by Court Type from 2014 to 2017 (excluding Misdemeanor)](image)

*Source: JC Annual Reports for 2014 to 2017*

202. **Almost 50 percent of the unresolved caseload in Montenegrin courts at the end of 2017 (excluding Misdemeanor Courts) were civil litigious cases in Basic Courts, where they comprised 80**
percent of the total. From 2014 to 2017, this number grew by 3,226 cases or 19 percent. Simultaneously, other unresolved case types declined, especially enforcement cases which dropped by almost 80 percent. Similarly, High Courts also reduced their numbers of unresolved cases by 2016, but in 2017 the number increased due primarily to the growing numbers of second instance civil cases. Although the Appellate and the Supreme Courts also increased their numbers of unresolved cases, this was not as significant due to their relatively low case numbers. The Administrative Court was the only court whose number of unresolved cases grew each year, reaching an almost 500 percent increase between 2014 and 2017. This sudden jump in the Administrative Court’s caseloads and workloads was the primary cause of the deteriorating overall results for the Montenegrin court system in 2017.

Table 6 -Unresolved Cases at the End of the Year by Court and Case Type from 2014 to 2017

<table>
<thead>
<tr>
<th>Court Type</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>28,095</td>
<td>25,666</td>
<td>25,428</td>
<td>24,730</td>
</tr>
<tr>
<td>Criminal 1st Instance</td>
<td>2,390</td>
<td>1,946</td>
<td>1,527</td>
<td>1,406</td>
</tr>
<tr>
<td>Criminal Other</td>
<td>1,406</td>
<td>1,271</td>
<td>1,162</td>
<td>1,032</td>
</tr>
<tr>
<td>Civil Litigious</td>
<td>16,678</td>
<td>19,177</td>
<td>20,225</td>
<td>19,904</td>
</tr>
<tr>
<td>Civil Non-Litigious</td>
<td>2,379</td>
<td>1,392</td>
<td>1,256</td>
<td>1,125</td>
</tr>
<tr>
<td>Other Litigious and Non-Litigious</td>
<td>241</td>
<td>68</td>
<td>208</td>
<td>270</td>
</tr>
<tr>
<td>Enforcement</td>
<td>5,001</td>
<td>1,812</td>
<td>1,050</td>
<td>993</td>
</tr>
<tr>
<td>High Courts</td>
<td>3,238</td>
<td>2,947</td>
<td>2,111</td>
<td>3,175</td>
</tr>
<tr>
<td>Criminal 1st Instance</td>
<td>156</td>
<td>153</td>
<td>170</td>
<td>184</td>
</tr>
<tr>
<td>Criminal Other</td>
<td>137</td>
<td>89</td>
<td>70</td>
<td>53</td>
</tr>
<tr>
<td>Criminal 2nd Instance</td>
<td>48</td>
<td>182</td>
<td>75</td>
<td>74</td>
</tr>
<tr>
<td>Civil 2nd Instance</td>
<td>2,811</td>
<td>2,444</td>
<td>1,727</td>
<td>2,736</td>
</tr>
<tr>
<td>Other</td>
<td>86</td>
<td>79</td>
<td>69</td>
<td>128</td>
</tr>
<tr>
<td>Commercial Court(s)</td>
<td>2,328</td>
<td>2,279</td>
<td>1,646</td>
<td>1,048</td>
</tr>
<tr>
<td>Misdemeanor Courts</td>
<td>n/a</td>
<td>n/a</td>
<td>42,193</td>
<td>30,881</td>
</tr>
<tr>
<td>Higher Misdemeanor Court</td>
<td>n/a</td>
<td>n/a</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>18</td>
<td>16</td>
<td>182</td>
<td>643</td>
</tr>
<tr>
<td>Criminal</td>
<td>11</td>
<td>7</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Civil</td>
<td>7</td>
<td>9</td>
<td>177</td>
<td>637</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>1,814</td>
<td>2,159</td>
<td>2,720</td>
<td>10,743</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>204</td>
<td>254</td>
<td>232</td>
<td>441</td>
</tr>
<tr>
<td>Criminal</td>
<td>11</td>
<td>7</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>Civil</td>
<td>150</td>
<td>205</td>
<td>148</td>
<td>353</td>
</tr>
<tr>
<td>Administrative</td>
<td>41</td>
<td>38</td>
<td>59</td>
<td>75</td>
</tr>
<tr>
<td>Trial Within Reasonable Time</td>
<td>0</td>
<td>4</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>0</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>TOTAL excluding Misdemeanor</td>
<td>35,697</td>
<td>33,321</td>
<td>32,319</td>
<td>40,780</td>
</tr>
<tr>
<td>TOTAL including Misdemeanor</td>
<td>n/a</td>
<td>n/a</td>
<td>74,512</td>
<td>71,661</td>
</tr>
</tbody>
</table>

Source: JC Annual Reports for 2014 to 2017
3.1.3.2. Congestion Rate

203. The congestion rate is the number of unresolved cases at the end of one year divided by the number of resolved cases during the same year. It helps to assess the significance of pending stock. Ideally, it should be well under 1.00, preferably 0.50 or lower, indicating that there are far fewer unresolved cases at the end of the year than the annual dispositions.

204. The congestion rate of courts in Montenegro slightly improved and was 0.33 in 2016 (excluding Misdemeanor Courts) but deteriorated again in 2017, rising to 0.44. Even if Misdemeanor Courts were included, the total congestion rate for 2017 would have been 0.43. This would still indicate that in general the court system was able to handle its incoming cases.161

Figure 61 - Congestion Ratio from 2014 to 2017 (excluding Misdemeanor)

205. All courts in Montenegro, with the exception of the Administrative Court, displayed congestion ratios below 1.00 in 2017. The court with the highest congestion ratio was the Administrative Court at 2.24, followed by the Basic Court in Podgorica with a 0.67 congestion rate. The lowest rate of 0.00 occurred in the Higher Misdemeanor Court of Montenegro. The latter finished 2017 without any unresolved cases, probably because Misdemeanor Courts were established only in 2015 and it takes time for cases to reach the second instance. The Basic Court in Rozaje also had a very low rate of 0.04.

206. According to case type, the highest congestion ratios in 2017 were recorded in litigious cases in Basic Courts, bankruptcy and liquidation cases in the Commercial Court, first instance criminal cases in High Courts and cases in the Administrative Court. In Basic Courts the highest congestion ratios were recorded in litigious cases at over 0.8. The congestion ratio of bankruptcy and liquidation cases in the Commercial Court was 0.46. In High Courts the highest congestion ratios were recorded in first instance criminal cases, particularly special crimes cases. All previously mentioned congestion ratios, except for first instance criminal special crimes cases,162, were below 1.00, indicating that the pending stock was far less than the annual outflow.

161 In this case backlog of the whole court system in Montenegro has been reduced in 2017 but only if the calculation includes Misdemeanor Courts. Otherwise the backlog grew primarily due to the Administrative Court backlog.
162 The calculated congestion ratio for this case type was 1.08 in 2017.
3.1.3.3. Age Structure

The age structure of pending cases sheds light on how courts select cases for resolution and whether they are resolving a significant number of new cases relatively quickly, or consigning more complex new cases to the pending case stock which, at worst, may never be resolved. Based on experience from other countries this cherry picking is not unusual especially when judges are assessed against by productivity quotas, but the prevalence of the practice demonstrates why backlog reduction programs should focus first on older cases. Ageing lists shows the composition and age structure of all resolved and unresolved cases from the date of the initial act (when the party first asked for court protection) and is an excellent tool for creating backlog reduction plans and monitoring their execution. Targeted measures to reduce backlogs also might include the temporary assignment of judges to overburdened courts and delegation of cases to less burdened courts.

After a decrease in 2015 the number of unresolved older cases increased again in 2016. According to reports provided by the Judicial Council, the definition of “old cases” changed between 2015 and 2016. In 2014 and 2015 it referred to cases older than four years. In 2016 it comprised cases older than three years. If the 2016 numbers were recalculated using the old definition, the number of unresolved old cases would be reduced by approximately 300, but the number of resolved old cases would also be reduced by 600 compared to 2015. Figure 22 shows the number of older unresolved cases per year using the definitions provided by the Judicial Council (older than four years for 2014 and 2015 but older than three years for 2016 and 2017).

According to Supreme Court data, 92 percent of all unresolved cases at the end of 2016 were not older than three years. An additional seven percent were four to ten years old and one percent was older than ten years. The highest numbers of old cases were reported in Basic Courts, specifically in Podgorica and in Kotor.

\[163\] The change in definition influenced the number of old cases causing the number of unresolved old cases to grow by 1,080, while the number of resolved old cases grew by 2,133.
The number of resolved older cases grew from 3,190 in 2014 to 6,734 in 2017. Almost 600 cases older than ten years were resolved in 2017, one of which was initiated in 1974. Each year courts resolved more old cases in general and specifically more cases older than ten years, proving that the courts’ old cases backlog reduction plans produced results. However, it is possible that some of these resolved old cases were returned for re-trial after they were appealed.

### Disposition time

As Montenegro’s court statistics did not provide data on disposition times, a proxy indicator developed by CEPEJ was used to estimate average disposition times, by comparing cases resolved and carried over during one year. The formula is (pending cases/resolved cases) X 365. While it rests on several possibly questionable assumptions (e.g., that judges do not cherry pick the cases they work on and that there will be no abrupt changes in inflows or in pending caseloads because of successful backlog reduction programs), it is frequently used when, as in Montenegro, there is no other option.

Using the CEPEJ formula, Montenegrin disposition times for first instance civil and commercial litigious cases in 2014 were 48 days higher than the EU average. With 298 days, Montenegro had better disposition time than the Western Balkan average of 313 days. Moreover, Montenegro ranked better than the EU average in administrative cases, and 60 days lower in first instance criminal cases.
213. Disposition times in Montenegro, as calculated by CEPEJ, decreased from 132 days in 2014 to 120 days in 2016 but then increased to 160 days in 2017. The average disposition time of all courts in 2017 was 156 days if Misdemeanor Courts are included. The highest disposition time was reported by the Administrative Court at 816 days. The lowest disposition time was recorded in the Supreme Court (38 days) and the Commercial Court (73 days). Among Basic Courts the one in Podgorica reported the longest disposition of 263 days in 2017, which was a decrease from the prior year.

214. The highest disposition time in any court type was 816 days in 2017 in the Administrative Court. This was a three-fold increase compared to the previous year, although judges resolved 16 percent more cases than before. The issues concerning Administrative Court have been discussed in previous sections. Higher disposition times than the ones calculated per court type also were recorded in litigious cases in Basic Courts, the bankruptcy and liquidation cases in the Commercial Court, and in litigious and criminal first instance cases in High Courts. The latter can be explained by the very complex crimes these courts had to process.

3.1.3.5. Timeliness as Reported by Court Users and Practitioners

215. In the 2016 Survey on Montenegrin court users’ perceptions of the judiciary, both citizen parties and their lawyers assessed the duration of cases as unnecessarily long. As expected, opinions of both groups were more negative than those of judges and prosecutors. Almost half of court users and lawyers believed that their court cases lasted longer than necessary, while judges and prosecutors believed that only one-fifth of their cases lasted longer than necessary. Unsurprisingly, the lawyers’ opinion matched the opinion of court users. See Figure 65.

Figure 65 - Average Percentage of Cases Assessed as Lasting Longer Than Necessary by Practitioners and Court Users

<table>
<thead>
<tr>
<th></th>
<th>Judges</th>
<th>Prosecutors</th>
<th>Citizens</th>
<th>Business sector</th>
<th>Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>19%</td>
<td>17%</td>
<td>49%</td>
<td>44%</td>
<td>44%</td>
<td></td>
</tr>
</tbody>
</table>


216. Citizens and businesses were the least satisfied with the duration of their civil cases while the most satisfied were those who participated in misdemeanor and commercial cases. Interestingly, these results correspond with the CEPEJ disposition time indicator calculations. Indeed,

---

164 Survey question: Judges, prosecutors and lawyers: Please estimate the percentage of your cases that you worked on during the past 12 months that lasted longer than they should have for any reason. Citizens and business sector: How would you evaluate the duration of this case? Given all the circumstances, do you think that the case lasted much longer than it should have lasted, somewhat longer, just right, somewhat shorter, much shorter?
civil cases and criminal cases lasted the longest while the disposition time of the Commercial Court improved significantly in 2016 (from 307 days in 2015 to 153 in 2016 for commercial litigious cases). In contrast, Misdemeanor Courts reported their second longest disposition time in 2016 (242 days) but taking into consideration the nature of these cases, it would be natural for the parties to be satisfied with longer, rather than shorter proceedings since longer proceedings delay the imposition of possible penalties.

**Figure 66 - Percentage of Citizens and Business Sector Representatives Who Believed Their Court Cases Lasted Longer Than Necessary, By Type Of Cases**

![Percentage of Citizens and Business Sector Representatives Who Believed Their Court Cases Lasted Longer Than Necessary, By Type Of Cases](image)


**217. Court users reported a wide range of durations for all case types.** According to citizens, criminal cases lasted from one to 61 months, and misdemeanor and civil cases from one to 48 months. Businesses reported that commercial cases lasted from one to 29 months, and civil cases one to 70 months. Based on information provided by citizens, more than half of criminal and civil cases and more than 80% of misdemeanor cases lasted less than a year until the first instance judgment, but one in five civil cases and 16% of criminal cases lasted longer than two and even three years. According to business sector representatives, more than 60% of cases lasted less than a year, but 28% of cases lasted more than two years. See Table 7.

**Table 7 - Percentage of Cases by Duration in Months, According to Citizens and Business Sector Representatives in Their Cases**

<table>
<thead>
<tr>
<th>Duration</th>
<th>Criminal cases</th>
<th>Misdemeanor cases</th>
<th>Civil cases</th>
<th>Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 11 months</td>
<td>57%</td>
<td>85%</td>
<td>54%</td>
<td>62%</td>
</tr>
<tr>
<td>12 do 23 months</td>
<td>28%</td>
<td>12%</td>
<td>26%</td>
<td>10%</td>
</tr>
<tr>
<td>24 do 35 months</td>
<td>11%</td>
<td>1%</td>
<td>16%</td>
<td>18%</td>
</tr>
<tr>
<td>36 and more months</td>
<td>5%</td>
<td>3%</td>
<td>4%</td>
<td>10%</td>
</tr>
</tbody>
</table>


**218. The survey revealed that citizens waited three to four months for their first hearing while the businesses waited more than six months in civil cases and three to four months in commercial**

---

165 Survey question: How would you evaluate the duration of this case? Given all the circumstances, do you think that the case lasted much longer than it should have lasted, somewhat longer, just right, somewhat shorter, much shorter?
cases. The survey did not ask whether the citizens and the businesses considered that time acceptable. Also, there was no explanation for why businesses should wait longer for first hearings in civil cases, especially since commercial cases are more complex. See Figure 27.

Figure 67 - Number of Months from Filing the Case to the First Hearing According to Citizens and Businesses

![Figure 67](image)


219. Survey results roughly match the data provided in courts’ statistical reports about the duration of cases, but the reports do not provide enough information on timeliness to conduct a proper comparison. Therefore, the CEPEJ indicator has been used both to estimate disposition time, and for comparison with the survey results.

3.1.4. Effective Enforcement

220. To function properly, enforcement is crucial in any legal system. Effective enforcement strengthens the entire justice system and is an important requirement of Chapter 23. It is essential for economic development, respect for the rule of law and protection of citizens’ rights. Finally, without effective enforcement, effective access to justice is denied and improvements in other aspects of efficiency or quality are meaningless for citizens.

221. With the aim of improving enforcement and to harmonize the work of its judicial institutions with the values, standards and practice of the EU, Montenegro introduced private bailiffs in 2014. The work of bailiffs is regulated through the Law on Bailiffs which was adopted in 2011 and came into effect in January 2014. The first bailiffs started their work on 7 April 2014.

222. There have been many problems in the creation and functioning of the bailiffs. These problems are identified by Human Rights Action in its “Bailiffs in Montenegro” study, which identified problems related to fees and collection methods; assignment of cases; publishing of personal data; disciplinary responsibility; control and supervision; appointment, dismissal and education; the status of bailiffs; lack of citizen information about the system, and poor statistical data. In response to the report, the legal framework was amended, and additional obligations were imposed

---

166 Survey question: When was the case filed – month and year; When was the first hearing scheduled when at least one of the parties appeared before a judge? – month and year?


169 This study was financed by the Embassy of the Kingdom of the Netherlands within the project “Towards an effective justice system – improving the development of the profession in the function of the Montenegrin judiciary”. See http://cemi.org.me/wp-content/uploads/2017/09/CeMI_javnizvrs%CC%8Citelja_analiza_eng.pdf.
on the agents. The new Law Amending the Law on Bailiffs and the Law Amending the Law on Enforcement and Securing of Claims, adopted in March 2017, addressed a significant number of the problems identified in the report. Nevertheless, the system has been hampered by a series of controversies, including some criminal activities.\textsuperscript{170} As a consequence, the introduction of bailiffs became and still is an issue of wider public interest, and has generated less trust in the judicial system.

Box 10 - Case Assignment to Bailiffs

\textbf{An Ordinance on Uniform Assignment was adopted in April 2017 to ensure that each bailiff in a certain territory receives the same number of cases.} This was adopted after lengthy discussions about preferential treatment of individual bailiffs. According to the Ordinance, the Chamber of Bailiffs will assign an agent to a case through a standardized procedure initiated by the creditor. The whole assignment procedure is performed electronically. The Ordinance does not apply to those bailiffs who, by decision of the Minister of Justice, are the sole bailiffs in Danilovgrad, Ulcinj, Rozaj and Cetinje. The Chamber issues reports on case assignments three times per year; the reports are available online (https://www.javni-izvrsitelji.me/raspodjela-predmeta).

223. After bailiffs were introduced, a large number of enforcement cases remained in courts but were not fully registered in the courts’ case management system, PRIS. As a result, these cases created a large backlog not visible in the regular reports, but which nevertheless needed to be tackled. There were 161,461 of these enforcement cases unresolved as of 1 January 2014 and most of them (128,555) were in Podgorica’s Basic Court. Courts reported taking different measures to resolve these cases, such as active monitoring by court/department presidents, engagement of court advisors and trainees, etc. So far, the courts have reduced the number of these unresolved enforcement cases to 10,189 of which 9,839 were in Podgorica. At this rate these enforcement cases could be resolved in a year or two, although the remaining cases might take longer because they are probably the most complex ones.

224. With the introduction of bailiffs in April 2014 a significant incoming caseload of enforcement cases was redirected from courts. Statistical data regarding the work of bailiffs was inadequate and did not permit satisfactory monitoring of the system’s efficiency (e.g., the number of incoming cases was not included in the annual reports). Nevertheless, available data indicate that the number of unresolved cases was rather high from 2014 to 2016 (Table 8). According to the Chamber of Bailiffs, the number of pending enforcement cases increased again in 2017 to 71,299, with 22,948 cases resolved that year. The Chamber reports that the ratio of bailiffs’ expenses to the value of the claim was 22 percent in 2017, and therefore seven percent higher than in 2014. It appears that the average expense per resolved case grew annually; it was 135 Euros in 2014, 186 Euros in 2015, 194 Euros in 2016, and 207 Euros in 2017. The 2017 figure amounted to around 40 percent of an average monthly wage in Montenegro. Still, the expenses for case preparation and the award for successful execution do not seem to be excessive. Instead there are serious concerns that other, accompanying expenses

\textsuperscript{170} Criminal proceeding has been initiated against the first president of the Chamber of Private Enforcement Agents for enforcing 263,000 euro based on forged documents.
included in the fee schedule\textsuperscript{171} could significantly increase the total amount to be collected. For details see Table 8.

<table>
<thead>
<tr>
<th>Table 8 - Enforcement Cases Processed by Bailiffs from 2014 to 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year</strong></td>
</tr>
<tr>
<td>2014</td>
</tr>
<tr>
<td>2015</td>
</tr>
<tr>
<td>2016</td>
</tr>
<tr>
<td>2017</td>
</tr>
</tbody>
</table>

Source - Annual Chamber of Bailiffs Reports 2014-2017

225. The remaining weaknesses and problems encountered in the bailiff system suggest the need for further improvements. Since bailiffs were established, courts have been unburdened of enforcement cases and can now commit to resolving “old” enforcement cases and other more complex disputes. The MoJ has been actively resolving enforcement-related problems with new legislation. Still, additional efforts must be made to overcome the remaining problems and shortcomings in enforcement procedures. The efficiency and the quality of bailiffs’ work needs to be closely monitored to lay ground for further interventions, both legislative and operational. Only then, can informed decisions be made to further improve the system and ensure its proper operation.

3.1.5. Removal of Administrative Tasks from Courts - Public Notaries

226. Public notaries were introduced to Montenegro in 2011 and starting from May 2015, they were given jurisdiction over probate cases by amendments to the Non-Contentious Proceedings Act\textsuperscript{172}. Montenegro decided to establish public notaries based on the experience of other European nations. The introduction of a notary service aimed to relieve the courts and administrative bodies of parts of their caseloads, enhance legal certainty, expedite legal transfers of property, and enable citizens to exercise their rights and protect their interests. The 2015 reform also aimed to achieve more efficient resolutions of uncontested probate cases.

227. Unlike enforcement cases, probate cases are first opened in courts and then assigned/delegated to a public notary. Cases resolved by public notaries are a part of the court statistics (reported as “delegated”) and are considered as cases “resolved” by the court. As with bailiffs, the introduction of public notaries did not result in the improvement of the Basic Courts’ efficiency.

\textsuperscript{171} These expenses are related to issuance of receipts and documents, travel costs and similar. Bailiffs Tariff, https://www.javni-izvrsitelji.me/images/dok/uredba-o-tarifi-javnih-izvrsitelja-2016.pdf.

\textsuperscript{172} Official Gazette of Montenegro, No. 20/15.
228. An analysis\textsuperscript{173} conducted by the MOJ in 2016 found notaries were efficient in dealing with their cases; the Notary Chamber of Montenegro’s statistical report for 2017\textsuperscript{174} confirmed this. According to the report, in 2017 notaries received 6,184 cases and resolved 4,867 while objections were filed in only 0.8%. The MoJ’s analysis reported that notaries were efficient and most of the time they resolved probate cases in the 60 days set by law. However, since probate cases have been transferred to notaries only recently, their work should be closely monitored in the future.

3.1.6. Procedural Efficiency

229. As in other judiciaries across Europe, procedural bottlenecks undermine court efficiency in Montenegro. Court performance is affected by court management and organization, practice and procedure, as well as discipline of the parties. Despite the general opinion that performance can be improved simply by hiring more judges and staff (see Figure 28) more significant improvements in Montenegro could be achieved through procedural changes.

![Figure 68 - Judges’ Views on Factors Reducing Efficiency of Their Courts](image)


230. PRIS is not utilized properly as a tool for monitoring and detecting irregularities so competent authorities can respond in a timely and appropriate manner. Court management should actively monitor case flows to prevent cases from becoming inactive. However, many proceedings lack clearly defined procedures, so there are inconsistent practices within and among courthouses.

231. Judges, prosecutors and court users reported about 70 percent of scheduled hearings were necessary as opposed to the lawyers’ assessment of 50 percent. Judges, prosecutors and lawyers agreed that delaying tactics by parties was the major contributor to case length. Parties, witnesses and court experts were usually considered the main cause of cancelled and inefficient hearings, but


most members of all three groups also mentioned the failings of other state institutions\textsuperscript{175} to act at the request of the court as a cause of delay. The omissions of judges and court staff and legislative omissions were also identified as significant reasons for extended case duration.

Figure 69 - Percentage of Judges, Prosecutors and Lawyers Who Believe That Given Circumstances Have Been Occasional or Frequent Reasons for the Extended Duration of Cases in Which They Participated During the Past 12 Months

\begin{table}
\begin{tabular}{|c|c|c|c|}
\hline
 & Prosecutors & Judges & Lawyers \\
\hline
Objective courthouse inabilities (e.g. understaffing, insufficient courtroom equipment, shortage of computers...) & 7\% & 28\% & 33\% \\
\hline
Court and court staff omissions (e.g. confirmed low quality indictment acts, problems with delivery, absence or not respecting instruction deadlines) & 15\% & 39\% & 57\% \\
\hline
Obstructions by the parties to the proceeding (absence of witnesses, lawyer's intentional stalling...) & 22\% & 40\% & 70\% \\
\hline
Accidental errors of the parties to the proceeding (unpreparedness, ignorance, when a party represents himself for instance...) & 20\% & 44\% & 44\% \\
\hline
Legislative omissions (inefficient delivery regulations, imprecise deadlines, unregulated fields, different interpretations of laws...) & 7\% & 28\% & 33\% \\
\hline
\end{tabular}
\end{table}


\textbf{232.} Surveyed judges, prosecutors and lawyers perceived parties as one of the main reasons for cancelled and inefficient hearings. The stakeholders also mention witnesses and expert witnesses and failing of other institutions to act at the request of the court. See Figures 30 and 31.

\textbf{233.} Stakeholders interviewed for the FR reported that expert witnesses also were a source of delay. Though expert witnesses are often used in proceedings, there are instances where their opinions add little or no value to the case. Expert witnesses are costly, so their excessive use drives up the cost of the case for the parties.

\textsuperscript{175} Institutions such as Ministry of Interior, Tax Administration, Pension and Health Insurance were seen as not providing their assistance properly and promptly.
There were significant differences between judges and prosecutors on the one side and lawyers on the other occur regarding the importance of court-related reasons for delays. Predictably, lawyers were very likely (over 60 percent) to blame the courts for cancelled and inefficient hearings while judges and prosecutors were the least likely.
3.2. Efficiency, Timeliness and Productivity of Prosecutors’ Offices in Montenegro

235. For a complete understanding of any judicial system, it is essential to address the work of prosecutors, who are among every system’s most important participants and stakeholders. Their work influences court performance but also affects society in general. The public frequently perceives the courts as the only institution responsible for the delivery of justice; this is incorrect since all parts of the system needs to operate well if justice is to be delivered. Obviously, the impact of prosecutors is much stronger in criminal cases, but they also play a significant role in certain non-criminal proceedings.176

236. Data availability for Prosecution Offices in Montenegro was significantly more limited than for courts. There is still no unified electronic system in SPOs which could be used for reporting, although a case management system177 was implemented in August 2016. As a result, it was difficult to provide a detailed analysis about the functioning of SPOs in this Functional Review.

237. The primary available data sources for SPOs were their individual reports produced and published annually. The annual reports of the PC also contained some useful information. The SPO individual reports were not uniform either in form or content, which made any analysis or comparison challenging. The reports depended on manual data collection and individual interpretation. In some reports data were presented in tables but in others there was only a narrative discussion. In the latter situations, only information important to the author was presented, which often meant that critical data were missing and hence unavailable for this analysis.178 For example, all SPOs reported on received various criminal cases (the KTRs), but not on how they were resolved or whether they were left unresolved at the end of the period.

As opposed to courts, SPOs report their caseload by perpetrators – adults, juveniles, unknown or legal entities – which poses problems for the creation of statistics for the whole criminal chain of police, prosecutors and courts. In courts a single case may contain many parties while in SPOs all reporting is concentrated on an individual defendant; how this affects SPO caseload numbers remains unclear although, logically, it probably increases them. This reporting methodology has been practiced in SPOs for many years and is found throughout the region. An example of the results from the Basic SPO in Podgorica is presented in Table 9 below.

---

176 In addition to criminal cases, prosecutors in Montenegro are also competent for specific civil and administrative matters. For example, they submit requests for judicial reviews and revisions, participate in proceedings concerning return of confiscated property rights and indemnification.

177 This system was developed and implemented by IBM. For further details see section ICT Management.

178 Individual SPOs’ annual reports were analysed and compared to each other. In cases when the team found differences within the margin of error, this data was included in this report.
Table 9 - Review of Perpetrators of Criminal Offenses in Basic SPO in Podgorica from 2014 to 2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Known Perpetrators</th>
<th>Unknown Perpetrators</th>
<th>Total Criminal Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Adults</td>
<td>Juveniles</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>1,797</td>
<td>137</td>
<td>697</td>
</tr>
<tr>
<td>2015</td>
<td>1,768</td>
<td>102</td>
<td>741</td>
</tr>
<tr>
<td>2016</td>
<td>1,935</td>
<td>90</td>
<td>594</td>
</tr>
<tr>
<td>2017</td>
<td>1,824</td>
<td>131</td>
<td>569</td>
</tr>
</tbody>
</table>

Source: Basic SPO in Podgorica Annual Report for 2017

3.2.1. Workloads and Caseloads

According to the CEPEJ 2016 report based on 2014 data, prosecutors in Montenegro received fewer cases per 100 inhabitants each year than the EU average. In Montenegro 1.62 cases were received per prosecutor per 100 inhabitants while the EU average was almost double at 3.55 (and even higher in “Old” EU). See Figures 32 and 33 below. Since case numbers are a direct result of complaints filed, the unanswered question is whether crime levels decline, or citizen did not report crimes that did occur. What was evident is that Montenegrin prosecutors had lower workloads than those in the rest of Europe, and as a result should have had comparatively more resources available to process what they did receive. It was not apparent that prosecutors were using those resources effectively, as discussed in more detail below.

Figure 72 - Number of Cases Received by Public Prosecutors per 100 Inhabitants according to CEPEJ in 2014


---

239. From 2014 to 2017 SPOs in Montenegro received fewer criminal complaints. In 2017, 7,360 criminal complaints\textsuperscript{180} were received in all SPOs – the Basic, High and the Special SPO – which was a 14 percent decrease. Although some variations were noticeable, the inflow of criminal complaints on a national level was declining rather constantly. The share of complaints filed against juveniles remained steady at approximately five percent of the total.

\textit{Source: Annual SPOs’ Reports 2014-2017}

\textsuperscript{180} These are criminal complaints against adults, juveniles, legal entities and responsible persons in legal entities as reported by SPOs in their annual reports. Special SPO did not report on unknown perpetrators cases consistently for which reason all its received criminal complaints regardless of the type are summed in this figure. Criminal complaints against unknown perpetrators have been presented separately below.
2016 was the fifth year of full application of the new Criminal Procedure Code and the prosecution-led adversarial system. The introduction of prosecution-led investigation under the new Code has dramatically expanded the prosecutors’ roles and obligations since the prosecutors now actively lead the investigation of cases instead of courts.

Kotor’s Basic SPO reported in 2016 that changes required a completely different organization of work and higher staffing numbers. A shortage of prosecutors and administrative staff contributed to the accumulation of a large number of cases. According to this SPO the situation improved in 2015 after three new prosecutors were appointed.

240. The distribution of incoming criminal complaints was uneven among SPOs, and as expected the highest numbers correspond to the Podgorica Basic SPO.181 Details are presented in Figure 35.

Figure 75 - Received Criminal Complaints per SPO from 2014 to 2017

Source: Annual SPOs’ Reports 2014-2017

241. Basic SPOs received 6,155 criminal complaints in 2017, corresponding to 84 percent of all caseloads. One fifth of these criminal complaints were received in Podgorica’s Basic SPO while the High SPO in Bijelo Polje received the fewest – only 104. However, other data showed that prosecutors in some smaller SPOs were more burdened than those in larger ones when it came to caseload per prosecutor.

181 Until 2015 the Special SPO was organized as a special department of the Supreme SPO of Montenegro. When possible, data have been included for the year 2014 for Special SPO as a Supreme SPO department.
242. The average number of complaints received per prosecutor declined from 2014 to 2017 as a result of fewer incoming cases and an increase in the number of prosecutors. If all received criminal complaints were divided by the total number of prosecutors (excluding the Supreme SPO), Montenegrin prosecutors averaged only 78 new cases in 2016 and 68 in 2017. If data is disaggregated by individual SPO, the situation varied from office to office. For example, Kotor’s Basic SPO had the highest average (254) in 2014, but its caseload per prosecutor fell after three new prosecutors were appointed in 2015. This also happened in the Basic SPOs in Ulcinj, Pljevlja and Rozaje. See Figure 76.

Figure 76 - Received Criminal Complaints per Prosecutor in SPOs from 2014 to 2017

Source: Annual SPOs’ Reports 2014-2017

243. The variations in per-prosecutor caseloads among SPOs were significant, since some SPOs of the same type received twice as many cases as others. As shown by Table 10, this indicates that although resources were available in the system on a national level, they were not distributed efficiently among SPOs.

---

182 In Ulcinj and Rozaje one additional prosecutor was appointed in 2015; two were added in Pljevlja.
Table 10 - Received Criminal Complaints per Prosecutor in SPOs from 2014 to 2017

<table>
<thead>
<tr>
<th>Prosecutor Type</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special SPO</td>
<td>n/a</td>
<td>62</td>
<td>102</td>
<td>75</td>
</tr>
<tr>
<td>High SPO Podgorica</td>
<td>20</td>
<td>22</td>
<td>27</td>
<td>20</td>
</tr>
<tr>
<td>High SPO Bijelo Polje</td>
<td>23</td>
<td>16</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Basic SPO Bar</td>
<td>96</td>
<td>76</td>
<td>77</td>
<td>91</td>
</tr>
<tr>
<td>Basic SPO Berane</td>
<td>81</td>
<td>86</td>
<td>95</td>
<td>99</td>
</tr>
<tr>
<td>Basic SPO Bijelo Polje</td>
<td>75</td>
<td>73</td>
<td>57</td>
<td>57</td>
</tr>
<tr>
<td>Basic SPO Cetinje</td>
<td>67</td>
<td>57</td>
<td>67</td>
<td>58</td>
</tr>
<tr>
<td>Basic SPO Herceg Novi</td>
<td>120</td>
<td>113</td>
<td>99</td>
<td>92</td>
</tr>
<tr>
<td>Basic SPO Kolasin</td>
<td>64</td>
<td>68</td>
<td>72</td>
<td>85</td>
</tr>
<tr>
<td>Basic SPO Kotor</td>
<td>254</td>
<td>146</td>
<td>121</td>
<td>120</td>
</tr>
<tr>
<td>Basic SPO Niksic</td>
<td>103</td>
<td>85</td>
<td>73</td>
<td>86</td>
</tr>
<tr>
<td>Basic SPO Plav</td>
<td>86</td>
<td>72</td>
<td>80</td>
<td>80</td>
</tr>
<tr>
<td>Basic SPO Pljevlja</td>
<td>131</td>
<td>45</td>
<td>60</td>
<td>55</td>
</tr>
<tr>
<td>Basic SPO Podgorica</td>
<td>94</td>
<td>97</td>
<td>105</td>
<td>72</td>
</tr>
<tr>
<td>Basic SPO Rozaje</td>
<td>139</td>
<td>90</td>
<td>88</td>
<td>67</td>
</tr>
<tr>
<td>Basic SPO Ulcinj</td>
<td>168</td>
<td>122</td>
<td>105</td>
<td>118</td>
</tr>
</tbody>
</table>

Source: Annual SPOs’ Reports 2014-2017

244. SPOs also carried large caseloads deriving from the so-called “various criminal cases” – recorded separately in KTR registries. These are cases which lack enough information to determine whether a crime has been committed. However, they added to prosecutors’ work as they had to be investigated before any decision could be taken on whether they would be pursued. Available data were insufficient to determine how and whether these cases were resolved – by conversion to KT (verified crime) cases, by dismissal on the basis that no crime was committed, or by placement in a temporary archive. The same phenomenon has been identified elsewhere in other countries. In all of these systems, citizens either knowingly submit non-criminal complaints (usually debt collection) to prosecutors or simply do not understand what constitutes a crime. As shown in Figure 37, KTR cases constituted a large part of new cases. Their numbers indicate the system should devise special remedies for their handling. They could include the creation of intake procedures to filter out non-crimes more quickly, so they would never reach the investigative phase of the process. It also would be worthwhile to explore further just how much time prosecutors put into “investigating” the KTR cases and what that entails (e.g., what exactly do prosecutors need to do to direct or help the police investigate these matters).
Cases in which the perpetrator is unknown are registered to KTN registries until the perpetrator is discovered or until the expiration of the statute of limitations. Those KTN cases in which the perpetrators are discovered are re-entered as regular criminal cases. Due to their specific nature, these cases are presented separately in this analysis (and in Montenegrin SPOs’ statistics). SPOs registered around 2,000 new KTN cases each year from 2014 to 2017. The vast majority of KTNs were received in Basic SPOs, only two to three percent of them were received in Higher SPOs and under two percent in the Special SPO. Perpetrators were discovered in approximately 20 percent of the cases; out of 1,951 new KTN cases in 2017 the perpetrators were discovered in 407 of them. In the same year 1,598 KTN cases were dismissed due to the expiration of the statute of limitations while 9,345 cases were left pending.

The Special State Prosecutor’s Office has nation-wide jurisdiction for the prosecution of perpetrators of the following criminal offences: organized crime, high-level corruption, money laundering, terrorism and war crimes, crimes against election rights.

A division for suppressing organized crime was first established within the Supreme State Prosecutor’s Office in 2004. To augment the Division’s effectiveness, its jurisdiction was expanded in 2008 to include corruption, terrorism and war crimes. The Special State Prosecutor’s Office was established by the Law on Special State Prosecutor’s Office in 2015 (“Official Gazette of Montenegro, No.10/2015”) as an independent authority. The Special State Prosecutor’s Office undertakes all the activities falling within its jurisdiction before the Special Division of the High Court in Podgorica.

The Special State Prosecutor’s Office is headed by the Chief State Special Prosecutor appointed by the PC based on a public competitive appointment procedure. Applicants need to be lawyers who have passed the bar exam and have a minimum of ten years of experience as prosecutors, judges or attorneys.

Few SPOs did not clearly distinguish newly received from all pending KTR cases in their annual reports (e.g. Basic and Higher SPO in Bijelo Polje). For this reason, the actual number of received cases may be slightly lower.

2,190 in 2014, 2,276 in 2015, 2,111 in 2016 and 1,951 in 2017 in Basic SPOs, Higher SPOs and the Special SPO. Special SPO data for 2014 was unavailable.

These were dismissals in Basic and Higher SPOs; Special SPO reported 16 dismissed KTN cases in 2017 but this number was not further disaggregated by dismissal reasons.
The Special SPO doubled the number of complaints it received from 2015 to 2016, but it also doubled its number of unresolved cases. In 2016 six times as many indictments were filed as in 2015. The increased demand was expected given the office’s creation as an independent body to fight organized crime, corruption, money laundering, terrorism and war crimes as the most serious forms of crimes. One of the factors causing this increased demand was the expanded jurisdiction of the office to crimes against election rights. With a rise in caseload, the Special SPO reported that the average duration of investigations doubled from two months and 22 days in 2015 to four months and 21 days in 2016. In 2017, the number of incoming criminal complaints fell by 27 percent (from 1,126 to 823) but the number of unresolved cases kept growing, by 24 percent. Although the Special SPO’s Annual Report contains statistical data, it was incomplete, unstructured, and thus inadequate for more detailed analysis.

The Supreme SPO of Montenegro has jurisdiction over second instance proceedings, extraordinary legal remedies and other cases. These other cases include various criminal cases (KTRs), international legal aid, administrative cases, requests for the protection of legality and cases related to application of Law on the Recovery of Revoked Property Rights and Compensation. Pending second instance criminal cases in the Supreme SPO decreased each year, falling by 44 percent from 2014 to 2017 (from 324 to 182 cases). Concurrently, the number of received extraordinary legal remedies also dropped from 147 to 102 from 2014 to 2016, yet the Supreme SPO filed approximately the same number of extraordinary legal remedies to the Supreme Court, about 10 each year. Between 2014 and 2017, the Supreme SPO received about 70 percent fewer KTRs, more international legal aid cases and roughly the same number of civil, administrative and revoked property rights cases. Statistical data indicate that the Supreme SPO handled its caseload without any productivity or efficiency problems.

3.2.2. Productivity of the State Prosecutors’ Offices

The clearance rate for all SPOs in Montenegro (calculated excluding KTRs) was just over 80 percent in 2014 as reported by CEPEJ, indicating that backlogs were growing. However, CEPEJ pointed out that more than 70% of the states for which data were available showed a negative clearance rate, although 22 of the 35 reported states included had rates of 80% or more. CEPEJ also noted the reported data should be interpreted with caution in view of the different approaches used by national jurisdictions.

Surprisingly, although the number of received criminal complaints remained steady from 2014 to 2017 and even grew slightly in 2015, the number of indictments decreased from 2014 to 2015. In its 2016 Report on Montenegro the European Commission noted that Montenegro has achieved some level of preparation in the fight against organised crime. Progress was made notably on strengthening the legal, regulatory and institutional framework. The report noted efforts should continue to improve advances against organised crime cases, especially as regards human trafficking and money laundering where results are limited. The number of suspicious bank transactions detected remains low. See p. 5; https://ec.europa.eu/ neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf.

In 2016, 155 criminal complaints were received concerning criminal offences against election rights while in 2017 this fell to 35. The jurisdiction of Special SPOs was expanded to these types of crimes in 2016. See Law on Amendments to the Law on Special State Prosecutor’s Office, Official Gazette No. 53/2016.

A major difference is that many countries also include cases where a suspect has not been identified. Our calculations for Montenegro only include cases with an identified suspect; this is also true for the Netherlands with a rate in 2014 of 105%.
2017 by 17 percent. The primary reason for this was the increased number of dismissals. In 2014, a total of 3,229 criminal complaints were dismissed while in 2017 there were 3,634 dismissals, or 13 percent more. However, it was unclear what triggered these dismissals.

Figure 78 - Indictments form SPOs, 2014 to 2017

![Graph showing the number of indictments from 2014 to 2017.](image)

Source: Annual SPOs’ Reports 2014-2017

250. On average in 2016 and 2017, for every two complaints received in High and Basic SPOs one indictment was filed. In 2017 only Ulcinj’s Basic SPO had a worse record, with one indictment for every three complaints. Overall, the number of indictments fell from 2014 to 2017 in all Basic SPOs except for Kolasin. In 2016 the number of indictments fell by 18 percent in Podgorica and by 39 percent in Bar comparing to 2014. However, in 2017 both SPOs increased their filed indictments. Higher SPOs slightly increased the number of indictments from 2014 to 2016 but in 2017 the Higher SPO in Podgorica filed 18 percent fewer indictments. For details see Figure 79.

Figure 79 - Indictments per SPO from 2014 to 2017

![Bar chart showing the number of indictments per SPO from 2014 to 2017.](image)

Source: Annual SPOs’ Reports 2014-2017

189 In this report, reasons for dismissal could not be analyzed further due to the lack of structured data. The reasons for these dismissals could be lack of probable cause, statute of limitations, procedural reasons, delayed prosecution, etc.

190 Excluding dismissals of unknown perpetrator cases.

191 Special SPO data for 2014 was unavailable.
In 2017, SPOs resolved 7,339 criminal complaints by dismissal, motion to indict, direct indictment and delegation, which was an increase of two percent compared to 2014. As already stated, the SPOs resolved most complaints by dismissals. See Figure 40, below. In 2017 these trends continued without significant deviations. The underlying reasons for dismissals (statute of limitations, charges unfounded, etc.) were not clearly presented in all available annual reports. But Kotor’s Basic SPO reported that in 2016 about one half of all dismissals (225) were due to expired statutes of limitations.

![Resolved Criminal Complaints](source: Annual Supreme SPO Report 2017)

3.2.3. Case Processing

Even though the inflow of cases was steady and there were fewer indictments and more resolutions without indictments, the number of unresolved criminal cases grew each year from 2014 to 2016. In 2017, however, this backlog was reduced by 17 percent. There were 2,446 unresolved criminal complaints in 2014 and 2,706 in 2016, a 11 percent increase, although 17 additional prosecutors were appointed in the same period and the expenditures of SPOs rose by 52 percent. The number of juvenile unresolved cases, generally low in absolute numbers, more than doubled from 44 in 2014 to 104 in 2017. The increasing backlog of unresolved complaints indicates that SPOs were less efficient even with more available resources and/or it took longer to resolve a criminal case. The SPOs could not provide the average duration of cases or the aging case lists which could give more insights on these issues. The trends are shown in Figure 81 below.

---

192 Resolved by dismissal, motion to indict, direct indictment and delegation. This classification derives from SPOs annual reports. Additionally, the reports count unknown perpetrator cases as resolved, but these have been excluded here since these cases return to the system as new criminal complaints. Juvenile cases have not been displayed in this chart due to their specific classification of dispositions.
**Box 13 - Indictments as a part of criminal proceedings**

*If the prosecutor has not resolved the criminal complaint by dismissal, motion to indict, direct indictment (without conducting an investigation) or some other way described above, after the investigation is over court proceedings can be conducted only based on an indictment. The indictment is filed by the prosecutor and confirmed by the court. The court can decide to return the indictment for amendments or to decline confirmation, but this happens rarely.*

---

**254.** The number of unresolved indictments fell from 3,655 to 2,693 in the period from 2014 to 2017; simultaneously the numbers of indictment requests filed by SPOs and resolved indictments also fell. These trends correspond to the reduction of number of incoming criminal cases through the observed period. Unresolved indictments are those for which the court has not yet decided whether to accept or reject it. Any delays are most likely caused by the courts, although courts also may return indictments to SPOs for amendments if the indictments are found to be incomplete or faulty.

---

193 Juvenile cases have not been displayed in this chart due to their specific classification of dispositions.
255. From 2014 to 2016 SPOs performed approximately the same number of preliminary investigations \(^{194}\) (around 6,000) and issued the same number of orders to conduct investigations (an average of 640 annually on a national level). In 2017 a slight increase in these numbers was reported.\(^{195}\) Under the Montenegrin CPC, preliminary investigations and orders to conduct investigations are both adopted and conducted by prosecutors, if needed with the assistance of the police. The order to conduct investigations, meaning the opening of an investigation, is served on the defendant. The order contains case-relevant data, a description of the crime and may even contain measures proposed to the investigatory judge, such as detention and other forms of restrictions of freedom. The number of orders to conduct investigations ranged from only three in Basic SPOs in Ulcinj and Kolasin to 188 in the Higher SPO in Podgorica. When it came to Basic SPOs, the SPO in Podgorica issued 30 times more orders to conduct investigations in 2016 than the three ordered by the SPO in Ulcinj. These differences probably are due to the fact that more complex crimes are usually committed in the area of larger cities.

3.2.4. Procedural Efficiency

256. The introduction of prosecution-led investigation under the new Criminal Procedure Code in 2011\(^{196}\) significantly increased the caseloads of SPOs and expanded their roles and obligations. Moreover, it significantly altered the amount and nature of the prosecutors’ work. The prosecutors now face challenges regarding the organization of their work, human and material resources, facilities and ICT. Investment in ICT and further development of IBM CMS is a priority to enable the generation of more reliable information on caseloads, performance, and the efficiency of prosecution services.

---

\(^{194}\) Preliminary investigations include gathering, preparing, preserving and analyzing evidence to assess whether a crime occurred.

\(^{195}\) In 2017 SPOs performed 6,627 (6,354 in 2016 or 4 percent fewer) preliminary investigations and issued 679 orders to conduct investigations (642 in 2016 or 6 percent fewer).

\(^{196}\) After the Criminal Procedure Code (Official Gazette 57/2009, 49/2010, 47/2014, 2/2015,35/2015, 58/2015) was adopted in 2009, it was first applied to cases involving organized crime, corruption, terrorism and war crimes in August 2010. Its full application to all cases began in September 2011. It has been amended several times since then.
Analysis of these data is critical to understanding the effectiveness of SPOs and identifying any necessary corrective measures.

257. Montenegrin prosecutors reported that preliminary investigations, on-site investigations and hearings were delivered in compliance with CPC rules and without delay, despite the lack of staff and material resources. Prosecutors reported they frequently supported the police by helping them to conduct the preliminary investigations properly, although that kind of work was neither evaluated nor monitored. Furthermore, a significant number of their procedural actions were recorded and registered “in bulk“ under various criminal cases with no further disaggregation.

258. Although several memoranda of understanding were signed with other institutions involved in the prosecution of cases, prosecutors reported that these institutions were still causing procedural bottlenecks. Memoranda were signed to strengthen cooperation and ensure exchange of information between the Supreme SPO and the police of the Tax Administration; the Administration for Prevention of Money Laundering and Terrorist Financing; Customs, and the Agency for Prevention of Corruption. Cooperation also was frequently described as time-consuming and impeded by insufficient procedural knowledge on the part of the cooperating agencies.

259. The new Criminal Procedure Code introduced the possibility of deferred prosecution. Through this procedure, the prosecutor may postpone prosecution for criminal offenses punishable by a fine or imprisonment of less than five years when s/he finds reasons not to proceed immediately. The nature of the criminal offense and the circumstances under which it was committed, the perpetrator's earlier life and his/her personal characteristics are factors influencing the prosecutor's decision to defer prosecution. However, the suspect must accept one or more obligations, e.g., payment of a certain amount of money to a humanitarian organization, to a fund or a public institution, or performing socially beneficial or humanitarian work. If the suspect fulfils these conditions, criminal charges will not be filed, and s/he will not have a criminal record.

260. CEPEJ 2016 reported that the numbers of discontinued/dismissed cases and cases concluded by a penalty or a measure imposed or negotiated by the prosecutor were lower in Montenegro than the EU average. Although the new Criminal Procedures Code introduced these alternatives in 2011, a certain amount of time was required to build the necessary conditions, practice and experience for their efficient application, so their impact appeared only in 2014.

261. According to the Prosecutorial Council and the Supreme SPO Annual Report for 2016, the number of deferred prosecutions and plea bargains grew from 2015 to 2017, indicating that prosecutors used their procedural possibilities more often. Deferred prosecution was used in 487 cases in 2015, 591 in 2016 and 659 in 2017. During this process prosecutors collected payments from defendants of EUR 171,200 in 2015, EUR 198,070 in 2016 and EUR 273,581 in 2017. For 2016, prosecutors in Basic and High SPOs also concluded 139 plea bargains, almost triple those in 2015 (53). In 2017 211 plea bargains were concluded. There was little if any additional data about the use of plea bargains during the period under review.
3.3. Recommendations on Increasing Efficiency

262. Bearing in mind available resources, it might not be cost effective to have an internal audit department in every judicial institution, but audits need to be done on a regular basis to improve the system’s performance, ensure compliance with applicable EU standards, and demonstrate that the system is fulfilling its Constitutional duties. To establish an independent Inspector General for judiciary and prosecution performance function, Montenegro should:

- Establish a long-term working group to draft the detailed plans for conducting performance reviews of all aspects of the system, including courts, SPOs, and the work of bailiffs and notaries. The group should review best practices for performance reviews and how they are conducted in other CEPEJ countries; propose methods, schedules and maximum completion times for review activities, and propose a formal scheme for the use of performance reviews and conducting research to improve both the external and internal aspects of the judicial system. (Supreme Court, Supreme State Prosecutor Office, Judicial Council, Prosecutorial Council - short term and ongoing). The group’s other assignments would include:
  - Studying options for and ultimately recommending a governance and staffing structure for the Inspector General’s office that includes the management and professional qualifications for the Inspector General and staff. The governing structure should include representatives of all the institutions falling within the Inspector General’s jurisdiction. Although it would work exclusively on judicial system issues, the Inspector General’s office should be an independent agency. (Working group - short term)
  - Drafting the necessary legislation and corresponding rules to establish the Inspector General’s office and its professional functions. The laws and rules should make it mandatory for each judicial institution to review the results of performance reviews at a formal meeting within a specified time of each audit’s completion. (Working group - short term)
  - Determining the budget required to establish, house and equip the Inspector General’s office and to fund its operating costs. (Working group - short term)
- Adopt the necessary legislation and rules for the Inspector General. (MoJ, Judicial Council, Prosecutorial Council - short term)
- Obtain and allocate the necessary resources for the office to begin operations and continue. (MoF - short term)
- Publicize the results of all performance reviews. At a minimum, full reports of the reviews should be posted on the website of the Inspector General with links to the reports on the web pages of the institutions reviewed. (Inspector General and judicial institutions - short term and continuing)
- Follow through by remedying shortfalls identified in the performance audits. (All reviewed institutions - short term and continuing.)
- Use local contractors and EU-based consultants with specialized skills to assist with planning for the Inspector General’s office, and with drafting the laws and rules pertaining to the office’s operations and its methods and timing for its performance reviews, and to conduct

197 The reports should not refer to any personal information about individuals protected from disclosure by any Montenegrin laws.
specialized training of prosecutors and SPO staff. (MoJ, Judicial Council, Prosecutorial Council - short term and continuing)

263. **The five existing sources of statistical data (reports of the Supreme Court, JC, PC and individual court and SPO reports) lack uniformity and compatibility.** Data often are missing or are not disaggregated properly, which restricts monitoring of basic performance and quality indicators, e.g., average case duration or appeal rates. To overcome these impediments, Montenegro should:

- MOJ to establish a long-term working group for unification and compatibility of statistical data comprising of representatives from all types of courts and SPOs, JC, PC and MoJ. Ensure participation of court presidents and heads of SPOs, their administrative staffs responsible for reporting; JC and PC representatives responsible for reporting and CMS development, and representatives of the MoJ responsible for court organization, inspection, statistics and reporting. (MoJ, Judicial Council, Supreme Court, Supreme SPO, Prosecutorial Council - short term.) Other tasks of the group should include:
  
  o Using local contractors and EU-based consultants with specialized skills to assist with the tasks of the working group. (Working group -- Short term and continuing)
  o Defining the reports needed by courts, the JC and PC, the MoJ, Supreme Court and the Supreme SPO for internal and external performance monitoring. The results should include the design of at least 10 standard reports with options for varying levels of detail, and the reports should include relevant EU (particularly Justice Scoreboard) and CEPEJ indicators. (Working group - short term)
  o Defining the data needed to facilitate generating of the defined reports. (Working group - short term)
  o Conducting quality checks of data until the Inspector General’s office can assume this work. (Working group, JC, PC - short term)
  o Ensuring that all portions of required performance reports of judicial institutions are legible, accurate and prepared in a format that users can search electronically, and that the data are assembled in formats used for electronic assembly of the reports. These steps should be taken no matter how long it takes to introduce a system-wide CMS for the courts, prosecutors. [Working group, JC, PC – short term]
  o Determining how much work and what type of work prosecutors must spend on KTR cases. [Working group, Supreme Prosecutor Office, PC, Inspector General - medium term]
  o Consider the introduction of an SPO intake system that filters out non-criminal matters without requiring that prosecutors do so. The system could be based on models from other countries that facilitate the identification and dismissal procedures for non-crimes (Working group, PC, Inspector General - medium term)

- Adopt a detailed reporting methodology to ensure reports are consistent and comparable and do not allow arbitrary recording by courts. (JC, PC, Inspector General - short term)
- Prepare and disseminate materials to all staff responsible for data collection and reporting in the courts, SPOs, the JC, PC and the MoJ. (JC, PC, Inspector General - short term)
- Design trainings to be conducted on a regular basis to facilitate the adoption of data quality assurance protocols. (JC, PC, Inspector General, Training Center - medium term)
Develop a list of the data fields to be included in the court CMS (and relevant reporting/business intelligence tools if applicable) to facilitate report generation. (JC, PC, Inspector General - medium term)

Develop and deliver training for court administrative staff on CMS data entry. Monitor results on quality and consistency of data entry. (JC, PC, Inspector General, Training Center - medium term)

- Establish and appropriately staff department within the Councils, the Supreme Court and the Supreme SPO for the collection and analysis of statistical data on workloads and caseloads. (All named institutions - short term)

264. Develop a backlog reduction plan to reduce the number of carried-over cases and, particularly, cases which have been pending for longer than two years. Steps to accomplish this include:

- Establishing a permanent working group with representatives of the courts and SPOs to draft and monitoring implementation of the backlog reduction plan. Membership of the group may change over time, but its function cannot since backlogs are a permanent threat to the efficiency and quality of the judicial system. (Supreme Court, Supreme SP - short term and continuing)

- The backlog reduction plan should include a method of developing and updating a list of aging cases being handled by each court and SPO. The lists would contribute to the detailed design of the JIS and backlog reduction plans for the courts and SPOs. The lists should be updated at least every six months, and responsibility for assembling and updated the plan should be one of the items covered by the working group. (Working group – short term)

265. Establish a working group to conduct a detailed study of the investigation, case-handling, management and administrative practices of the most efficient courts and SPOs in each size category. The study would identify processes or policies that could help other courts and SPOs improve their case disposition times and numbers and reduce the age and numbers of cases carried over from one year to the next. (Supreme Court, JC, Supreme SPO, PC - short term). The scope of work for the group should include:

✓ Preparing a report detailing the most efficient practices and the preconditions for putting them into practice in other courts and SPOs. (Working group - short term)

✓ Preparing relevant rules and “bench books” to record the steps necessary to put the recommended practices into effect. (Working group - short term)

266. To roll out the more efficient practices to lower-performing courts and SPOs, Montenegro should:

✓ Set up through peer exchange programs, workshops, trainings, etc. (Training Center - short term)

✓ Develop incentives for the highest performing and most improved courts and SPOs. (Supreme Court, Supreme SPO - medium term)

267. The development and installation of sophisticated case management systems in both courts and SPOs is essential to improving the efficiency and effectiveness of these institutions. Montenegrin courts and SPOs record data both electronically (in PRIS for the courts and the IBM CMS
for the SPOs) and in hard copy. Eliminating the double-entry system would permit staff to dedicate more time to case processing. To achieve these efficiencies, Montenegro should:

✓ Designate JIS (or any CMS that replaces it) as the only data source for the courts and the IBM CMS for the SPOs, as is the practice being adopted across Europe. (Ministry of Justice - short term)

✓ Prepare migration plan in phases and support courts in transferring hard copy data to the digital system. (Ministry of Justice, JC, PC - medium term)

268. **To provide positive incentives, many judiciaries have developed performance frameworks with targets and monitoring tools.** To motivate lower-performing courts, ensure consistency of justice services, and lift the average performance of the judicial system, Montenegro should identify and reward higher-performing courts and implement performance improvement plans for under-performing courts by:

✓ Appointing responsible organizational unit and/or professionals from the JC and PC to identify target indicators for court performance and monitor them through unified and regular quarterly, semi-annual and annual reports across all courts. (JC, PC - medium term)

✓ Discussing performance trends and acknowledge improvements and at regular meetings of all court presidents and heads of departments. (JC, PC - short term and continuing)

✓ Promoting individual and institutional good practices and innovations by ensuring they are included in all training course curriculum. (JC, PC, Training Centre - short term and continuing)

269. **Monitor prosecutors’ tasks that are not measured through their quotas.** This addresses prosecutors’ concerns that their work on KTR cases or others that significantly increase their workload is not adequately considered. The monitoring should identify these cases and analyze their impact on the performance of POs (Prosecutorial Council - medium term).
4. QUALITY OF JUSTICE SERVICES

General findings

270. This Functional Review examines several dimensions of the quality of justice services, ranging from the effects of laws and legal interpretation of the laws to the effectiveness of the appeal system and the work of allied professions.

271. Most quality measurement techniques rely on a survey\(^{198}\) conducted by the World Bank in 2016. This was necessary because surveys of perceptions by users of the system provide insight into quality of justice services and can be validated against statistical evidence only to a very limited extent.

272. Providers of court services ranked quality significantly more positively than did users of court services and lawyers, however perception of the overall quality of the work of Montenegro’s courts were positive. Although a majority of judges and prosecutors evaluated the work of courts positively, there were fewer with very positive opinions.

\[\text{Figure 83 - General perception of quality of work of courts}\]

273. Citizens and business sector perceived the quality of prosecutors’ and judges’ work as similar. This could imply that citizens see the judicial system as a single entity, that they recognize the interrelatedness of the different actors’ influence on outcomes, or that they simply fail to distinguish among the contributions of the various actors in the system. Presumably users with more experience understand the differences, but for outside observers or one-time users, blame or credit for a good or bad impression/experience may easily be misattributed.


\(^{199}\) What is your general impression of the quality of work of courts in Montenegro in the past few years?) Base: total population of five target groups
274. **The poor quality of legislation in Montenegro 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 the 2016 Survey, 32 percent of judges, 57 percent of lawyers, and 26 percent of prosecutors cited unclear laws as the main reason why the quality of judicial work was not higher.

275. **When disputes arise, the application of the law is inconsistent across the country.** More than 60 percent of judges, prosecutors and lawyers’ express concerns about inconsistent or selective interpretation of laws and inconsistent jurisprudence.

276. **There are few examples of specialized case processing for the types of cases that often warrant a tailored approach, such as a small claim.** However, these cases can tend to get ‘stuck’ in the system because they lack specialized case processing practices.

277. **ECtHR statistics suggest that the Montenegrin justice system is struggling to reach full compliance with the ECHR standards.** Of a total of 46 judgments finding Montenegro in breach of the standards, eight found violations of the right to a fair trial and 20 found excessive lengths of proceedings.

278. **Montenegro’s overall appeal rates appeared to be relatively high, which cause problem in quality of decision making.** Rates also vary markedly across court types, and court locations without plausible explanation.

### 4.1. Quality of laws and law-making

279. **Many of Montenegro’s judges and especially its lawyers thought the country’s laws were not as clear as they should be.** In the 2016 Survey, 38 percent of lawyers and 27 percent of judges thought laws were imprecise, unclear and ambiguous to at least some extent. Prosecutors had the fewest reservations in the study: only 10 percent of them thought laws were imprecise, unclear and

---

200 What is your general impression of the quality of work of the prosecution in Montenegro in the past few years?) Base: total population of five target groups
ambiguous to at least some extent. Only six percent of judges, eight percent of prosecutors, and ten percent of lawyers stated that Montenegro’s laws were precise or clear to a great extent.

Figure 85 - Perception of precision and clarity of laws – judges, prosecutors and lawyers

280. The survey also highlighted how unclear laws can impact the quality of justice services. Thirty-two percent of judges, 57 percent of lawyers, and 26 percent of prosecutors cited unclear laws as the main reason why the quality of judicial work was not higher.

Figure 86 - Reasons for which the quality of court services was not better that were assessed as very important

---

201 Survey question: In your opinion, to what extent were the Montenegrin laws in the past 12 months precise, clear and unambiguous in terms of form? Base: Judges, prosecutors and lawyers, total target population.

202 Survey question: Please evaluate to what extent were the following circumstances important reasons due to which efficiency of the institution in which you have worked during the past 12 months was not higher? Please give one grade from 1 to 3 to each of the specified reasons, where 1 means that the given circumstances were unimportant, 2 means that they were partly important and 3 means that they were very important. Base: judges, prosecutors and lawyers who do not evaluate the work of courts/prosecution with the highest score
281. For citizens, ‘poor legal solutions’ (meaning poor laws) were also seen as a reason for why the quality of work was not higher. Thirty-nine percent of the public and 18 percent of business representatives cited bad laws as the main reason for quality of the work.

Figure 87 - The major reason why the quality of judicial services was not higher.

4.2. Consistency in the implementation of law

282. There was widespread concern within the judiciary regarding inconsistent interpretation of laws and inconsistent jurisprudence. In the same 2016 survey, 60 percent of judges and prosecutors and 80 percent of lawyers identified both as issues. More than two-thirds of lawyers reported that inconsistent or selective application of laws occurred frequently. However, only about 10 percentage of judges and prosecutors shared this view.

Figure 88 - Percentage of judges, prosecutors and lawyers who think that the mentioned problems occur occasionally or frequently in the enforcement of laws.

---

Survey question: Which of the following would you identify as the main reason explaining why you did not rate the quality of judicial work higher? Base: Citizens and business sector representatives who don’t evaluate the work of the judiciary in THEIR SPECIFIC CASE with the highest score (citizens 77%, business sector 72%). Although all users were given six choices, citizens only chose four of them.

Survey question: How often did the following problems occur in the enforcement of laws? Scale: 1=Never, 2=Rarely, 3=Occasionally, 4=Frequently Base: Judges, prosecutors and lawyers, total target population.

---

203 Survey question: Which of the following would you identify as the main reason explaining why you did not rate the quality of judicial work higher? Base: Citizens and business sector representatives who don’t evaluate the work of the judiciary in THEIR SPECIFIC CASE with the highest score (citizens 77%, business sector 72%). Although all users were given six choices, citizens only chose four of them.

204 Survey question: How often did the following problems occur in the enforcement of laws? Scale: 1=Never, 2=Rarely, 3=Occasionally, 4=Frequently Base: Judges, prosecutors and lawyers, total target population.
4.3. Consistency of decision making with the ECtHR

283. Decisions of the European Court of Human Rights (ECtHR) provide an indication of the quality of justice services in Montenegro and their compliance with human rights standards. From 2014 to 2016, the ECtHR received 452 applications against Montenegro: 158 applications in 2014, 129 applications in 2015 and 165 applications in 2016. As of January 2019, there were 131 pending applications before the ECtHR.205

284. ECtHR statistics suggest that the Montenegrin justice system is struggling to reach full compliance with the ECHR standards. Of a total of 46 judgments finding Montenegro in breach of the standards, eight found violations of the right to a fair trial and 20 found excessive lengths of proceedings. Another six judgments found there had been failures to enforce final court and administrative decisions. Other violations involved the right to an effective remedy. Montenegro has also been sanctioned for a lack of effective investigation, and inhuman or degrading treatment of prisoners and suspects.

285. Montenegro has provisions to ensure effective legal remedies for protection of human rights, including the right to fair trial. To address lengthy trials, in 2007 Montenegro adopted the Law on Protection of the Right to a Trial within a Reasonable Period of Time.206 The Law introduced two legal remedies – a request for review to speed up the proceedings submitted to a court president and a claim for just satisfaction207 for breach of the right to a trial within a reasonable time. The first was intended to accelerate an on-going process, while the claim for satisfaction provides monetary compensation for damages when the breach already has occurred. The European Court of Human Rights concluded that both remedies provided under the Act are effective in principle, which means that they must be exhausted prior to filing a complaint with the ECtHR.

286. In comparison to the number of pending cases, there were relatively few requests for review and claims for just satisfaction. In the period from 2011 to 2015 there were on average 191 requests for review and 45 claims for just satisfaction, while during the same period there were on average 35,000 pending cases per year.208 According to the Judicial Council 2016 Annual report, courts received 249 requests for review of which 22 were approved.

4.4. Specialization and specialized case processing

287. Montenegro’s judicial system includes specialized structures intended to make the system more effective and efficient, including the Special State Prosecution Office established in 2015 to deal with organized crime.209 Annual reports of the European Commission on Montenegro’s progress

---

205 Information on 1 January 2019. The number includes applications for which completed application forms have not yet been received.
207 Referred to as ‘an action for fair redress’ by the European Court of Human Rights in its judgments in cases Vukelić v. Montenegro (Application No.58258/09, Judgement [2013]) and Vučelić v. Montenegro (Application No. 59129/15, Judgement [2016]).
209 In 2017 the Special SPO produced a conviction rate of 84 percent (plea bargains included). In 49 cases the defendant was found guilty in trial and there were 32 confirmed plea bargains. Prosecutors appealed in 11 cases. In the same year the court decided on 18 appeals by accepting five and rejecting 13. Of 1,275 pending criminal complaints, 392 criminal complaints were dismissed.
towards EU membership noted the Special SPO was demonstrating a proactive attitude towards investigation of high-level corruption cases.

288. Montenegro’s specialized courts are the Commercial Court, the Administrative Court and the Misdemeanor Courts. Decisions of the Commercial Court and the first instance courts of general jurisdiction are upheld on appeal at approximately the same rates, while the Administrative Court has better appellate results, as discussed in the section on quality of judicial services. Citizens in the 2016 World Bank survey were significantly more satisfied with the timeliness of case processing by Misdemeanor Courts than other courts, while the business sector was most satisfied with the Commercial Court.

289. In Montenegro there were simplified procedures for disputes involving small claims in line with practice in other countries. These cases are heard in Basic Courts by single judges, and most Basic Courts have judges/judicial assistants designated to deal with this type of cases and one judge who is responsible to oversee their work. The threshold for small claims in Montenegro is 500 euros. Appeals for small claims judgments are limited, and deadlines are shorter for small claims than for general procedure cases.

4.5. Using Data on Appeals to Evaluate the Quality of Judgments and of the Appeals System

290. The following discussion employs information on appeals to evaluate the quality of judgments and the appellate system. It also explores whether high confirmation rates on appeals indicate lower-court decisions are of higher quality, potential problems in the appellate system, and possible abuse of the system by litigants to create unnecessary delay. Data for this section are drawn from World Bank’s survey results and statistics provided by the judiciary and prosecution.

4.5.1. Statistical Data on Quality in Courts

291. Ideally, decision-making quality should be evaluated by case type to identify specific problem areas, but current standard statistics provided by the JC and the Supreme Court did not allow this for the FR. As reported by the JC, the data on quality by case type also could not be extracted ad hoc from PRIS. Moreover, the JC’s annual reports did not even disaggregate data by court; it was reported by court type only. As a result, the data on quality per court used in this chapter are derived from the Supreme Court’s reports. This means that there were no data-supported ways to isolate a specific domain in which quality problems occur, and/or to identify possible improvements in that specific domain.

292. Montenegro’s overall appeal rates appeared to be relatively high. A comparison of the number of resolved cases to the number of submitted appeals shows the average appeal rate in Basic Courts in 2017 was around 18 percent. (There was no data available to determine the number of appeals in civil versus criminal cases.) Estimated appeal rates of Commercial Court(s) were somewhat lower but also increased from eight percent in 2014 to 24 percent in 2017. These estimates, when combined with confirmation rates of substantially more 50 percent, may indicate quality and case law harmonization problems. High Courts, Appellate Court and the Administrative Court had lower and

211 Commercial Court in Podgorica in 2014.
rather stable appeal rates of nine to 13 percent. However, these rates also cannot be considered low, in view of the more limited appeal possibilities for the cases handled by these courts.

Table 11 - Estimated Appeal Rates per Court Type from 2014 to 2017

<table>
<thead>
<tr>
<th>Court Type</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>15%</td>
<td>18%</td>
<td>20%</td>
<td>18%</td>
</tr>
<tr>
<td>Commercial Court(s)</td>
<td>10%</td>
<td>14%</td>
<td>17%</td>
<td>24%</td>
</tr>
<tr>
<td>High Courts</td>
<td>10%</td>
<td>14%</td>
<td>17%</td>
<td>24%</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>10%</td>
<td>12%</td>
<td>9%</td>
<td>13%</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>11%</td>
<td>12%</td>
<td>11%</td>
<td>12%</td>
</tr>
</tbody>
</table>

*Source: WB Calculations*

293. Available statistical reports did not offer sufficient information to calculate appeal rates as a check of the validity of the reports of court users. Although the CMS (PRIS) is functioning in all except Misdemeanor Courts, the Judicial Council reported that PRIS tracked only the number of submitted appeals; it did not give the number of all decisions which could have been appealed or link those appeals to specific cases.

294. Nevertheless, the available data suggest the number of appeals increased each year. The number of appeals grew each year and reached 15,360 in 2017. As explained above, without the ability to calculate appeal rates it was impossible to determine the exact extent to which the parties used their appeal possibilities. However, the increase in the number of appeals and decrease in the number of resolved cases strongly suggest that parties were filing appeals.

Figure 89 - Number of Appeals Submitted and Cases Resolved from 2014 to 2017 (excl. Misdemeanor Courts)

*Source: Supreme Court Annual Reports 2014 – 2017*
295. Without having a more definitive appeal rate, it is hard to evaluate the confirmation rate, but in all court types it was well over 50 percent. The Basic Courts came closest to 50 percent with an average confirmation rate of around 64 percent, while the Administrative Court had the highest rate of confirmed cases with rates of 83 to 87 percent.

296. The Administrative Court also encountered the most problems with efficiency. This would indicate that although the Administrative Court could not handle the rising inflow of cases, its judgments were of high quality. The confirmation rates also indicate it is easier to harmonize case law in one specialized Administrative Court with a relatively low caseload than it is in 15 Basic Courts with a much larger caseload. See Tables 1 and 2 for more details.

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>63%</td>
<td>64%</td>
<td>66%</td>
<td>69%</td>
</tr>
<tr>
<td>High Courts</td>
<td>75%</td>
<td>75%</td>
<td>76%</td>
<td>76%</td>
</tr>
<tr>
<td>Commercial Court(s)</td>
<td>75%</td>
<td>80%</td>
<td>73%</td>
<td>73%</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>78%</td>
<td>79%</td>
<td>76%</td>
<td>75%</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>87%</td>
<td>83%</td>
<td>84%</td>
<td>86%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>76%</td>
<td>76%</td>
<td>75%</td>
<td>76%</td>
</tr>
</tbody>
</table>

Source: JC Annual Reports 2014-2017
Table 13 - Confirmation Rates per Court from 2014 to 2017

<table>
<thead>
<tr>
<th>Courthouse</th>
<th>% Confirmed in 2014</th>
<th>% Confirmed in 2015</th>
<th>% Confirmed in 2016</th>
<th>% Confirmed in 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Court Bar</td>
<td>50</td>
<td>54</td>
<td>54</td>
<td>62</td>
</tr>
<tr>
<td>Basic Court Berane</td>
<td>55</td>
<td>74</td>
<td>71</td>
<td>78</td>
</tr>
<tr>
<td>Basic Court Bijelo Polje</td>
<td>70</td>
<td>73</td>
<td>74</td>
<td>79</td>
</tr>
<tr>
<td>Basic Court Cetinje</td>
<td>66</td>
<td>65</td>
<td>58</td>
<td>67</td>
</tr>
<tr>
<td>Basic Court Danilovgrad</td>
<td>53</td>
<td>67</td>
<td>69</td>
<td>64</td>
</tr>
<tr>
<td>Basic Court Herceg Novi</td>
<td>49</td>
<td>53</td>
<td>51</td>
<td>59</td>
</tr>
<tr>
<td>Basic Court Kolasin</td>
<td>64</td>
<td>70</td>
<td>71</td>
<td>82</td>
</tr>
<tr>
<td>Basic Court Kotor</td>
<td>55</td>
<td>57</td>
<td>57</td>
<td>62</td>
</tr>
<tr>
<td>Basic Court Nikšić</td>
<td>65</td>
<td>61</td>
<td>64</td>
<td>64</td>
</tr>
<tr>
<td>Basic Court Plav</td>
<td>73</td>
<td>79</td>
<td>70</td>
<td>73</td>
</tr>
<tr>
<td>Basic Court Pljevlja</td>
<td>78</td>
<td>62</td>
<td>78</td>
<td>82</td>
</tr>
<tr>
<td>Basic Court Podgorica</td>
<td>66</td>
<td>61</td>
<td>69</td>
<td>75</td>
</tr>
<tr>
<td>Basic Court Rozaje</td>
<td>77</td>
<td>76</td>
<td>74</td>
<td>77</td>
</tr>
<tr>
<td>Basic Court Ulcinj</td>
<td>54</td>
<td>48</td>
<td>52</td>
<td>63</td>
</tr>
<tr>
<td>Basic Court Žabljak</td>
<td>71</td>
<td>61</td>
<td>78</td>
<td>52</td>
</tr>
<tr>
<td>High Court Bijelo Polje</td>
<td>74</td>
<td>73</td>
<td>73</td>
<td>74</td>
</tr>
<tr>
<td>High Court Podgorica</td>
<td>76</td>
<td>77</td>
<td>79</td>
<td>77</td>
</tr>
<tr>
<td>Commercial Court Bijelo Polje</td>
<td>77</td>
<td>87</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Commercial Court Podgorica</td>
<td>74</td>
<td>74</td>
<td>73</td>
<td>73</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>78</td>
<td>79</td>
<td>76</td>
<td>75</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>87</td>
<td>83</td>
<td>84</td>
<td>86</td>
</tr>
</tbody>
</table>

Source: Supreme Court Reports 2014 – 2017

297. Confirmation and reversal rates do not mean much individually but they are significant in tandem. The combination of generally high appeal and confirmation rates probably indicate the use of dilatory tactics by parties. The best situation would be a low appeal rate and a confirmation rate of approximately 50 percent, since that would suggest that only cases with truly disputable facts or conclusions were being appealed. Every system has these cases, as any judge will admit, but they should not occur frequently. If they do, there probably are systemic problems to be addressed.

298. High appeal rates also suggest the systemic presence of other problems. Possible issues include lack of uniformity in the application of law which encourages parties to hope for a more favorable result on appeal. Attorneys also may play a role in increasing the number of appeals; since they charge for every action they take in a case, at least in theory they have financial incentives to prolong their clients’ cases.212 They also advise their clients about the likelihood of success on appeal.

---

212 Attorneys charge separately for each action they take (e.g., per hearing, brief, or appeal). The fee depends on the case type and sometimes on the claim value. Attorney Tariff, Official Gazette No. 12/2005, 45/2008, 11/2015 and 79/2017.
and the tactical advantages appeals may offer, such as the delayed enforcement of an adverse judgment.

299. In 2017 the majority of unconfirmed decisions were reversed; only a small portion were modified. The highest reversal rate in Basic Courts in 2017 was recorded for Zabljak at 32 percent while the lowest reversal rate was Pljevlja’s seven percent. Modification rates ranged from nine percent for Pljevlja to zero for the Administrative Court. Table 3 provides confirmation, modification and reversal rates in detail per court. Of particular concern across Montenegro was the apparent reluctance of higher instance courts to overrule lower instance decisions with their own. In only a small percentage of cases did higher instance courts modify the decisions of lower courts. Over time, modified decisions also would increase uniformity in the laws’ application. Available data did not clarify whether the low number of modified decisions was due primarily to legal provisions that limit the circumstances in which the appellate court can issue them, or some other factor.

Table 14 - Modification and Reversal Rates per Court in 2017

<table>
<thead>
<tr>
<th>COURT</th>
<th>Modified %</th>
<th>Reversed %</th>
<th>Partially Confirmed/Modified/Reversed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Court Bar</td>
<td>7</td>
<td>24</td>
<td>7</td>
</tr>
<tr>
<td>Basic Court Berane</td>
<td>5</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Basic Court Bijelo Polje</td>
<td>3</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>Basic Court Cetinje</td>
<td>9</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>Basic Court Danilovgrad</td>
<td>8</td>
<td>20</td>
<td>8</td>
</tr>
<tr>
<td>Basic Court Herceg Novi</td>
<td>6</td>
<td>30</td>
<td>5</td>
</tr>
<tr>
<td>Basic Court Kolasin</td>
<td>4</td>
<td>12</td>
<td>3</td>
</tr>
<tr>
<td>Basic Court Kotor</td>
<td>7</td>
<td>25</td>
<td>6</td>
</tr>
<tr>
<td>Basic Court Niksic</td>
<td>9</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>Basic Court Plav</td>
<td>5</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Basic Court Pljevlja</td>
<td>2</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Basic Court Podgorica</td>
<td>6</td>
<td>13</td>
<td>7</td>
</tr>
<tr>
<td>Basic Court Rozaje</td>
<td>4</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>Basic Court Ulcinj</td>
<td>7</td>
<td>24</td>
<td>6</td>
</tr>
<tr>
<td>Basic Court Zabljak</td>
<td>13</td>
<td>32</td>
<td>4</td>
</tr>
<tr>
<td>High Court Bijelo Polje</td>
<td>7</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>High Court Podgorica</td>
<td>4</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>1</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>4</td>
<td>16</td>
<td>4</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>0</td>
<td>14</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Supreme Court Reports 2014 – 2017

300. A range of measures are available to improve the quality of decision-making. These include education of judges, implementation of new and/or better use of existing case law harmonization tools (e.g., meetings of judges in the same department to discuss legal issues which they encounter often). Higher instance judges should, whenever possible, replace the decision of the lower court with their own to avoid moving cases back and forth. For reversals, higher instance decisions should contain
a precise explanation and instructions to be followed in subsequent proceedings. Finally, measures should be taken to discourage needless appeals, especially for appeals which obviously are merely dilatory tactics. These might include immediate dismissal of the appeal for insufficient justification and even fines on repeat offenders.

4.5.2. Users perceptions of appeals

301. Business users of the court system appeared to be less apt to appeal from judgments than other users of the system. There was no data to indicate if the lower appeal rates of businesspeople were due at least in part to their level of trust (or distrust) in the appellate system.

Figure 90 - Percentage of filed appeals in individual court cases

302. Trust in the appellate system among court users was relatively low. Only 60 percent of the general public with recent court cases stated that they trust the appellate system. For the business sector trust was slightly higher, at 66 percent. What remains unclear from these perceptions is whether this lack of trust either encouraged or discouraged court users from lodging appeals.

Figure 91 - Trust in appellate system

---

213 Survey question: *Did you file an appeal against the judgment?* Base: General population AND business sector with experience of a court case.

214 Survey question: *Do you trust the appellate system?* Base: General population and business sector with experience of a court case.
4.5.3. Statistical Data on Quality in Prosecutors’ Offices

303. It is frequently said that the quality of the SPOs’ work depends on the quality of the work of other contributing bodies such as the police, the willingness of those bodies to do their work, and the timeliness of their actions. Nonetheless, in view of prosecutors’ status as representatives of society in criminal cases, the public is entitled to know what to expect in terms of the quality of prosecutors’ work. This can be evaluated through different standards like timeliness (e.g., the length of proceedings within the jurisdiction of the SPO), the degree of confirmed indictments based on the results of investigations, and the results of trials. However, available reports did not provide very detailed data about these factors.

304. Only three SPOs reported regularly on the average duration of investigations; these were the Special SPO, the High SPO in Bijelo Polje and the Basic SPO in Berane. The first two gave exact averages (one month and 20 days in 2016 in Bijelo Polje’s High SPO) while the latter only stated that investigations lasted less than six months. The SPO reports from which this information was taken did not specify at which point in the process the proceedings began or ended.

305. The duration of proceedings, including breakdowns of the stages of a case, is a very important indicator for determining whether a defendant has received a fair trial as guaranteed by Article 6 of the European Convention on Human rights. The duration of proceedings should be recorded in greater detail and closely monitored to facilitate data-based analysis and informed decision making in Montenegro.

306. In terms of the outcomes of adjudicated cases, the success of High and Basic SPOs, as reported in the Supreme SPO annual reports, increased and reached a 90\%\textsuperscript{215} percent conviction rate in 2017. This constituted a two percent increase over 2014. These figures were calculated on a national level for all High and Basic SPOs; for individual SPOs the results varied as shown in Figure 12 below. The 19 percent difference in outcomes between the highest and lowest performer recorded in 2016 may have been caused by plethora of internal and external factors, which merit further analysis.\textsuperscript{216} Some SPOs achieved significant improvements, like the High SPO in Bijelo Polje that rose from a 76 percent conviction rate in 2014 to 97 percent in 2017. See Figure 12 below.

307. In general, SPOs did not report the outcomes of the filed appeals although those figures would help evaluate their productivity and the quality of their work. Additional quality indicators could not be used in this analysis since the data needed for their calculation were unavailable or incomplete.

\textsuperscript{215} Both conviction rate and the appeal rate were calculated using adult perpetrator cases data. For other case types (e.g. legal entities) data were not consistently available.

\textsuperscript{216} The highest performer was Basic SPO in Herceg Novi with 97 percent and the lowest performer was Basic SPO in Bar with 78 percent. Interestingly, in 2017 Herceg Novi’s results declined slightly to 95 percent while Bar’s SPO improved by 11 percent.
The relatively high conviction rates, when combined with declining numbers and percentages of indictments; the relatively limited use of alternative dispositions like deferred prosecution, and high dismissal rates may indicate that prosecutors are cherry picking and taking only “sure things” to trial. Prosecutors in Montenegro assumed responsibility for directing the investigation of cases from the courts in 2011. However, there were no policies or procedures in place for regular performance audits of prosecutor decisions about which cases to try, so it was not possible to determine whether these decisions were made appropriately.

Basic and High SPOs filed appeals in 19 percent of rendered decisions through 2016. In 2017 appeals were filed in 12 percent of rendered decisions; available data did not explain this drop. Not surprisingly, as the percentage of decisions increased in which defendants were found guilty, the percentage of appeals filed by the SPOs decreased. Since the conviction rates were rather high, presumably the majority of SPO appeals from 2014 through 2017 related to sentences received by the defendants. This correlation is presented in Figure 13 below. The SPOs did not report the outcome of appeals on a regular basis, which constrained further analysis. The numbers shown below do not include appeals filed by defendants.
310. To ensure better quality and control of prosecutor’s work, the new Criminal Procedure Code\(^\text{217}\) allows filing of complaints when criminal complaints have been dismissed by the prosecutor. An alleged victim or the person who submitted a criminal complaint is entitled to request that a higher instance SPO reconsider the dismissal. The request must be filed within eight days of notification of the dismissal. The higher instance SPO must respond within 30 days.

311. According to the Prosecutorial Council’s Annual Report for 2016, 447 such requests were received in that year, of which 33 were found to be justified.\(^\text{218}\) This means that nine percent of all dismissals were contested and in only 0.63 percent of the cases with complaints were the dismissals reversed. SPOs with the highest number of incoming cases also received the highest numbers of complaints about dismissals. Of the total number of complaints, 40 of the 44 were filed with the Supreme SPO about decisions of the Special SPO, three about decisions of the High SPO in Podgorica, and one about the decision of the High SPO in Bijelo Polje. The High SPO in Podgorica received 295 complaints about the decisions of the Basic SPOs in its jurisdiction, while the SPO in Bijelo Polje received 108 complaints about Basic SPOs. Following the trends from the previous year, nine percent (or 460) of all dismissals were contested in 2017. High SPOs found 0.73 percent of those justified but there was no data concerning the resolutions of the Supreme SPO.

4.5.4. Quality of work of associated professions

312. According to the 2016 perception survey, court users assessed the overall quality of bailiffs’ services as average. Less than 50 percent of general court users and more than 50 percent of business sector court users positively evaluated the bailiffs, while 26 percent of the general population and 29 percent of the business sector representatives provided negative evaluations.

313. Among the judges surveyed, only 55 percent evaluated the quality of the bailiffs’ work as positive. Lawyers are most satisfied with the bailiffs’ work, as shown by Figure 94 below.

---

\(^{217}\) Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15 i 35/15.

\(^{218}\) There was no corresponding data for 2014 or 2015.

\(^{219}\) Survey question: What is your general impression of the quality of work of bailiffs in Montenegro in the past few years? Base: Total population of the five target groups.
The quality of the work of expert witnesses was evaluated more positively by judges and prosecutors than the work of bailiffs. Around 80 percent of judges and prosecutors were satisfied with quality of the work of court experts. Lawyers had less positive opinions; only 61 percent provided positive evaluations. Since the limited availability of experts contributes to delays in case processing and informal reports indicate by judges’ request for additional expert opinions also contribute to delays, the use of experts and their impact on case processing requires further study.

Figure 95 - Perception of the quality of work of court experts

<table>
<thead>
<tr>
<th>Judges</th>
<th>Prosecutors</th>
<th>Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>77%</td>
<td>80%</td>
<td>61%</td>
</tr>
<tr>
<td>20%</td>
<td>18%</td>
<td>38%</td>
</tr>
</tbody>
</table>

4.6 Recommendations

There are many factors that may contribute to the perception that Montenegro suffers from ambiguous legislation and inconsistent jurisprudence. Some of these involve issues in drafting legislation, while others involve issues of transparency and communication. To address these issues of legislative drafting, inconsistent judicial opinions and Montenegro’s relatively high rates of appeals, Montenegro should:

- Survey lawyers, judges and prosecutors every three years to see which laws and bylaws need to be amended because they are ambiguous or conflict with other provisions. The results should be correlated, and the most troublesome language amended to eliminate the ambiguities. (Supreme Court to conduct the surveys and the MoJ to supervise work on resulting amendments - short term and continuing)

- Assign a specialist in legal drafting to every working group tasked with writing laws and bylaws. To allow them time for other duties, much of the specialist’s assistance could be provided through emails and phone conferences. At a minimum, the specialists should be asked to comment about the clarity and consistency of all drafts of relevant provisions. (MoJ - short term and continuing)

- Require the advance public announcement of plans to draft amendments to all laws and bylaws, at least on the MoJ website. (MoJ - short term and continuing)

- In addition to any officially required announcement of proposed amendments to law or bylaw, the proposed amendments should be published on the websites of the MoJ and any other affected agency. The announcements should include instructions and deadlines for submitting comments.

Survey question: What is your general impression of the quality of work of court experts in Montenegro in the past few years? Base: Total population of judges, prosecutors and lawyers.
comments, all comments should be collected and categorized and considered by the drafters of the amended provisions. (MoJ and other relevant institutions - short term and continuing)

✓ For every proposed amendment to a law or bylaw, the drafters should be required to issue an official response to each category of comments, and the response should be published on the website of the MoJ and every other affected agency. The response should be permanently available on those websites so courts, attorneys and parties dealing with the provisions in individual cases can consider the intent of the drafters, and why they chose the wording they used. (MoJ and various institutions - short term and continuing)

316. To improve the incidence of consistent jurisprudence and to avoid unintended costs or other consequences of legislative and regulatory provisions, officials should:

✓ Assign a representative of the Training Center to every working group considering new or amended laws and bylaws. To allow them time for other duties, many of the representative’s assistance could be provided through emails and phone conferences. At a minimum, they should be asked to comment about the scope and costs of training needs generated by the provisions. (MOJ, Training Center - short term and continuing)

✓ Require all members of working groups drafting laws and bylaws to receive basic training on aligning policies with budget and determining the operating and implementation costs triggered by the proposed provisions. Group members should repeat the training at least every two years. The training could be delivered virtually and should be limited to less than half a day. (MoJ, Training Center - short term and continuing)

✓ To the extent this is not mandatory already, require all new and amended laws and bylaws to be accompanied by estimates of their cost implications, including the costs of associated training, before they can be considered by Parliament or the agencies proposed to adopt them. (MoJ, Parliament - short term and continuing)

✓ The MoJ should make experts in estimating these costs available to advise those drafting laws and bylaws throughout the drafting process. (MoJ - short term and continuing)

317. Greater transparency of judicial operations can contribute to increased public confidence in the quality of the system’s work and the integrity of its personnel. To make information about their system accessible and available, the Councils, courts and SPOs need to expand the contents, frequency and types of information they provide to lawyers and the public. To achieve this, the system’s leaders should:

✓ Determine what information is most commonly available from courts and prosecutors in EU countries, which platforms are the most effective to convey the information by courts and/or prosecutors, and the number and expertise of staff needed to convey it. Due to the judicial system’s current shortage of analytic staff, the most efficient way to obtain that information would be through the use of a short-term consultants. (Judicial Council and Prosecutorial Council - short term)

✓ Appoint a standing working group to improve transparency consisting primarily of judges and prosecutors, with at least one representative from each Council and the MoJ. The group would make an initial selection of additional content to be made available and develop the budget for providing the information. Over time, the group should ensure the distribution of additional information about system operations, keeping the information current, and
diversify the means of distribution. (Judicial Council and Prosecutorial Council, MoJ - short term and continuing)

✓ Include the importance, effects and means of outreach in the initial training curriculum of the Training Center, and provide periodic continuing trainings to judges, prosecutors and their senior staff members. These training also should cover appropriate means of dealing with the media and reacting to adverse publicity directed at individuals and institutions within the judicial system. (Training Center - short term and continuing)

✓ Finance the working group’s operations, consultants, trainings and implementation of the outreach efforts through the budget proposals of the judicial and prosecutorial system. (Judicial Council, Prosecutorial Council and MoJ - short term and continuing)
5. ACCESS TO JUSTICE SERVICES

General Findings

318. Access to justice is a basic principle of the rule of law and includes several dimensions: an individual's access to courts, legal representation for those who cannot afford it, and equality of outcomes. There is no access to justice if citizens, especially marginalized groups, do not use the system because they fear it; if the justice system is financially inaccessible; if individuals cannot obtain legal representation; if individuals do not have information about their rights, or if systemic flaws preclude fair, equitable treatment.

319. World Bank's Survey results suggest that improving access to justice is not limited to the relatively simple tasks of demystifying court operations or raising awareness about access to their services. Rather, it requires efforts to address the more complicated barriers experienced by court users, especially those related to costs.

Figure 96 - Percentage of citizens, business sector representatives, judges, prosecutors and lawyers who think that judicial system is accessible or very accessible in terms of defined aspects

320. Financial access to the court system was the largest barrier to access to justice for most Montenegrins. Court and attorney costs represent a significant proportion of average income in

---


222 Survey question: Users: To what extent is the judicial system accessible to you personally /to your company in terms of…; Judges, prosecutors and lawyers: To what extent is the judicial system accessible to the citizens in terms of….? Base: Total target population of citizens, business sector, lawyers, judges and public prosecutors.
Montenegro. Pursuing even a simple case is unaffordable for many. For lower income individuals deterred from the courts because of the cost, fee waivers may be critical to enable access to the courts. However, use of the court fee waiver program was largely undocumented from 2014 to 2017.

321. **Lack of affordability of justice services also causes a drag on the business climate.** Majority of surveyed business sector representatives perceived attorneys’ expenses as an obstacle to access to justice.

322. **Attorney fees and attorney costs are highly regulated, which restricted the ability of parties to negotiate fees with their lawyers.** The Attorney Fee Schedule specifies the fees for each type of proceeding and each legal action 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.

323. **Self-represented litigants struggle to proceed alone without lay formats, checklists or practical guides, and unsurprisingly therefore, they are less likely to succeed.**

324. **Free legal aid is provided by Legal Aid Offices across the country.** The Ministry of Justice, as the body responsible for the coordination and control of the legal aid system, had no centralized system for tracking the types of cases that generated the requests, so there was no accessible source of additional information about the scope of legal aid in Montenegro. Data show that courts approved 80 percent of the requests for legal aid during the period reviewed.

325. **Awareness of law and practice is limited, even among professionals.** The only legal databases in which statutes were available in their complete form were those established and maintained by private companies. The website of the Parliament and the Official Gazette did not contain consolidated versions of legislation.

326. **Although, the most court users familiar with the mediation process believe it is useful for parties and can contribute to the resolution of the dispute, the use of mediation remained low.** One of the reasons for the limited impact of the Law on Mediation may be the relatively low fees authorized for mediators. A significant outreach initiative to potential court users will be required, including promotion of success rate of mediation. The average success rate of mediation from 2014-2016 was 74 percent in civil cases and in criminal cases is 95 percent. Specifically, mediation should be promoted among state institutions since in 2016 there was no single case with the state as one of the parties that was referred to mediation.

327. **Equality of access for vulnerable groups poses specific challenges.** Only 37 percent of the citizens surveyed considered the judiciary equally accessible to all citizens, regardless of their age, socio-economic status, nationality, disability, language and political party membership. According to a recent World Bank survey of LGBTI people in the Western Balkans, including in Montenegro, 32 percent of LGBTI respondents had been a victim of violence in the last five years yet only 17 percent reported their case to the police.

---

5.1. Affordability of Justice Services

328. Financial access to the court system was the largest barrier to access to justice for most Montenegrins. The chart below gives an indication of average total costs for court users in 2016.

Figure 97 - Average costs in Euros of actual concrete court cases based on data obtained from the citizens and business sector

329. It was not the absolute cost but the perceived value of court services, or the lack of it, which drove court users’ concerns. While court users questioned in the survey complained about the costs of going to court, they were far more willing to pay if they were satisfied with the quality of justice services delivered. Seventy-two percent of court users who reported that the quality of services they received was low also reported that the costs were excessive. By contrast, only 36 percent of court users who reported that quality was high considered the costs to be excessive. It may be that these results were affected by what users could afford to pay; the next section explores the affordability of costs.

Figure 98 - Citizens – evaluation of the amount of cost of court processes in relation to the quality of court services

---

224 Survey question: How much did the case cost you altogether? Total costs imply all court costs and taxes, the lawyer’s fee and travel costs (but does not include fines Base: citizens and business sector with experience of a court case.

225 Survey question: Do you think TOTAL costs of this case were small, “reasonable” or excessive given the quality of court services you were provided? In your opinion what was the quality of judicial work in that specific case? Base: General population and business sector with experience of a court case Base: Citizens with experience of a court case.
5.1.1. Affordability of Court Fees

330. **Court fees are contained in the Law on Court Fees.** Fees are based on the stated value of the claim, up to a cap of 750 EUR in civil cases and 1,500 EUR in commercial cases. Fees are paid to the court for every motion submitted, every decision rendered, and every court settlement reached in all civil litigious processes and commercial disputes. In uncontested proceedings, a nominal filing fee of 10 EUR applies in many instances, though higher fees apply for those involving real and financial assets such as inheritance procedures or divisions of property. Fees are also charged in criminal cases initiated by a private party; Montenegro is one of only eight countries monitored by the CEPEJ that charges such fees.

331. **The majority of survey respondents stated that the costs of their own court case represented a financial burden.** These perceptions were based on actual experience, particularly for those from less affluent parts of the country. As seen in Table 15 below, in 2017 the court fees for a divorce case, among the least costly types of case, represented a burden of around 1.2 average monthly salaries in the municipality of Andrijevica; for citizens of Podgorica the costs were only 91.5 percent of their average monthly income.

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Net Monthly Wage</th>
<th>Court Fees</th>
<th>Attorney Fees</th>
<th>Total Fees</th>
<th>Court Fees as Share of Income</th>
<th>Total Fees as Share of Income</th>
<th>Total Fees (incl only 50% Attorney Fees) as Share of Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrijevica</td>
<td>409</td>
<td>60</td>
<td>437.5</td>
<td>497.5</td>
<td>14.7%</td>
<td>121.6%</td>
<td>114.3%</td>
</tr>
<tr>
<td>Podgorica</td>
<td>544</td>
<td>60</td>
<td>437.5</td>
<td>497.5</td>
<td>11.0%</td>
<td>91.5%</td>
<td>85.9%</td>
</tr>
</tbody>
</table>

*Source: WB calculation*

332. **The Law on Civil Procedure anticipates that each party will pay court fees before submitting an initial claim or answer.** The court will not suspend litigation for failure to pay fees but the significant upfront fees may deter access to the courts, and there may not be enough available information about those fees to alert court users to them beforehand.

---

226 Law on Court Fees, Tariff Number 1.
227 In this FR, litigious cases are contentious or disputatious cases (e.g., cases involving divorces, indemnities, labor, or property).
228 See the CEPEJ Evaluation Report, 2014. Court fees are charged to start private prosecutions in Croatia, Cyprus, Greece, Monaco, Portugal, Serbia and Switzerland.
229 The Law on Court Fees previously stipulated that if the party did not pay the court fee after an order and warning issued by the court, the party’s submission would not be taken into consideration (Article 4, paragraph 4). The Law also stipulated that if the party still did not pay the prescribed fee for a court decision after an order and warning issued by the court, the decision would not be delivered to that party prior to presentation of proof that the court fees had been paid in full (Article 5, paragraph 2). However, these provisions were challenged before the Constitutional Court of Montenegro, which found that those rules limited the principle of Article 17 of the Constitution, which states that everyone is entitled to equal protection of his freedoms and rights to due process, and is guaranteed the right to appeal.
5.1.2. Accessibility of court fee waivers

333. For lower income individuals deterred from the courts because of the cost, fee waivers may be critical to enable access to the courts. The Law on Court Fees\(^\text{230}\) and the Civil Procedure Code\(^\text{231}\) allow court fee and cost waivers for parties who are financially unable to cover court-related costs. According to the Civil Procedure Code, Basic Courts will waive fees if the fees jeopardize the court user's financial situation. The procedure for relief from fees is initiated by a court user, who must submit evidence in support of his/her request.

334. However, the rules of the Civil Procedure Code are not precise about these procedures, making it difficult for citizens to be informed about the method for requesting an exemption or waiver. The waivers also do not apply to attorney's fees.

335. Use of the court fee waiver program was largely undocumented from 2014 to 2017. Official statistics and information on the number and amount of fee waivers granted by courts was lacking and aggregation of data was not possible. Information about fee waivers was not recorded in PRIS and manual registries of waivers were not kept. The only recording of fee waivers was in the orders of individual judges.

5.1.3. Affordability of Attorneys

336. Majority of surveyed citizens and business sector representatives perceived attorneys' expenses as an obstacle to access to justice.

\(^{230}\) Article 8-19 Law on Court Fees. In accordance with Article 8, certain subjects are exempt from payment of court fees ex lege: Republic, state bodies and public institutions; local self-government bodies; humanitarian organizations; persons involved in the process of exercising rights from labor or civil servant relations; dependents in the process of legal support; plaintiffs in court proceedings for the recognition of motherhood and fatherhood; plaintiffs in disputes over preserving and educating children; spouse, child or parent of a missing person in the process of declaration of missing person deceased and proof of death. In addition to the mandatory exemption from payment of court fees, under Article 9 the court may exempt a party from payment of court fees, if the payment of court fees would significantly impair the resources for maintenance of that person and his/her family. The provisions of the Civil Procedure Code on exemption from payment of the costs of proceedings apply with regard to the exemption from court fees. Hence, the law refers to the rules of civil proceedings rather than including precise rules.

\(^{231}\) Article 166 Civil Procedure Code.
Figure 99 - Percentage of the citizens with and without experience of a court case who think the judicial system is inaccessible for specified reasons.

- Citizens with experience of a court case
- Citizens without experience of a court case

<table>
<thead>
<tr>
<th>Reason</th>
<th>% of inaccessible (mostly + very)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court-related costs</td>
<td>39%</td>
</tr>
<tr>
<td>Lawyer-related expenses</td>
<td>44%</td>
</tr>
<tr>
<td>In terms of geography</td>
<td>51%</td>
</tr>
<tr>
<td>Given the distance of the courthouse</td>
<td>7%</td>
</tr>
<tr>
<td>In terms of layout</td>
<td>18%</td>
</tr>
<tr>
<td>How easy was it to find your way and move around the courthouse</td>
<td>6%</td>
</tr>
<tr>
<td>In terms of access to information</td>
<td>16%</td>
</tr>
</tbody>
</table>

Figure 100 - Percentage of representatives of business sector with and without experience of a court case who think that judicial system is not accessible.

- Business sector with experience of a court case
- Business sector without experience of a court case

<table>
<thead>
<tr>
<th>Reason</th>
<th>% of inaccessible (mostly + very)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court-related costs</td>
<td>33%</td>
</tr>
<tr>
<td>Lawyer-related expenses</td>
<td>42%</td>
</tr>
<tr>
<td>In terms of geography</td>
<td>47%</td>
</tr>
<tr>
<td>Given the distance of the courthouse</td>
<td>12%</td>
</tr>
<tr>
<td>In terms of layout</td>
<td>10%</td>
</tr>
<tr>
<td>How easy was it to find your way and move around the courthouse</td>
<td>17%</td>
</tr>
<tr>
<td>In terms of access to information</td>
<td>12%</td>
</tr>
</tbody>
</table>

---


Attorney fees and attorney costs are highly regulated, which restricted the ability of parties to negotiate fees with their lawyers. The Attorney Fee Schedule specifies the fees for each type of proceeding and each legal action or motion. Parties can negotiate with their attorneys to a limited extent, but fees must not be less than 50 percent of the prescribed rate. In practice, assessments of payments reveal that the Attorney Fee Schedule is unrealistic. Stakeholders reported it is common for parties to pay only 50 percent of the prescribed rate. Parties in civil cases and their attorneys may negotiate a lump-sum fee or one based on a percentage of the value of the claim. In addition, the parties may negotiate for the payment of an hourly fee, with each hour costing a maximum of 75 EUR.

5.1.4. Legal aid program

The right to an attorney provided at state cost for parties to a non-criminal dispute who cannot afford an attorney is outlined in the EU's Charter of Fundamental Rights, by the ECtHR, and, in limited circumstances, the United Nations’ Principles on Access to Legal Aid in Criminal Justice Systems. In recognition of the principle, Montenegro adopted the Law on Free Legal Aid in 2011.

In 2017 legal aid was provided by 685 lawyers assigned from a list compiled by the Montenegro Bar Association. Legal advice also was available from attorneys on the list through the Legal Aid Office associated with the courts, but that option was not well-publicized.

Funding for legal aid is provided from the state budget. Legal Aid lawyers charge 50% of the regular tariff of legal practitioners. The Legal Aid Office determines if the client meets the qualifications for assistance. Based on the bill of costs, the president of the court issues a decision determining which attorney fees and costs will be paid. That decision is sent to the Judicial Council, which is responsible for making the payment.

Legal Aid Offices keep a register of new requests and the applications they approve for free legal assistance, but these records provide little information about the type and content of the proceedings for which legal aid has been approved. Furthermore, the Law on Free Legal Aid does not limit other agencies and organizations from providing legal aid. The Ministry of Justice, as the body responsible for the coordination and control of the legal aid system, had no centralized system for tracking the types of cases that generated the requests, so there was no accessible source of additional information about the scope of legal aid in Montenegro.

---

235 Title VI Art. 47 paragraph 3 ‘Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’
236 ECHR Art. 6 paragraph 3 ‘… to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.’
237 Article 9 of the Law on Legal Aid.
Data show that courts approved 80 percent of the requests for legal aid during the period reviewed. In 2015, the judicial system paid Legal Aid attorneys a total of 117,745.34 Euros. The Judicial Council did not publish the number of approved requests in 2016, but the amount paid to lawyers increased to EUR 156,206.76. In 2017 the number of received requests decreased by 22 compared to 2016 (454 requests were submitted and 351 were approved), and the Judicial Council paid EUR 151,375.85 to Legal Aid attorneys.

Free legal assistance was perceived as accessible by a majority of judges and public prosecutors. However, many others claimed they could not evaluate the accessibility of legal assistance because of lack of information.

---

240 Survey question: Do you think that free legal help is available to the necessary extent? Base: Total target population of judges and prosecutors.
5.2. Access to Information

344. **Access to and awareness of laws was limited in Montenegro.** The only legal databases in which statutes were available in their complete form were those established and maintained by private companies. The website of the Parliament and the Official Gazette did not contain consolidated versions of legislation.

345. **A majority of surveyed court users reported they were satisfied with the accessibility of information.** Sixty-six percent of citizens and 78 percent of representatives of business sector gave positive scores for access to information about their own court cases.

Figure 103 - Evaluation of the ease of obtaining information by lawyers, the general population and business sector during their own court cases\(^{241}\)

346. **Citizens and the business sector used several sources of information when looking for information about their cases and about the applicable laws.** Almost half of citizens mentioned lawyers as their main source of information, while one in four citizens named court staff. It was striking however, that the smallest percentage of the users mentioned the Internet as their source of information about their case.

---

\(^{241}\) Survey question: **Citizens with experience of a court case, business sector with experience of a court case: How easy or difficult was it for you or your lawyer to access information regarding your court case? Lawyers: how easy or difficult was it for ALL citizens, notwithstanding their age, education level, financial status, nationality, or disability to access the information they needed about the functioning of the judicial system (e.g., how to file a case, etc.?) Base: Total target population of citizens and business sector with experience of a court case.**
In contrast to the court users, 77 percent of judges and 71 percent of prosecutors maintained the best sources of information were the court and SPO websites. Bulletin boards were perceived as main sources of information by more than 70 percent of the judges, but only one third of prosecutors. One in four judges identified brochures and leaflets as sources of information. This suggests that stakeholders within the system were ignorant about the needs and practices of actual and potential court users.

The availability of court information improved with the introduction of the web portal, sudovi.me in 2017. This site also is discussed in the ICT Management chapter. The portal provides standardized information for each court, including information on the status of ongoing proceedings as well as hearing dates and the decisions of each court.

5.3. Access to Alternative Dispute Resolution

Most court users familiar with the mediation process believe it is useful for parties and can contribute to the resolution of the dispute.

---

242 Survey question: Which sources of information did you use to find out what you should do in this concrete case? Base: citizens and business sector representatives with experience of a court case.
350. Other than providing for some relief from court fees and expanding the scope of cases for which mediation is suitable, the Law on Mediation did not produce its expected impact in terms of the number of cases referred to mediation. In 2015, judges referred only 1.5 percentage of civil cases to mediation (corresponding numbers were not readily available for 2016 or 2017). As a percentage of court caseloads, the use of mediation remained low. However, this was in line with the EU average, although not with current European trends for the increasing use of mediation.

351. One of the reasons for the limited impact of the Law on Mediation may be the relatively low fees authorized for mediators. The Government of Montenegro adopted a decree on fees for mediators; for family and criminal matters it is 5 percent of the average Montenegro income, or around EUR 25.

Survey question: In your opinion, how useful is a mediation process to parties to court proceedings, i.e. can it help settle a dispute in case of legal entities? Base: General population and business sector with experience of a court case who know what mediation process is (14% of citizens and 32% of representatives of business sector with experience of a court case).


---

243 Survey question: In your opinion, how useful is a mediation process to parties to court proceedings, i.e. can it help settle a dispute in case of legal entities? Base: General population and business sector with experience of a court case who know what mediation process is (14% of citizens and 32% of representatives of business sector with experience of a court case).

244 For a court settlement, half of the prescribed fee is provided in Montenegro, according to the value on which the parties have settled (half fee from the Tariff 1).


246 The average income in 2016 was 490e, a 5% percent of average income is 24,5e. Statistical Office Montenegro, (MONSTAT): http://www.monstat.org/cg/novosti.php?id=2049.
352. The average success rate of mediation from 2014-2016 was 74 percent in civil cases and in criminal cases is 95 percent. The value of the civil claims successfully resolved in mediation procedure was EUR 55 million. Mediation in criminal cases is used only for crimes for which the penalty is a fine or up to five years of incarceration. It is one of the possibilities deriving from the “principle of opportunity” in criminal cases.

353. State institutions did not use mediation. According to the State Audit Institution, from 2012 to 2015, the state was ordered to pay total courts cost of EUR 33 million in cases which the state lost, although there was no data available about the number of cases which produced these costs. In 2016 there was no single case with the state as one of the parties that was referred to mediation.

5.5. Geographical and Physical Access to Justice Services

354. Geographic barriers to access to justice were not a significant concern in Montenegro. Around 79 percent of surveyed citizens and 89 percent of business representatives did not consider distance to the courthouse to be a problem.

355. Future efforts to improve physical access to justice services might be best addressed using online strategies, such as e-filing, hearings conducted online and even online dispute resolution (ODR). As internet penetration improves, geographic distance should become less relevant and lawyer and court users, including those from outside Montenegro, will expect to spend even less time at the courthouse for routine matters. The appropriate development of streamlined online processes should bring a range of court services directly to the user.

356. More than 80 percent of the surveyed users of court services stated it was easy to find their way in court building. A healthy majority of lawyers – 72 percent – believed that orientation within the court buildings was easy for all citizens, notwithstanding their age, education level, financial status, nationality, or disabilities.
Figure 107 - Evaluation of the ease of orientation in court buildings by the general population, business sector and lawyers, based on their experience with a court case.

5.6. Equality of Access for Vulnerable Groups

Only 37 percent of the citizens surveyed considered the judiciary equally accessible to all citizens, regardless of their age, socio-economic status, nationality, disability, language and political party membership.

According to the citizens surveyed, unequal treatment of individuals was due primarily to their political party membership. Majority of citizens surveyed thought there also were differences in treatment due to economic status. Around one third of citizens believed that nationality, degree of education, disability, and sexual orientation affected individuals’ treatment by the court. Age was mentioned as a reason for differential treatment by 26 percent of those surveyed. Gender-related differences were mentioned by 22 percent of the individual respondents.

Survey question: General population, business sector: From experience with this case, how easy was it to find your way to and move around the courthouse? Lawyers: how easy or difficult was it for ALL citizens, notwithstanding their age, education level, financial status, nationality, or disability to find their way around the court buildings? Base: Citizens i business sector with experience of a court case and lawyers.

---

247 Survey question: General population, business sector: From experience with this case, how easy was it to find your way to and move around the courthouse? Lawyers: how easy or difficult was it for ALL citizens, notwithstanding their age, education level, financial status, nationality, or disability to find their way around the court buildings? Base: Citizens i business sector with experience of a court case and lawyers.
A considerably smaller percentage of judges and prosecutors thought that certain categories of citizens were treated differently. However, they still named party membership as the top factor for unequal treatment. Overall, the opinions of lawyers regarding the inequality of treatment were considerably closer to those of the general population than to the attitudes of providers of court services.

Members of the business sector also thought all citizens and legal entities were not treated equally. According to 58 percent of business representatives, the system’s treatment of economic enterprises depended on their ownership structure. Forty-six percent believed that the treatment

---

248 Survey question: In your opinion, does the judicial system in Montenegro treat all citizens equally notwithstanding their...
Base: General population, total target population of citizens.

249 Survey question: In your opinion, does the judicial system in Montenegro treat all citizens equally notwithstanding their...
Base: Judges, prosecutors and lawyers, total target population.
depended on the size of the enterprise. Another 36 percent responded that their treatment depended on the type of economic activity involved, while 30 percent named geographic location as a factor (i.e., the municipality in which the business was located).

361. According to a recent World Bank survey of LGBTI people in the Western Balkans, including in Montenegro, 32 percent of LGBTI respondents had been a victim of violence in the last five years yet only 17 percent reported their case to the police. Most commonly respondents stated the belief that the police would not or could not do anything about the incident, fear that the perpetrator would retaliate, and fear of homophobic or transphobic reactions from the police as reasons for not reporting.

5.6. Access for Victims

362. There is a clear and strong focus on access to information in the EU Victims’ Support Directive.250 The Directive established requirements about the information that must be provided and a basic framework for how it should be made available.251

363. Existing services in Montenegro fell short of the national system of generic victim support required by the EU Directive. There were support services provided by government institutions, as well as through NGOs. However, there was limited service provision by the state, and the lack of a formal state referral system for victim support organizations also reduced victims’ access to help.

364. The CPC regulates the protection of victims through provisions relating to protected witnesses.252 The right of a victim to avoid contact with the offender is regulated to some extent in the rules of the CPC related to protected witnesses.

365. State services are focused on assistance during criminal proceedings and primarily provide information, so they do not reach victims who have not reported a crime or whose case has been dropped. The CPC established some access to information for victims, but only in their role as witnesses. While this covers most victims in criminal proceedings, it excludes victims who are not called as witnesses or who are not considered as possible witnesses. State services do not provide victims in these categories with formal assistance of any kind. Informants interviewed for the FR reported that in practice, the following information is not always provided to victims: written confirmation of the victim’s report of a crime; information on how to obtain information about the results of any investigation and trial; information on the release or escape of a suspect, and contact information for relevant institutions.

366. Results of EU Surveys254 show that there is a need to improve rights awareness of and reporting of violence and discrimination for LGBT population. The survey results show very high non-

250 2012/29/EU.
251 At the minimum, Member States must ensure information is provided to victims proactively when authorities first become aware of the victim (Article 4 of the Directive). This information generally relates to the victim’s rights and available services. In addition, victims must receive a written acknowledgement when making a complaint, in their own language where appropriate (Article 5 of the Directive).
252 Articles 121-124 of the CPC.
reporting rates among respondents who had felt personally discriminated against or who said that they were victims of violence or harassment. The most frequent reasons for not reporting incidents of discrimination were a belief that ‘nothing would change’, as well as a lack of knowledge about how or where to report an incident or fear of homophobic or transphobic reaction from the police. Having in mind problem of non-reporting and focus of state victim support only to those victims who reported crime, there is a need to incentivize reporting of hate crimes.

5.7. Recommendations

367. Meaningful access to justice includes giving parties the opportunity to make informed decisions about their participation in court cases. As the World Bank survey shows, the cost of participation can be a major deterrent to pursuing a court case, and cases languishing in the system because parties cannot afford the fees or costs are a drain on the system’s resources. To benefit both the judicial system and its users, Montenegro should simply its court fee structure by:

✓ Establishing a working group that includes representatives of relevant NGOs as well as the MOJ and JC, to be chaired by a representative of the Supreme Court, to draft provisions that standardize the court fee waiver process; design a system to collect centralized information about the types of and numbers of cases in which fee waivers are requested, under what circumstances the requests are approved, the amount of the waiver, and the amount of fees left for the party to pay. (MOJ, Supreme Court - medium term)

✓ Identify the appropriate court staff to be responsible for entering data about fee waiver requests and corresponding fields in JIS and include entry of the information among the criteria in the performance appraisal of the person filling the assigned position. (JC, courts – short term)

✓ Assigning the responsibility for conducting annual performance audits of the court fee waiver process and the regular data entry to a particular office, and include performance of the audits and preparing reports on them as criteria to be considered in the performance appraisal of the person filling the assigned position. The performance audits should include regularly scheduled and statistically valid random sampling of the data entry function. (JC - medium and long term)

✓ Publishing the reports of the annual performance audits on the JC website within three months of the audit’s completion. (JC - medium and long term)

✓ Once additional data is available about the number, types, duration and costs to the system of criminal cases filed by private parties, consider eliminating or at least limiting the imposition of court fees in those cases. (MOJ - medium to long term)

✓ Providing information online and in paper brochures available at courthouses and libraries about the court fees and costs and duration of proceedings, so potential and actual court users can better estimate the costs of their case. (MOJ - medium term)

✓ Designing and implementing an interactive calculator of court fees. The calculator should be featured on each court’s web page. (MOJ, courts - medium term).

368. Realistically, the cooperation of the Montenegro Bar Association would be needed improve access to justice by encouraging more attorneys to charge lower fees for parties in need. The
following steps are designed to promote the availability of legal aid that is free or done at reduced cost to litigants in search of access to justice.

✓ Standardize the forms used by Legal Aid Offices, other organizations assisting with attorney fees and non-Legal Aid attorneys who provide free legal assistance, to report on the type and content of the proceedings for which legal aid was applied for and approved; the estimated amount of attorney time the proceedings are expected to be required; the expected duration of the attorney’s assistance; the fee structure to be used by the attorney or Legal Aid office, and at the end of the matter, the amount actually charged. (MoJ, JC - short term)

✓ Assign the responsibility to a particular staff for collecting the forms, entering data collected through the forms into a data base maintained by the JC/MoJ, and issuing an annual report about the use of free legal aid in Montenegro. Entry of the information and preparation of the report should be included in the criteria used in the performance appraisal of the person filling the assigned position. (JC, courts - short term and continuing)

✓ Publish the resulting reports on the JC website within three months of the report’s completion. (JC – short term and continuing)

✓ If the Bar Association already publishes a regularly updated list of attorneys willing to handle legal aid cases on its website together with information about how to obtain the services of those attorneys, ensure that all courts include links to the list on their own websites. If the Bar Association does not include the regularly updated list on its website, each court should obtain the relevant list for its cases, and publish it on its own website. The court websites all should include the procedures for parties to obtain free legal aid. Compliance with these posting requirements should be one of the items in the performance audits of courts described in the recommendations of the Efficiency chapter. (Supreme Court – short term and continuing)

✓ The websites for each court also should include information about how parties, witnesses and, for criminal cases, victims, can register complaints about the attorneys involved in their cases. Compliance with these posting requirements should be one of the items in the performance audits of courts described in the recommendations of the Efficiency chapter. (All courts – short term and continuing)

✓ Encourage the development of alternative fee structures and amounts for parties of limited means by hosting a conference on those topics, featuring representatives from the Bar Association, interested Montenegro NGOs and CEPEJ, CCBE or other international and regional organizations with comparative experience and understanding of the free legal aid. (JC – short term)

369. Even if the availability of free legal aid increases, a certain percentage of Montenegro’s litigants will prefer to or will have to represent themselves for at least some part of the proceedings. The following steps should help those litigants represent themselves more effectively and help courts process cases involving pro se parties more efficiently.

✓ Create fields in JIS to collect data about the number of self-represented litigants, their case types, outcomes and times to disposition. (MoJ – short term)

✓ Require that staff enter the data so that over time, the data can be used to design more targeted interventions to support self-represented litigants. (MoJ – short term)

✓ Assign the responsibility to a particular staff in each court for entering the data. Entry of the information should be included in the criteria used in the performance appraisal of the person
filling the assigned position. Compliance with these data entry requirements should be one of the items in the performance audits of courts described in the recommendations of the Efficiency chapter. (Supreme Court, courts – short term)

✓ Develop information packs for case types that are most commonly pursued by parties without an attorney, including procedural guides and applicable forms, procedural flow charts, contact information for relevant court personnel, and the applicable laws and rules. (MoJ, JC – medium term) The information should always be easily available in each court and through every court’s website. Compliance with these requirements should be one of the items in the performance audits of courts described in the recommendations of the Efficiency chapter. (MoJ, JC – medium term)

✓ Develop information packs for witnesses and criminal case victims who do not have attorneys, including procedural guides and applicable forms, procedural flow charts, contact information for relevant court personnel, and directions for finding any laws and rules applicable to their cases (MoJ, JC, PC – medium term). The information should always be easily available in each court and through every court’s website. Compliance with these requirements should be one of the items in the performance audits of courts described in the recommendations of the Efficiency chapter. (MoJ, JC – medium term)

✓ Improve registries of allied professionals, such as enforcement agents, mediators and notaries, to include the professional’s expertise and geographic area, as well as a detailed description of the individual’s fees, and whether there have been any disciplinary actions initiated or fines levied against an individual. The information should be updated at least annually. (The MoJ should coordinate the collection of the information from the Chamber of Bailiffs and Chamber of Notaries – short term and continuing)

✓ Publish consolidated legislation online free of charge. (National Assembly, Official Gazette – medium term)

✓ As discussed further in the ICT Management chapter, develop and implement common standards for uploading appellate decisions to a searchable public website. (MoJ, Supreme Court – medium term)

370. **Well-conducted mediations contribute to the relatively early resolution of court cases and to the satisfaction of parties with the judicial process, since presenting their version of events in a mediation is just as satisfying as presenting their case to a judge would be.** The following steps are designed to encourage more parties to use mediation, and to use it sooner rather than later.

✓ If the provisions do not exist already, draft and adopt rules requiring parties to notify the courts if their case is being submitted to mediation. (MoJ – short term)

✓ Create fields in JIS to identity individual cases in which mediation has been conducted successfully, and the type of case. (MoJ – short term)

✓ Improve implementation of the Mediation Law by providing more information to parties, creating incentives for court users and practitioners to opt for mediation, encouraging judges to make referrals, and monitoring the results by:

- Developing a mediation self-assessment to supplement the information they receive from the attorneys about the mediation process, and to help them decide if mediation might benefit them. (MoJ – short term)
- Require courts to notify parties directly through email and/or regular mail, about the available mediation in their cases, and providing information about the benefits and
probable costs of mediation. The notices should be sent within 15 working days of the date that each party files a first document in the case. Copies of the correspondence to each party also should be sent to that parties’ attorney, if applicable. (Supreme Court - short term)

- Adopt all necessary measures to require judges to address the suitability of mediation as part of the judge’s case-management analysis in every case, and to document that analysis in the court file. (Supreme Court - short term).
- Develop training and printed materials for judges and prosecutors about the advantages to the parties and the courts of mediation, as well as the mechanics of mediation and make them available online so they can be reviewed easily. (Training Center, JC - short term)
- Develop and adopt quality standards for mediators and a certified mediator registry. (MoJ – short term)

371. Develop and implement policies to improve treatment of vulnerable groups (i.e. women, children, minorities, ethnic background, Roma, LGBTI, immigrants) and victims by:

✓ Conduct random but statistically valid surveys and/or structured interviews of individuals in each selected group to determine where and how they feel they have been, or have been, treated inequitably and/or disrespectfully by the judicial system. The most effective and efficient way to conduct this research may be through a contract to an NGO with the necessary expertise, or to a consortium of NGOs. (MoJ – short term)

✓ Based on the results of the research, pick five issues and appoint a working group that includes at least one psychologist to develop plans to address them. The plans should include but not be limited to relevant training of judges, prosecutors and their staffs; the development of special in-court services; the publication of pertinent information both online and in hard copies available in courthouses, libraries, hospitals, NGOs, etc., in a range of languages. (MoJ, Supreme Court, Supreme SPO – short term)

✓ Make information about legitimate, available forms of redress (e.g., civil case in some instances) for those people who come to the courts believing they have been wronged, but whom the system does not consider to be the victim of a crime. This would assist the individuals and should help courts and SPOs reduce some of their workloads. The courts and SPOs should develop this information jointly, have it available in hard copy in the offices and also on their websites. Some of the information could be customized to discuss options available in different parts of the country. (Supreme Court, Supreme SPO, courts and SPOs – short term and continuing)
6. FINANCIAL RESOURCE MANAGEMENT

General findings

372. Montenegro’s Judicial system is sufficiently financed when compared to its EU and regional peers. Reported expenditure figures for 2014 put Montenegro on top of the countries, according to the CEPEJ report on efficiency and quality of justice (2016). With expenditures at 0.74 percent of the GDP, Montenegro ranks second among the 46 European countries analyzed in the report. Further, when the outflows from enforced collection are factored in, the expenditures rise to 0.82 percent of GDP, which is the highest in the sample. However, an analysis of total expenditures in the context of GDP per capita as an affordability measure raises the question of whether such high levels are justifiable and sustainable in the medium to long-terms.

373. Combining these findings with the Functional Review analyses of efficiency and productivity suggests a sub-optimal utilization of resources within the Montenegrin judicial system. Although Montenegro showed improvements in both efficiency and productivity between 2014 and 2016, it remained well below the EU average on several performance indicators. Montenegro’s case clearance rates of slightly more than 100 percent produced a proportionate reduction of backlogs and the indicators of congestion and disposition time point to some improvements from 2014 to 2017. However, while performance indicators do not deviate much from EU average, that performance level was achieved by utilizing a much higher proportion of financial and human resources. Not only is Montenegro at the highest level of judicial expenditure as a percentage of GDP, it has a judge-to-population ratio twice as high as the EU average. Finally, Montenegro’s judges face lower demand for their services than their EU counterparts when measured by the number of incoming cases.

374. The Judicial and Prosecutorial Councils act as superior budget users for the courts and POs, for both budget preparation and budget execution. The Councils collect and aggregate draft financial requests from individual courts and SPOs and negotiate the resulting amounts with the MoF as part of budget preparation. They also are responsible for management of budget appropriations during the year, on behalf of the entire court and prosecutorial system.

375. The coverage of the financial management information system (FMIS) is limited to communications between the MoF/Treasury and “first order” budget users (i.e., the MoF and the Councils). This means that courts and SPOs as subordinate budget users are forced to process their invoices in parallel systems, while the JC and PC are responsible for generating payment requests on their behalf. Accounting and financial reporting is also centralized at the JC and PC.

376. There is significant operational risk involved in both budget formulation and execution in the judicial and prosecutorial systems. The entire exchange of data within budget preparation takes place through spreadsheets shared by email without any automation. The situation with budget execution is mixed. Courts communicate their invoices through a software platform accessible by the JC, which uses this information to process their payment requests. The SPOs do not have such a platform and are forced to use physical mail to send their invoices to the PC.

377. The fact that the courts and SPOs are not integrated in the FMIS (SAP\(^{255}\)) and maintain their subordinate status to JC and PC impairs their financial accountability and could hurt their

---

\(^{255}\) SAP is the system which acts as FMIS. FMIS is referred to as SAP for the rest of this analysis.
performance. The lack of firm spending limits at the level of individual courts and SPOs affects their financial discipline. Consequently, there are significant variation in cost per active case among courts and SPOs at the same levels of authority. These differences are reflected in both wage and non-wage current expenditures (mostly services).

378. The budgeting process is not aligned with any performance criteria related to efficiency or quality of service. It is instead based on past expenditures, which routinely are rolled over to the next fiscal year with minor upward adjustments. The budget process does not refer to caseload distribution and management. The structure of the financial management system, in general, does not encourage cost-effectiveness. This is accentuated by the absence of individual budgets/spending limits at the level of courts and SPOs.

379. The expenditure structure is strongly skewed towards wages and wage-related outflows. The total budget grew by around 28 percent from 2014 to 2016, owing mostly to a one-off capital expenditure of EUR 2 mil in 2016 and an 18 percent increase in the wage bill distributed evenly across the court and prosecutorial system. From 2016 to 2017 expenditures remained relatively stable, with the salaries-to-budget ratio of the court system between 72.5 and 75 percent. However, if the large capex is excluded, the ratio would have risen to 81.3 percent in 2016, putting Montenegro among the top 10 percent of EU countries. Between 2014 and 2016, the capital expenditures averaged only 2.5 percent of the total budget, far below recommended levels.

380. The volume of liabilities settled through enforced collection has been growing constantly, from slightly less than EUR 3 million in 2014 to EUR 6.1 million in 2017. It reached an alarming share of 20 percent of the total court system budget in 2017. There are two issues with such high levels of enforced collection. On one hand, the mechanism adds a large portion of unnecessary expenses: enforcement agent fees, lawyer’s fees, central bank fee and interest. A rough estimate based on a sample of reviewed invoices indicates that this share averages around 25 percent of the original debt. Another and more pressing issue is that these invoices are not properly accounted for and are thus not included in the reported expenditure figures. Over 90 percent of invoices settled through enforced collection come from lawyers and expert witnesses. Finally, the rising level of liabilities settled this way has a proportionate effect on the amount of arrears in the judicial system, which are increasing rapidly from year to year.

6.1. Overview of Expenditure Management

381. This chapter provides analytical insights into the budgetary performance of the Montenegro justice system with a specific focus on courts and SPOs. The functional aspects analyzed include budget formulation, budget levels and sources, budget structure as well as the effectiveness of budget execution. If not otherwise specified, all data used in this chapter are obtained from the Ministry of Justice, the Judicial Council and the Prosecutorial Council.

382. Financial management of Montenegro’s justice system institutions is governed primarily by the Law on Budget and Fiscal Responsibility (LBFR) and the annual Budget Laws. Other important regulations include the Instructions on the functioning of the State Treasury and the Rulebook on the Chart of Accounts. The LBFR differentiates between the status of independent spending units and subordinate spending units.

383. The judicial system budget is currently split into four parts managed by the MoJ, the Judicial Council, the Prosecutorial Council and the Center for Training in the Judiciary and State Prosecution.
The 2016 Budget Law introduced two important changes: i) the Training Center became an independent spending unit (it had been a subordinate unit under the Judicial Council), and ii) the Misdemeanor Courts became a subordinate unit of the Judicial Council. Based on the 2016 Budget Law, the courts and SPOs are subordinate spending units without budgetary autonomy. Figure 110 below outlines the current organizational structure of the judiciary’s financial management system.

384. First-order budget users perform budget execution directly through the Treasury computerized system (SAP), while their subordinate users must submit their payment requests to their corresponding first-order users. The list of institutions having direct access to SAP is limited to the MoJ, JC, PC and the Training Center. The system provides a sufficient degree of decentralization for budget execution, although all payments are made from one account managed by the Treasury on behalf of all budget entities. This account is part of the Single Treasury Account, which aggregates all government institutions’ cash holdings except for certain levels of operating cash balances. Other (non-first order) budgetary entities, including courts and SPOs, execute their budgets from common budget appropriations managed by their superior first order budget users. Courts and SPOs do not have their own accounts and their bills are paid from the Single Treasury Account held at the Central Bank of Montenegro.

385. Communications between first-order users and their subordinate users are done through varying levels of automatization. Courts communicate their financial requests through a web-based accounting software. This software enables the courts to generate their payment requests, which are then aggregated by the JC, manually transferred to SAP, and sent for processing/payment to the MoF/Treasury. This software is primarily an accounting platform which allows courts to record their liabilities on invoices at the moment they are received. The SPOs lack any form of electronic
communication with the PC. Once invoices reach the SPOs and pass informal verification checkpoints, they are physically mailed to the PC Secretariat, which uses SAP for additional accounting and payment processing. The SPOs’ situation, and especially their reliance on physical mail, poses enormous operating risks which could seriously disrupt service delivery. In the worst case this situation could produce mistakes leading to litigation over unsettled bills, or inaccurate financial reporting.

386. **While SAP is moderately efficient as a budget execution platform it does not provide operating controls over financial commitments.** This is a consequence of the lack of interoperability between the budget execution and accounting software. The latter’s up-to-date financial liabilities data are not shared with SAP and thus are not visible to the budget administration. This is problematic not only for budget execution but also from the budget formulation perspective. Despite increasing attention to the issue of arrears, an even greater concern is the level of payables collected through enforced collection as a consequence of inadequate procedural and communication arrangements. This issue is discussed further in the section on Effectiveness of Budget Execution.

387. **The judicial system’s gross expenditures grew rapidly in the period from 2014 to 2017.** Table 16 below shows the level of expenditure in this period, while Figure 111 and Figure 112 show the breakdown between the court and prosecution service budgets by the institution involved. As Table 16 shows, total expenditures increased by around 28 percent from 2014 to 2017. Most of the increase was within the court system. The most significant increase was seen in 2016 when the total budget rose by EUR 5.78 million. This was a consequence of a one-off capital expenditure intervention of EUR 1.89 million for the purchase of a building for the Administrative Court. Most of the remaining increase was due to an 18 percent rise in the courts’ wage bill in 2016. Considering the infrastructure needs of the entire justice system and the relative irreversibility of current wage levels, it is reasonable to expect these levels of expenditure will persist or even increase in the future.

Table 16 -Total expenditure of the Montenegro justice system (2014-2017), in EUR

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Courts</strong></td>
<td>22,766,531</td>
<td>25,097,185</td>
<td>30,889,912</td>
<td>28,742,952</td>
</tr>
<tr>
<td><strong>Prosecution Offices</strong></td>
<td>5,612,226</td>
<td>6,472,021</td>
<td>8,504,470</td>
<td>8,471,899</td>
</tr>
<tr>
<td><strong>Training Center</strong></td>
<td>42,464</td>
<td>152,966</td>
<td>225,602</td>
<td>334,675</td>
</tr>
<tr>
<td><strong>Ministry of Justice</strong></td>
<td>10,603,113</td>
<td>10,535,444</td>
<td>10,583,284</td>
<td>10,472,565</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>39,024,335</strong></td>
<td><strong>42,257,616</strong></td>
<td><strong>50,203,268</strong></td>
<td><strong>50,439,091</strong></td>
</tr>
</tbody>
</table>

1 Estimate based on earlier years

*Source: MoF data and World Bank staff calculations*

388. **The increase in the expenditure was evenly distributed across courts and SPOs.** Apart from the large one-time spike for the Administrative Court in 2016, the trends in total expenditures were similar for all courts. The few exceptions were the Commercial Court and the High Court in Podgorica. While the former experienced higher-than-usual operating expenses of nearly EUR 0.5 million, the latter had a disproportionate rise in salaries due to an increase in staffing numbers. In case of SPOs the only outlier was the Special SPO, which opened its doors in 2015 but did not start working at full capacity until 2016. Its total expenditure continued to rise in 2017 and it is now by far the largest spender among the units of the prosecutorial system. This was probably predictable given the nature

256 The data excludes Misdemeanor Courts which started operating as independent institutions only in 2016.
of cases handled by the Special SPO. Finally, staffing changes were the underlying reason for the drastic variation in expenditure of High Court in Podgorica.

Figure 111 - Total expenditure court system institution (2014-2017), in EUR

Source: Judicial Council data and World Bank staff calculations

Figure 112 - Total expenditure prosecutorial system by institution (2014-2017), in EUR

Source: Prosecutorial Council data and World Bank staff calculations
6.2. Effectiveness in Budget Formulation

389. The formulation of the justice system budget is performed in accordance with the budget calendar prescribed by the LBFR. The cornerstone of the preparation process is the Fiscal Strategy drafted by the Ministry of Finance which discusses the overall macro-fiscal framework. It also contains policy guidelines on which the MoF sets mandatory overall spending limits. The limits are determined at the level of the primary spending units and the only two categories are wage and non-wage expenses (i.e., the limit for non-wage current expenditures is a single limit). This means that for courts, for instance, the Judicial Council, as the administrative manager of the spending unit “Courts”, receives the ceiling for the entire court system. The Judicial Council also is in charge of aligning the draft budget of the courts with those limits. The Prosecutorial Council plays a similar role for the prosecutorial system.

390. At the level of individual institutions (courts and SPOs), the budgets are formulated and sent in a pre-defined format to the corresponding Council. The format is designed in a spreadsheet with separate tables for wages and wage-related expenses and another for “other current expenditures” with required narrative rationales for the amounts requested.

391. Budgets are prepared on an annual rolling basis with a strong reliance on previous years’ budget execution. Councils aggregate the budget requirements from their users and adjust those to the overall limits set forth by MoF. This remains a practice for the PC. However, starting in 2016 the JC has left it to the MoF to decide on the specific appropriations that have to be reduced to fit within the ceiling. It is unclear what criteria are used to arrive at the final budgetary allocations for court and prosecutorial system institutions.

392. The budget preparation process does not correspond to any analysis of judicial efficiency and similar situation is in the other public sectors. There is not even a general effort to link service delivery efficiency to the financial performance of the courts. As both types of reports report exist and are published regularly, correlating one with the other would be a useful starting point in defining a framework for output-based budgeting. This also would complement the program budgeting endeavors of the MoF. Introducing a standardized approach based on a structured analysis of caseload and service effectiveness would provide for more accountability and financial discipline, while eliminating anomalies such as the large variation in the costs per active case of courts and SPOs of the same level. These differences are discussed in detail in section 7.6. below.

393. Capital budget preparation is done in a separate procedure prescribed by the Decree on Capital Budget Formulation. This procedure requires budget users to communicate their capital expenditure needs to the MoF, which collects the requests and formulates a joint proposal. The proposal is put forward to a committee chaired by the Prime Minister, which determines the final list of priorities for a particular budget year.
Table 17 - Approved versus Requested budget of the courts system (2014-2016), in EUR

<table>
<thead>
<tr>
<th></th>
<th>2014*</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Approved Budget</td>
<td>Requested Funds</td>
<td>Differ</td>
</tr>
<tr>
<td>Judicial Council</td>
<td>675,600. 72</td>
<td>1,800,92 0.76</td>
<td>- 62.5%</td>
</tr>
<tr>
<td>Gross wages</td>
<td>278,265. 72</td>
<td>445,701. 48</td>
<td>- 37.6%</td>
</tr>
<tr>
<td>Other personal expenses</td>
<td>140,000. 00</td>
<td>449,047. 08</td>
<td>- 68.8%</td>
</tr>
<tr>
<td>Material expenses</td>
<td>17,800. 00</td>
<td>39,522. 0</td>
<td>- 55.0%</td>
</tr>
<tr>
<td>Services</td>
<td>77,035. 0</td>
<td>407,250. 12</td>
<td>- 81.1%</td>
</tr>
<tr>
<td>Current maintenance</td>
<td>110,000. 00</td>
<td>367,400. 04</td>
<td>- 70.1%</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>0.00</td>
<td>0.00</td>
<td>n/a</td>
</tr>
<tr>
<td>Courts</td>
<td>10,146.5 55.82</td>
<td>11,356.5 62.88</td>
<td>- 11.3%</td>
</tr>
<tr>
<td>Gross wages</td>
<td>6,795.5 4.8</td>
<td>7,094.96</td>
<td>5.68</td>
</tr>
<tr>
<td>Other personal expenses</td>
<td>126,100. 00</td>
<td>413,424. 60</td>
<td>- 69.5%</td>
</tr>
<tr>
<td>Material expenses</td>
<td>16,000. 00</td>
<td>44,400. 0</td>
<td>64.0%</td>
</tr>
<tr>
<td>Services</td>
<td>1,090. 00</td>
<td>2,017.60</td>
<td>17.6%</td>
</tr>
<tr>
<td>Other expenditure</td>
<td>2,041.92</td>
<td>1,786.17</td>
<td>2.52</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>0.00</td>
<td>0.00</td>
<td>- 0.0%</td>
</tr>
<tr>
<td>Administration</td>
<td>9,761.66</td>
<td>12,413.24</td>
<td>21.4%</td>
</tr>
<tr>
<td>Gross wages</td>
<td>7,644.55</td>
<td>7,896.62</td>
<td>- 2.3%</td>
</tr>
<tr>
<td>Other personal expenses</td>
<td>30,000. 00</td>
<td>210,151. 32</td>
<td>- 85.7%</td>
</tr>
<tr>
<td>Material expenses</td>
<td>689,000. 00</td>
<td>850,599. 96</td>
<td>- 19.0%</td>
</tr>
<tr>
<td>Services</td>
<td>837,800. 00</td>
<td>961,320. 0</td>
<td>12.8%</td>
</tr>
<tr>
<td>Current maintenance</td>
<td>80,000. 00</td>
<td>246,720. 0</td>
<td>- 67.8%</td>
</tr>
<tr>
<td>Rent</td>
<td>202,304. 40</td>
<td>251,520. 00</td>
<td>- 19.6%</td>
</tr>
<tr>
<td>Other expenditure</td>
<td>220,000. 00</td>
<td>385,200. 0</td>
<td>- 42.9%</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>58,000. 00</td>
<td>1,611.09</td>
<td>- 96.4%</td>
</tr>
</tbody>
</table>

Source: Judicial Council data and World Bank staff calculations

*2014 data for Judicial Council includes the budget of the Center for Training in the Judiciary and State Prosecution
Aggregate budget requests generally were much higher than the approved budget. Table 17

above outlines the difference between the approved and requested court budget items. As it shows, the largest discrepancy was in the “other personal expenses” category, which covered items such as transportation, accommodation and severance. The average difference for this category was 78.6 percent. The largest difference in terms of volume of funds approved compared to those requested, was seen in capital expenditure, where the cumulative difference for the three observed years was more than EUR 4 million. Expectedly, the smallest divergence was between the approved and requested wage bill.

6.2.1. Budget Levels and Sources

When judicial expenditure is scaled with number of inhabitants (i.e. per capita), a comparison of Montenegro with other EU states places it near the median value. In 2014, Montenegro spent around EUR 42 per citizen on court system while the median value was EUR 45. The countries with lowest per capita expenditure among the EU member states were Bulgaria, with EUR 35, and Romania with EUR 32. Those with the highest expenditure include Austria with EUR 96 and the Netherlands with EUR 122.

Measured as a share of GDP, Montenegro had much higher judicial expenditures than any EU country. Its court budget in 2014 was equivalent to 0.57 percent of GDP. Combined with the 0.17 percent spent on prosecutorial services, this yielded a total of 0.74 percent of GDP. The simple average in the EU countries was 0.26 percent while the weighted average was 0.24 percent. A comparison among regional peers, however, produces a slightly different picture. Bosnia and Herzegovina was on top with 0.77 percent of GDP for judicial expenses while Serbia had the third largest expenditure with 0.58% of GDP spent on the courts and prosecution offices.

Montenegro also ranks high among EU comparators when the expenditure of court and prosecution services as a share of GDP is compared to countries’ wealth, measured by GDP per capita. As shown in Figure 113 below, the only country that comes close to Montenegro in the comparison is Poland; but even its expenditure on courts is roughly half of Montenegro’s 0.57 percent. Figure 114, using the same comparison for POs, shows similar results. Among its regional peers, Montenegro has the second largest court expenditure as a share of GDP, but comes fourth in GDP per capita. Among its regional EU member peers, all three countries (i.e. Croatia, Bulgaria and Romania) have similar court budgets as a share of GDP (around 0.35 percent), compared to Montenegro’s 0.57, but much higher GDP per capita.

Figure 113 - Court budget as a share of GDP against GDP per capita, Montenegro and EU, 2014

The table is organized by the relevant budget headings from the Budget Law. The courts’ expenditure is divided between the heading “Courts” and “Administration”.

The benchmark analysis is done using the data from the latest available CEPEJ Report on European Judicial Systems, Efficiency and Quality of Justice which was published in 2016 and contains data for 2014.
Montenegro’s judicial expenditure has been high, based on a comparison of expenditure per capita to affordability measured as GDP per capita. As shown in Figures Figure 115 and Figure 116 below, a large majority of EU countries that presumably could afford to spend more on these systems are keeping their expenditure at modest levels as compared to Montenegro. For instance, countries with substantially higher per capita GDP levels (e.g. Czech Republic, Poland, Slovakia) spend slightly less per capita on their courts. In the region, only Bosnia and Herzegovina aligned its expenditure and wealth in the same proportion as Montenegro. Figure Figure 115 and Figure 116 show the prosecution services’ expenditure per capita in relation to GDP per capita; with the exception of Bulgaria prosecution expenditure per capita are relatively lower compared to per capita GDP.
Figure 115 - Court Budget per Capita against GDP per capita, both in Euros, Montenegro and EU, 2014

Source: European Judicial Systems, Efficiency and Quality of Justice (CEPEJ, 2016) and World Bank staff calculations

Figure 116 - Court Budget per Capita against GDP per capita, Montenegro and Regional Peers, 2014

Source: European Judicial Systems, Efficiency and Quality of Justice (CEPEJ, 2016) and World Bank staff calculations

Figure 117 - Prosecution Budget per Capita against GDP per capita, Montenegro and EU, 2014
Court fees are treated as general budget revenue according to the Law on Court Fees, and they decreased gradually every year. In other words, the court fees structure and collection have no bearing on the financial performance of Montenegrin courts, since the fees flowed to the budget as general revenue that was not earmarked for the courts or SPOs. The level of court fees collected decreased from EUR 3.78 million in 2014 to EUR 1.86 million in 2015, EUR 1.44 million in 2016 and finally 1.29 EUR million in 2017. The reason was the volume of work transferred to notaries and enforcement agents.

The variations in collected court fees generally reflects the differences in the number of active cases, their complexity and their value across different courts. Table 17 below shows that the Commercial Court continuously collected the highest levels of fees per active case, because of the
relatively high value of disputes in that court. The courts located on the coastline collected more fees than other courts for the same reason. For instance, the Basic Court in Kotor (which has jurisdiction over the town of Budva where a majority of investment activity is located) collected on average 3.5 times more court fees per case than the Basic Courts in Berane or Plav. The Supreme Court and the Administrative Court collected the lowest number of fees.

Table 18 - Court fees collected per court and per active case (in EUR), 2014-2017

<table>
<thead>
<tr>
<th>Court</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>total fees</td>
<td>per active case</td>
<td>total fees</td>
<td>per active case</td>
</tr>
<tr>
<td>BC - Bar</td>
<td>232,435</td>
<td>36.8</td>
<td>166,122</td>
<td>30.5</td>
</tr>
<tr>
<td>BC - Berane</td>
<td>109,337</td>
<td>13.4</td>
<td>39,446</td>
<td>4.5</td>
</tr>
<tr>
<td>BC - Bijelo Polje</td>
<td>203,125</td>
<td>24.0</td>
<td>127,321</td>
<td>21.7</td>
</tr>
<tr>
<td>BC - Cetinje</td>
<td>75,351</td>
<td>26.8</td>
<td>36,216</td>
<td>11.7</td>
</tr>
<tr>
<td>BC - Danilovgrad</td>
<td>63,791</td>
<td>28.6</td>
<td>25,379</td>
<td>10.4</td>
</tr>
<tr>
<td>BC - Herceg Novi</td>
<td>189,994</td>
<td>51.0</td>
<td>84,309</td>
<td>23.4</td>
</tr>
<tr>
<td>BC - Kolasin</td>
<td>34,548</td>
<td>27.1</td>
<td>12,261</td>
<td>9.4</td>
</tr>
<tr>
<td>BC - Kotor</td>
<td>430,543</td>
<td>51.1</td>
<td>234,330</td>
<td>27.7</td>
</tr>
<tr>
<td>BC - Niksic</td>
<td>200,563</td>
<td>22.6</td>
<td>102,479</td>
<td>11.1</td>
</tr>
<tr>
<td>BC - Plav</td>
<td>36,310</td>
<td>11.8</td>
<td>21,202</td>
<td>8.8</td>
</tr>
<tr>
<td>BC - Pljevlja</td>
<td>68,587</td>
<td>25.8</td>
<td>44,285</td>
<td>16.2</td>
</tr>
<tr>
<td>BC - Podgorica</td>
<td>1,186,345</td>
<td>39.8</td>
<td>286,116</td>
<td>10.0</td>
</tr>
<tr>
<td>BC - Rozaje</td>
<td>78,997</td>
<td>22.5</td>
<td>61,503</td>
<td>17.7</td>
</tr>
<tr>
<td>BC - Ulcinj</td>
<td>81,214</td>
<td>24.4</td>
<td>59,849</td>
<td>21.7</td>
</tr>
<tr>
<td>BC - Zabljak</td>
<td>38,131</td>
<td>43.7</td>
<td>27,426</td>
<td>28.7</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>725,501</td>
<td>59.7</td>
<td>506,803</td>
<td>60.4</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>29,435</td>
<td>5.7</td>
<td>27,570</td>
<td>5.0</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>1,216</td>
<td>0.4</td>
<td>945</td>
<td>0.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,785,422</td>
<td>33.2</td>
<td>1,863,563</td>
<td>17.3</td>
</tr>
</tbody>
</table>

Source: Judicial Council data and World Bank staff calculations
6.3. Budget Structure

401. The wage bill was a dominant item in the budgetary structure of Montenegro’s entire justice system.\textsuperscript{259} Between 2014 and 2016, wages accounted for an average of 60.7 percent of the justice budgets. This figure was relatively stable from year to year. Capital expenditure stood at a modest average of 2.5 percent and was only 0.67 percent of the total budget in 2014. The average of 2.5 percent for capital expenditure results from the purchase of a building for nearly EUR 2 million for the Administrative Court in 2016, when the capex reached 5.16 percent of the total justice system budget.

402. The structure of the court and prosecution service budgets are relatively similar to that of the overall budget. However, the share of wages and wage-related expenses in their budgets is somewhat higher because of the high material costs in the MoJ budget. Court system wages increased in absolute terms over the period, but their share dropped in 2016 due to the one-time capex expenditure. The average share of wages in court system budget stood at 74.5 percent while the average for the prosecution service was 73.3 percent. Figures 119 and 120 below show the annual structure of court and prosecution service budgets, respectively.

\textbf{Figure 119 - Overall structure of Montenegro court budget}

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>capex</td>
<td>135,854</td>
<td>223,164</td>
<td>2,168,479</td>
<td>325,189</td>
</tr>
<tr>
<td>other current expenditure</td>
<td>2,743,048</td>
<td>3,035,731</td>
<td>3,194,065</td>
<td>2,541,032</td>
</tr>
<tr>
<td>services</td>
<td>1,937,015</td>
<td>1,668,956</td>
<td>1,435,195</td>
<td>1,217,199</td>
</tr>
<tr>
<td>wages</td>
<td>14,923,880</td>
<td>15,385,055</td>
<td>18,052,472</td>
<td>18,576,533</td>
</tr>
</tbody>
</table>

\textit{Source: Judicial Council data and World Bank staff calculations}

\textsuperscript{259} The justice system budget includes the court system budget, the prosecution service budget, the Ministry of Justice budget and the Training Center budget
Apart from wages and wage-related expenses, the current expenditure budgets of both the courts and prosecution services contained a steady share of material costs and “other expenses.” “Other expenses” include the costs of court proceedings and contractual services. The share of these expenditures reached as much as 72 percent in the prosecution services’ current non-wage expenditure budget for 2017, while they represented 33.5 percent of court system current budget excluding wages. For the prosecution services, these expenditures recorded a remarkable increase of just under 250 percent, going from EUR 575,265 in 2014 to EUR 1.21 million in 2016. They dropped in 2017 to EUR 1.03 million but this was offset by higher amounts collected through enforced collection – see Figures Figure 121 and Figure 122 below. This was a direct consequence of the transfer of responsibility over conducting criminal investigation in favor of SPOs.

Source: Judicial Council data and World Bank staff calculations
The court wage bill increased by 17.6 in 2016, compared to the increase from 2014 to 2015 of 2.8 percent. It continued to rise in 2017, although at much lower levels. The largest increase was seen in the Administrative Court for which the wage bill went up by 38.6 percent; the increase in the Supreme Court was 35.6 percent. The High Court in Podgorica had the highest increase (26 percent) among regular courts. From 2016 to 2017, the wage bill went up by an aggregate of 3 percent. The change was, however, not evenly distributed among institutions as some of them had large cuts in their wage bill (e.g., Basic Court Kotor had a wage bill decrease of more than 10 percent) while some had large increases (e.g., the Judicial Council recorded an increase of nearly 27 percent, while Basic Court Ulcinj’s wage bill went up by 26 percent).

Source: Judicial Council data and World Bank staff calculations

Figure 123 - Wage bill of court system in Montenegro, 2014-2017

Source: Judicial Council data and World Bank staff calculations
Montenegrin SPOs also experienced a sharp increase of nearly 35 percent in their gross wage bill in 2016, while the rate of increase stabilized at 3.5 percent in 2017. The 2016 increase was due largely to introduction of the Special SPO in late 2015. The SPO started working at full capacity only in 2016 when its wage bill reached EUR 1.16 million, compared to EUR 236,000 in 2015. Excluding the effect of this increase, the wage bill for the rest of the prosecution services increased by 14.75 percent in 2016. Between 2014 to 2015 the increase was at a more modest 6.5 percent. Only the Supreme SPO had a reduction in its wage bill during the observed period. Figure 124 below shows the wage bill trend in each PO. In 2017, the largest increase was in the Supreme SPO which had its gross wage bill raised by as much as 26 percent. Staffing changes in two biggest Basic SPOs (i.e., Podgorica and Kotor) were the reason for their wage bill decrease in the last year. The wage bill for the Basic SPO in Podgorica’s dropped by nine percent while Basic SPO in Kotor recorded a decrease in staffing costs of up to 13 percent.

Figure 124- Wage bill of POs in Montenegro, 2014-2017

Source: Judicial Council data and World Bank staff calculations

When compared to EU countries court budgets, the share of salaries in the total court system budget of Montenegro was above average. The 72.5 salaries-to-budget ratio of Montenegro in 2014-2016 was only slightly above the unweighted average of 70 percent of the sample of EU countries shown in Figure 125 below. However, in 2017 capex went back to its usual levels while salaries remained stable; this caused the share of salaries within the budget to increase to 82 percent from previous year. This was substantially above average and matched the levels seen in the top 10 to 15 percent of the sample.

407. In the group of regional peers including three EU member states (Bulgaria, Croatia and Romania) Montenegro had one of the lowest salaries-to-budget ratios. In fact, only Romania had a lower ratio, owing largely to its infrastructural investments over the past decade. The non-EU regional peers group was led by Bosnia and Herzegovina, where salaries accounted for 84.3 percent of the total court budget.

Figure 125 - Share of Court Budget allocated to wages, Montenegro and EU, 2014

![Bar chart showing the share of court budget allocated to wages in Montenegro and EU countries, 2014.]

Source: European Judicial Systems, Efficiency and Quality of Justice (CEPEJ, 2016) and World Bank staff calculations

408. The variation across courts for the share of annual budgets spent on wages was approximately 20 percent. Among the 15 basic courts, there were significant and consistent differences in the wage-to-budget ratio. For instance, the Basic Court Kotor was constantly below the levels seen in other courts with values of around 70 percent between 2014 and 2016, while Basic Court Pljevlja averaged around 90 percent. This difference was attributable to variations in the share of “services” expenditures among courts of the same level. In 2017, the combined expenditures in BC Kotor on lawyers (i.e., mandatory representation) and postal services, the two largest services subcategories, was EUR 170,000 but they were only EUR 10,000 in Basic Court Pljevlja. While the difference in expenditures for postal services reflected the difference in the complexity of cases and size of the courts, it does not explain the difference in expenditure for mandatory representation. The underlying reason for the relatively low expenditure for this type of services is that most of the lawyers appointed for mandatory representation collect their fees using the enforced collection mechanism. This is discussed in detail in the sub-section titled Effectiveness in Budget Execution.
409. Prosecution Offices across Montenegro also have inconsistent wage-to-budget ratios. The lower ratios of the High SPO compared to Basic POs reflect the complexity of cases handled at higher instances and their corresponding higher investigation costs. However, the POs also demonstrate significant variations within the same jurisdiction levels. The lowest percentage (72.1) was in Basic PO Kotor, while Basic PO Plav reached 92.3 percent in 2014. As was the case with courts, the differences were due primarily to the services expenditure which were disproportionately low for the Basic PO in Plav.

410. Capital expenditure represented a negligible share of the total budget of both courts and POs. The principal exception was 2016 owing to the purchase of the building for the Administrative Court. The capex in that year reached 7 percent of the court system budget. Excluding this purchase, the capex budget typically was about 1 percent of the total budget, far below the amounts necessary to maintain efficient service delivery, as documented in the Infrastructure Chapter.

411. The courts’ capex budget structure was dominated by the purchase of vehicle, computer equipment and office equipment, as shown in Figure 126. Aggregate data show that vehicle purchases, consistently at levels of around EUR 100,000, represented 34.4 percent of the capex budget. Computer equipment peaked in 2017 with EUR 143,941 spent. Due to data limitations it was not possible to analyze the structure of the prosecution services’ budget. The JC and PC were recorded as spending most of the capex budget because of the centralization of most procurements.

Figure 126 - Court system capital expenditure structure in 2017 (excl. one-off building purchase)

Despite substantial variations, Montenegro’s average capital expenditure as a share of the total court budget matched the average EU level between 2014 and 2017. In the court system budget, the aggregate capital expenditure was EUR 2.53 million or 3.2 percent of the total budget, while the EU average based on 2014 data was 3 percent.

413. The capital budgeting procedure is different from the one for current expenditure. It involves high-level prioritization by a Committee chaired by Montenegro’s Prime Minister. The MoF acts as an intermediary between budget users and the Committee; the Committee makes the final
decision on the contents of the draft Budget discussed in the Parliament. The Committee’s decision allows for three-year capital budgeting proposals although the Budget Law contains only appropriations for current year. The purpose of this exercise is to allow the Committee to accurately assess the gross financial commitment arising from potential project implementation.

6.2.1. Effectiveness of Budget Execution

6.2.1.1. Analysis of cost per case

414. The total cost per active case\(^{261}\) in Montenegro’s courts grew by 20 percent from 2014 to 2017. Average cost per active case in the entire court system of Montenegro was EUR 139 in 2014, EUR 147 in 2015, EUR 166 in 2016, and finally EUR 158 in 2017. Average service costs dropped from EUR 28 per case in 2014 to EUR 24 in 2017, and wages were the primary driver of the increase in total costs. The aggregate increase in wages per case was 22 percent, from EUR 110 to EUR 134.

415. Not all courts shared the general trend of increasing costs per case. Among the different court categories displayed in below (i.e., Basic, High, Commercial, Administrative, Appellate and Supreme), on average the Supreme, Appellate and Administrative Courts decreased their costs per case. However, all but a few of the Basic and High Courts saw a per-case cost increase during the same period. On average, the cost per case rose in Basic Courts to EUR 134 in 2017 from EUR 113 in 2014. At the same time the two High Courts, in Podgorica and Bijelo Polje, had their corresponding costs rise to EUR 217 in 2017 from EUR 206 in 2014. The Commercial Court had the greatest increase. Its cost per case in 2014 was close to the cost per case for Basic Court in the same year, around EUR 110) but rose by a factor of three, EUR 326 in 2017, because the rate at which its caseload was dropping was much greater than the rate at which its total costs were increasing – its number of active cases was 9,107 in 2016 and 6,271 in 2017, while its aggregate expenditures increased by only 1 per cent during the same period.

416. The differences in expenditure per active case across different court categories reflected the difference in complexity and value of cases handled. If Basic Courts’ expenditures are used as the baseline, for example, in 2017 the High Court spent 58 percent more than the Basic Courts, the Commercial Courts spent 138 percent more, Appellate Court spent 174 percent more and the Supreme Court spent 121 percent more. In contrast, the Administrative Court spent half as much per case as the Basic Courts, because of a sharp increase in Administrative Court cases. That court’s number of cases managed almost tripled in one year, from 6,919 in 2016 to 2017 in 15,549.

\(^{261}\) For the purpose of this analysis, we define „active case number“ as the sum of unresolved cases at the beginning of year and those coming in during the current year.
Even within the same categories, there were striking differences in costs per active case. Among Basic Courts, there were courts which reduced their cost per active case from 2014 to 2017 in the past four years, namely the Basic Courts in Rozaje, which had a reduction over the four years of EUR 9 and Zabljak, which had a reduction of EUR 46. However, other Basic Courts such as those in Bijelo Polje, Ulcinj and Kolasin had respective four-year increases of EUR 88, 80 and 75.

These differences were mainly the result of variations in wage and service costs per case. Figures 128 and Figure 129 depict the amounts spent on wages and services in Basic Courts for the 2014-2017 period. Wages per active case were highest by far in Pljevlja with its total salary budget of EUR 460,274 and 2,032 active cases in 2017. The average per case budget for this court was EUR 221, which was more than twice as much as the four-year average of EUR 103 for all Basic Courts in Montenegro. This amount also was considerably larger than the average for High Courts (EUR 176) and the Commercial Court (EUR 139). On the other end of the spectrum, the Basic Court in Podgorica spent only EUR 88 on wages per active case, based on its combination of 30,293 active cases and EUR 2,650,726 in wages.

Source: JC data and World Bank staff calculations
Official financial records show that service costs per case decreased from 2014 to 2017 for most courts in Montenegro, but that conclusion is probably misleading. Seen in isolation, this might indicate a more efficient use of court resources, but this conclusion is undercut by the ever-rising levels of invoices settled through enforced collection. These expenditures were not accounted for properly. Since most beneficiaries of enforced collections were lawyers and expert witnesses, presumably majority of these expenditures should have been recorded under “services.” However, it is not possible to determine exact share that is spent here. If these expenses were accounted for correctly, the service costs per case may have increased during the period under review.

Figure 129 - Services cost per active case in basic courts, 2014-2017

Source: JC data and World Bank staff calculations

6.2.2. Barriers to the Efficient Utilization of Resources

Budget preparation and execution for the courts and POs had serious weaknesses that prevent efficient utilization of financial resources. On execution, as noted above, there was inadequate communication between the POs and the PC secretariat, which handles payment requests as the POs’ first-order budget user with direct access to SAP. The communication that did occur took place by physical mailing, which was relatively slow and incurred serious operational risks. In addition, inadequate analysis of budget performance by the courts, POs and their respective Councils prevented their draft budgets from accurately reflecting their financial needs. Once the Budget Law was approved, the maximum transfer between appropriations was 10 per cent of the appropriation being reduced in this transaction. Transfers between appropriations had to be approved by the MoF. The MoF also could approve a change of up to 10 percent of a first-order user’s total budget if there was an equal reduction in total appropriation of another first-order user. These procedures allowed the Councils to correct for some imbalances during a year.

The institutional arrangements for budget execution did not provide incentives for courts and POs to spend responsibly. Since courts and POs had no direct involvement in budget preparation or accountability for budget execution, they did not feel constrained by budgetary limits and how they relate to their work. And since individual courts and POs were not aware of, or were not concerned about, how their spending affected the amounts in the Budget Law available for all courts.
and POs, the JC and were forced to make arbitrary and often not evidence-based decisions about budget requests. The lack of responsible spending by many courts and POs is reflected in the persistent variability of service costs and the expanding problem of enforced collections of court and PO invoices.

422. The financial management staff in Montenegro’s courts and POs are qualified to assume more responsibility for budgets formulation, tracking and spending, especially if appropriate training is available on new procedures. Courts and POs maintained sound accounting records and were responsible for all aspects of their financial management before those duties were transferred to the Councils. Many of the financial staff members in the courts and POs are experienced with the pre-transfer procedures, but if their offices assume more budget and accounting duties, the judicial system should provide a well-defined training program for financial management staff across the judicial system to ensure their familiarity with current regulatory and ICT arrangements.

423. Courts have at least one staff member dedicated to financial management while POs have “generalists” who deal with finances on a part-time basis. Interviews conducted by the Functional Review team indicated not every PO needed its own full-time financial manager, but it would be practical for having finance specialists work in several POs. More analysis would be needed to determine how many offices each specialist could handle.

424. The procurement departments of the JC and PC conduct annual open tender procedures for office supplies and maintenance items. Courts and POs make periodic requests to the Councils which then ship the necessary goods to them.

6.3.3. Analysis of Arrears and Forced Collection

425. Court and PO invoices settled through enforced collection was EUR 6.01 million in 2017. This was a sharp increase for the total of EUR 2.99 million in 2014, and EUR 4.99 million in 2015, but a drop from the 2016 level of EUR 6.34 million. Ninety-five percent of these invoices were for goods and services rendered to courts.

Table 19 - Amount of liabilities settled through enforced collection, 2014-2017

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts</td>
<td>2,898,728</td>
<td>4,727,086</td>
<td>6,066,941</td>
<td>6,013,213</td>
</tr>
<tr>
<td>Prosecution Offices</td>
<td>92,605</td>
<td>265,810</td>
<td>277,251</td>
<td>258,316</td>
</tr>
<tr>
<td>total</td>
<td>2,991,333</td>
<td>4,992,896</td>
<td>6,344,192</td>
<td>6,271,529</td>
</tr>
</tbody>
</table>

*Source: Judicial Council and Prosecutorial Council data*

426. These amounts reached alarming shares of the courts’ total budgets. Enforced collection represented 12.8 percent of the total court budget in 2014, 18.9 percent in 2015, 19.6 percent in 2016 and more than 20 percent in 2017. In the case of the POs the share was much lower, but growing gradually – from 1.7 percent in 2014, 4.1 percent in 2015, 3.3 percent in 2016 to and 3.1 percent in 2017.

427. With few exceptions, all invoices settled through enforced collection came from lawyers and expert witnesses for services rendered in court or investigation procedures. There were 2,088 different creditors identified. This figure includes both lawyers and expert witnesses. The average
amount paid in 2014, 2015, 2016 and 2017 was EUR 2,044 while the maximum was EUR 139,239 in 2016.

428. Enforced collection took place because of a lack of i) communication between judges and their financial departments and ii) appropriate business procedures that would streamline the handling of invoices from lawyers and expert witnesses by the financial departments of courts and POs. Court decisions in civil cases listed the expenses that should be paid to the parties involved, but they did not contain the applicable account numbers. Since courts and POs had only 15 days to pay, as prescribed in the Law on Contracts and Torts, the lawyers and expert witnesses used the enforced collection mechanisms to settle their accounts, based on the court decision awarding the expenses. In criminal procedures, the decisions stated only that detailed invoices should be submitted in due time. Once the invoices were received, the court would issue an order for payment. However, associated invoice never follows from this order demonstrating again the lack of communication within the courts themselves. Finally, after 15 days elapsed lawyers and expert witnesses used the court orders to start enforced collection.

Liabilities settled through enforced collection were not properly accounted for. These expenditures were not reconciled in the accounting records as other liabilities. Normally, once an invoice is received, it is entered into the accounting system and a corresponding liability is created. Based on the elements of this liability (creditor, amount, date due, etc.) an associated payment request is generated and sent for processing to the payment system. Once that transaction is performed, a confirmation from the payment system in the form of a report or automatically generated ticket flows back to the accounting system, which records a decrease in liabilities and an associated decrease in cash balance. This process is shown in Figure 130 below. However, significant numbers of invoices never reach the financial departments of the courts and POs. Instead creditors skip this step and go directly to the Central Bank of Montenegro (CBM) for enforced collection processing. It was only once the accounting department receives the daily balance report from the CBM that they were able to properly reconcile their records, but only if i) the invoice was previously sent to the financial department of the court/PO and an associated liability was created, and ii) the report from the CBM contained the liability number so the financial department could associate the payment with a liability. Otherwise, only the cash outflow was recorded and it was not associated with any particular liability. The latter situation in total expenditure averaged 65 percent. This process is also described in below.
429. **Enforced collections generated unnecessary expenses that had to be paid in addition to the original debt.** Creditors went directly to the CBM with their payment requests. For the CBM to process the payment, there had to be a litigation request filed by a lawyer and an enforcement request from an enforcement agent. In addition to fees of the lawyer and enforcement agent, the process also produced fees and interest of the central bank. The exact dimensions of the accompanying costs were difficult to calculate because they were not properly reconciled. However, a rough estimate based on a sample reviewed by the FR team was that cost represented approximately 25 percent of the initial debts.

430. **Assuming 25 percent of amounts submitted to enforced collection was paid for expenses in addition to the amount of the original debt, it resulted in an unnecessary aggregate expenditure of EUR 5.15 million over the period 2014-2017.** This amount which would cover roughly purchases of two buildings similar to the one bought for the Administrative Court or the entire wage bill of the two High Courts in Montenegro.

431. **The rising level of enforced collection inversely influenced the level of arrears.** Table 8 below shows that the level of arrears was 3 times higher in 2014 than in 2016. In 2017 arrears doubled while enforced collection stayed roughly at the same absolute levels as in 2016. This is because larger and larger numbers of creditors reach out for enforced collection mechanism to settle their invoices every year.

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office material</td>
<td>231,287</td>
<td>171,014</td>
<td>15,869</td>
<td>210,170</td>
</tr>
<tr>
<td>Lawyers’ services</td>
<td>403,373</td>
<td>166,214</td>
<td>113,436</td>
<td>354,816</td>
</tr>
<tr>
<td>Rents</td>
<td>0</td>
<td>55,000</td>
<td>96,104</td>
<td>1,576</td>
</tr>
<tr>
<td>Other</td>
<td>570,456</td>
<td>295,889</td>
<td>216,258</td>
<td>271,870</td>
</tr>
<tr>
<td>Total arrears</td>
<td>1,205,116</td>
<td>688,117</td>
<td>425,797</td>
<td>838,431</td>
</tr>
</tbody>
</table>
432. The aggregate expenditure for the court and prosecution service system should be re-interpreted, taking into account the enforced collection amounts which effectively represent financing of courts and POs. The per capita and GDP normalized expenditures are even higher than the official figures indicate. The above sections indicated that Montenegro has a higher expenditure for judicial services than any EU country and is the second highest in the region after Bosnia & Herzegovina. However, CEPEJ is operating using EUR 19.9 million as total court expenditures in 2014, omitting EUR 2.9 million from enforced collection\textsuperscript{262}. If the EUR 2.9 million were added to the original figure, Montenegro’s judicial expenditure would be by far the largest in Europe with 0.82 percent of GDP judicial budget.

6.4. Recommendations

433. Increasing the cost effectiveness of the judicial system requires changes of both higher and lower management processes. Placing greater responsibility for management on courts and SPOs would introduce greater accountability for the use of judicial resources and lay the foundation for performance-based budgeting by the courts, SPOs and the Councils. Specific actions would include:

✓ Preparing courts and SPOs to take responsibility for managing their own budgets by:
  o Assigning pro-forma budgets to all courts and SPOs based on past expenditure and financial plans, tracking each court’s and SPO’s actual expenditure against the pro-forma appropriations and communicating the results periodically to the courts and SPOs. (Judicial Council and Prosecutorial Council - short-term).
  o Building on the experience of the financial/accounting staff of courts and SPOs through trainings that focus on the provisions of the Law on Budget and Fiscal Responsibility and State Treasury Directive that relate to budget preparation and budget execution. (MoF, Judicial Council and Prosecutorial Council - short-term)
  o Providing mandatory training on the administration and management of performance-based budget planning and execution for the members and staff of the Councils; training elements would include regular monitoring of spending, analyses of past expenditures (especially case-related and capital expenses), and relevant communication with courts and SPOs authorities. (MoF, Judicial Council and Prosecutorial Council - medium-term)
  o Completing the training should be made one of their own job requirements for the members and staff of the Councils. (Judicial Council and Prosecutorial Council - medium term)
  o Performing the necessary modifications of SAP for courts and SPOs to receive their own appropriations and manage their spending independently. This would have to include the purchase of necessary licenses. (MoF, Judicial Council and Prosecutorial Council - medium-term)
  o Designating courts and SPOs in SAP as independent spending units. This could be done without changing the status of courts and SPOs in terms of the Law on Budget and Fiscal Responsibility – the Councils could remain as the “first-level budget user” so they could

\textsuperscript{262} The total expenditure of courts reported by the MoF in 2014 was EUR 22.8 million while data coming from the Judicial Council do not contain the enforced collection figure and report the total expenditure as EUR 19.9 million.
retain control of the budget preparation process and monitor the system’s budget execution. (Judicial Council and Prosecutorial Council - medium-term).

434. Laying the foundation for of performance-based budgeting would enable the JC and PC to link financial performance with productivity and the quality of service delivery at the level of individual institutions. It would also contribute to initiatives by MOF to introduce program budgeting across all levels of government in Montenegro. This would require:

✓ Conducting the analysis of the most and least effective courts and SPOs recommended in the Efficiency chapter to determine what case-handling, human resource and other procedures need to be changed to improve the performance of the judicial system. (Judicial Council and Prosecutorial Council – short term).

✓ Formation of a standing working group consisting of representatives of the MoJ, the MoF, both Councils and courts and SPOs of all levels to develop and supervise the use of budget and performance goals and indicators, and the implementation of the indicators within the system’s budget framework. To allow the group to perform effectively and transparently, Montenegro must:

   - Provide mandatory training for members of the working group on the development, tracking and reporting of realistic, performance-based goals and the corresponding indicators that would move the system towards greater efficiency, effectiveness and accessibility. The training should be repeated at regular intervals for new members of the working group, and to refresh the skills of existing members. (MoF, Judicial Council and Prosecutorial Council and outside consultants - medium-term).

   - Provide mandatory training for court presidents, heads of SPOs, their senior staffs and their financial/accosting staff on the monitoring and reporting of performance-based goals and indicators. (MoF, Judicial Council and Prosecutorial Council and outside consultants - medium-term and continuing).

   - Completion of the training should be made one of their own job requirements for the members of the working group, as well as court presidents, heads of SPOs, their senior staffs and staff members responsible for day-to-day accounting of their offices. (MoJ, Judicial Council and Prosecutorial Council - medium-term and continuing).

   - Include performance-orientation and case-processing skills in the selection criteria for judges and prosecutors at different levels and for top administrative staff at the Councils, courts and SPOs, and incorporate the development of more of these skills in individual performance plans for both professional and administrative staff. (Judicial Council and Prosecutorial Council - medium term and continuing).

   - Ensure that the system has all the necessary resources to support the working group and the introduction and execution of performance-based budgeting and case handling. (MoJ, MoF, Judicial Council and Prosecutorial Council – medium term and continuing).

   - Publish the proposed performance-based goals and indicators developed by the working group on the websites of the MoJ, the Judicial Council and the Prosecutorial Council and set a time for comments. (MoJ, JC, PC - medium term).
o Revise the relevant rules and any other official formulations so the goals and indicators developed by the group become the official goals and indicators of the system. (MoJ, Judicial Council and Prosecutorial Council - medium term).

o Publish the final goals and indicators on the websites of the MoJ, the Judicial Council and the Prosecutorial Council. (MoJ, the Judicial Council and the Prosecutorial Council - medium term).

435. Unless Montenegro has adequate ICT infrastructure in place to support the financial management operations of courts, SPOs and the Councils, it will not be able to sustain a pattern of improvements in the financial, performance and HR elements of the judicial system. Development of an adequate infrastructure would have to be based on the following steps and would require cooperation of the MoJ and the MoF in allocating the necessary financial support.

✓ Enabling SPOs to have remote access to the central accounting software. This would eliminate the risks associated with mailing hard-copies of every invoice from SPOs to the Prosecutorial Council, and perhaps even more importantly, it would require each SPO to be accountable for its financial performance and the documentation of that performance. (Prosecutorial Council - short-term)

✓ Developing or modifying the functions of the existing accounting software so the Councils, courts and SPOs can prepare and track their budgets and monitor their performance, including the production of in-year (i.e., analytical) and year-end financial statements. (Judicial Council and Prosecutorial Council - medium-term).

✓ Ensure interoperability of the existing financial management software in courts, SPOs and SAP, to:
  o Allow the elements of a payment request to be pre-formulated in the existing accounting software.
  o Allow SAP to report on the processed payments for accounting purposes.
  o In later stages of development, allow SAP to provide detailed spending information as a basis of more effective budgeting and budget and performance monitoring. (Judicial Council and Prosecutorial Council - medium-term)

✓ Develop the interoperability of the existing CMS in courts and SPOs with the financial management software. The main objective of bringing these systems together would be to provide for better planning of case-related expenditures (primarily the cost of lawyers and expert witnesses) revenues in the form of court fees and avoid enforced collection and unnecessary costs. (Judicial Council and Prosecutorial Council – medium term).

✓ Train court and SPO leadership and staff on the implications for budget planning and execution of these software changes; the type of training should differ based on the roles of the trainees in the budget system. (Judicial Council and Prosecutorial Council and outside consultants – medium term).

436. Forced collections represent an avoidable and growing issue for both the courts and SPOs and proper accounting of these expenditures would enable the Councils to have a clearer picture of the costs of the judicial system. It also would contribute significantly to cost reductions by eliminating
the fees for enforcement agents, lawyers, central bank, etc. The waste of resources forced collections represent can be stemmed by:

✓ Creating an appropriation in the MoJ budget to be charged for cases of unlawful arrest. Around 25 percent of the total amount of forced collection is for penalties imposed to the Government for this purpose, and since there is no budgetary appropriation for these expenses, citizens must obtain an order for forced collection, to have these penalties paid by the Central Bank rather than judiciary budget (MoF, MoJ – short-term).

✓ Enabling and requiring the Judicial and Prosecutorial Councils to account for expenditures executed through forced collection, by having the MoF instruct enforcement agents to provide the number of the associated court case in collection requests that are submitted to the Central Bank. Once the case numbers have to be included in the requests, courts and SPOs can plan their budgets more effectively and financial staff will have timely information about the financial commitments made by courts and SPOs. (MoF, Judicial Council, Prosecutorial Council – short term).

✓ Developing procedures requiring judges and prosecutors to forward court decisions, invoices and any other information with implications for the institution’s budget to their financial and accounting staff. Eventually, the same result could be achieved through close coordination between CMSs and the accounting software at courts and SPOs. (Judicial Council and Prosecutorial Council – medium term).

✓ Once those procedures are in place, include the incidence of enforced collections in the performance evaluations of judges and prosecutors, and in the criteria for the consideration of their possible promotions. The incidence of enforced collection in their offices as a whole should be included in the performance evaluations of court presidents and heads of SPOs, and in the criteria for the consideration of their possible promotions. (Judicial Council and Prosecutorial Council - medium term).

✓ Incorporate information on the financial consequences for the system enforced collections, and how to avoid them, in the initial training of judges and prosecutors. (Judicial Council, Prosecutorial Council and Training Center - medium-term)
7. HUMAN RESOURCE MANAGEMENT

General Findings

437. All justice systems are human resource intensive, and the largest portion of its budgets usually are devoted to wages. The number, quality and distribution of human resources (key professionals, their support staff, and administrative personnel) are a major influence on all dimensions of performance. Getting the right people in the right number and in the right types of positions often depends on available funding, which is discussed in detail in the chapter on Financial Management. However, higher staff numbers alone are no guarantee of good results, while lower staff numbers do not automatically produce poor ones.

438. Montenegro’s justice system is particularly human resource intensive: compared to EU figures, Montenegro has extremely high judge-, prosecutor-, and staff-to-population ratios. Following five years of maintaining a stable number of judges from 2010 to 2014, Montenegro increased the courts’ human resources despite reductions in their responsibilities. The number of judges did not decline after the new CPC transferred their investigative functions to the prosecutors in 2011, when private bailiffs were introduced in 2014, when the competencies of notaries were expanded in 2015, and when the two commercial courts were merged in 2015. The establishment of Misdemeanor Courts in 2015 also added judges to the system, although most of these judges were transferred (together with their caseloads and duties) from the administrative agencies which processed misdemeanors before the transfer.

439. When calculated per 100,000 inhabitants, the numbers of staff in the system were far above the EU average. With an average of 4.4 non-judge employees per judge in 2017, Montenegro was above the EU average for 2014 (CEPEJ, 2016), but many courts had high absentee levels.

440. CEPEJ’s 2016 report, using 2014 data, found Montenegro’s judicial efficiency, as measured by staff per capita output, had four non-judge employees per judge. However, that report calculated the work of only permanently employed staff and excluded 217 trainees and 29 long-term contracted staff. The trend of increased staff number continued after 2014, with annual growth of six percent for permanent staff despite the reduced responsibilities of many courts noted above.

441. There were fluctuations in the number of prosecutors. Their number dropped significantly in 2012263 and then returned to former levels between 2012 and 2017, as prosecutors gradually assumed new responsibilities (e.g., supervision of criminal investigations and the use of adversarial techniques).

442. At the same time, there was a clear upward trend in the absolute number of prosecutors’ staff during the period assessed, although the prosecutor to staff ratio was reasonable compared to EU levels. The ratio between the number of staff and the number of prosecutors fluctuated over time while the proportion of case-related to other staff increased.

443. The salaries of judges and prosecutors were appropriately high when compared to average per capita income, which put them within the range of EU member states monitored by CEPEJ.

444. New procedures for the appointments of judges and prosecutors which took effect in 2016 were in line with EU standards. Once they complete a probationary period, neither judges nor

---

263 The CEPEJ 2016 Report attributed the drop to retirements and resignations.
prosecutors can be transferred, even to a higher-level position, without their consent. However, there were few incentives to raise what appeared to be low levels of their productivity.

445. Low rates of pay for non-case support staff compared to the private sector made it difficult to recruit and retain personnel with necessary expertise in IT and finance from 2014 to 2017. The information available also indicated some of the required specialists were not included in staffing plans.

7.1. Human resource methodology and staffing levels

7.1.1. Methods used to set staffing levels

446. Staffing levels were proposed by the Judicial and Prosecutorial Councils and then considered by the MoJ. According to the rulebooks adopted by the MOJ in 2015, the number of judges and prosecutors were based on the average number of incoming cases by case type for the prior three years, and a pre-determined acceptable caseload by case and court/prosecution type. Acceptable caseloads levels were reduced for court presidents, presidents of second instance court departments and trial committees, and increased for judges assisted by an advisor. The methods for determining numbers of staff were organized by court/prosecution type and staff category, and the regulations provided ratios for courts but were less detailed for prosecution offices.

447. In practice, judicial authorities were not in strict compliance with staffing ratios set by the Rulebooks. Basic Courts were entitled to 0.5 advisors/judge, 1 typist/judge, 0.5 typist/advisor, 0.33 other staff/judge and one additional typist for court administration. In sum, each Basic Court was entitled to 2.33 staff/judge plus one additional staff member/typist. Basic SPOs were allowed 0.5 advisor and 0.5 typist per prosecutor but could have undetermined numbers of “other staff considering objective needs of prosecution offices.” The ratios, however, were only for permanent, case-related staff. They did not cover trainees, contracted staff or categories like enforcement staff.

448. Decisions on the numbers of judges and prosecutors and their staff were made by separate institutions from 2014 to 2017; the Judicial and Prosecutors Councils determined the number of judges and prosecutors while the Ministry of Justice decided on the numbers of staff. The Councils set the number of judges and prosecutors based on proposals from all court presidents and the Supreme State Prosecutor. Before adopting the Acts on Internal Organization and Systematization of Posts, each court president/head of each SPO had to obtain opinions from the Councils, the Ministry of Justice and other authorities responsible for the civil service system and the approval of the Government.

449. The existing system for determining the numbers of judges and prosecutors did not consider changes in judicial and prosecutorial responsibilities, and its empirical basis was not clear. Using a 2015 Case Weighting Study conducted in nine courts, the Judicial Council adopted a new methodology in 2016 for determining the number of judges and their workload balances. The methodology considered by case types, the complexity of cases, average time required to process

---

264 Rulebooks on Framework Criteria for Determining the Number of Judges/State Prosecutors and civil servants and public employees in Court/State Prosecution (Pravilnik o orjentacionim mjerilima rada za odredjivanje potrebnog broja sudija i drzavnih službenika i namjenjeniku u sudu; Pravilnik o orjentacionim mjerilima rada za odredjivanje potrebnog broja drzavnih tuzilaca i drzavnih službenika i namjenjeniku u drzavnom tuzilastvu)
265 Montenegro Case Weighting Study, Final Report with Recommendations, October 2015, EUROL Project in partnership with the TAIEX and IMG
specific cases, etc. Implementation of the methodology depended on modifications to the court’s case management system, and the methodology still had not been implemented as of early 2019.\footnote{Mid-term Plan for Rationalization of Judicial Network (2017-2019)} Similarly, there was no case weighting system in place for prosecutors from 2014 to 2017.

450. Labor was the single largest expense for the judicial system, and the absence of a human resource information system (HRIS) impeded the ability of management to make evidence-based decisions. Tracking the number of personnel represented a challenge. Tracking their competencies and other career-related issues (e.g., training obtained, training needed, and individual career paths) was even more difficult, due to the division of human resource management responsibilities among different authorities as well as the lack of an automated personnel tracking system.

451. Position classifications for staff were not systematic, resulting in many apparent inequities and making it difficult to determine what individuals occupying any position were expected to do. Staff often were organized by categories or ranks\footnote{E.g. senior clerk, senior advisor, state employee, etc.} instead of job titles, thereby obscuring staff roles and responsibilities. In addition, positions with very similar responsibilities often were categorized or ranked differently.\footnote{E.g., the head of the registry office in State Prosecution Offices was classified as Advisor I (requiring a university degree and at least three years of work experience), Advisor II (requiring at least five years of work experience), and also as a Senior State Employee I (requiring a university degree and at least three years of work experience).} This practice needed to be abandoned and a more uniform system of position classification and job descriptions adopted.\footnote{As of January 2019, there were plans to apply a new methodology in 2020.} This would still have permitted the recognition of different ranks or levels within each position category (e.g. typist level 1, 2, etc.), but would have simplified and rationalized classifications generally.

452. Due to the methodology’s shortcomings, positions were created and vacancies filled even if there was no objective need for them. The methodology applied specifies the total number of cases per general case type, but there was little differentiation within those types. For example, the methodology treated all criminal cases as equally complex, but did not consider the complexity of different cases. In addition, the methodology was not revised to address the transfer of additional court responsibilities to other authorities (e.g., the transfer of investigation responsibilities from judges to prosecutors or the handling of new enforcement cases from judges to bailiffs). Moreover, the 2015 Eurol Case Weighting Study’s\footnote{Montenegro Case Weighting Study, Final Report with Recommendations, October 2015, EUROL Project in partnership with the TAIEX and IMG.} finding that the judiciary had 60 judges more than it needed to maintain its current workflows was not considered when planning new judicial appointments.

453. The practice of transferring cases from busy to less-busy courts and temporary transfers of judges and prosecutors from one authority to another should not undercut efforts to evaluate long-term plans for rationalization of judicial network (2017-2019). An HRIS would allow the collection of necessary data and other HR information within a short period of time and its analysis in a concise and effective manner. Moreover, linking such a system with budgeting information system/s would allow for a strategic approach to HRM that focuses on efficient judicial service delivery.

On a per capita basis, Montenegro had approximately two times the number of filled judge positions as Lithuania, the EU country with the most similar population density as Montenegro’s (44 in Lithuania and 45 inhabitants/km² in Montenegro).

An HRIS would allow the collection of necessary data and other HR information within a short period of time and its analysis in a concise and effective manner. Moreover, linking such a system with budgeting information system/s would allow for a strategic approach to HRM that focuses on efficient judicial service delivery.
term staffing needs. In 2014, approximately eight percent of all sitting judges had temporary transfers to other courts. This decreased to approximately three percent of sitting judges in both 2015 and 2016, while only one judge was transferred in 2017. Although transfers of cases, judges or prosecutors can be an effective tool for backlog reduction, the system needs to focus reforms on reforms that provide incentives for the permanent transfer of professional personnel to courts or prosecution offices which are expected to have heavier caseloads in the middle to long term.

7.1.2. Numbers of judges, prosecutors and their staff

454. At 41.0 judges per 100,000 inhabitants in 2014, Montenegro’s ratio was twice the average for all 27 other EU countries considered by CEPEJ. Moreover, by 2017 its judge-to-population ratio increased by 23 percent to 50.3, and as noted above, the 2015 Eurol Case Weighting Study’s found that the judiciary had 60 judges more than it needed to maintain its current workflows.

455. Between 2014 and 2017, Montenegro significantly increased the number of judges, both budgeted and actual due to incorporation of misdemeanor courts to judicial system. While budgeted positions increased by 23 percent from 264 in 2014 to 324 in 2017, new appointments brought about the same percent increase of judges in the system, from 254 to 312. Fifty-six of the new judges were in the Misdemeanor Courts and two were appointed in other courts.

Figure 131 - Number of Judges per 100,000 Inhabitants, Montenegro and EU Member States, 2014 CEPEJ data

---

271 Montenegro Case Weighting Study, Final Report with Recommendations, October 2015, EUROL Project in partnership with the TAIEX and IMG.

272 This included judges assigned to other authorities – two in 2014, one in 2016 and two in 2017.

273 Four judges were appointed in the Higher and one in the Supreme Court, while the number of judges was reduced by one in Basic and by two in Commercial Court. It should be noted that one judge assigned to other authorities went back to the Basic Court while another one continued working in the Ministry of Justice, and one High Court judge was working at other authority in 2017.
In 2014, Montenegro had 17.4 prosecutors per 100,000 inhabitants compared to the EU average of 10.7 (CEPEJ 2016). The ratio increased by nine percent, in the period 2014-2017 to 19.0, far higher than Western Europe; only Bulgaria, Latvia and Lithuania had a higher proportion of prosecutors.

Figure 132 - Number of Prosecutors per 100,000 Inhabitants, Montenegro and EU Member States, 2014 CEPEJ data

With an average of 4.4 non-judge employees per judge in 2017, Montenegro was above the EU average for 2014 (CEPEJ, 2016). Montenegro’s ratio dropped slightly from 4.5 in 2014 to 4.4 in 2017, but this occurred largely because the number of judges increased by 23% in this period and not because the number of staff was significantly reduced. Two-thirds of courts had a staff-to-judge ratio above the average, but there was no information available to explain this phenomenon.

---

274 The CEPEJ 2016 Study noted that for 2014 Montenegro reported only permanently employed staff.
275 The number of judges grew from 254 in 2014 to 312 in 2017. This included 56 new judges in the Misdemeanor Courts that were established in 2015, and two other judges were added in other courts.
Figure 133 - Ratio of Court Staff to Judge, Montenegro and EU, 2014 CEPEJ data

At an average of 1.6 staff to each prosecutor in 2014, Montenegro compared well with European benchmarks, but this changed by 2017. Due to the establishment of the Special State Prosecutor’s Office, the ratio decreased in 2015 and then increased with new staff appointments to the office. As Montenegro continued to fill budgeted positions in 2017, its staff-to-prosecutor ratio exceeded the EU average.

Figure 134 - Ratio of Prosecution Staff to Prosecutor, Montenegro and EU, 2014 CEPEJ data

In 2016, 318 judges, 120 state prosecutors and 1223 permanent staff were on the judicial payroll. In addition, there were 245 trainees and 103 contracted staff (50 long-term and 53 short-term.

---

276 Including 1041 in courts and 182 in prosecution offices.
contractors\(^{277}\) working in courts and six trainees and one short-term contractor in SPOs. The Councils reported 310 judges and 118 state prosecutors on the 2017 judicial payroll, and two judges assigned to other authorities (i.e., one Commercial Court judge was assigned to the Basic Court in Podgorica, and one Podgorica Basic Court judge was assigned to the Ministry of Justice). Compared to 2016, the non-judge figures increased by 64 permanent staff and 18 long-term contractors in 2017\(^{278}\) although the number of trainees and short-term contractors decreased by 64 and 37 respectively. Prosecutors were supported by 19 more permanent staff and seven trainees in 2017, but no new contractors were engaged\(^{279}\)

<table>
<thead>
<tr>
<th>Court Type</th>
<th># Actual Judges (Annual Report of the Judicial Council)</th>
<th>Total Permanent Staff</th>
<th>Prosecution Type</th>
<th># Actual Prosecutors (Annual Report of the Prosecutorial Council)</th>
<th># Total Permanent Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic courts</td>
<td>145</td>
<td>142</td>
<td>579</td>
<td>581</td>
<td>Basic SPOs</td>
</tr>
<tr>
<td>Higher courts</td>
<td>58</td>
<td>54</td>
<td>142</td>
<td>147</td>
<td>Higher SPOs</td>
</tr>
<tr>
<td>Supreme Court*</td>
<td>18</td>
<td>19</td>
<td>30</td>
<td>31</td>
<td>Supreme SPO</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>12</td>
<td>13</td>
<td>28</td>
<td>30</td>
<td>Special SPO</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>12</td>
<td>11</td>
<td>32</td>
<td>35</td>
<td>Total</td>
</tr>
<tr>
<td>Commercial Court MNE</td>
<td>16</td>
<td>15</td>
<td>78</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>Misdemeanor Courts</td>
<td>50</td>
<td>49</td>
<td>137</td>
<td>188</td>
<td></td>
</tr>
<tr>
<td>Higher Misdemeanor Court</td>
<td>7</td>
<td>7</td>
<td>15</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>318</td>
<td>310</td>
<td>1041</td>
<td>1105</td>
<td></td>
</tr>
</tbody>
</table>

\(^{277}\) Long-term contractors are used for a definite period of one to two years, to replace permanent staff members who are on temporary absences. Short-term contractors may work for a maximum of six months to help with increased workloads.  

\(^{278}\) These numbers included 29 permanent and three long-term contractors in the Misdemeanor Court for Podgorica. This staffing data are based on the List of Employees from September 2018.  

\(^{279}\) Some staffing data was available for analysis for all four years of the reviewed period, but the overall staff numbers for 2014 and 2015 were not comparable to the data for 2016 and 2017, since the Misdemeanor Courts did not become part of the system until late 2015. Since the system was more stable by 2016, overall staffing data were compared for 2016 and 2017.  

\(^{280}\) The number of judges does not include one judge assigned to the Ministry of Justice, while the number of staff presented here is based on the data provided by courts and prosecution offices.
The increase in the number of judges from 2014 to 2017 was followed by the addition of new non-judge staff during the same period, and the staff/judge ratio far exceeded what was stipulated in the framework criteria. The increase in judges included additions for the new Misdemeanor Courts in 2015 (228 authorized positions of which 203 had been filled as of 2017), as well as 103 authorized positions of which 43 were filled for other courts. The major increase in authorized positions was for non-core staff categories and enforcement; most new appointments occurred in enforcement even though enforcement cases were transferred to private bailiffs in 2014.

<table>
<thead>
<tr>
<th>Year</th>
<th>Judges</th>
<th>Total Staff</th>
<th>Case-related Staff</th>
<th>Other Staff</th>
<th>Enforcement Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>264</td>
<td>967</td>
<td>746</td>
<td>167</td>
<td>54</td>
</tr>
<tr>
<td>2017</td>
<td>324</td>
<td>1298</td>
<td>963</td>
<td>253</td>
<td>82</td>
</tr>
</tbody>
</table>

% Staff Increase: 23% 34% 29% 51% 52% 23% 29% 8% 5% 31%

The number of budgeted positions for prosecutors increased by 15 percent from 2014 and those appointed to the job increased by 10 percent. New authorized positions included 13 in the Special SPO, three in Basic SPOs and one in the Supreme SPO. From 2014 to 2017, five Basic SPOs performed with the same number of prosecutors, five with one to three additional prosecutors and three with one to four prosecutors fewer than in 2014. In the High SPOs, the number of prosecutors increased by one in both offices, while the number decreased by three in the Supreme SPO. The Special SPO performed with nine prosecutors in 2015 and 11 in the following years.

As in the courts, increases in the number of prosecutors were followed by the creation of new staff positions and appointments. Although more new positions were authorized in the “other staff” category, actual appointments were higher for case-related staff.

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutors</th>
<th>Total Staff</th>
<th>Case-related Staff</th>
<th>Other Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>116</td>
<td>193</td>
<td>128</td>
<td>65</td>
</tr>
<tr>
<td>2017</td>
<td>133</td>
<td>323</td>
<td>199</td>
<td>124</td>
</tr>
</tbody>
</table>

% Staff Increase: 15% 67% 55% 91% 10% 31% 45% 0%

In addition to existing permanent staff, a large number of trainees and temporary staff (long- and short-term contracts) created a ‘shadow workforce’. Their numbers peaked at 348 in 2016 and dropped to 265 in 2017. While the absolute figures showed a growing number of trainees in the courts compared to the total workforce, they dropped from 19% in 2014 to 18% in 2016. In 2017, the shadow workforce constituted 19 percent of the employees in Montenegrin courts. In addition to 1105 permanent staff, there were 181 trainees and 84 contracted staff (68 engaged on long-term and

281 Mainly in Misdemeanor Courts.
282 Two in Kotor and one in Bijelo Polje.
283 Bijelo Polje, Kotor, Pljevlja, Rozaje and Ulcinj.
16 on short-term contracts). The shadow workforce numbers and their proportion to total workforce decreased at nearly all courts in 2017; this probably was due to the introduction of the centralized recruitment and selection of trainees and delayed appointments. The percentages ranged significantly among courts, but the most extreme case was in the Appellate Court where trainees’ numbers reached more than 25 percent of the workforce. Details on the distribution and composition of the shadow workforce are found in Figure 135 below.

Table 24 - Shadow workforce in courts

<table>
<thead>
<tr>
<th>Year</th>
<th>Permanent employees</th>
<th>Trainees</th>
<th>Long-term contracts</th>
<th>Short-term contracts</th>
<th>Total Workforce*</th>
<th>Total Shadow workforce</th>
<th>% Shadow workforce/Permanent employees</th>
<th>% Shadow/Total Workforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>859</td>
<td>217</td>
<td>29</td>
<td>29</td>
<td>1134</td>
<td>275</td>
<td>32%</td>
<td>24%</td>
</tr>
<tr>
<td>2015</td>
<td>950</td>
<td>259</td>
<td>28</td>
<td>40</td>
<td>1277</td>
<td>327</td>
<td>34%</td>
<td>26%</td>
</tr>
<tr>
<td>2016</td>
<td>1041</td>
<td>245</td>
<td>50</td>
<td>53</td>
<td>1389</td>
<td>348</td>
<td>33%</td>
<td>25%</td>
</tr>
<tr>
<td>2017</td>
<td>1105</td>
<td>181</td>
<td>68</td>
<td>16</td>
<td>1370</td>
<td>265</td>
<td>24%</td>
<td>19%</td>
</tr>
</tbody>
</table>

*Permanent staff and shadow workforce

Figure 135 - Shadow workforce, composition and as compared to total workforce

464. Basic Courts engaged significant numbers of staff on long-term contracts in from 2014-2017. This raised their proportion compared to total workforce from three percent to five percent. In the Supreme and Administrative Courts, the proportion changed from 0 to six and eight percent, respectively. About 95 percent of all long-term contracts in courts were for workers performing case-related functions and five percent were for “other” and enforcement.

465. Short-term contractors represented only one percent of the workforce in 2017. This decrease mainly occurred in all courts. Eighty-one percent of their short-term contracts in 2017 were for case-related functions, 13 percent were for “other” and six percent for enforcement.

189
Not all the courts could justify extensive use of contractors to fill in for employees on leave and/or work-overload. While the Basic Courts in Ulcinj, Bar, Kotor and Niksic, the High Court in Podgorica and the Administrative Court tried to address their high absentee rates by using contractors, the Higher Misdemeanor Court managed its operations without engaging contractors despite an absentee rate of seven percent of staff. Moreover, three courts with zero absentee rates engaged significant numbers of contractors for case-related functions in 2017 – contractors represented 13 percent of the total workforce in the Basic Court in Cetinje, five percent in the Basic Court in Herceg Novi and six percent in the Supreme Court. Three courts – the Basic Court in Plav, the Basic Court in Podgorica and the Misdemeanor Court in Budva, had more contractor staff than employees on sick leave.

In 2017, 93 percent permanent staff who were on long-term sick leave provided direct support to judges. Thus, 11 percent of permanent typists and nine percent of judicial advisors were absent for more than three months.

The total number of temporary employees in SPOs was more modest. The survey of prosecutors’ offices revealed 13 trainees, or about six percent of total workforce numbers in 2017. Nearly all were in Basic SPOs.

<table>
<thead>
<tr>
<th>#Permanent employees</th>
<th>#Trainees</th>
<th>#Long-term contracts</th>
<th>#Short-term contracts</th>
<th>#Employees on long-term absence</th>
<th>#Total Workforce</th>
<th>% Shadow to permanent workforce</th>
<th>% Shadow to Total Workforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>153</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>163</td>
<td>10</td>
<td>7%</td>
</tr>
<tr>
<td>2015</td>
<td>161</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>165</td>
<td>4</td>
<td>2%</td>
</tr>
<tr>
<td>2016</td>
<td>182</td>
<td>6</td>
<td>0</td>
<td>1</td>
<td>189</td>
<td>7</td>
<td>4%</td>
</tr>
<tr>
<td>2017</td>
<td>201</td>
<td>13</td>
<td>0</td>
<td>0</td>
<td>214</td>
<td>11</td>
<td>6%</td>
</tr>
</tbody>
</table>
7.1.4. Staffing Ratios

469. In 2017, Montenegro had an average of 4.0 budgeted non-judge employees per judge, divided among 3.0 case-related, 0.8 other and 0.2 enforcement staff per judge. As noted above, the staff-to-judge ratio was well above the EU average (2014 data). However, there were significant differences among Montenegro courts, which ranged from 1.5 to 4.5 case-related employees per judge (i.e., 0.3 to 1.1 judicial advisors, 0.5 to 2.0 typists and 0.6 to 2.2 other case-processing staff). Staffing composition ranged from 1.8 to 6.3 total staff to judge, and 2.0-5.2 case-related, 0.2-1.5 “other” staff and 0.1-0.8 enforcement staff to judge.

470. Although there were simplistic staffing norms for personnel allocations for judicial advisors and typists, the systematized, actual budgeted positions deviated from these prescribed norms. The 2017 average ratio of advisors/judge was 0.6, ranging from 0.3 to 1.1, that of typists was 1.2, ranging from 0.5 to 2.0 per judge, and that of all other staff was 2.2 per judge ranging from 0.8 to 4.5. Official records did not indicate why the MoJ approved these deviations.

Figure 137 - Budgeted staff per judge by category of staff, 2017

471. The budgeted staff-per-prosecutor ratio increased from 1.7 in 2014 to 2.0 in 2016, and reached a peak in 2017. The increase occurred in almost all SPOs; it was only in the Supreme SPO that

---

284 Supreme Court
285 Commercial Court
286 BC Zabljak – BC Bar
287 HC Podgorica and Appellate Court-BC Zabljak
288 BC Kotor-MC Budva
289 Basic Courts in Kolasin, Plav and Pljevlja
290 Administrative Court
291 Supreme Court
292 BC Pljevlja
293 Excluding judicial advisors and typists
294 HC Podgorica and Appellate Court
295 BC Zabljak
the ratio of budgeted staff to prosecutors decreased. The staff-to-prosecutor ratio significantly differed among prosecution offices, and in 2017 ranged from 1.5 in the High SPO Podgorica to 5.9 in the Supreme SPO. As would be expected, the ratio of case-related staff to prosecutor was higher than the ratios for other staff except in three small Basic SPOs\textsuperscript{296} and the Supreme SPO.

472. Basic SPOs Berane and Ulcinj and the Special SPO exceeded staffing norms set for allocation of prosecution advisors and typists. Thus, these two Basic SPOs budgeted 0.6 and 0.7 instead of 0.5 typists per prosecutors, and the Special SPO budgeted twice as many prosecutorial assistants as prescribed.

![Figure 138 - Budgeted staff per prosecutor by category of staff, 2017](image)

473. In 2016, Montenegro’s average case-related employee per judge numbers were above the EU average for 2014. The number was 3.6 in Montenegro and 2.6 for the EU (CEPEJ 2016 and Montenegrin statistics for 2016). Moreover, there were significant differences among Montenegro courts, ranging from 1.6 to 5.7 case-related employees (i.e., 0.4 to 2.5 judicial advisors, 0.6 to 2.0 typists and 0.4 to 2.0 other case processing staff). Although the 2017 average case-related employee per judge remained at the level of 2016, the difference among courts somewhat declined.

\textsuperscript{296} Kolasin, Plav and Rozaje
There was no correlation between the productivity of prosecution offices and the staff-to-prosecutor ratio. Thus, the two most productive Basic SPOs in 2016 had 0.9 and 2.3 employees per prosecutor. The majority of prosecution offices employed more case-related than other staff, although staffing composition varied. In 2017, the staffing composition ranged from 0 to 1.5 prosecutorial advisors/prosecutor and 0.8 typists/prosecutor and from 0.3 to 1.0 of other case-related staff per prosecutor.
7.1.5. Distribution of staff among the subcategories and its impact on performance

475. In total, around 19 percent of all court employees did not contribute directly to case processing. According to the data provided to the Functional Review team, the average proportion of case-related, enforcement and other staff did not significantly increase during the observed period, but the percentage of case-processing vis-à-vis total budgeted staff positions dropped from 77 percent in 2014 to 74 percent in 2017, while permanent staff remained at the same level of 77 percent. Of all court staff in 2017, a total of only one percent were engaged in finance, ICT and HR. Of the rest, 12 percent served in other general administrative functions, including cleaning, court police, facilities maintenance, and drivers, while another six percent of employees (inexplicably) continued to work in enforcement.

476. The proportion of core, non-enforcement case-related staff to total staff, both budgeted and appointed, varied significantly among the courts of the same type and size from 2014 to 2017, with no clear justification. For example, in 2017 the High Court in Podgorica budgeted for 93 percent of case-related staff while the Supreme Court budgeted for only 32 percent. In Basic Courts, this proportion ranged from 46 percent of core staff in Zabljak to 80 percent in Cetinje, although both are small courts. There were also significant discrepancies in appointed staff. Again taking 2017 as an example, case-related employees represented 50 percent of total staff in the Basic Court in Zabljak and 93 percent in the Appellate Court. In Basic Courts of the same size, case-related staff represented 50 to 80 percent of employees in small courts (Zabljak and Kolasin), and 67 to 80 percent in medium-sized courts (Ulcinj and Berane). The percentage of case-related to total employees in Basic Courts was somewhat more consistent in the group of large and very large courts, ranging from 76 to 85 percent.

477. The most productive courts were not necessarily those with highest numbers of non-enforcement case-related staff or judicial advisors. To continue using 2017 as an example, among the five most productive Basic Courts for that year, core staff represented 50 to 85 percent of all employees and 2.0 to 4.4 case-related staff/judge, with judicial advisors ranging from zero to 38 percent of the total and from zero to two judicial advisors/judge. At the same time, the Basic Court with the lowest disposition per judge had case-related staff and judicial advisors of total staff at 75 and nine percent respectively. The staff to judge ratios were 4.0 for case-related and 0.5 for judicial advisors. Between the two High Courts, the less productive had the lower share of case-related staff and judicial advisors but higher number of employed case-related staff and judicial advisors per judge. It was only in the Misdemeanor Courts that the productivity increased with more judicial advisors.

478. It is evident that Montenegro’s high numbers of support staff did not guarantee equally high performance from 2014 to 2017, either by judge or by the system as a whole. Overall staff numbers were excessive, especially for support staff. The needs for and functions of non-case related staff needs to be analyzed in detail, based both on job profiles and administrative needs.

---

297 Excluding Basic Court Herceg Novi, Misdemeanor Court Podgorica and the Supreme Court for which disaggregated staffing data were not available.
298 The Judicial Guard services for all the courts are planned to be centrally administered by the Supreme Courts, but this had not occurred by January 2019.
299 Court size groups: small (up to five judges); medium (from six to 10 judges); large (from 11 to 20 judges) and very large (21 and more judges),
Although private bailiffs were introduced in 2014, the number of enforcement staff in courts increased by more than 50 percent for both approved positions and for those that were filled. New enforcement staff was budgeted for the Misdemeanor Courts and the Commercial Court; and new permanent enforcement staff was recruited by these courts and Basic Court Danilovgrad. No actions were taken to eliminate unnecessary positions and/or to transfer staff to courts that may have needed enforcement agents to handle existing caseloads. This pattern illustrates the reluctance of the judicial system to undertake necessary changes that could free funds to meet other needs, e.g., investments in ICT and infrastructure upgrades.

No analysis was been conducted of the courts’ enforcement staffing needs following the introduction of private bailiffs. Enforcement as a percentage of total staff varied from two to 17 percent in 2017, with very little explanation for the different numbers, even among courts of the same size. Enforcement staff was planned for all Basic and Misdemeanor Courts and the Commercial Court; their proportion of enforcement staff ranged from four percent in two small to 11 percent in one large Basic Court. On the other hand, while the low-performing, large Basic Court in Kotor had only two percent of enforcement staff (i.e., one staff member), that staff constituted 10 percent of the workforce, i.e., nine employees, in the large Basic Court in Niksic. The numbers of this type of employees ranged even between two large Misdemeanor Courts (i.e. nine percent or five employees in one court and 17 percent or nine staff members in the other).

The difference in the proportion of case-related to other staff among SPOs of the same jurisdiction levels was considerable and was not related to office size. Overall, 22 percent of
employees were engaged in the SPOs’ non-core functions in 2017, but percentages for Basic SPOs ranged from 11 to 60 percent. The proportion of non-case related to total staff was even higher among budgeted positions at 38 percent, but for this category the variations among offices varied only from 18 to 57 percent.

482. A high share of case-related staff or prosecutorial advisors did not imply higher productivity within SPOs. Although the most productive SPO in 2016, the Basic SPO in Kotor, had the highest share of case-related staff and 29 percent of employees as advisors – the second best, the Basic SPO in Berane, had almost equal shares of case-related and other staff. However, the more productive office had a lower case-related staff/judge ratio; the ratio was 0.8 in Kotor and 1.0 in Berane.

483. At the same time, two basic prosecution offices with the lowest disposition per prosecutor had 33 and 80 percent of case-related employees in 2017 and 0.3 and 0.5 case-related staff per prosecutor. In a few offices with a high share of prosecutorial advisors to total staff and a high prosecutorial advisors/prosecutor ratio, there were fewer disposed cases than in the most productive one, and two Basic SPOs without prosecutorial advisors did not have the lowest numbers of resolved cases per prosecutor. The more productive High SPO had a higher share of case-related staff and judicial advisors and a higher ratio of case-related staff/prosecutor and prosecutorial advisors/prosecutor.

7.1.6. Impact of vacant positions

484. Since there were no well-developed staffing ratios in place, it was not possible to determine whether all vacancies should have been filled or funds reallocated to other positions, invested in capacity building of existing staff or spent on ICT and infrastructure projects.

485. While only a small percentage of budgeted judicial positions remained vacant (five percent in 2014, none in 2015, one percent in 2016 and three percent in 2017), many staff positions remained unfilled for years. Judicial positions remained vacant in six Basic and both High Courts as well as in the Administrative Court and the Misdemeanor Court in Budva, which had two judges assigned to other authorities in 2017. Increase of budgeted staff also did not always result in new hires; approval of new positions was followed by an increase in vacant staff positions from 11 percent in 2014 to 15 percent in 2017. Court staff vacancies ranged from one percent to 64 percent, with eight courts having vacancy rate of more than 20 percent. Vacancies were not concentrated in any size of court or particular geographic region.

---

302 Notably, the number of resolved cases increased for 20 percent after one more judge was assigned to the BC Podgorica.
In 2017, prosecution offices had significant numbers of vacant prosecutor and staff positions – 11 percent for prosecutor’s positions and 38 percent for staff.

There were large vacancy rates for positions that needed to be filled for the benefit of the system. In courts, vacancy rates in 2017 were 15 percent for judicial advisor positions and 13 percent for ICT positions. The situation was even more severe for SPOs in 2017, since 27 percent of advisor positions and 48 percent of ICT positions were vacant.
7.2. Recruitment, Evaluation and Promotions of Judges and Prosecutors

488. A uniform, result-based system of selection and promotion of judges was adopted in 2015 and became effective in late 2016. The new system was designed in line with EU standards and requires full transparency of all steps. It was still in its initial stages of implementation by the end of 2017. A report prepared by two NGOs in 2017 found a lack of transparency in the selection and promotion of judges in the 2014-2016 period. They specifically noted that selections were not always based on ranked lists of candidates and JC decisions did not provide valid justifications for judicial selections.

489. Under the new system, the Judicial and the Prosecutorial Council have central roles in the recruitment and appointment of judicial officials. The Judicial Council is charged with the recruitment, appointment and dismissal of judges and court presidents, except for judges of the Constitutional Court for which Parliament has full responsibility. The Prosecutorial Council is responsible for the recruitment, appointment and dismissal of state prosecutors and heads of prosecution offices. Parliament is responsible for the appointment and dismissal of the Supreme State Prosecutor, based on the Prosecutorial Council’s proposal.

490. Judicial positions now are filled in accordance with the Two-Year Plan of Vacant Judge/Prosecutor Positions. The Councils assess the needs for each court/prosecution office and adopts the plan at the end of each year in accord with the framework criteria, including information on positions to be filled by consensual transfer, promotion or public competitions for initial appointment.

491. The Constitution prohibits judges and prosecutors from serving as members of Parliament, exercising any other public function, or from being professionally engaged in other activities. In addition, judges and prosecutors have immunity except for criminal offenses for which approval of the Judicial Council is needed for the imprisonment of a judge.

492. General and specific requirements for the appointment of judges and court presidents are contained in legislation. Judges must have a law degree and pass the bar exam; the minimum years of service and professional experience depend on the type of court. Legal professionals with at least two years of professional experience are eligible to apply for judgeships in the Basic, Misdemeanor, Commercial and Administrative Courts. Only judges and prosecutors with at least four years of service in the system can serve as judges in the in the Basic, High and Misdemeanor Courts, as well as the Appellate and Supreme Courts. The law envisages an exception for one judge of the Supreme Court who can be drawn from the other legal professions and who has 20 years of work experience. Specific requirements defined for court presidents vary among court types – e.g., a minimum of six years of legal experience and four years as a judge or prosecutor is required to be president of a Basic Court. In addition, only good or excellent performers can be selected as presidents and their mandate is limited to five years, with the possibility of one renewal in the same court.

---

303 Amendments to the Constitution adopted by the Parliament in July 2013.
304 These include Judicial and prosecutorial advisors, attorneys, notaries, law professors and members of other legal professions.
305 Additional years of service are required for the other legal professionals.
306 Judicial and prosecutorial advisors, attorneys, notaries, law professors and other legal professions.
307 For judges of Higher Misdemeanor Court.
The recruitment and selection procedures include internal and public competition, and vary among court types. In Basic and Misdemeanor Courts, vacant positions can be filled by the consensual transfer of judges. Vacant positions in the Administrative, Commercial and Supreme Courts are filled through public competition.

Selection procedures for judges vary depending on whether the competition is internal or external. Internal competition for consensual and permanent transfer to a court of the same or lower instance is based only on the performance evaluation of candidates in the prior three years. In open competitions (meaning candidates from outside the system can apply), the Judicial Council selects judges and issues a ranking list of candidates based on results of written tests (or the results achieved at the bar exam) and an interview. Exam results are the primary filter; there are interviews only for candidates with very strong exam results. At interviews, the JC selection panel evaluates candidates’ motivation, communication skills, conflict resolution and decision-making skills and understanding of the role of judge in the society. For court presidents, the JC assesses the candidates’ proposed work programs, performance evaluations and candidate interviews.

The initial selection of lay judges is left to the discretion of court presidents. The methods to be used are rather vague – although announcements and formal criteria drawn from the Law on Judicial Council and Judges are published, court presidents apparently select lay judges based on interviews. The Judicial Council makes the final decision on lay judges considering the list of candidates and the opinion of the committee of judges of each of the candidates proposed.

The Law on State Prosecution includes requirements for the appointment of state prosecutors. As with judges, these include a law degree and passage of the bar examination with work experience and years of service depending on the level of SPO. The required years of experience range from two in Basic SPOs to 15 in the Supreme SPO. Vacancies in higher instances usually are filled by promotion from within, with an exception for three of the 37 positions in the Supreme and High SPOs that also can be filled by other legal professionals. Judicial advisors, attorneys, notaries and their deputies, law professors and other legal professionals can apply for positions within Basic SPOs and for the three positions in the offices mentioned above. Heads of prosecution offices must have 10 to 12 years of legal experience or five to eight years of experience as a judge or prosecutor (for Basic and High SPOs respectively). As for court presidents, only good or excellent performers can be selected for five-year terms as heads of offices, renewable for an additional five years.

The application procedure for initial appointments to Basic SPOs is open, as is the selection of three prosecutors in the Supreme and SPOs. The invitations also are published for internal competitions for permanent tenure after a four-year probationary period, the selection of heads of offices, and promotion to higher instances.

The Prosecutorial Council uses tests and interviews for open selection and performance assessments and interviews for internal competitions. Written tests drafted by the selection panel of the PC are designed to assess competence in applying knowledge and skills, while soft skills are evaluated in recruitment interviews. The soft skills to be evaluated at interviews for prosecutors are the same as those for judges – motivation, communication, conflict resolutions and decision making and understanding of prosecutors role in the society. The procedure for appointment of heads of

---

310 The Law on State Prosecution envisage up to 60 points from the test and 20 out of 100 from the interview.
prosecution offices is identical to that for court presidents – the Council considers the proposed five-year work programs, prior performance evaluations and interviews with candidates.

499. The interviewing guides adopted by the Prosecutorial Council are useful tools, but lack clarification of criteria for evaluation and awarding points for soft skills. Moreover, the selection process would benefit from building the capacity of the selection panel in interviewing techniques and evaluation of soft-skills as well as the involvement of psychologists as authorized by the legislation.

500. After the first appointment, the mandate of judges is indefinite. Before entering the judicial system, candidates for judge positions that are selected by the Judicial Council through public competition have to undergo an initial training program of 18 months for Basic, nine months for Misdemeanor, six months for Commercial and three months for Administrative Court judges. After completing the training program, the Center for Training in Judiciary and Public Prosecutor’s Office (i.e., the relevant trainers and mentors) evaluate the trainees. In case of negative training evaluations, candidates cannot be appointed to permanent tenure. There is no initial training planned for Supreme Court judges.

501. Candidates for judicial positions need positive evaluations from the Center for Training of Judges and Prosecutors to fill a post. Based on the Judicial Council’s rankings and available vacancies, candidates for the Basic and Misdemeanor Courts choose the court where they will work.

502. A judge or prosecutor serving within a given court or SPO cannot be assigned to another court or prosecution office without his/her consent. Under the current structure the Councils make the decisions on transfer. For the transfer of a judge or prosecutor on a temporary basis with the purpose of assisting a neighboring court or prosecution office, individual consent is required (although this is not required by European standards). Temporary transfers between judicial offices can be made for up to one year. Transfers to the either of the Councils, the Training Center or the Ministry of Justice for carrying out tasks of relevance for judiciary improvements can be for three years.

503. The performance assessments prescribed by law and further elaborated in the by-laws have been piloted but require further modifications before system-wide implementation. The performance evaluation systems designed for judges and prosecutors, which became effective in 2016, aim to assess individual competence, quantity and quality of work, ethics and training needs, as well as informing decisions on promotions to higher instances. They include court presidents and heads of prosecution office, but exclude all Supreme Court judges and prosecutors of the Supreme State Prosecution Office. The procedure is conducted by the Performance Assessment Committee that takes decisions based on proposals made by Councils of Judges for Performance Assessment and the Council of Prosecutors for Performance Assessment. These Councils are comprised of four judges/prosecutors of higher instances and the president of the court/head of the SPO for judges/prosecutors of that authority.

504. Regular performance assessments cover three-year periods, and extraordinary assessments are done in case of unsatisfactory performance or promotion. Additional evaluation periods are planned for initially appointed prosecutors, with interim and final evaluation after a four-year

---

311 Article 49 of the Law on Judicial Council, stipulates that each candidate can score up to 20 points at interview.
312 European Charter on the Statute for Judges and the Council of Europe Committee of Ministers’ recommendation on independence, efficiency and responsibilities of judges
probation period. The evaluation scale has four levels: excellent, good, satisfactory and unsatisfactory. This system was piloted in one SPO in 2016.

505. **Prosecutors and judges are evaluated by two main criteria – professional competence and general skills.** The Law on Judicial Council and Judges also specifies a number of sub-criteria for evaluating performance of judges: quantity and quality of work; preparation for hearings; planning and implementation of proceedings and adequate control of hearings; professional development; communication; ability to adapt to change, participation in professional activities and organization and coordination of staff in court. The performance assessment sub-criteria differ for prosecutors, for whom evaluation of professional competence is based on quantity and quality of work; planning and implementation of proceedings; condition of case files (whether all required documents are in the files so interested parties can obtain information on the prosecutor’s activities); ability to apply their knowledge, case processing skills, and professional development with the same general skills applied as for judges. The evaluations are conducted by reviewing a number of resolved cases, statistical data on performance, inspection reports and report of the Training Center, as well as self-assessments. The criteria are developed in the Rules for Assessment of Judges and Court Presidents (i.e., prosecutors and heads of SPOs), but require further modifications as some shortcomings were noted after testing the system in the Basic Court in Niksic in 2016. These shortcomings included equal valuation of trainings taken and cases resolved, and work in professional bodies for which individuals cannot apply for participation, and rating as “excellent” the resolution of 80 percent of case types set by the JC as the norm for courts of that level.

506. **The evaluation of court presidents and heads of prosecution office includes aspects of their work as a judge/prosecutor and managerial capacity, and can be graded either satisfactory or unsatisfactory.** The second part of the evaluation of court presidents covers implementation of the Work Program proposed on appointment, management of the court, and the regularity and timeliness of court administration. For heads of the prosecution offices, managerial capacity is evaluated considering supervisory activities over the prosecutors, staff and lower instance SPOs, monitoring the work of prosecutors, providing work instructions, monitoring work of the administration and reporting to the higher prosecution on activities and relevant cases. Assessments are based on documentary evidence, statistics, and inspection reports.

507. **Performance results are generally linked to promotion and career progression.** The legislation prescribes that judges who receive satisfactory or unsatisfactory rating should undergo continuous training at the Training Center, and opens the promotion path for those being evaluated as good or excellent performers. The best performers also receive salary increases if they are not promoted to a higher instance court within one year. Further needed improvements relate to clarifying relations between performance assessments and decisions on probation, promotion and discipline; developing and applying measures to recognize good performance and support proactivity, as well as remedial actions, including mandatory re-training for low performing judges.

508. **Incentives should be built into the performance assessment system to encourage judges and prosecutors to continually develop knowledge and skills.** Training-related criteria should be re-shaped to create incentives to improve performance and should not rely only on a simple number of
training activities. It should consider only trainings needed for efficient performance of a judge/prosecutor, as well as additions identified during the performance assessment interview, mentoring of less-experienced judges, participation in relevant task forces and working groups, introducing obligatory trainings for promotion to a higher instance, change of a legal area or becoming head of judicial authority, etc.

509. **For the promotion of judges to a higher instance court, the Judicial Council publishes an announcement in line with the Plan of Vacant Judge Positions.** Apart from meeting general and specific criteria for judges in these courts, candidates are ranked by the Judicial Council based on performance assessments and interviews. For open competitions, interviews focus on the same set of soft skills - motivation, communication skills, conflict resolution and decision-making skills and understanding of the role of judge in society.

### 7.3. Disciplinary procedure

510. **Disciplinary procedures for judges from 2014-2016 were handled by the Disciplinary Prosecutor, who proposes decisions to the Judicial Council.** The Disciplinary Prosecutor and his/her Deputy are selected by the Judicial Council from judges with more than 15 years of experience at the General Session of the Supreme Court. Disciplinary procedures can be initiated by the court president, the president of the High Court and the Supreme Court, the Committee for the Code of Judicial Ethics, and by the General Session of the Supreme Court in the case of the President of the Supreme Court. Before deciding on disciplinary liability and imposing sanctions, hearings are held by the Disciplinary Committee or by the Judicial Council. The Disciplinary Committee, comprised of three Council members, decides on minor and severe offenses. The Judicial Council as a whole considers the most severe disciplinary breaches. The law specifies minor, severe and “most severe” offenses.

511. **Disciplinary procedures for prosecutors were handled by the Disciplinary Prosecutor and decisions were taken by the Prosecutorial Council.** The Minister of Justice, the head of an SPO, the header of a higher instance SPO and the head of the Supreme SPO may initiate disciplinary proceedings, while the dismissal of the Supreme Prosecutor could be initiated by the Minister of Justice whose initiative have to be supported by at least 25 parliament members.

512. **Other stakeholders, such as lawyers and ordinary citizens, could initiate disciplinary procedures only indirectly, by filing a complaint with the relevant ethics committee.** However, this was possible only for claims of tarnishing reputation of the judicial office. Breaches of other ethical provisions, by themselves were not considered as disciplinary offenses.

513. **The most severe disciplinary offenses are those affecting the dignity of the judicial office and the unprofessional or unethical performance of judicial duties.** The unprofessional and unethical performance of duties is defined as resolving fewer than 50 percent of the average number of cases determined by the Councils, engagement in other public or professional functions, receiving two consecutive unsatisfactory performance ratings, or for receiving two prior sanctions for severe disciplinary offenses.

514. **There are a range of penalties available for disciplinary offenses.** The Councils can impose reprimand and financial sanction by a 20 percent salary decrease over three months for minor offenses; financial sanction of a 20-40 percent salary decrease from three to six months; two-year suspensions of promotion for severe offenses, and dismissal for the most severe offenses.
515. From 2014 to 2017, seven disciplinary measures were imposed in courts and one for prosecutors. All the procedures for initiating disciplinary measures for judges were initiated by court presidents, and the Disciplinary Committee applied measures available for the negligent performance of judicial duties. In two cases from 2014, the penalties were maximum salary decreases. For the three cases from 2015 reprimands were imposed. For harming the reputation of the judicial office, a reprimand was imposed for one event in 2014. In addition, in 2017 the Judicial Council supported the proposal of the Disciplinary Prosecutor to suspend a Basic Court judge for the commission of an act that rendered him/her unworthy of holding a judicial office. All three disciplinary procedures initiated against prosecutors in 2015 were rejected as unfounded; one procedure for harming the reputation of the prosecutorial office was initiated in late 2016 but the procedure also was dismissed as unfounded. For one disciplinary procedure initiated in 2017 for not meeting prescribed deadlines for making decisions, the Prosecutorial Council imposed a salary decrease.

Table 27 - Disciplinary initiatives and sanctions imposed by offence type, 2014-2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Negligent performance of judicial duties</th>
<th>Harming the reputation of the judicial office</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># initiated disciplinary proceedings</td>
<td># initiated disciplinary proceedings</td>
</tr>
<tr>
<td>2014</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>2015</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>2016</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

516. The Codes of Ethics for Judges and for Prosecutors were adopted by the Conference of Judges and the Conference of Prosecutors, with separate committees established to monitor implementation. Between 2014 and 2016, 42 complaints were filed, 31 investigations were initiated and four breaches were found, but none led to disciplinary actions. The first complaint submitted by a court president was made in 2016 and in three of the four complaints it considered, the Committee for the Code of Judicial Ethics found that judges of three Basic Courts breached ethical principles – that of impartiality in two cases and relations with colleagues and court staff in one case. The Committee also supported the initiative of a lawyer and confirmed violation of four ethical principles by one Basic Court judge – impartiality; competence; professionalism and commitment at work, and equal treatment of the parties and integrity. Concerning prosecutors, the Committee confirmed the violation of ethical principles in two of three cases submitted but did not initiate disciplinary procedures for these breaches.

---

313 BC Herceg Novi and MC Podgorica
314 BC Herceg Novi
315 All in BC Kotor
316 BC Niksic
317 Failing to submit the property and income disclosure reports is considered as serious disciplinary offence.
318 Composed of all judges and court presidents
319 Niksic, Bije Polje and Bar.
320 Basic Court Kotor.
Training

517. The Center for Training in Courts and State Prosecution designs and delivers initial training to judges and prosecutors and in-service training to various judicial professionals. Its purpose is to improve knowledge and skills that ensure the independent, autonomous, impartial, professional and efficient discharge of judicial duties. The Center provides trainings to judges and state prosecutors, but also can organize sessions for judicial advisers and other employees, as well as trainees, notaries and bailiffs.

518. After functioning as an organizational unit of the Supreme Court for many years, the Center formally became independent in late 2015 and started operations in its current form in 2016. It is overseen by a managing board made up of a judge, prosecutor,321 members of the Judicial and Prosecutorial Councils, a representative of the Ministry of Justice and a law professor selected by the Montenegro Academy of Sciences and Arts. The Programming Council of the Center is comprised of judges and prosecutors selected by the Management Board for four-year terms. It approves the programs, monitors their implementation and proposes improvements, selects teachers from the list of trainers, etc. Support to the design and implementation of training programs is provided by its secretariat.

519. The Center provides initial training for candidates for judges and state prosecutors,322 including both practical and theoretical knowledge and skills. The Center provides training on theory while practical skills are addressed in the courts and SPOs in Podgorica under the supervision of mentors. Trainees and mentors submit reports on training/s delivered and the practice results together with an evaluation of trainees. The Center’s Programming Board for the Initial Training considers these reports and the feedback provided by participants, and submits decision on either “satisfactory” or “unsatisfactory” completion of the initial training to the Councils.

321 Selected by the General Session of the Supreme Court, i.e. the Supreme State Prosecution.
322 Selected by the Judicial Council and the Prosecutorial Council.
520. In-service training supports professional development of judges and state prosecutors, who are expected to undertake at least two days of training annually. The Program of Continual Training is determined by the number of years of experience of participants. Separate training is provided for the presidents of courts and heads of SPOs, judges and state prosecutors whose performance is evaluated as “unsatisfactory”, and those being promoted or changing their areas of expertise. Other courses such as integrity and performance evaluation are available to all judges and prosecutors.

521. The Law on the Training Center\footnote{Adopted in September 2015.} sets the Center’s annual budget as two percent of the court and prosecution budgets. In 2017, approximately EURO 450,000 (only 1.3 percent of the budgets) was allocated to the Center; the allocation in 2016 was only 1.3 percent of the budgets. The Center managed to obtain significant support from donors for its core activities. Estimates indicated the Center received approximately EUR 300,000 from donors in 2016 and approximately EUR 437,000 in 2017.

522. The number of courses, seminars and workshops organized by the Center itself or in cooperation with international partners increased from 63 events in 2015 to 83 in 2016. In 2016, 83 events were organized over 164 training days and 1,413 trainees participated. For 2017, the Centre reported 100 training events and around 1,800 participants. A wide range of legal issues were covered in these courses, but most of them focused on criminal and civil law and human rights. The number of events on and participants in trainings on judicial independence and accountability and general management topics increased during the observed period.

523. More prosecutors and judges as well as prosecutorial and judicial advisors took part in trainings, but not court presidents and heads of SPOs. Considering figures presented in the Center’s 2016 annual report, 92 percent of judges and 84 percent of prosecutors participated in at least one training event. Moreover, a few management and leadership trainings were delivered to heads of judicial institutions in 2016.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure_143.pdf}
\caption{Number of Trainees by Category of Staff, 2014-2016}
\end{figure}
7.5. Gender equity

524. Legislation requires that the Judicial and Prosecutorial Council encourage proportional representation of national minorities and gender balance.324 However, there are no specific provisions for facilitating gender equality within the procedures for recruiting or promoting judges or prosecutors.

525. Gender equity in employment in the Montenegrin judiciary was generally appropriate considering comparable data for EU member states. Montenegro has more female than male judges and deputy prosecutors at all levels. However, there are significant differences in distribution. In one prosecution office and four courts, there are more male than female professionals, while only male prosecutors and judges work in one prosecution office325 and one court.326 Women made up 70 percent of the administrative staff in both courts and prosecution offices.327

526. Nevertheless, women fall far below parity in leadership positions since they made up only 32 percent of Court Presidents and 35 percent of heads of SPOs. In prosecution offices, women occupied leadership positions in five Basic and one High SPO, and in courts they managed operations of four Basic, two Misdemeanor Court and the Administrative and Supreme Courts.

Table 29 - Percentage of Women in Leadership Positions in 2017

<table>
<thead>
<tr>
<th>Court Presidents</th>
<th>32%</th>
<th>62% Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic courts</td>
<td>27%</td>
<td>62% Basic courts</td>
</tr>
<tr>
<td>Higher courts</td>
<td>0%</td>
<td>60% Higher courts</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>100%</td>
<td>72% Supreme Court</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>0%</td>
<td>58% Appellate Court</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>100%</td>
<td>60% Administrative Court</td>
</tr>
<tr>
<td>Commercial Court MNE</td>
<td>0%</td>
<td>60% Commercial Court MNE</td>
</tr>
<tr>
<td>Misdemeanor Courts</td>
<td>67%</td>
<td>63% Misdemeanor Courts</td>
</tr>
<tr>
<td>Higher Misdemeanor Court</td>
<td>0%</td>
<td>67% Higher Misdemeanor Court</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Heads of SPOs</th>
<th>35%</th>
<th>61% State Prosecutors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic SPOs</td>
<td>38%</td>
<td>61% Basic SPOs</td>
</tr>
<tr>
<td>Higher SPOs</td>
<td>50%</td>
<td>67% Higher SPOs</td>
</tr>
<tr>
<td>Supreme SPO</td>
<td>0%</td>
<td>50% Supreme SPO</td>
</tr>
<tr>
<td>Special SPO</td>
<td>0%</td>
<td>64% Special SPO</td>
</tr>
</tbody>
</table>

7.6. Age structure

527. By 2022, some 25 percent of both judges and state prosecutors will be old enough to retire. This will particularly affect four courts and one SPO with significant numbers of judges and prosecutors over 60 years of age – the Supreme Court, Appellate Court, Administrative Court and the Higher Misdemeanor Court and the Supreme SPO. This presents a challenge for succession planning.

325 Rozaje.
326 Basic Court Zabljak.
327 Since not all judicial authorities submitted the data, this figure should be treated as a general depiction of staff gender structure.
Table 30 - Age Structure of Judges and State Prosecutors in 2017

<table>
<thead>
<tr>
<th>Age structure</th>
<th>up to 40</th>
<th>41-50</th>
<th>51-60</th>
<th>over 60</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>313</td>
</tr>
<tr>
<td>Basic courts</td>
<td>58</td>
<td>83</td>
<td>95</td>
<td>77</td>
<td>143</td>
</tr>
<tr>
<td>Higher courts</td>
<td>2</td>
<td>14</td>
<td>22</td>
<td>17</td>
<td>55</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>12</td>
<td>19</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>Commercial Court MNE</td>
<td>0</td>
<td>5</td>
<td>5</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Misdemeanor Courts</td>
<td>9</td>
<td>12</td>
<td>21</td>
<td>7</td>
<td>49</td>
</tr>
<tr>
<td>Higher Misdemeanor Court</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>SPOs</td>
<td>37</td>
<td>23</td>
<td>28</td>
<td>29</td>
<td>117</td>
</tr>
<tr>
<td>Basic SPOs</td>
<td>36</td>
<td>12</td>
<td>14</td>
<td>13</td>
<td>75</td>
</tr>
<tr>
<td>Higher SPOs</td>
<td>1</td>
<td>5</td>
<td>7</td>
<td>8</td>
<td>21</td>
</tr>
<tr>
<td>Supreme SPO</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Special SPO</td>
<td>0</td>
<td>6</td>
<td>4</td>
<td>1</td>
<td>11</td>
</tr>
</tbody>
</table>

528. Court presidents and heads of prosecutions were mainly elected among professionals with substantial prior experience. The statistics show that 76 percent of court presidents and 95 percent of SPO heads were older than 51 in 2016, the only year for which data could be retrieved.

Table 31 - Age structure of Court Presidents and Heads of SPOs in 2016

<table>
<thead>
<tr>
<th>Age structure</th>
<th>30-39</th>
<th>40-49</th>
<th>51-59</th>
<th>over 60</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts</td>
<td>8%</td>
<td>16%</td>
<td>52%</td>
<td>24%</td>
</tr>
<tr>
<td>Basic courts</td>
<td>7%</td>
<td>20%</td>
<td>47%</td>
<td>27%</td>
</tr>
<tr>
<td>Higher courts</td>
<td>0%</td>
<td>0%</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>Commercial Court MNE</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Misdemeanor Courts</td>
<td>33%</td>
<td>0%</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>Higher Misdemeanor Court</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>SPOs</td>
<td>0%</td>
<td>6%</td>
<td>71%</td>
<td>24%</td>
</tr>
<tr>
<td>Basic SPOs</td>
<td>0%</td>
<td>8%</td>
<td>77%</td>
<td>15%</td>
</tr>
<tr>
<td>Higher SPOs</td>
<td>0%</td>
<td>0%</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Supreme SPO</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Special SPO</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
</tr>
</tbody>
</table>

7.7. Salary of Judges, Prosecutors and Administrative Staff

529. Since 2016 the salaries of judges, prosecutors and staff in Montenegro judiciary have been regulated by the law applicable to all public sector employees. The previous salary provisions for staff had been in effect since 2012 and for judicial officials since 2007. Revision of the salary scheme in 2017 resulted in 7-14 percent reductions of salary coefficients for judicial officials and by 14 percent for judicial advisors at the highest instances. Salaries are composed of a basic salary (fixed compensation for regular work calculated by multiplying the coefficient foreseen for specific
categories of jobs, with their value set by the Government on an annual basis), and supplements for meals and refreshments, years of service and bonuses for extraordinary performance. Additional payments of up to 45 percent of the basic salary can be made for overtime work, on-call duty and work on public holidays and bonuses for special duties of up to 30 percent of basic salary.

Table 32 - Salary Coefficients in the Judicial System

<table>
<thead>
<tr>
<th>Position in the Court System</th>
<th>Position in the Prosecutorial System</th>
<th>Salary Coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>President of the Supreme Court and the Constitutional Court</td>
<td>Supreme State Prosecutor</td>
<td>25.94</td>
</tr>
<tr>
<td>Deputy President of the Supreme and Constitutional Court</td>
<td>Deputy of the Supreme State Prosecutor</td>
<td>23.34</td>
</tr>
<tr>
<td>Judge of the Supreme and the Constitutional Court</td>
<td>Prosecutor of the Supreme State Prosecution</td>
<td>22.48</td>
</tr>
<tr>
<td>President of the Appellate Court</td>
<td>Chief Special Prosecutor</td>
<td></td>
</tr>
<tr>
<td>President of the Administrative Court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge of the Appellate Court dealing with the organized crime, fight against corruption and money laundry, terrorism and war crime</td>
<td></td>
<td>21.62</td>
</tr>
<tr>
<td>Judge of the High Court dealing with the organized crime, fight against corruption and money laundry, terrorism and war crime</td>
<td>Prosecutor of the Special State Prosecution</td>
<td>20.75</td>
</tr>
<tr>
<td>Judge of the Appellate and the Administrative Court President of the High Court and the Commercial Court</td>
<td>Head of the High Prosecution</td>
<td>19.89</td>
</tr>
<tr>
<td>Judge of the High Court and the Commercial Court President of the Basic Court</td>
<td>Prosecutor of the High Prosecution Head of the Basic Prosecution</td>
<td>19.02</td>
</tr>
<tr>
<td>President of the Higher Misdemeanor Court</td>
<td></td>
<td>17.29</td>
</tr>
<tr>
<td>Judge of the Higher Misdemeanor Court President of the Misdemeanor Court</td>
<td></td>
<td>15.99</td>
</tr>
<tr>
<td>Judge of the Basic Court</td>
<td></td>
<td>15.56</td>
</tr>
<tr>
<td>Judge of the Misdemeanor Court</td>
<td></td>
<td>12.53</td>
</tr>
</tbody>
</table>

530. Salaries depend on the court and prosecution instance, i.e. judges and prosecutors of higher instance have a higher salary. Salaries of judges and prosecutors are equal by the law – they share the same base tenure and denominator on the same levels, although differences can occur due to the salary additions mentioned above. During the probation period, candidates for judicial positions receive 70 percent of the salary for that position.

531. The recent European trend observed by CEPEJ of a correlation between judges’ and prosecutors’ salaries, is reflected in the new salary law in Montenegro. Generally, this was also true under the earlier salary provisions. At the beginning of their careers, basic prosecutors have higher salaries than misdemeanor and the same as Basic Court judges. At the end of the career, their salaries

---

328 70 percent of the gross salary coefficient value.
329 Specified by Collective Agreement.
330 Bonus criteria are set by the Judicial Council for judges and non-judge staff within the approved budget.
331 Specified by the Collective Agreement.
332 The Judicial Council decides on bonuses for judges, within the approved budget.
equalize, except for the slightly higher salary (approximately three per cent) for the president of the Supreme Court.

532. **Compared to the national average salary, judges in Montenegro are adequately rewarded for their services.** In 2017, judges earned 3.4 times more than the national average salary in Montenegro (2.9 at first instance to 4.7 at the Supreme Court), which was within the range of EU Member States monitored by the CEPEJ\textsuperscript{334} and even above the average. Only in Bulgaria, Cyprus and Romania did judges earn more in relation to their national average salaries both at the beginning of the career and when they serve in the highest courts.\textsuperscript{335} In Latvia, as the country with comparable national average salary to Montenegro but with almost twice GDP, judges’ salary ranged from 2.2 to 4.3 of the national average salary.

533. **In principle, the salary of administrative staff is not linked to the level of court or SPO.** An exception to this rule is made for judicial advisors, for whom there are two salary coefficients - 10.81 for those working at the Supreme Court and the Supreme Prosecution Office, and eight for those in other judicial offices. Other staff coefficients range from 2.6 for public employees to 7.4 for Independent Advisor I. The positions of the Secretary General in the Supreme Court, the Supreme Prosecution and the Judicial and Prosecutorial Council have 15.56 assigned salary points. Trainees fall within a separate staff category and are entitled to a share of the national average salary – 60 percent for those with university diploma, 50 percent for those with higher and 40 percent for secondary education levels.

534. **Salaries for prosecutors in Montenegro were appropriate compared to EU benchmarks.** In relation to the national average net salaries, prosecutor’s salary was 2.6 times higher in 2014 and 3.0 in 2017. Montenegro also compares well with European benchmarks, with its salaries for prosecutors in Basic POs (2.5 times higher than the national average salary), the Supreme Prosecution Office (4.8 times higher) and for those in the Special Prosecution office (4.5 times higher 4.5) in 2017. Among EU member countries,\textsuperscript{336} these indicators range from 0.8\textsuperscript{337} to 3.8\textsuperscript{338} at the beginning of career and from 2.0\textsuperscript{339} to 6.4\textsuperscript{340} at the highest instance.

<table>
<thead>
<tr>
<th>Table 33 -- Net Salary Expenditures of Prosecutors, 2014-2017 (in EUR)\textsuperscript{341}</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Net Salaries</strong></td>
</tr>
<tr>
<td>Basic Prosecutions</td>
</tr>
<tr>
<td>1030464</td>
</tr>
<tr>
<td>Higher Prosecutions</td>
</tr>
<tr>
<td>275215</td>
</tr>
<tr>
<td>Supreme Prosecution</td>
</tr>
<tr>
<td>305252</td>
</tr>
<tr>
<td>Special Prosecution</td>
</tr>
<tr>
<td>0</td>
</tr>
<tr>
<td>Total Prosecutions</td>
</tr>
<tr>
<td>1610931</td>
</tr>
</tbody>
</table>


\textsuperscript{335} The average gross annual salary in Bulgaria and Romania is much lower than in Montenegro.

\textsuperscript{336} These figures are from the CEPEJ 2016 Report (2014 data).

\textsuperscript{337} Ireland.

\textsuperscript{338} Bulgaria.

\textsuperscript{339} Denmark.

\textsuperscript{340} Italy.

\textsuperscript{341} These calculations were based on the Prosecutorial Council’s financial report.
Non-salary compensation may be excessive in Montenegro. On average, “other compensation” equals only 0.4 percent of a judge’s salary. However, in a few courts other compensation equaled five or seven percent of salaries in 2014 and 2015. This practice was discontinued in 2016, but the expense category should still be monitored.

Table 34 --Judge Salaries and Other Expenditures in 2017 (in EUR)

<table>
<thead>
<tr>
<th></th>
<th>Average Judge Salary</th>
<th>Average Other Compensation as share of Salary</th>
<th>Range of Other Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>26563</td>
<td>78</td>
<td>0.3%</td>
</tr>
<tr>
<td>Higher Courts</td>
<td>34581</td>
<td>124</td>
<td>0.4%</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>43338</td>
<td>63</td>
<td>0.1%</td>
</tr>
<tr>
<td>Appellate Court</td>
<td>36554</td>
<td>194</td>
<td>0.5%</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>40795</td>
<td>254</td>
<td>0.6%</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>40173</td>
<td>485</td>
<td>1.2%</td>
</tr>
<tr>
<td><strong>Total Courts</strong></td>
<td><strong>31454</strong></td>
<td><strong>124</strong></td>
<td><strong>0.4%</strong></td>
</tr>
</tbody>
</table>

The reform of the public-sector salary system in 2016 brought a 29 percent increase in average staff salaries in courts and a 50 percent increase of the average staff salaries for prosecution offices. In 2017, the average salary of staff in prosecution offices reached the national average, while staff in courts earned slightly less.

An upward trend in expenditures for “other compensation” of non-judge staff requires close monitoring. In 2017, these doubled compared to 2015 and tripled compared to 2014. There was an increase in number of courts that used these resources each year, and an annual increase in the percentage of other compensation to salary. This percentage ranged from zero to three percent. Although the amounts of individual other compensation payments were low, allocations of these funds to individual staff members should be monitored to prevent favoritism. “Other compensation” could not be examined for prosecution offices because there was no disaggregated data from 2014 to 2017 available for review.

---

342 Based on available data, it was not possible to determine how much of the overall figures for SPOs was paid to prosecutors and how much to their staffs.
Table 35 - Other Compensation to Courts' Administrative Staff in 2017 (in EUR)

<table>
<thead>
<tr>
<th></th>
<th>Average Gross Salary of Staff</th>
<th>Average Other</th>
<th>Other Compensation as share of Salary</th>
<th>Range of Other Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>8691</td>
<td>87</td>
<td>1.0%</td>
<td>0.0%-1.6%</td>
</tr>
<tr>
<td>Higher Courts</td>
<td>9618</td>
<td>62</td>
<td>0.6%</td>
<td>0.6%-0.7%</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>12196</td>
<td>0</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td>Appellate Court</td>
<td>8775</td>
<td>19</td>
<td>0.2%</td>
<td></td>
</tr>
<tr>
<td>Administrative Court</td>
<td>9656</td>
<td>79</td>
<td>0.8%</td>
<td></td>
</tr>
<tr>
<td>Commercial Court</td>
<td>9085</td>
<td>52</td>
<td>0.6%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Courts</strong></td>
<td><strong>9022</strong></td>
<td><strong>74</strong></td>
<td><strong>0.8%</strong></td>
<td><strong>0.0%-1.6%</strong></td>
</tr>
</tbody>
</table>

7.8. Recommendations

To ensure the equitable treatment of everyone working with the judicial system and evidence-based decision-making on human resource issues Montenegro should:

- Establish a personnel tracking system with a new Human Resource Information System (HRIS). The first step would be forming a long-term working group that includes career and political representatives of the MoJ, as well as judges and prosecutors from all levels of courts and SPOs. consult for information and suggestions about the design and operation of the HRIS. (MoJ, JC, PC – short term and continuing)

- Provide training on strategy development, project management and budgeting to all members of the working group who have not had that training in the last two years. (Training Center - short term)

- Retain long-term consultant(s) for the working group to advise on various aspects of the group’s organization and operations. The working group should be responsible for selecting the consultants, but if the consultants are charging for their fees or expenses those arrangements would have to be approved by the MoJ. (Working group and MoJ - short term and continuing)

- Provide all resources needed for the working group to engage one or more long-term consultants with expertise on the design and implementation of computerized human resource information systems, to help the group develop (a) a design and implementation schedule for the system, including the entry of existing data into the HRIS; (b) a budget covering all aspects of the system and the dates when the funding needs to be available, and (c) definitions of the quantitative and qualitative data the system would need for all aspects of evidence-based decision-making, including procedures for data collection and verification. (JC and PC - short term and continuing).

343 Such as determining the number of judicial officials and their staff, performance monitoring for individuals and the HR system, assessments of training needs for individuals, etc.
✓ As the HRIS becomes closer to implementation, require the working group to make its own recommendations for the performance monitoring of the system's performance monitoring and for HRIS in the future. These should be posted on the websites of the MOJ, JC and PC. (Working group - medium term)

✓ Require the working group (preferably in conjunction with the Training Center) to draft outlines of the training needed for end-users of the HRIS at all levels and all institutions. The type and amount of training would vary by the job descriptions of the users; all training should be available on a periodic schedule through the year so new employees and those assigned to different jobs can receive the training they need to fulfil their duties. (Working group - short-term and continuing).

As the working group completes developing its plans for the HRIS, arrangements for funding the technical development of HRIS, its installation, implementation and future maintenance and upgrades need to be put in place. In addition, to ensure the new HRIS will be useful, Montenegro should:

✓ Ensure that all non-judge/non-prosecutor staff-related data are entered into the existing HRMIS (administered by the Personnel Management Service) and regularly updated (JC, PC, courts and SPOs - short term).

✓ Ensure the data are regularly updated in HR systems (JC, PC - medium term and ongoing).

✓ Assign responsibility for ensuring that the transfer of data is completed and that the data is updated regularly to one or more specific individuals. Those responsibilities should be part of the person’s annual performance assessments. (JC, PC, courts and SPOs - short term and continuing).

538. Montenegro needs to base the number of judges, prosecutors and their staffs on transparent, objective criteria that correspond to their caseloads and workloads, to increase public confidence in the system and ensure that resources allocated to the system are used efficiently. To reach this goal, Montenegro should:

✓ Conduct the performance assessment of the most and least efficient and effective courts and SPOs recommended in the Quality of Justice Services and Financial Management chapters and publish the results on the websites of the Supreme Court and Supreme Prosecutor Office. (JC and PC – short term)

✓ Require training for the JC, PC, all court presidents and the heads of SPOs and their relevant staff members, on the use of HR analytics to set and achieve performance goals. The training should be updated and provided at least every two years. (Training Centers - short term and continuing).

✓ Select efficiency, quality and access to justice goals for all levels of courts and SPOs, in five-year increments over the next 15 years. (JC, PC - short term and continuing)

✓ Factor the results of the assessment of the most and least efficient courts into a revised version of the case weighting methodology adopted by the Judicial Council in 2016, to
determine the appropriate number of judges and their staff members of every type of case for each jurisdiction level, and to project the number and levels of judges and staff the system will need to reach the selected efficiency, quality and access to justice goals in five-year increments over the next 15 years. (JC - short term and continuing)

✓ Develop a corresponding case-weighting methodology for the prosecutorial system, also recommended in the Quality and Financial Management chapters, and publish the results on the PC website. (PC - short term and continuing)

✓ Prepare new systematizations of courts and prosecutor’s offices in line with changes to the internal organization of judicial institutions. (JC, PC - medium term)

✓ Adopt any constitutional, legislative and regulatory changes necessary to ensure the numbers and types of judicial personnel are based on transparent, objective criteria.

✓ Prepare manuals for all appropriate agencies so the process of determining the appropriate numbers and types of judges, prosecutors and staff can be determined and revised at regular, pre-determined intervals in the future. (JC, PC – medium term and continuing)

539. To prevent any increases in the total numbers of judges, prosecutors and staff until the transparent, objective methodology is developed to determine the needed number of judges, prosecutors and staff, Montenegro should:

✓ Create additional incentives to encourage individuals to accept temporary or permanent transfers, including salary bonuses and points toward promotion. (JC, PC, MoJ and MoF - short term)

✓ Strictly limit hiring of temporary staff and contractors, by making the addition of these staff contingent on the approval of both the MoJ and the appropriate Council (JC, PC, MoJ and MoF - short term and continuing)

✓ Develop a staff reduction plan for the courts and prosecution offices to rationalize the numbers and categories of non-case handling staff (cleaners, drivers, bailiffs, typists, registry staff, maintenance staff, etc.). The plan should consider outsourcing or centralizing some of these support functions. (JC, PC - short term)

✓ Develop job descriptions and performance evaluation criteria and provide funding for positions that would produce greater efficiencies in the system, such as mid-level specialist staff, additional management and other training, and ICT and infrastructure investments. (JC, PC - medium term)

✓ Develop a position classification scheme for support staff based on uniform job descriptions and responsibilities. (JC and PC - medium term)

540. To enhance quality, increase efficiency and raise public trust in the judiciary in line with EU standards, Montenegro should strengthen existing procedures systems for selecting, appointing, evaluating and promoting judges, prosecutors and trainees by:

✓ Requiring graduates of the Judicial Training Center to accept appointment to any court and SPO that needs them, and modify relevant legislation accordingly. (JC, PC and Parliament - short-term)
Ensure that the performance evaluations for individuals are aligned with and support the institutional performance monitoring framework recommended in the Quality chapter by:

- Including appropriate leadership and management skills in the selection criteria for judges and prosecutors at different levels, and incorporating the development of more sophisticated leadership and management skills in individual performance plans. (JC and PC - medium term)

- Requiring members of the JC, PC, court presidents and heads of SPOs to complete training on leadership, management skills and results-based management. Completion of that training as one of the job requirements and assessment criteria for those positions. (Training Centre, JC, PC - medium term and continuing)

- Linking performance evaluations more directly to promotions. This process could include giving preference to judicial officials who have served in multiple courts/prosecutions or voluntarily worked on backlog reduction plans in their own courts/SPOs or others, or participating in reform activities, etc., and establishing more rigorous standards for the achievement of a satisfactory rating, etc. (JC, PC, short term and continuing).

- Creating a performance evaluation process and criteria and career path for judicial assistants. (JC, PC - short term)

- Ensuring that the Training Center has all the necessary resources to conduct or to contract for all the trainings required by the recommendations of all chapters of this Functional Review (Training Center – short term and continuing)

- Measuring the Training Center’s performance is measured against specific, pre-determined indicators, although the indicators may be revised over time as the training needs of those in the system change. (Training Center, JC and PC - medium term and continuing)

Engaging one or more EU-specialist consultants to improve the skills of the Councils’ Selection Panels, including interview techniques and the evaluation of soft-skills required for judges and SPOs, and drafting justifications for HR decisions. Consultants also should be used to improve the following governance aspects of the HR system:

- Developing standards and procedures for designing plans for all trainee positions and the recruitment and selection of trainees. (JC and SC, PC and SP, MoJ - short term)

- Developing an improved examination system for the initial training program to ensure that only qualified trainees receive diplomas. (Training Center, JC, PC - medium term)

- Developing criteria and techniques for mentors in courts and prosecutor offices to evaluate trainees, and train the mentors accordingly. (Training Centre, JC, PC - medium term)

- Delivering mandatory training on leadership, management skills and results-based management for the JC, PC, court presidents and heads of SPOs on a regular basis. (Training Center, JC, PC - medium term and continuing)
8. ICT MANAGEMENT

General findings

541. This chapter provides an outline of ICT management while focusing on the issues of governance, equipment, communication and functionalities of the case management system. ICT has a direct impact on the efficiency and quality of the public service of justice through the assistance it provides to judges, prosecutors and clerks. It also facilitates access to justice through provision of electronic communication tools for justice professionals and court users (i.e. citizens and businesses). This chapter will touch on aspects of ICT management from the perspective of the Judicial ICT Development Strategy and interviews held with key system stakeholders on the Strategy’s objectives.

542. The development of Montenegro’s justice sector ICT lies at the average level compared to other European countries. A recent CEPEJ study on the use of ICT in European Courts places Montenegro at the medium development level in IT equipment and governance, but scores the legal framework for ICT management slightly lower. Compared to its regional (both EU and non-EU) peers, Montenegro ranks second with a score of five, just behind Croatia with its score of six.

543. ICT development is governed by the 2016-2020 Strategy for Judicial ICT. The strategy focuses on the development of a Judicial Information System (JIS) which will integrate all existing and new software into a single platform. The strategy examines issues of development and implementation of JIS, infrastructural arrangements, data exchange between JIS and outside systems, service orientation aspects and necessary financial and human resources. Although the strategy contains detailed estimates of budgetary requirements, the financing sources are not clearly defined.

544. The current ICT budget does not correspond to the agenda set forth by the Strategy. The total budget estimate for successful strategy implementation stands at EUR 6.7 million most of which is planned for the purchase of adequate infrastructure and licenses. In recent years there were higher than usual discrepancies between the requested and approved ICT budgets. As an illustration, in 2016 the requested funds were at EUR 2 million while the approved budget was only EUR 210,000.

545. While Montenegro has tried to increase the accessibility of justice services through the development of web-based channels, the interoperability of existing ICT systems supporting different business processes is minimal. For instance, one of the consequences of the lack of communication between case management and financial management software is the growing level of case-related financial commitments that are settled through enforced collection. This is both expensive and non-transparent.

546. The case management system used in courts (PRIS) is more than a decade old; overall it has shown satisfactory performance despite issues encountered in early development stages. Initially it was designed to be used by both courts and SPOs, but because of unresolved ownership issues it was never rolled out to include SPOs. PRIS supports case initiation, processing and reporting and facilitates random allocation of cases to judges. In 2018 the SPOs have started using their own case management

---

344 The World Bank defines ICT as “the hardware, software, networks and media for the collection, storage, processing, transmission and presentation of information (voice, data, text and images), as well as related services”. ICT is comprised of ICI (information and Communication Infrastructure) and IT (Information Technology).
systems (IBM Case Manager) but it is not yet fully operational. While these two systems are currently not interoperable, their full integration is expected once JIS in place, as outlined by the ICT strategy.

8.1. Benchmarking analysis

547. On a scale from 3 to 9, Montenegro scored 5 on the overall ICT development index elaborated in the newest (i.e. 2016) CEPEJ thematic report on the Use of Information Technology in European Courts.\textsuperscript{345} The overall scores are reached by adding the scores on three individual indices measuring equipment, the legal framework and governance. Montenegro’s individual scores were 2 for equipment, 1 for the legislative framework and 2 for governance.

\textbf{Box 14 - the CEPEJ scoring system for ICT development}

In each of the three indices, a score of 1 indicates early development, while a score of 2 suggests an ongoing development. The highest score of 3 implies that the development within the category is “almost or fully completed.” The IT equipment category measures the level and use of IT equipment for: i) direct assistance to judges, prosecutors and court staff in terms of material and intellectual assistance, ii) administration of the courts and case management, and iii) communication between courts, professionals and court users. Governance dimension looks into the development stage of project management and strategic governance in IT, while the legislative framework score indicates how well the legislative framework supports electronic communication between courts, professionals and court users.

548.

549. Compared to the other countries included in the report\textsuperscript{346} Montenegro is estimated to be at the average ICT development level. Only a few countries earned the maximum score of 9 (Austria, Germany, Czech Republic) while most of the other EU member countries were around the average of 6-7. The lowest ranking EU member countries were Luxembourgh, Malta, Greece and Romania with scores of 5, just as Montenegro. The picture across the regional peer group in terms was mixed. Albania was at the lowest development level with an overall index value of 3, followed by Serbia and Bulgaria with scores of 4. Croatia was on top with a score of 6 while Bosnia & Herzegovina also received a 5.

8.2. Governance of ICT

550. The most important piece of legislation governing judicial ICT is the Strategy for Judicial ICT for the period 2016-2020, as approved in 2015. In addition to the general review done by CEPEJ, Montenegro conducts periodic, although uncoordinated and irregular, ICT related diagnostic analyses. These analyses focus mainly on case management software and its functionalities;\textsuperscript{347} the most comprehensive analysis was done as part of preparing the Strategy. The document deals with seven performance areas identified as the most critical in achieving the Strategy’s objectives: i) development and implementation of software for an integrated and comprehensive JIS; ii) JIS as a tool for raising

\textsuperscript{345} available from https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20CEPEJ%20Study%2024%20IT%20Report%20%20EN.pdf

\textsuperscript{346} The countries covered include Council of Europe members except Liechtenstein and San Marino.

\textsuperscript{347} See for instance “Expert report on a peer review on judicial statistics and the functioning of PRIS” by Mario Osswald
analytical capacities in the judiciary; iii) data exchange between JIS and outside software; iv) implementation of an e-service platform for citizens and businesses; v) ICT infrastructure; vi) JIS security, and vii) governance and human resources.

551. The Strategy is centered around implementation of the Judicial Information System. All aspects of the Strategy listed above are dedicated completely to its realization. JIS is envisaged to gradually enable Montenegro’s judicial institutions to perform fully automated and paperless business activities. The Strategy requires that all current software (e.g., case management software) be transferred to a single platform, while new software components would be based on a specific business needs assessment to be developed simultaneously. The Strategy underlines the importance of investments in network infrastructure and a data center to enable more efficient data flow and system stability and security.

552. The Strategy’s Action Plan provides a budget estimate for successful implementation of its activities. The total required funds are determined at EUR 6.4 million with the planned expenditure peaking in 2017 requiring EUR 2.7 million. However, the funding source for each of the activities in the Action Plan is not clearly defined and is mostly identified as a mix of budgetary and donor funds in unknown proportions. The Strategy’s risk assessment recognizes that lack of financial resources would impede implementation, but unfortunately it is impossible to determine the precise risk levels given the current budgetary trends, since there is no estimate of the required investments within the Strategy itself. The Action Plan envisages a series of activities organized by the objectives set forth by the Strategy.

553. Montenegro established two bodies as institutional mechanisms for achieving the objectives laid out in the Strategy – the Committee for Monitoring and Coordination of the ICT Strategy and a working group. While the mandate of the former is self-explanatory, the working group is responsible for successful implementation of operational activities set out in the action plan. In most countries the strategic management of ICT system is delegated to a group of individuals with mixed professional and educational backgrounds to reflect the multidimensional aspects of ICT modernization and reforms. Some countries, as indicated by the CEPEJ ICT report, select exclusively non-justice personnel for the committees dealing with strategic governance issues. Others, like Hungary and Lithuania, place only judicial staff on the committees. Montenegro opted to staff the committee with representatives of both the JC and PC, the Supreme Court, the MoJ and the Ministry of Telecommunications.

554. Daily judicial ICT operations are managed by the respective ICT departments. The Judicial Council’s ICT department was first established in 2011. It currently employs 15 people with one manager, one system engineer, one programmer and 12 support staff – seven allocated to general ICT support to courts, three for multimedia support (i.e., audio and video recording of criminal cases) and two for case management software support.

555. The JC’s department was understaffed considering the ambitious agenda in the Strategy and Action Plan. The department is responsible for ICT development; provision of access and support to the case management system users; managing the mail server for courts; filtering of traffic; security policies; maintenance of hardware in courts (computers, printers, network equipment, etc.), and provision of audio-visual support for criminal proceedings.

556. The councils should develop a retention policy for ICT staff to stabilize the HR structure of their ICT departments. There are striking differences between salaries in the private and public
sectors. In the last several years there was a significant outflow of the most experienced staff from the JC’s department – three of those leaving were programmers. The available options are to either increase salaries or offer non-financial compensation to selected staff. Finding a solution is especially important in light of the ambitious objectives of the Strategy and the anticipated increase of responsibilities of the judicial ICT.

557. The budgets for ICT development do not correspond to the needs indicated by the ambitious plan to develop and maintain a comprehensive JIS. There are large discrepancies between the financial needs expressed by the judicial ICT and their approved budgets. While the ratio of requested versus approved funds in 2016 was 10:1, as Table 1 below shows, the difference seems to be consistent from the year the ICT is established as a separate function within the judicial system. The table shows that software development takes up almost half of the total budget, in line with the strategic objectives, but even without detailed specifications, it is apparent that these figures are far from sufficient.

558. The relevant section of the estimated budget required for implementation of the Action Plan shows that JIS software development and implementation will cost EUR 1.65 million. This estimate seems reasonable given the size of Montenegro. Regional experience shows that cost estimates for comprehensive information systems such as the one conceptualized in the Strategy reach around EUR 5 million. However, each estimate should pay close attention to the fragmentation of the existing software and their interoperability as well as the costs of new software for business processes that are currently not automated. In addition, licensing and WAN expenses represent significant cost items on the list.

<table>
<thead>
<tr>
<th>Item</th>
<th>Requested</th>
<th>Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>maintenance</td>
<td>400,000</td>
<td>50,000</td>
</tr>
<tr>
<td>software development</td>
<td>550,000</td>
<td>100,000</td>
</tr>
<tr>
<td>consulting services</td>
<td>30,000</td>
<td>0</td>
</tr>
<tr>
<td>trainings</td>
<td>30,000</td>
<td>10,000</td>
</tr>
<tr>
<td>other services</td>
<td>90,000</td>
<td>0</td>
</tr>
<tr>
<td>purchase of equipment</td>
<td>900,000</td>
<td>50,000</td>
</tr>
<tr>
<td><strong>total</strong></td>
<td><strong>2,000,000</strong></td>
<td><strong>210,000</strong></td>
</tr>
</tbody>
</table>

*source: ICT department of JC*

8.3. Equipment

559. Although the use of computers is widespread across the system, most of the current business processes require many manual interventions. For example, case records are kept both in case management systems and manually. Staff claims that the manual records are more reliable because of certain unresolved drawbacks of the existing software (e.g., it is not possible to roll out the status of cases from one year to another).
In 2019 a modern datacenter was established to support the applications running across the system. The datacenter is linked to the network of Podgorica courts with a 1 Gbps capacity. The available storage capacity is 10TB which is estimated to be sufficient given the current level of operations. The production servers which are used to run the case management software are the IBM Blade Center H series while storage is provided by IMB Storevize v7000. The datacenter is equipped with two Juniper EX3200 server switches with SRX series firewall devices. The CPU capacity ranges from 703 GB to the maximum capacity of 4096 GB with processing speeds going from 216 GHz to 512GHz. Storage capacity at the center is effectively around 13 TB. Current network equipment can accommodate traffic of 3 Gbps with 1.5 million maximum concurrent sessions supported. The Strategy estimated that the required upgrade datacenter would cost of this intervention will be EUR 500,000.

From 2014 to 2016 WAN infrastructure was partially set up across the judicial system, however significant challenges remained in the LAN segment. The investments in construction of an optical WAN network were made for the courts in Podgorica and the prosecution offices across the country. All institutions communicate with the datacenter using Juniper SRX 100 or 200 devices while the equipment in the LAN segment is mostly Allied Telesis. Problems with the LAN include: i) instability caused by the size of broadcast traffic combined with poorly planned VLANs that do not have any logical separation of workstations, and hosts with too many computers in same VLAN (a particular issue in large courts); ii) lack of a redundant link which causes frequent failures; iii) lack of centralized monitoring and logging, and iv) overall network performance. Section 5.2. of the Strategy contains a list of items to consider in planning the future investments in upgrading the existing LAN/WAN infrastructure (e.g. accessibility and stability, back-up communication links, monitoring, etc.). The needs of the future JIS play the central role in defining the initial step in future infrastructure design.

Backup and disaster recovery is currently done through the center established in Bijelo Polje by the Ministry for Telecommunications to serve all public institutions. However, section 6.4. of the Strategy and the corresponding part of the Action Plan outline the steps to establish a separate disaster recovery center for JIS only. It requires the development of a new JIS-adjusted Business Continuity and Disaster Recovery Plan. The Strategy also envisages that the source code of all JIS sub-components must be available at the disaster recover location. The total estimated cost of establishing the new Disaster Recovery location for JIS is EUR 200,000.

The average age of workstations in the judicial system is slightly below eight years. In Montenegro’s court system there are about 1,050 computers of which 750 were bought in 2009. ICT staff claim that around 100 of these need to be replaced immediately to ensure smooth functioning of judiciary while the rest can be replaced gradually. In the prosecutorial system there are 290 computers and their average age is five years.

8.4. Electronic communication

Interoperability of the existing ICT systems in Montenegro judiciary is very limited. As discussed in the Financial Management chapter, this not only impedes regular business activities of the judiciary but also adversely impacts the financial position of the system. Specifically, the lack of communication between case management and financial management software creates a situation in which financial departments are not aware of a large number of commitments that are settled through enforced collection, thus imposing additional cost for fees and penalties.
565. The case management systems in courts and SPOs still are not interoperable. Most information is physically delivered or mailed by prosecutors to the courts and vice versa. This creates additional workloads, adds costs for postal services and affects the speed of case processing.

566. Judicial institutions rely heavily on information obtained manually from one another or from other public institutions (the MoI, the National Bank, etc.). A higher level of electronic communication should replace the reliance on traditional paper-based channels.

567. The Strategy recognizes the importance of improving web-based access to justice for citizens and legal professionals. Currently, there is some but far from sufficient assistance available online. The courts have established a joint portal (www.sudovi.me) that contains news feeds and basic contact information about courts as well as information on the general legal framework. The portal also provides access to a comprehensive database of court decisions which is searchable by type of case, case number, court and year. It also contains hearing calendars. Similarly, the SPOs have established a web portal for its offices across the country (www.tuzilastvo.cg). Apart from general and contact information and a series of different reports, the portal provides access to the latest indictments. However, the indictment database is not searchable.

568. As already mentioned, the Strategy advocates the introduction of a single Judicial Information System for the courts which would resolve most of the above issues. However, its implementation may take significant time and would require considerable financial and human resources both for its completion and subsequent management and maintenance.

569. ICT authorities have an intermediate solution in mind to integrate and enable more effective communication with outside systems. The intermediate solution is to connect the judicial case management systems to the following registries of i) citizens; ii) legal entities; iii) firearms registrations; iv) border crossings; v) criminal antecedents; vi) fines and vii) the tax administration registry. This solution would enable communication of case management software with many outside services but does not resolve the internal challenges. Officials are considering introduction of a model which implements a communication system between mutually interacting software applications, working much faster and more reliably than head-to-head communication between each of them. The alternative to this model would be manual programming of data exchanges, which is very inefficient and resource-consuming.
8.5. Case Management Systems Functionality

570. Case management systems used in Montenegro are the judicial information system PRIS\(^{348}\) in courts and the IBM Case Management System (IBM CMS) in SPOs; the ICT Strategy for 2016 – 2020\(^{349}\) announced the implementation of a completely new system by 2020. Under the ICT Strategy, the MoJ plans to develop a conceptually unique ICT system to cover the business processes of the MoJ, the courts, the SPOs and the Institute for the Execution of Criminal Sanctions (IECS). This new JIS system will be structured through four interoperable subsystems (for courts, SPOs, the MoJ and the IECS). The goal is to establish a modern and customized user-friendly, unique information system for the judiciary which will facilitate strengthening of its administrative capacity. ICT should also provide data for more effective cooperation with other judicial systems, EU institutions, EU Member States and other international organizations. The overall objective is to create a “paperless judiciary”.

571. The most significant progress in ICT has been achieved in courts, where PRIS has already been used for a decade. The development of PRIS commenced in 2006 and lasted for several years. After initial development by a private company, the JC’s ICT department took over its maintenance and all following upgrades. Although PRIS was firstly designed as an integral system for courts, SPOs and IECS, the modules for SPOs and IECS have never been fully developed and rolled out. In courts, PRIS functionalities support case initiation, case processing (including case flow between Basic and High courts) and reporting (for internal and external purposes, e.g., CEPEJ). PRIS also facilitates random allocation of cases to judges and use of electronic forms for decisions and other documents.

572. The JC reported that PRIS is based on outdated technology and that for all its main software components vendor support has been discontinued.\(^{350}\) This was identified as a serious security risk since there would be no security updates from the vendors, Microsoft and Oracle. Additionally, outdated technologies significantly deter regular system maintenance, prevent further development, waste resources and excessively burden dedicated experts in the JC.

573. Even though the list of PRIS functionalities is lengthy, its use has had some shortcomings. Some of them include the lack of clear responsibility for accuracy of data at the early stages of implementation. Several years ago, legal changes placed this responsibility with court presidents. This increased the quality and reliability of data but has not contributed to the popularity of the system over manual records.

574. PRIS was not implemented in the newly established Misdemeanor Courts. This means that these courts will need to manage their case processing and reporting on paper at least until the JIS is in place. This decision should be reconsidered to determine the merits of PRIS’s provisional implementation in the Misdemeanor Courts during the transitional period.

575. According to a peer review expert report\(^{351}\) PRIS has faced serious problems since its introduction. The Report identified these problems as: imprecise initial definition of scope,  

\(^{348}\) PRIS is the abbreviation for “Pravosudni informacijski sustav”.  
\(^{350}\) Windows Server 2003R2 in 07/2015, Oracle Database 11g in 12/2015, Oracle Application Server 10g in 12/2011 and Oracle JAVA Runtime 1.7 in 04/2015.  
\(^{351}\) Expert Report on a Peer Review on Judicial Statistics and the Functioning of PRIS, Podgorica, 2015, Mario Osswald, Head of IT Department at the Data Protection Commissioner of the Free State of Saxony / Germany.
requirements, functionality and project steering; unfavorable initial technology decisions; unclear initial ownership and changing responsibility of assignment; no transparent procedures on functionality enhancement among stakeholders; no predictable allocation of sufficient annual public budgets (project money instead); insufficient human resources for further development, maintenance, support and training; and inappropriate network bandwidth to remote locations outside Podgorica. Furthermore, the Report described PRIS as a heavy legacy and a burden with insecure and vulnerable components that offer no painless migration.

576. While PRIS was initially intended for SPOs, this idea was abandoned over time and the IBM CMS was implemented in August 2016 as an independent solution for SPOs. IBM CMS is a modified off-the-shelf software solution for managing cases, documents, and workflows. It has been implemented in all SPOs in 2018 and, as reported by prosecutors interviewed for the FR, still has not overcome all early problems.

577. Only the first phase of development of IBM CMS has been completed. Reporting and interoperability with other systems are planned for the phase(s) to be completed by the end of 2019. The system records cases and supports their processing in SPOs while it also enables the users to access the MoJ’s criminal evidence system. Future upgrades to IBM CMS will include reporting modules, web services and a module for PC administrative cases. During the Functional Review team’s visits, the interviewed stakeholders from SPOs said they still were not satisfied with the new system; they reported electronic case processing inconsistencies and lack of proper training.

578. Lack of a unified reporting system for SPO’s impedes informed decision making in managerial layers of the SPOs and in the PC. Until IBM CMS is able to produce reliable and unified statistics on a national level as well as allowing their further disaggregated, SPOs’ management can only rely on unstandardized, inconsistent and fragmented individual paper-based reports. Weaknesses in data collection and analysis impede the assessment of the effectiveness of processes and organizational structures, as well as resource optimization.

579. PRIS and IBM CMS are not interoperable. Most information is mailed or hand-delivered by prosecutors to the courts. This process causes delays in case processing and significant duplicate data entry by staff in both courts and SPOs.

580. It is unclear from the ICT Strategy if IBM CMS will be used as a subsystem of the future JIS, but that would be the most rational next step, since IBM CMS was recently developed.

8.6. Recommendations

581. All of the following recommendations are necessary to promote the implementation of the Judicial ICT Strategy and its accompanying Action Plan. The Strategy is a well-structured and comprehensively documented and the judiciary depends on the ICT the Strategy is designed to accomplish.

✓ Perform a formal assessment of the implementation of the Strategy, and publish the results on the MoJ web page. (MoJ - short term)
✓ Adjust the Action Plan for the Strategy based on the assessment’s findings. (MoJ - short term)
✓ Expand the Strategy Coordination and Monitoring Committee to include appropriate representatives from the budget department of the Ministry of Finance. Their inclusion should
make it easier to avoid delays in Strategy implementation based on the Ministry’s lack of information about implementation progress. (MoJ - short-term)

✓ Hire additional qualified personnel to coordinate work on the Strategy and Action Plan, as well as performing other ICT responsibilities for the courts and/or SPOs. Implementation will become more complex as Strategy implementation advances, so staff with appropriate educational and employment backgrounds has to be on hand for all future steps. Experts at CEPEJ and/or NATO may be able to suggest experts to help Montenegro determine the qualifications the additional personnel should have. (MoJ - short-term)

✓ Obtain more stable and sufficient funding for Strategy implementation. The total funds required for implementation are estimated to be EUR 6.4 million total, or an average of EUR 1.6 million per year for each of the Strategy’s four years. Funds provided for implementation to date are approximately seven times lower than estimated. (MoJ - short and term)

582. Ensure that the JIS design and development activities are properly coordinated. This is critically important since JIS functionalities will drive the case management capabilities and resource needs for Montenegro’s entire judicial system, including management, personnel and infrastructural resources. Coordination activities should include:

✓ Establishing a working group of representatives from the courts and SPOs to monitor the case management components of JIS, and to collect additional CMS suggestions and relay them to the JIS designers. This needs to be done before implementation of JIS is complete, to avoid more difficult and more expensive changes later. This is a lesson Montenegro should have learned from the deployment of PRIS. (MoJ - short and medium terms)

✓ The JIS working group also should include judicial and SPO administrative staff, so business processes can be aligned with JIS as JIS is designed and implemented. The more that staff who will work with JIS on a daily basis are involved with the working group, the more useful the JIS testing and “trial and error” exercises will be. (MoJ - short and medium term)
9. Infrastructure Management

General Findings

583. The judicial network was restructured in 2015 and included the establishment of four Misdemeanor Courts and a Special SPO and the merger of the two Commercial Courts. To address priorities of judicial reform specified in national strategic documents and the Action Plan for Chapter 23, the Government and judicial authorities prepared the Plan for Rationalization of the Judicial Network for the period 2013-2015.

584. To establish a rational and more efficient court network, Montenegro plans to decrease the number of work units in the next two to three years. Based on analyses prepared internally and with the support of international partners, the new plan for rationalizing the judicial network was adopted, covering period 2017-2019. This midterm plan envisages changes of legislation governing the organization of courts and prosecution in 2019. It established a minimum number of four judges per court. If this plan is implemented, the number of courts would decrease by three to four basic courts.

585. The Montenegro court structure now contains 20 first instance courts, four second instance courts and the Supreme Court. There are 15 first-instance courts of general jurisdiction, five first-instance specialized courts, four second-instance courts and the Supreme Court.

586. Accessibility to the judicial system has been evaluated positively both by users and providers of judicial services and lawyers. In the 2016 World Bank perception survey, citizens and business sector representatives with experience with the courts expressed satisfaction with the facilities, technical equipment and other infrastructure elements in the judiciary, but court service providers saw the accessibility of the judiciary in a brighter light services than do users of these services.

Figure 144 - Citizens and business sector representatives: the satisfaction with infrastructure in judiciary

<table>
<thead>
<tr>
<th>Category</th>
<th>Very positive</th>
<th>Positive</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens</td>
<td>78%</td>
<td>33%</td>
<td>12%</td>
</tr>
<tr>
<td>Criminal</td>
<td>71%</td>
<td>50%</td>
<td>27%</td>
</tr>
<tr>
<td>Misdemeanour</td>
<td>83%</td>
<td>12%</td>
<td>24%</td>
</tr>
<tr>
<td>Civil</td>
<td>69%</td>
<td>59%</td>
<td>16%</td>
</tr>
<tr>
<td>Business sector</td>
<td>77%</td>
<td>56%</td>
<td>17%</td>
</tr>
</tbody>
</table>

---

352 Basic courts  
353 Three Misdemeanor Courts, and the Administrative and Commercial Court  
354 Two high courts that adjudicate at first but also at second instance, Higher Misdemeanor and Appellate Court  
355 Survey question: How satisfied were you with the facilities, technical equipment (computers, cameras...) and other infrastructure elements in the judiciary? Base: Citizens and business sector representatives with experience of a court case.
However, survey information on the physical condition of judicial facilities indicated judges and prosecutors have high expectations about possible upgrades to their physical working conditions. In the perception survey, judges and prosecutors who graded their institutions as less effective considered poor infrastructure to be among four key factors explaining poor court performance. Moreover, prosecutors identified this as a very significant cause of reduced institutional efficiency, and judges and prosecutors were the least satisfied with premises and equipment, and with safety at work and out of it.

9.1. Existing Infrastructure Stock

Courts are situated in 17 of 22 cities and municipalities in Montenegro, and at 39 geographic locations. First instance courts of general jurisdiction are in 15 municipalities and specialized courts are located in one more. The three first instance Misdemeanor Courts have 14 departments and a presence in 17 municipalities. The number of inhabitants in territories served by Basic Courts ranges from slightly above 5,600 to nearly 186,000; for Misdemeanor Courts and their departments the inhabitants served range from 3,600 to 186,000.

Table 37 - Geographic Locations of Basic and Misdemeanor Courts and number of inhabitants in courts’ territory

<table>
<thead>
<tr>
<th># Judges in 2016</th>
<th>Number of Inhabitants on Court Territory</th>
<th>Basic Courts (#municipalities)</th>
<th>Misdemeanor Courts including departments (#municipalities)</th>
<th>Number of Inhabitants on Court Territory</th>
<th># Judges in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>54673</td>
<td>2 Bijelo Polje</td>
<td>1</td>
<td>46051</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>39041</td>
<td>3 Berane</td>
<td>3</td>
<td>39041</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>8380</td>
<td>1 Kolasin</td>
<td>1</td>
<td>8380</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>13108</td>
<td>2 Plav</td>
<td>2</td>
<td>13108</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>30786</td>
<td>1 Prijepolje</td>
<td>1</td>
<td>30786</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>22964</td>
<td>1 Rozaje</td>
<td>1</td>
<td>22964</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>5639</td>
<td>2 Zublje</td>
<td>1</td>
<td>3569</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mojkovac</td>
<td>1</td>
<td>8622</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Budva</td>
<td>1</td>
<td>19218</td>
<td>12</td>
</tr>
<tr>
<td>11</td>
<td>42048</td>
<td>1 Bar</td>
<td>1</td>
<td>42048</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>30864</td>
<td>1 Herceg Novi</td>
<td>1</td>
<td>30864</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>55850</td>
<td>3 Kotor</td>
<td>2</td>
<td>36632</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>19921</td>
<td>1 Ulcinje</td>
<td>1</td>
<td>19921</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>185937</td>
<td>1 Podgorica</td>
<td>1</td>
<td>185937</td>
<td>27</td>
</tr>
<tr>
<td>6</td>
<td>18657</td>
<td>1 Cetinje</td>
<td>1</td>
<td>16657</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>18472</td>
<td>1 Danilovgrad</td>
<td>1</td>
<td>18472</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>75869</td>
<td>2 Niksic</td>
<td>3</td>
<td>77759</td>
<td></td>
</tr>
<tr>
<td>145</td>
<td>620029</td>
<td></td>
<td></td>
<td>620029</td>
<td>50</td>
</tr>
</tbody>
</table>

The 2015 changes to the court network put Montenegro well above the EU average for the number of courts locations per 100,000 inhabitants. For 2014, CEPEJ reported that Montenegro had 2.9 first instance courts and 3.5 court locations per 100,000 inhabitants; EU averages were 2.0 and 1.8 respectively. The establishment of new courts in 2015 increased the number of courts to 3.2 for first instance and 6.3 courts’ geographic locations per 100,000 inhabitants. When geographic locations are considered, Croatia’s ratio of 4.8 is the highest among EU countries due to decentralization of its judicial system and a 32 percent increase in the number of courts between 2010 and 2014. Following

---

356 47 percent of judges and 37 percent of prosecutors
357 For more details please refer to chapter discussing efficiency and accessibility
Western European trends, Austria and Italy initiated a concentration of their judicial system and decreased the number of courts and court locations by over 30 percent.

590. The prosecutorial system has 17 prosecution offices in 13 municipalities and at 17 geographic locations. In addition to the 13 basic SPOs, there are higher-instance prosecution offices in two locations covering the northern and southern territory and a Special and the Supreme State Prosecution Office in Podgorica.

<table>
<thead>
<tr>
<th>Number of Inhabitants on Prosecution Territory</th>
<th>Basic Prosecutions</th>
<th># Prosecutors in 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>42048 Bar</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>39041 Berane</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>54673 Bijelo Polje</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>8380 Kolasin</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>55850 Kotor</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>75689 Niksic</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>13108 Plav</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>36425 Pljevlja</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>204409 Podgorica</td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>22964 Rozaje</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>19921 Ulcinj</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>30864 Herceg Novi</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>16657 Cetinje</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>620029</td>
<td></td>
<td>76</td>
</tr>
</tbody>
</table>

591. It is common for several authorities to be housed in the same building. Thus, 25 courts and 17 state prosecutions are located in 31 facilities across 17 cities. At present, judicial institutions share 14 facilities – four buildings are shared by courts only, one by state prosecution and courts, and several SPOs are jointly located in nine buildings, while 18 courts and SPOs are in their own locations.

592. Approximately 1,300 square meters of office space is used by two basic and three Misdemeanor Courts. Basic Courts in Plav and Rozaje have roughly 600 m² of office space and Misdemeanor Courts have approximately 700 m² at nine of ten geographic locations. Average square footage per person ranges from 14 in Basic Courts to 2 m² in Misdemeanor Courts.

593. Five Basic Courts have more office space than they need for efficient service delivery. There are 34 courtrooms and the same number of offices available for the 30 judges of the five Basic Courts that submitted data. Five judges in the Basic Court Rozaje share one courtroom but each of them has a separate office. In these courts, there are approximately three staff members per office.
594. With 0.7 judges per courtroom, Misdemeanor Courts do not face challenges with scheduling hearings, but rather have more space than they need. Judges of the Misdemeanor Court in Podgorica do not have separate offices, while approximately two judges share one office in the other Misdemeanor Courts. In contrast, there are roughly 10 staff members to an office within the Misdemeanor Courts, due to the large numbers of trainees and contractors. The issue could be resolved in at least some of the courts by allocating some of the hearing rooms as staff offices.

595. The infrastructure of SPO offices often bears no relationship to staffing and other needs. Some SPOs have more space than necessary while others do not have enough. Moreover, there often is no correlation between infrastructure and results. For example, the two Basic SPOs with the lowest number of resolved cases per prosecutor\(^{358}\) have the best Basic SPO working conditions, with an interview room for each prosecutor and two staff members sharing one office.

596. Ten Basic and two High SPOs occupy more than 2,300 square meters and on average 13 and six square meters per person, respectively. However, there are significant variations among Basic SPOs — from six in Niksic to 36 square meters per person in Cetinje. The figures suggest that the High SPO in Podgorica suffers from insufficient working space having only one square meter per person.

597. As in the case of courts, the square footage and the number of offices affect the efficiency of a majority of prosecution offices. However, a relatively small number of separate interview rooms (0.3 per prosecutor) and the significant number of situations in which two prosecutors share an office and use them as interview rooms impede efficiency. The Basic SPO in Rozaje has a severe shortage of offices (three offices are shared by four prosecutors and five staff members within 68m² of total office space). There are somewhat better but still very poor working conditions in Basic SPOs in Herceg Novi and Niksic. One of these locations has four offices (three for prosecutors and one for staff) shared by four prosecutors and five staff, while the other has eight offices (six for prosecutors and two for staff and one interview room) shared by eight prosecutors and 13 staff. Apart from these three, other SPOs function with no more than three administrative staff per office. The Basic SPO in Pljevlja stands out from the average with five staff members and 12 offices.

598. In January 2019 EU Support to the Rule of Law II project (EUROL2) completed an Assessment of judicial authorities infrastructure in Montenegro. The Assessment covered 50 courts and SPOs in 30 geographic locations (buildings).\(^{359}\) Its primary objective was to analyze and document the current state of judicial infrastructure of selected authorities and to propose interventions for improvements in line with EU standards.\(^{360}\)

599. According to EUROL2 the judicial infrastructure is frequently unsuitable for authorities located in it. Lack of courtrooms, lack of interview rooms in SPOs and generally lack of space, lack of accessibility, poor safety conditions, poor working environment and significant maintenance challenges have been recognized as main issues.

---

\(^{358}\) Basic SPO Plav and Pljevlja

\(^{359}\) Judicial authorities included in the assessment were selected by the beneficiaries, the MoJ and the JC. The assessment includes the Supreme Court, the Appellate Court, the Commercial Court, the Higher Misdemeanor Court, two Higher Courts, 15 Basic Courts, 17 Misdemeanour Courts and their departments, 11 Basic SPOs and one Higher SPO.

\(^{360}\) Proposed interventions have been categorized as short term (up to two years), medium term (two to three years) and long term (three to five years). The short term interventions are recognized as pure maintenance which does not contribute to alignment with EU standards.
For each of the 50 judicial authorities a recommendation has been given implying (i) interventions without building enlargement, (ii) interventions including building enlargement, or (iii) relocation of the judicial authority. In total 27 judicial authorities have been recommended for relocation and three (located in two buildings) for building enlargement. For the remaining 20 judicial authorities (located in 11 buildings) interventions have been proposed (maintenance, reconstruction/renovation) within the existing building capacities. In most cases these latter judicial bodies would gain more space since one or more of their current co-residents would relocate. For instance, the Supreme Court and the Appellate Court would remain in their current building while the Higher Court in Podgorica would relocate. Relocation locations have not been identified by the Assessment, also the total cost estimation has not been included.

Presently Montenegro needs to decide on future steps to be taken concerning the implementation of these recommendations.

9.2. Physical Condition of Judicial Facilities

The system lacks basic information on facilities used by courts and prosecution offices. While all prosecution offices provided most facility-related data for this FR, courts provided partial data for only 14 of 39 geographic locations.

<table>
<thead>
<tr>
<th>Type of Judicial Institution</th>
<th># geographic locations</th>
<th># Judicial Officials</th>
<th># Staff</th>
<th>Total Office Space (m2)</th>
<th>m2/perso n</th>
<th># geographic locations</th>
<th># Judicial Officials</th>
<th># Staff</th>
<th># Cabinets</th>
<th># Courtro oms/Interview Rooms</th>
<th># Other offices</th>
<th># Cabinets</th>
<th>Judicial Official</th>
<th># Courtroom/s Interview Rooms per Judicial Official</th>
<th># Offices/Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Courts</td>
<td>2</td>
<td>8</td>
<td>36</td>
<td>608</td>
<td>14</td>
<td>5</td>
<td>30</td>
<td>162</td>
<td>34</td>
<td>46</td>
<td>1.1</td>
<td>1.1</td>
<td>0.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Misdemeanour Courts*</td>
<td>6</td>
<td>49</td>
<td>34</td>
<td>692</td>
<td>2</td>
<td>9</td>
<td>49</td>
<td>234</td>
<td>13</td>
<td>33</td>
<td>0.3</td>
<td>0.7</td>
<td>0.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic Prosecutions</td>
<td>10</td>
<td>60</td>
<td>98</td>
<td>2055</td>
<td>13</td>
<td>13</td>
<td>76</td>
<td>123</td>
<td>63</td>
<td>59</td>
<td>0.8</td>
<td>0.3</td>
<td>0.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Higher Prosecutions</td>
<td>2</td>
<td>21</td>
<td>28</td>
<td>279</td>
<td>6</td>
<td>2</td>
<td>21</td>
<td>28</td>
<td>14</td>
<td>3</td>
<td>10</td>
<td>0.7</td>
<td>0.1</td>
<td>0.4</td>
<td></td>
</tr>
<tr>
<td>Special Prosecution</td>
<td>1</td>
<td>11</td>
<td>35</td>
<td>9</td>
<td>2</td>
<td>8</td>
<td>8</td>
<td>35</td>
<td>2</td>
<td>8</td>
<td>0.8</td>
<td>0.2</td>
<td>0.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supreme Prosecution</td>
<td>1</td>
<td>10</td>
<td>28</td>
<td>6</td>
<td>0</td>
<td>14</td>
<td>14</td>
<td>6</td>
<td>14</td>
<td>14</td>
<td>0.6</td>
<td>0.0</td>
<td>0.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Staffing data were not available by departments

Note: Number of staff calculated here includes permanent and contracted staff and trainees

The judicial infrastructure is generally in poor condition and urgent repairs are needed in several courts and SPOs. Based on the list of needed immediate repairs for facilities, all 14 courts and seven out of 17 prosecution offices who replied to the survey need of total renovation or replacement of very basic elements, such as roofs, doors and windows, archives, etc. In addition, three courts reported a need for total reconstruction and one SPO for building extension. As result, the figures below may be under-reported, since there is no corresponding data for 25 court locations.
Table 40 - Recurrent Building Maintenance Expenditures in SPOs (in 1,000 Euro), 2014-2017

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current maintenance</td>
<td>10000</td>
<td>10000</td>
<td>10000</td>
<td>24500</td>
</tr>
<tr>
<td>Recurrent Building maintenance</td>
<td>32405</td>
<td>32405</td>
<td>32405</td>
<td>32405</td>
</tr>
<tr>
<td>Building Lease</td>
<td>0</td>
<td>0</td>
<td>22405</td>
<td>21285</td>
</tr>
<tr>
<td>Courts</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Administrative buildings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Administration</td>
<td>242304</td>
<td>531212</td>
<td>490000</td>
<td>390510</td>
</tr>
<tr>
<td>Current maintenance</td>
<td>40000</td>
<td>30000</td>
<td>30000</td>
<td>40000</td>
</tr>
<tr>
<td>Recurrent Building maintenance</td>
<td>202304</td>
<td>194212</td>
<td>210000</td>
<td>100510</td>
</tr>
<tr>
<td>Building Lease</td>
<td>0</td>
<td>307000</td>
<td>250000</td>
<td>250000</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>242304</td>
<td>531212</td>
<td>490000</td>
<td>390510</td>
</tr>
<tr>
<td>Total</td>
<td>252304</td>
<td>541212</td>
<td>522405</td>
<td>436295</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurrent Maintenance</td>
<td>0</td>
<td>0</td>
<td>84</td>
<td>2104</td>
</tr>
<tr>
<td>Lease</td>
<td>0</td>
<td>0</td>
<td>6000</td>
<td>0</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>0</td>
<td>0</td>
<td>4100</td>
<td>16882</td>
</tr>
<tr>
<td>Prosecution Offices</td>
<td>58258</td>
<td>141538</td>
<td>142694</td>
<td>111977</td>
</tr>
<tr>
<td>Recurrent Maintenance</td>
<td>19051</td>
<td>16786</td>
<td>20890</td>
<td>29491</td>
</tr>
<tr>
<td>Lease</td>
<td>11337</td>
<td>11445</td>
<td>10368</td>
<td>0</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>27869</td>
<td>113307</td>
<td>111436</td>
<td>82486</td>
</tr>
<tr>
<td>Total</td>
<td>58258</td>
<td>141538</td>
<td>152878</td>
<td>130962</td>
</tr>
</tbody>
</table>

Since 2014, two facilities used by prosecution offices have been reconstructed using the Capital Budget. The Report on Execution of the Capital Budget for 2015 published by the Directorate for Public Works, states that approximately EUR 530,000 was invested in the building of the SPO in Kotor and EUR 124,000 in reconstruction of offices of the SPO in Cetinje. It is also possible that from 2014-2017 other courts and SPOs may have benefited from building and reconstruction projects implemented under the Capital Budget, since judicial authorities often use facilities owned by other public institutions. However, this information could not be derived from the investment report. In addition, the capital budget for 2017 did not envisage any projects for the judiciary.

The Government Property Administration financed installation of fire alarm systems and video surveillance in the Supreme Court building in 2016, and partial reconstruction of premises in the facility used by the Basic Court Podgorica in 2017. Other infrastructure projects aimed at judicial authorities are not specified in annual reports of this central government institution.

Additional funds for building infrastructure were budgeted by the Judicial and Prosecutorial Councils. Between 2014 and 2017 the Judicial Council budgeted more than EUR 1.7 million for maintenance, lease and reconstruction projects for facilities of the Council, courts and the Training Center. Out of this, approximately EUR 800,000 was included in the capital expenditure budget line. The Prosecutorial Council spent an additional EUR 350,000 on capital projects (including facilities and equipment) and EUR 127,000 for recurrent maintenance and lease of facilities.
Table 41 - Infrastructure budget and expenditures of Judicial and Prosecutorial Council, 2014-2017

<table>
<thead>
<tr>
<th>Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Approved Budget</td>
<td>Approved Budget</td>
<td>Approved Budget</td>
<td>Approved Budget</td>
</tr>
<tr>
<td>Judicial Council</td>
<td>10000</td>
<td>10000</td>
<td>32405</td>
<td>45785</td>
</tr>
<tr>
<td>Current maintenance</td>
<td>10000</td>
<td>10000</td>
<td>10000</td>
<td>24500</td>
</tr>
<tr>
<td>Building Lease</td>
<td>0</td>
<td>0</td>
<td>22405</td>
<td>21285</td>
</tr>
<tr>
<td>Courts</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>Buildings</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Administrative buildings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Administration</td>
<td>242304</td>
<td>531212</td>
<td>490000</td>
<td>390510</td>
</tr>
<tr>
<td>Current maintenance</td>
<td>Recurrent Building maintenance</td>
<td>40000</td>
<td>30000</td>
<td>30000</td>
</tr>
<tr>
<td>Rent</td>
<td>Building Lease</td>
<td>202304</td>
<td>194212</td>
<td>210000</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>Buildings</td>
<td>0</td>
<td>307000</td>
<td>250000</td>
</tr>
<tr>
<td>Total</td>
<td>252304</td>
<td>541212</td>
<td>522405</td>
<td>436295</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Expenditures</td>
<td>Expenditures</td>
<td>Expenditures</td>
<td>Expenditures</td>
</tr>
<tr>
<td>Prosecutorial Council</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recurrent Maintenance</td>
<td>0</td>
<td>0</td>
<td>10184</td>
<td>18985</td>
</tr>
<tr>
<td>Lease</td>
<td>0</td>
<td>0</td>
<td>84</td>
<td>2104</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>0</td>
<td>0</td>
<td>6000</td>
<td>0</td>
</tr>
<tr>
<td>Prosecution Offices</td>
<td>58258</td>
<td>141538</td>
<td>142694</td>
<td>111977</td>
</tr>
<tr>
<td>Recurrent Maintenance</td>
<td>19051</td>
<td>16786</td>
<td>20890</td>
<td>29491</td>
</tr>
<tr>
<td>Lease</td>
<td>11337</td>
<td>11445</td>
<td>10368</td>
<td>0</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>27869</td>
<td>113307</td>
<td>111436</td>
<td>82486</td>
</tr>
<tr>
<td>Total</td>
<td>58258</td>
<td>141538</td>
<td>152878</td>
<td>130962</td>
</tr>
</tbody>
</table>

9.3. Management of Judicial Infrastructure

607. Management of judicial infrastructure is ineffective. The Government Property Administration initiated a project in 2015 to create a single state property registry, but it has not been completed. Moreover, there are no centralized data on facilities used by courts and SPOs, such as ownership status, property management responsibilities detailed in individual decisions on property use, footage, number of offices and hearing and court rooms, security equipment, etc. Responsibilities and financial resources for recurrent expenses, maintenance and capital investments are split among the property owners and users. Thus, maintenance and remodeling costs of facilities used by judicial authorities are budgeted by a combination of the Ministry of Justice, the Directorate of Public Works and the Property Administration, as well as the Judicial and Prosecutorial Councils, and local governments (for buildings shared with municipal authorities).

608. Judicial and prosecutorial authorities primarily are located in facilities owned by central and local governments and their agencies, or business or even residential buildings. Decisions on the use of individual real estates and related property management issues are taken by the property owner, i.e. central or local governments.361

609. Agreements between building owners and individual institutions or among cohoused institutions contain varied different arrangements for paying rent, heating, electricity, phone bills and other recurring expenses. Thus, some judicial authorities cover all these costs based on agreements reached with the building owner, some cover some of the costs, and in some cases the costs are fully covered by the building owner. There are also examples of courts reporting that the Supreme Court or Judicial Council takes care of these issues. Moreover, investment maintenance is

361 State Property Law
not centralized and repairs to judicial buildings are sometimes organized and paid for by the Government Property Directorate, the Directorate for Public Works or judicial authorities directly.

610. Existing staffing norms do not provide a specific ratio of guards or building maintenance and cleaning staff related to the number of judges or square footage of the facility. For situations in which two or more judicial authorities share facilities, one office or court may have judicial guards organized centrally, some may have separate guard staffs for each office, and still others may have none.

611. There is no maintenance or reconstruction plan for judicial facilities in place.

612. The disbursement rates for recurrent maintenance are low or even zero over the four years in some courts. On average, the annual maintenance expenses of all courts’ facilities covered by the Council are EUR 30,000. “Larger” amounts (over EUR 5,000) are rarely disbursed, and Basic and Misdemeanor Courts that reported an urgent need for repairs to the FR team (see the below) are those with extremely low or no transfers made for this purpose.

Figure 145 - Recurrent Building Maintenance Expenditures in Courts (in 1,000 Euro), 2014-2017

613. The Prosecutorial Council’s annual budget for building maintenance is around EUR 30,000. As expected, the disbursement rates are lower than for courts, but it is unrealistic to do maintenance of business facilities with few hundred euros annually. Therefore, it is quite understandable that prosecutors mentioned working conditions in the perception survey and reported so many necessary repairs for facilities.
The absence of design standards or facility maintenance protocols jeopardizes the stability and working conditions in the judicial facilities. This creates a wide range of issues such as inadequate number, size, and type of offices and inadequate access for the disabled.

### Table 42 - Judicial Authorities’ Assessment of Immediate Repairs to Facilities

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Courts’ Facilities</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>In need of complete renovation</td>
<td>3</td>
<td></td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Percentage</td>
<td>21%</td>
<td></td>
<td>7%</td>
<td>21%</td>
<td>14%</td>
<td></td>
<td>7%</td>
<td>14%</td>
<td>50%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecution Facilities</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>In need of complete renovation</td>
<td>1</td>
<td></td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>In need of partial renovation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage</td>
<td>6%</td>
<td></td>
<td>6%</td>
<td>24%</td>
<td>18%</td>
<td></td>
<td>12%</td>
<td>6%</td>
<td>6%</td>
<td></td>
<td>6%</td>
<td>12%</td>
<td>12%</td>
</tr>
</tbody>
</table>

### 9.4. Recommendations

In smaller jurisdictions like Montenegro, it may be relatively easy for officials to believe they can handle the infrastructure needs of a system. However, even if that were true publicly available inventories of facilities and plans for their repairs and renovations should assure everyone within the system that their needs are being considered fairly. To achieve that result, Montenegro should:

- Appoint and provide funding for the expenses of a short-term working group to conduct an inventory of all buildings in the judiciary including needed repairs and how urgently the repairs are needed based on EUROL 2 Report. The inventory also should clarify ownership and maintenance arrangements of each facility and the security measures in place, energy efficiency, list adjustments required to meet the needs of persons with physical disabilities and note the uses of the space and physical limitations of existing facilities. The inventory also should include
information on the terms of any existing leases and who or what agency is responsible for building maintenance, repairs and renovations. (MOJ – short term?)

✓ Post the inventory on the websites of the JC and PC and updated annually. (JC, PC – short term and continuing)

✓ Have the infrastructure arrangements for the highest-performing courts and SPOs at all jurisdiction levels reviewed by the working group, to see if and how their uses of space contribute to their performance. (Working group – short term)

✓ Interview those working in the courts and SPOs by the working group, to see how they think the reallocation of their space might help or impede further performance improvements. The interviews should focus on the practical, day-to-day work of the courts and SPOs. (Working group – short term)

✓ Issue a working-group report for the system’s managers, based on its look at the infrastructure arrangements of the highest-performing courts and SPOs and its interviews of those working within the judiciary system. The report should be posted on the websites of the JC and PC so everyone within the system can see it. (Working group – short term)

✓ Develop guidelines with minimum rules for design standards for facilities used by courts and SPOs. The standards should address the number, size and configuration of needed courtrooms and interview rooms, taking into account the uses of the space and physical limitations of existing facilities. (Judicial Council, Prosecutorial Council – short term)

✓ Develop guidelines with minimum rules for maintenance standards for courts and SPOs. The guidelines should include maintenance protocols and staffing norms for building maintenance and cleaning staff per number of judges or square footage. (Judicial Council, Prosecutorial Council – short term)

✓ Develop standardized provisions for contracts for the lease, maintenance and repair of judicial and SPO space. (JC, PC, MoJ – medium term). Eventually, the mandatory use of these clauses should make it easier for managers to project more accurate infrastructure budgets.

✓ Create a long-term infrastructure plan for renovation of facilities that enables multi-year implementation. (JC, PC – short term)

✓ Secure state and international funding support and closely monitor the implementation of the plan to ensure priorities are followed and budgets executed. (JC, PC – medium term and ongoing)

616. To improve public access and the public perception of the judicial system, Montenegro should publish the information on the websites for courts and SPOs about their infrastructure, and compliance with this recommendation should be part of the regular audits of court and SPO activities. The information should include:

✓ Directions for reaching the SPO by private vehicle and public transport. (Courts, SPOs – short term)

✓ A map showing the SPO within the community. (Courts, SPOs – short term)

✓ A diagram of the portions of the facilities which are available to the public. The key for the diagram each court and SPO within the building. (Courts, SPOs – short term)

✓ Information about accommodations for and restrictions on accessibility, including ramps, elevators and restrooms. (Courts, SPOs – short term)

617. Courts and SPOs also should post a directory of court and SPO personnel at each facility entrance. The directory should be updated at least four times a year. (Courts, SPOs – short term)
Annex 1
Organization of Judiciary in Montenegro

1.1. Recent History of Judicial Reforms

1. In 2000 judicial reform initiatives were set as one of the Montenegro Government priorities. Justice reform project adopted by Montenegro Government in 2000 set as priorities: amendments to organizational, substantive and procedural laws; implementation of newly adopted legislation; professional enhancement of judicial office holders, establishment of new judicial institutions and development of judicial information system – PRIS.


5. Beside legislative amendments reorganisation of the judicial network was one of the key activities. In 2013 Government adopted Plan for rationalization of judicial network in period 2013-2015. In line with the Plan, Commercial Court in Bjelo Polje was closed, and Podgorica Commercial Court continue to work as Montenegro Commercial Court. Misdemeanour system was reformed, and 17 misdemeanour bodies were reorganized in 2015 and from 2016 only three misdemeanour courts were established and Higher misdemeanour court as second instance court. Specialized department for fight against corruption, organized crime, terrorism and war crimes in the Higher Court in Bjelo Polje was closed and competences were concentrated within Higher Court in Podgorica.

6. In October 2016 new system of appointment of judges was introduced in line with Law on Judicial Council and Law on Judges.

362 COM(2010) 670
1.2. Court system in Montenegro

7. Court system includes both courts of general jurisdiction and specialized courts. General jurisdiction courts include the Supreme Court, the Court of appeal, the higher courts, and the basic courts. The specialized courts include the Administrative Court, the Commercial court, the misdemeanour courts and the Higher misdemeanour Court.365

8. The Constitutional Court was established in 2006, following referendum on independence of Montenegro. The Court protects supremacy of the Constitution, human rights and freedoms guaranteed by the Constitution and ratified international treaties. It has seven judges appointed by the qualified majority in the Parliament.

1.2.1 General jurisdiction courts

9. The highest court in Montenegro is Supreme Court. Supreme court ensures harmonization of court practice and unified implementation of laws. The Judicial Council decides on appointment and dismissal of the President of the Supreme Court by two third majority on the proposal of General Session of the Supreme Court. The Supreme Court decides in the third instance and has jurisdiction over extraordinary legal remedies, and conflict of jurisdiction between courts in Montenegro. The Supreme Court has 18 judges and its seat is in Podgorica.

10. The Appeal Court of Montenegro decides on appeals against first instance decisions of higher courts, appeals against decisions of the Commercial Court and decides on conflict of jurisdiction between basic courts, basic and higher courts, and higher courts. The Appeal Court has 11 judges and seat in Podgorica.

11. There are two higher courts in Montenegro, one in Podgorica and one in Bejlo Polje with the total of 54 judges. Higher courts have two-fold jurisdiction – first instance and second instance. Higher courts have first instance jurisdiction for criminal offenses with minimum possible imprisonment of 10 years; all cases involving corruption, organized crime, and petitions for extradition and recognition of foreign court decision. As a court of second instance higher courts decide on appeals against decision of basic courts.

12. The Basic courts are first-instance courts, with criminal jurisdiction over cases in which the possible imprisonment can be a fine or imprisonment of less than 10 years. They also have primary jurisdiction over a wide range of civil cases.366 There are 15 basic courts in Montenegro with total of 148 judges.

13. Basic courts together with misdemeanour courts that are discussed below receive the highest number of cases. In 2016 the basic and misdemeanor courts received majority of total number of cases in Montenegro.

1.2.2 Special Jurisdiction Courts

14. The Commercial Court is specialized court for the territory of whole Montenegro with the total of 15 judges and has seat in Podgorica.367 The Commercial Court has jurisdiction in disputes between companies, enterprises, co-operatives and entrepreneurs. The Commercial courts has jurisdiction over a wide range of commercial disputes and the status of commercial entities, including bankruptcy, liquidation, and varied range of intellectual property issues.

366 Guide through the courts system, Association of judges, Podgorica, 2012.
367 Law on Judicial Council and Judges, Official Gazette, No. 11/15 from 12.03.2015.
15. The Administrative court adjudicates in administrative disputes. The Administrative Court decides on an administrative procedure about legality of administrative acts and about legality of individual acts deciding on rights, obligations or statutory interests, and has jurisdiction over extraordinary legal remedies against decisions in misdemeanour procedure. It has total of 11 judges and is also located in Podgorica. 

16. The misdemeanour Courts, which had been sui generis administrative bodies, became part of the judiciary in 2016. With the changes in the court network that took effect January 1, 2016, there are now 3 misdemeanour Courts, several with more than one location. misdemeanour courts have a broad range of responsibilities. 

17. Misdemeanor Court is competent to decide upon requests for initiation of misdemeanor proceedings and upon request for judicial decision. Cases from the area of the Law on Road Transport Safety dominantly prevail, while cases that are significantly more involved in the structure of resolved cases are from the area of the Law on Public Order and Peace, in the area of the Law on Protection against Domestic Violence, the VAT Law and the Law on Prevention of Corruption. The Higher Misdemeanor Court is located in Podgorica and decides on appeals against decisions of misdemeanour courts.

1.2.3 Judges

18. Judges are guaranteed independence in their work both by Constitution and the Law on Judges. Framework rules on criteria for determine number of judges and judicial staff in the court\(^\text{368}\), from 17 April 2015, determines number of judges based on the number of incoming cases over last three years. Based on the Framework rules the total number of judges in Montenegro is 323.\(^\text{369}\)

19. From January 2016 the new rules of nation-wide appointment of judges and prosecutors which should guarantee uniform, objective, and transparent assessment of candidate entered into force.\(^\text{370}\) However, nation-wide appointment of new judges and prosecutors has not yet taken place since there was no need for new recruitment. According to the Law on Centre for Training in Judiciary and State Prosecution\(^\text{371}\), the Center organizes and conducts initial training for first time appointed judges and prosecutors. Vacant positions are filled in line with Plan of vacant judges’ positions in courts in Montenegro adopted by the Judicial Council.\(^\text{372}\)

1.2.4 Judicial assistants

20. Judicial assistants are common term for judge’s trainee and judge’s adviser. Judge adviser is a person who has passed the bar exam. The Judge adviser performs professional tasks relevant to the judicial department, or the entire court.\(^\text{373}\)

21. Number of judicial advisers is determined based on number of judges. In Basic courts ratio is one adviser per two judges. In Higher courts ratio is one adviser per judge, as well as in Commercial Court, Administrative Court and Appeal Court.

\(^{368}\) Rulebook on framework criteria for determing needed number of judges ad staff in court, Official Gazette, No. 17/15. 


\(^{370}\) Articles 37-75 and 87 to 101 Law on Judicial Council and Judges. 

\(^{371}\) Official Gazette of Montenegro, No. 58/15 from 9/10/2015. 


\(^{373}\) Article 57 Law on courts, Official Gazette, No. 11/2015 from 12.3.2015. 

236
1.3. State Prosecution System

1.3.1 Prosecutor offices

22. Autonomy and monocracy of state prosecution are guaranteed in the Constitution. Main competence of prosecutors is prosecution of crimes. Position of the state prosecution within the judiciary system is *sui generis*, it is not formally part of judicial branch, but is not part of executive branch.

23. According to the Law on State Prosecution, tasks of prosecutors is to prosecute perpetrators of criminal offences that are prosecuted *ex officio* and misdemeanors. Main principles of prosecutors work are constitutionality and legality, independence, impartiality and openness.

24. In the State Prosecution, the prosecution function was conducted by 120 state prosecutors and heads of the state prosecution. The function of state prosecution is performed by the Supreme State Prosecution, the Special State Prosecution, higher state prosecutions in Podgorica and Bijelo Polje and 13 basic state prosecutions.

25. Supreme State Prosecution conducts supervision over lower prosecutor offices. Supervision of work of state prosecutors is performed by direct insight into work of every state prosecutor and undertaking of other appropriate measures for efficient and legal work of state prosecutors. Supreme State Prosecution is competent for application of extraordinary legal remedies.

26. Special State Prosecution conducts tasks in accordance with the special law that regulates conditions for selection of heads and state prosecutors in the Special State Prosecution, and it was established for the territory of Montenegro, with headquarters in Podgorica, and takes all the actions within its jurisdiction before the Special Division of the Higher Court in Podgorica. It is responsible for prosecution of perpetrators of criminal offences of organized crime, high-level corruption, money laundering, terrorism, war crimes and since August 2016 also for criminal offences against election rights.

27. Higher state prosecutions performs function as first instance and second instance prosecution office. In the first instance higher prosecution offices jurisdiction over cases with minimum possible imprisonment of 10 year or crimes with elements of corruption or organized crime. Basic state prosecution is established for the area of one or more basic courts.

1.3.2 State Prosecutors

28. Constitution defines that competences of the State Prosecution are exercised by state prosecutors and heads of prosecutor offices. Parliament appoints and dismiss Supreme state prosecutor on proposal of the Prosecutors Council. Parliaments decides on this by qualified majority. Mandate of Supreme State Prosecutor is five years as well as mandate of heads of prosecutor offices. Constitution stipulates that tasks of the State Prosecution are performed by heads of state prosecutions, which are selected and dismissed by the Prosecutorial Council on five-year period by majority of its members' votes.

29. In order to provide independence, the state prosecutors have permanent tenure guaranteed by Constitution. The-first-time appointment is limited to four years. After this probation period person can be selected for the permanent position, if he/she has achieved appropriate work results.

30. Framework rules on determining needed number of state prosecutors and staff in prosecutor offices defined number of prosecutors based on average number of incoming cases during last three years.  

---

374 Article 134 of the Constitution.
375 2/3 of members of Parliament have to vote for decision.
years. Based on the Framework Rules, Decision on number of prosecutors was adopted.\textsuperscript{376} Total number of prosecutors in Montenegro is 131, from which 85 are in Basic Prosecutor Offices, 24 in Higher Prosecutor Offices, 11 in Specialized Prosecutor Office and 11 in Supreme Prosecutor Office.

1.4. Governing Structure

1.4.1 Governing Montenegro’s Courts

31. In order to ensure independence and autonomy of courts and judges, Judicial Council was established as autonomous and independent body. Judicial Council independently decides on the most important issues pertaining to the work of courts: elects and dismisses president of the Supreme Court, president of the Judicial Council, judge, president of the court and the juror-judge; submits to the Parliament an annual report on work of the Judicial Council and overall state in judiciary, considers report on work of the court, applications and complaints about work of the court and takes stand on them; determines termination of judicial office; determines the number of judges and juror-judges; proposes to the Government the amount of funds for work of courts and other activities determined by the law. On matters within its jurisdiction, Judicial Council decides by a majority of vote of all members, except in the cases prescribed by Constitution, such as deciding on election and dismissal of president of the Supreme Court. In this case, Judicial Council decides by a two-thirds majority, upon proposal of the General Session of the Supreme Court. Constitution determines composition and manner of election of members of the Judicial Council, which are elected and dismissed by the Parliament, as well as the manner of election of president of Judicial Council.

32. Judicial Council has a president and nine members. Regarding members of the Judicial Council from judicial power, Constitution prescribes a restriction, according to which president of court may not be a member of Judicial Council. Constitution stipulates that decision on election of four members of Judicial Council, who are elected by the Parliament from among distinguished lawyers, shall be adopted by the Parliament in first vote by a two-thirds majority and in the second vote by a three-thirds majority of all MPs at the earliest after one month. Manner of election of members of the Judicial Council from the ranks of judges, who are elected and dismissed by the Conference of Judges is prescribed by the Law on Judicial Council and Judges. President of Judicial Council is elected by the Judicial Council from the ranks of its members, by a two-thirds majority of the members of the Council, whereby two restrictions are prescribed.

1.4.2 Governing Montenegro’s Prosecutor’s

33. Prosecutors Council is recognized by the Constitution and ensures independence of the State Prosecution, and it is chaired by the Supreme State Prosecutor, except in disciplinary procedure. This should represent a basis for building a necessary integrity of the State Prosecution. Composition, selection, mandate, organization and manner of work of the Prosecutors Council shall be regulated by law. Prosecutors Council determines proposal for election of the Supreme State Prosecutor; elects and dismisses the heads of state prosecutions and state prosecutors; determines termination of function of heads of state prosecutions and state prosecutors; proposes to the Government amount of funds for work of state prosecutions; submits to the Parliament an annual report on work of the State Prosecution; performs other tasks prescribed by the law. Judicial Reform Strategy 2014-2015 envisages improvement of administrative capacities of the Prosecutors Council, provision of budget

\textsuperscript{376} Ibidem., br. 21/15.
funds for its unhindered work and implementation of a continuous training of employees in the Secretariat of the Prosecutors Council.

1.5. Related Institutions

1.5.1. Centre for Education of Holders of Judicial Function

34. In 2016, Centre for Training in Judiciary and State Prosecution transformed in the Centre for Education of Holders of Judicial Function. Centre is independent organization with the status of a legal entity. Before 2016 the Center was an organizational unit of the Supreme Court.

35. The Centre organizes and conducts initial training; organizes and conducts continuous training for holders of judicial functions, lawyers, notaries and bailiffs. In addition, the Center is competent to organize and conduct trainings for counselors, officers and trainees in courts and state prosecutions and skills enhancement of trainers and mentors. The Center maintains documentation about completed trainings.

36. The new structure and competences of the Center requires additional resources. The Law on the Centre stipulates that funds for its work are provided in a special section of the Budget of Montenegro in the amount of 2% of the allocated budget for judiciary and state prosecution, but also that funds can be provided through donations, gifts, grants as well. The new Rulebook on Internal Organization and Systematization of the Secretariat of the Centre significantly increased number of employees to 19, while before 2016 the Center had 4 employees.

1.5.2. Free legal aid

37. The Law on Free Legal Aid was adopted in mid-2011 and its implementation started as of January 2012. After implementation challenges, in 2014 the Ministry of Justice has started to work on amendments to the Law, that were adopted in April 2015.378

38. There is no central body responsible for free legal aid, but Legal aid offices are opened in all basic courts in Montenegro. In the period from 2012 to October 2016, a total 3009 requests for free legal aid were submitted of which 2414 were adopted, which represents 80.22 percent of accepted requests.

39. When it comes to financial implications of existence of free legal aid system on the Montenegro budget, for period 2012-2016 the amount of 327,624 EUR was allocated.

1.6. Judicial Professions

1.6.1. Bailiffs

40. Bailiffs were introduced in 2014 to improve enforcement of court decisions. Work of bailiffs is regulated by the Law on bailiffs from 2011 that is amended in 2017. Law on enforcement and security defines competences of bailiffs. Bailiffs can act based on “authenticated documents” (e.g. invoices or bills) and a decision of the court from the territory for which bailiff is appointed.

41. Bailiffs must have a law degree, a minimum of five years of legal experience and passed Bar examined and examination for enforcement. While the MOJ determines the number of Bailiffs to

---

377 The Law is published in the Official Gazette of Montenegro, No. 58/15 from 9/10/2015.
378 Law on Free Legal Aid, Official Gazette of Montenegro, No. 20/2011 and 20/2015.
379 Before introduction of bailiffs, basic courts had significant number of enforcement cases (184,107 enforcement cases).
382 Law on Bailiffs, art. 10.
be appointed, Law call for the appointment of 1 Bailiff per 25,000 inhabitants and currently there are 29 of them. The geographic district for each private bailiff corresponds to the boundaries of certain court. Bailiffs are members of their own chamber, which is largely self-governing. The MOJ determines the date and place of the exam and the five members panel.

1.6.2. Notaries

42. Law on notaries was adopted in 2005 with the aim to strengthen legal security in real property transactions and to improve efficiency of services. 2015 Amendments of Law on Non-contentious procedure extended competences of notaries over uncontested inheritance cases.

43. Law call for the appointment of 1 notary per 15,000 inhabitants and currently there are 47 of them, while plans call for Montenegro to have 65 notaries.

1.6.3. Mediators

44. Mediation was introduced in Montenegro in 2004 by Law on civil procedure and lately regulated by the Law on mediation from 2005. The Center for mediation was established in Podgorica based on 2012 Law on Mediation with primary tasks of providing mediation services and promoting mediation. Mediators are usually involved in family cases in which judge is obliged to send parties to mediation.

45. The Law on Mediation adopted in 2005 and amended in 2012, regulates mediation proceedings in civil-legal disputes, including disputes from domestic, commercial, labor and other property-law relationships between individuals and legal entities, and mediation in cross-border disputes.

46. In order to become a mediator in Montenegro one has to meet general work requirements for employment in state organs and following special requirements: to have higher professional qualification and at least five years of work experience; to have had attended appropriate training program for mediation in criminal and civil matters; to have not been convicted of criminal offence that renders him/her unworthy of performing mediation; to have no imposed security measures of ban on performance of profession, activity or duties. License for work is issued to the mediator by Ministry of Justice for five years while request for renewal of the license is decided by the Ministry of Justice, on the basis of proposal of the Centre. Mediator who received the license is registered in registry of mediators, run by Ministry, which is published on the web page of both the Ministry and Mediation Centre and it is submitted to courts and state prosecutions, as well as the list of mediators for mediation in civil matters and the list of mediators for mediation in criminal matters.

47. In Montenegro 118 mediators have work licenses, and they are situated in every town that has a court. Eighty-one mediators have a license for civil matters, thirty-seven have for criminal matters and eleven have for both. In 2016 there were 471 cases in civil matters, in 2015 there were 

383 It is estimated that there is a need for 32 bailiffs for whole Montenegro.
386 Official Gazette of Montenegro, No. 30 from 13 May 2005 and Official Gazette of Montenegro No. 30 from 6 June 2012.
798 cases, while in 2014 there were 880 cases. In last seven years on average there were 560 of mediation cases.\textsuperscript{389}

### 1.6. Professional associations

#### 1.6.1. Association of Judges

**48.** Association of Judges of Montenegro is voluntary, professional association of judges established in 1998. Association of Judges protects interest of judges, promotion of profession, improvement of legislation and professional integrity and ethics.\textsuperscript{390} Association of judges is affiliated with the International association of judges from 2010.

#### 1.6.2. Association of Prosecutors

**49.** The Association of state prosecutors of Montenegro is a voluntary association of state prosecutors formed in 2002 with aim to advocate for improvement of organization and work of state prosecution, legal framework, independence and autonomy of prosecutors, regain of citizens trust in work of prosecutors and strengthening of ethics. The Associations of state prosecutors established cooperation with Consultative Council of European Prosecutors and International association of prosecutors.\textsuperscript{391}

#### 1.6.3. Bar Association

**50.** Membership in the Bar Association of Montenegro is obligatory for lawyers practicing before Montenegro ordinary courts. It is also responsible for drafting the code of ethics for attorneys appearing before the courts, setting the fees and expenses to be charged by attorneys.\textsuperscript{392} In addition to paying membership fees to the Association, attorneys also must obtain professional liability insurance, through a group policy obtained by the Association, or directly from an insurance company.\textsuperscript{393}

**51.** Bar association is providing legal aid, however, in that direction a general guideline on strengthening the system of accountability of lawyers in terms of responsibility for general provision of 'legal aid' was introduced in the Action Plan for implementation of the Strategy on Judicial Reform. This measure was reduced only to establishment of a mechanism for monitoring the work of lawyers.

\textsuperscript{389} Mediation in Montenegro; Human Rights Action, Podgorica 2016.
\textsuperscript{390} Statute of Association of Judges of Montenegro.
\textsuperscript{391} Statute of Association of Prosecutors of Montenegro - http://tuzilastvogc.me/media/files/STATUT.pdf
\textsuperscript{392} The latest amendments to the Advocacy Tariff were adopted by the Administrative Board of the Bar Association of Montenegro (ACCG) in 2015. The fee is published in Off. Gazette of Montenegro (Official Gazette of the RMNE, No. 12/2005, Off. Gazette of Montenegro 45/2008, 11/2015), in accordance with Article 15 of the Law on Advocacy, and also published on the website of the BAMNE.
Fee prescribes orientation values of lawyers' awards and reimbursement of expenses, to which must strictly adhere only courts and other state organs when they calculate and pay reimbursement of expenses to lawyers (Article 3, paragraph 2). Lawyers themselves have the right to contract even a smaller or larger amount than what is prescribed by the fee with parties, with the restriction that they can not agree on a price that is less than 50% or five times the amount prescribed by the fee numbers for each individual action (Art. 4). Furthermore, if a lawyer contracts the price of his/her services according to the hourly rate, the agreed price can not be lower than 75 euros per each hour (Art. 3, paragraph 1). Objective of the minimum price regulation is to prevent unfair competition, while the maximum price is prescribed for the protection of clients.

Law on Amendments to the Law on Lawyers from March 2017 stipulates that the Government of Montenegro gives prior consent on the Advocacy Fee issued by the Bar Association. Such a solution was in force until 2007, and in the meantime the Bar Association has been independently prescribing a fee.

\textsuperscript{393} Article 22, Law on the attorney at law, Official Gazette of Montenegro, No. 79/06, 73/10, 22/17.
in cases in which they provide 'free legal aid' under the Law on Free Legal Aid, but not for case where they act in line with mandatory defense provisions.