

Analysis of Human Resources Management In the Montenegrin Judiciary

Executive Summary

- 1. The Montenegrin judiciary's strategic goals can only be accomplished through better human resource management.** The sector needs a strategic approach to human resources management that links it to the judicial branch's organizational strategy, focuses it on providing services to court users in an efficient manner, and recognizes that employees are a key asset of the courts.
- 2. Overall, approximately 78% of the justice sector's budget is devoted to personnel; only six EU countries allocate a higher proportion of their justice sector budget to people.** Given a fixed resource envelope, there is insufficient funding to support expenditures such as ICT that would support improved performance. Unnecessary rigidities in resource allocation in the sector prevent managers from making positive trade-offs between personnel and other expenditures (e.g., applying staff vacancy savings to operating costs).
- 3. Nonetheless, some budget users and the justice sector in total spend more than their annual appropriation for human resources.** The justice sector lacks adequate controls over personnel spending; Parliamentary appropriations are at a very high level and subsidiary level controls are missing.
- 4. Montenegro has the highest ratio of judges-to-population and an above average ratio of staff-to-judges compared with the 26 EU Countries for which CEPEJ reported data.** A lack of planning and constraints in resource deployment explain in part the suboptimal system performance. Key problems with human resources management are as follows:
 - a. Judges, prosecutors and staff are added to prior staffing levels in an ad hoc manner, rather than based on objective demand or caseloads;¹
 - b. Greater per capita resources do not correspond to improved performance, with some highly resourced institutions resolving fewer cases per judge or prosecutor than their less well-resourced counterparts;
 - c. In effect, there is no national judiciary or prosecution service. Appointments and hiring are highly localized, and judges, prosecutors, and civil service staff cannot be moved without their consent from low to high demand locations within this small country. Few mechanisms exist to incentivize that consent, although the Judicial Council recently created new incentives for judges to relocate;
 - d. Staffing complements are set without reference to an overall resource rationalization plan. The number of support staff per judge or prosecutor varies by as much as 100% between institutions;
 - e. Some institutions suffer from a high number of vacancies in authorized staff positions; this does not appear to relate to regional recruitment difficulties;
 - f. In addition to a large permanently authorized staff, large numbers of temporary staff, contractors and volunteers create a 'shadow workforce'. In particular, in the courts they represent nearly 30% over and above the permanent workforce. The extent or purposes of this temporary employment are not easily understood or transparently available. Standards and processes for the appointment of these employees are unclear and their performance goes largely unmonitored;
 - g. The judiciary has not analyzed the proper level of enforcement judge and staff resources given court

¹ Judicial appointments should generally be considered very cautiously. Judges and prosecutors are permanent investments; once appointed, they are difficult to remove or transfer and generate high unit costs to the system in salaries, allowances, accompanying staff etc.

enforcement workload now compared with 2012, when private bailiffs were introduced and in light of escalating enforcement appeal caseloads.

5. Setting the appropriate number and properly allocating judges, prosecutors, and staff between courts and PPOs in line with caseload will improve the efficiency of the judiciary and provide more equitable public access. Vacancies at the Basic Court level should not be filled until the number of judges falls by attrition. Furthermore, a freeze should be put in place in most areas of staffing and a plan to reduce the total complement of staff. Meanwhile, the Montenegrin judiciary needs to develop new mechanisms for determining the appropriate level of court staffing, taking into consideration workloads, performance, and the goals of transformation. The ‘shadow workforce’ of temporary staff and volunteers should be reduced. Decisions about the number and deployment of judges and prosecutors (under the auspices of the Councils) and those concerning non-judge/prosecutor staff (under the Ministry of Justice (MOJ)) should be coordinated.

6. The system should invest in and foster specialized and analytic roles, such as judicial and prosecutorial assistants, court managers, ICT administrators, budget analysts, and statisticians – the so called “missing middle”. The recent departure of several clerical employees from the judiciary makes it timely to reconfigure the staffing mix by not filling these vacancies and adjusting systematizations to trade large numbers of low-skilled positions for fewer numbers of higher-skilled positions. Complementary investments in ICT, infrastructure and process re-engineering would capitalize on new employees’ skills. Adjusting the skills mix in this way presents a significant opportunity to transform system performance.

7. In particular, judicial and prosecutorial assistants make an important contribution to sector performance, and they deserve special attention in HR reforms. Currently, they do not receive any designated, formal training. Evaluation or promotional criteria are weak despite their potentially critical role in supporting judges and court administration in processing cases. Many assistants aspire to work in their role only temporarily as a ‘stepping stone’ to becoming judges or prosecutors. This aspiration is unrealistic in a system that already has an excess supply of judges. The judicial system should create an attractive and viable career path for high-performing assistants to advance to key managerial (non-judge) positions in the courts² in a new system that values mid-level management. It should also provide training and retraining to enable these judicial assistants to align their aspirations with that of a modern judiciary.

8. Systems for the evaluation and discipline of judges and prosecutors have been developed; that for judges is being piloted. These rules provide a frame for measuring performance and will be strengthened after the pilot. Evaluations should be linked to promotion and career progression and incentives built in to encourage judges and prosecutors to develop their skills through continuing training. Specific criteria for evaluating Court Presidents and Public Prosecutors that recognize their significant case flow and management responsibilities for both judicial and non-judicial activities is needed.

9. There is an acute need for training and capacity building across the judiciary. Looking forward, the Judicial Training Center should focus more on continuing training and lead a large-scale capacity building initiative for judges, prosecutors, assistants and court staff alike. Training could cover all aspects relevant to the transformation to a modern European judiciary, based on a comprehensive training needs assessment.

10. Overall, the judiciary needs clearer assignment of responsibility for human resources policy making, more sophisticated management, and better-defined systems for human resources than are currently in place.

² This could include as senior advisers, analysts, court administration professionals, court managers, chiefs of cabinets, etc.

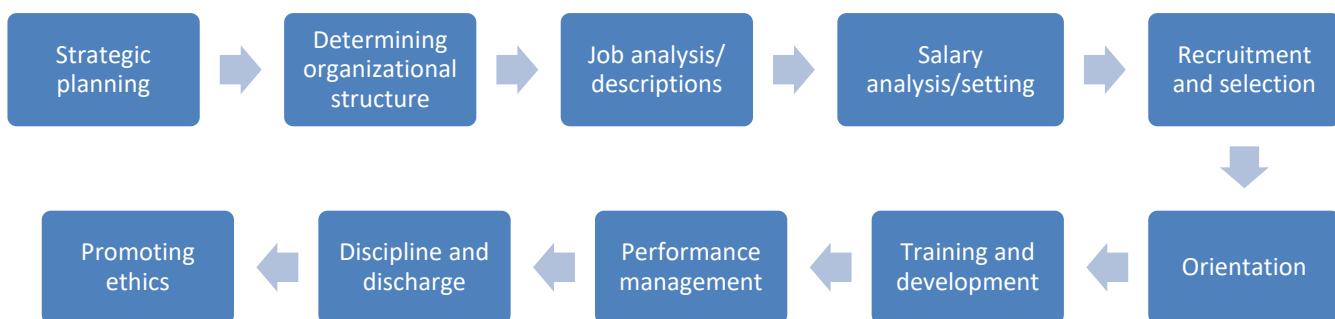
a. Introduction

1. Montenegro's courts and PPOs are labor-intensive public service organizations operating in a resource-constrained environment. The judiciary employs nearly 1,800 individuals³ across 44 institutions including courts, PPOs, the Supreme Court, the Public Prosecutor, the MOJ and the Judicial Training Center. These employees are divided into three groups: 1) judges and prosecutors, 2) civil servants (from executive management to clerical staff) and public employees (for example, janitors and drivers). More effective use of these numerous and varied human resources would allow the judiciary to perform efficiently, better use non-labor resources such as technology and capital assets, and enhance accessibility, efficiency and quality of judicial service delivery.

2. Resource constraints require that funding for human resources be based on confirmed workload considerations, that the most appropriate individual be assigned to most improve service delivery, and that processes be examined to ensure they are as efficient as possible. Montenegro's judicial sector needs a strategic approach to human resources management that links it to the judicial branch's organizational strategy, focuses it on providing services to court users in an efficient manner, and recognizes that employees are a key asset of the courts.

3. Human resources management is composed of several interrelated functions, illustrated at Figure 1 and described in Box 1 below.

Figure 1: Framework for Analysis of Human Resource Management⁴



³ Excludes staff of misdemeanor courts.

⁴ National Center for State Courts, Core Competencies, Human Resource Management Resource Guide: <http://www.ncsc.org/topics/human-resource-management/human-resource-management/resource-guide.aspx>.

Box 1: Strategic HR Management in the Judiciary

In line with this framework, efficient and effective HR management in the judiciary requires:

- a. a strategic vision and an organizational structure that reflects needs and anticipates emerging ones while eliminating unnecessary bureaucracy;
- b. job analyses incorporating essential duties, core competencies (knowledge, skills, and abilities), and rankings reflecting differences between classifications in position descriptions;
- c. salaries set to attract, retain and motivate employees, while ensuring internal equity and budgetary soundness;
- d. recruitment of high-quality applicants, selection using job-relevant, efficient and transparent tools;
- e. employee orientation and training programs to improve justice system performance;
- f. strong performance management, including setting individual performance expectations tied to institutional goals, objectives and appraising performance;
- g. fair and consistent discipline, transfer, demotion, and termination of employees with inferior performance to ensure optimal organizational service delivery; and
- h. promotion of ethical behavior on the part of judges, prosecutors, and staff to enhance public trust and confidence in the judicial sector.

4. The judiciary's strategic goals can only be accomplished with better human resources management.

Goals that will be advanced by improved human resources management include:

- a. increased efficiency, accountability and transparency;
- b. clear productivity and performance standards, effective use of judicial and prosecutorial resources, and a strong system for education and training; and
- c. empowering the Judicial and Prosecutorial Councils to improve the effectiveness and performance of the judiciary jointly with Court Presidents and MOJ.

5. United Nations (UN) and Council of Europe (CoE) standards⁵ directly address human resources issues for judges and Deputy Prosecutors, and their importance to the independence and service delivery of the judicial system. These standards require transparent and effective appointment, promotion, evaluation, discipline and discharge of judges and prosecutors, and stress the necessity of initial and in-service training.

6. For civil servants, European good practices focus almost entirely on performance management, including creating pay differentials that provide an incentive for high-quality performance. Consistency, fairness, and transparency are the underpinnings of these standards. Although not explicitly addressed by European standards, performance management depends on other elements of the human resources cycle above (e.g., hiring the right individuals impacts their performance).

7. The current highly decentralized and haphazard human resources system hinders the judiciary's ability to improve service delivery and transformation. As in the rest of the public sector, individual courts and PPOs

⁵ See UN Standards: *Basic Principles on the Independence of the Judiciary* (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985); and *Guidelines on the Role of Prosecutors* (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990). See also Council of Europe standards: *Recommendation of Committee of Ministers* (94) 12 on independence, efficiency, and role of judges (from 1994) and Recommendation (2000) 19 on the role of public prosecution in criminal justice system; Consultative Council of European Judges (CCJE – established by COE) adopted European Charter on the Statute for Judges (1998); Consultative Council of European Prosecutors (CCPE – established COE) adopted European Guidelines on ethics and conduct for public prosecutors: ‘The Budapest Guidelines’ (2005). However, they do not address human resources management related to civil servants or public employees.

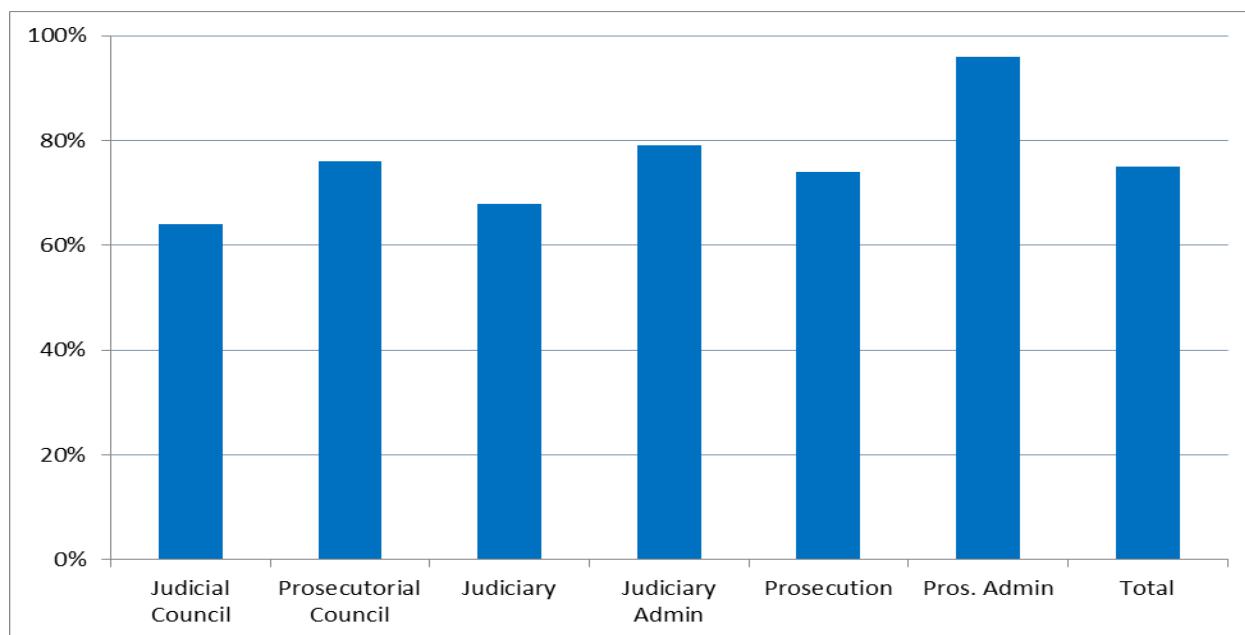
directly employ civil servants and public employees. However, there is no single body that drives human resource policy making. Supervisory bodies (the Judicial Council, Prosecutorial Council, Supreme Court, Chief State Prosecutor and MOJ) should determine the key areas where human resource management can drive performance, and each should contribute their part to elevating Montenegro's human resource capacity.

b. Personnel Allocations and Expenditures

8. Overall, approximately 78% of Montenegro's justice sector's budget is spent on personnel; only six countries in the EU spend more on people.⁶ The large proportion of spending on personnel leaves few resources for other performance-enhancing expenditures such as information technology.

9. The amount allocated to personnel by justice institutions varies widely, with prosecution administration spending nearly 100% and the judiciary less than 80% of its allocation on people. The differences in the percentage of budget devoted to human resources are likely related to absence of information technology in prosecutors' offices.

Figure 2: Percentage of Budget Devoted to Personnel by Budget User – 2014⁷



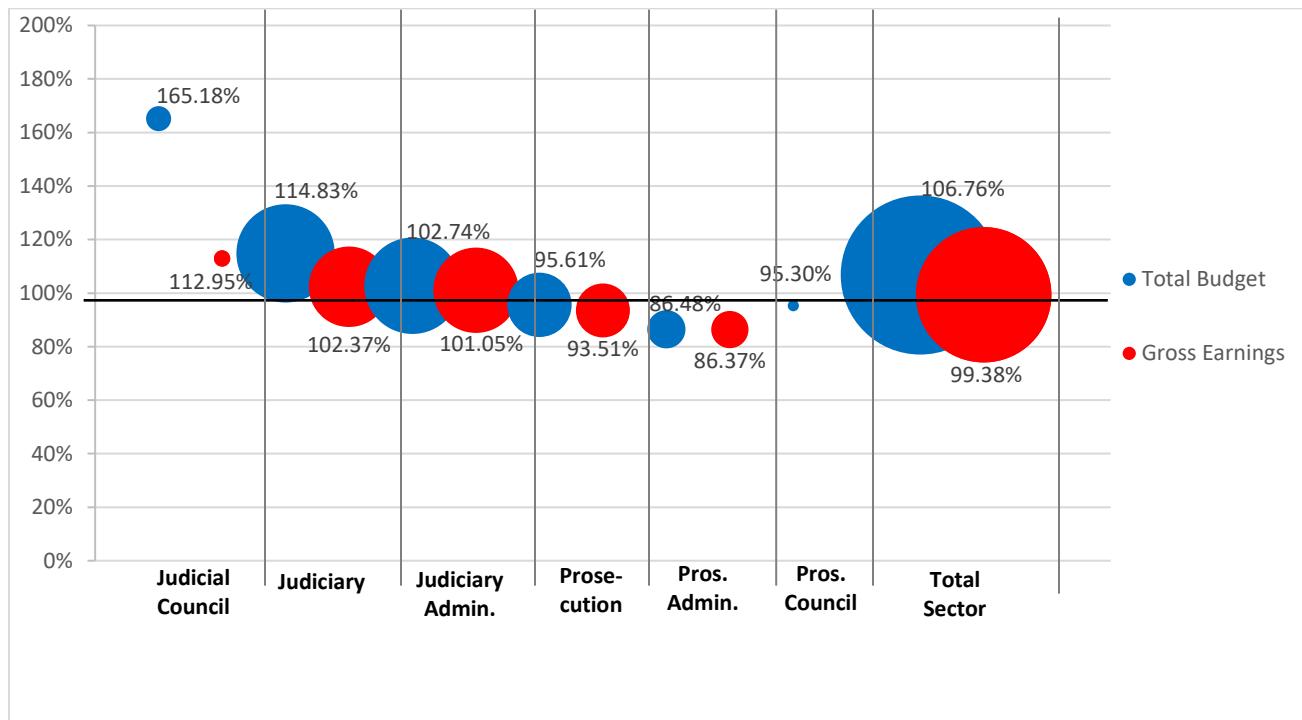
10. Some justice sector budget users expend more than both their total annual appropriation for human resources appropriation because the justice sector lacks adequate controls over personnel spending. For example, in 2014, total Judicial Council expenditures were 65% above its budget while personnel expenditures exceeded the personnel budget by 13%. As a small institution, this overexpenditure does not represent a large amount of funding. However, the judiciary overspent its approximately €10 million annual budget by 15%, with personnel expenditures exceeding the budget by 2%, pointing to a much more significant financial concern. This

⁶ Croatia, Greece, Lithuania, Luxembourg, Portugal and Spain, European Commission for the Efficiency of Justice (CEPEJ), Study on the Functioning of Judicial Systems in the EU Member States, Facts and Figures from the from the CEPEJ 2012-2014 Evaluation Exercise. See http://ec.europa.eu/justice/effective-justice/files/cepj_study_scoreboard_2014_en.pdf

⁷ Law on Amendments to the Law on Budget of Montenegro for 2015, Official Gazette 047/15, 18.08.2015.

occurs because Parliamentary appropriations are at a very high level (e.g., at each group of institution, for example, all courts) but subsidiary level controls are currently missing. For example, a given basic court may now fill positions without MOF approval but without a specific allocation against which to control expenditures,⁸ over (or even under-)expenditures by this court for salaries are not easily identified. Providing courts as well as prosecutor offices with specific budgets against which they must control expenditures will not only improve fiscal management but will encourage institutions to more carefully consider funding tradeoffs. The comparison of personnel budgets to expenditures should be recalculated once 2015 expenditure information is released by the government.

Figure 3: Percentage Execution of Total and Personnel Budgets by Budget User - 2014⁹



11. Salary levels have not historically been responsible for the over-average spending on personnel in Montenegro compared to other countries. Salaries for judges and prosecutors were 2.3 times higher than the average national salary, comparable to the average in the EU. This compares well with European benchmarks, where the salaries of judges are on average 2.3 times higher than the national average salary. Like most European jurisdictions, Montenegro does not apply a difference between the salaries of judges and prosecutors.

12. However, significant salary increases for judges, prosecutors, and some advisors implemented in March, 2016 may bring the ratio to the average national salary higher than that in Europe¹⁰ and extend salary differentials between these office holders and civil servants, who did not receive pay increases similar in size (see discussion in Human Resources Equity section below).

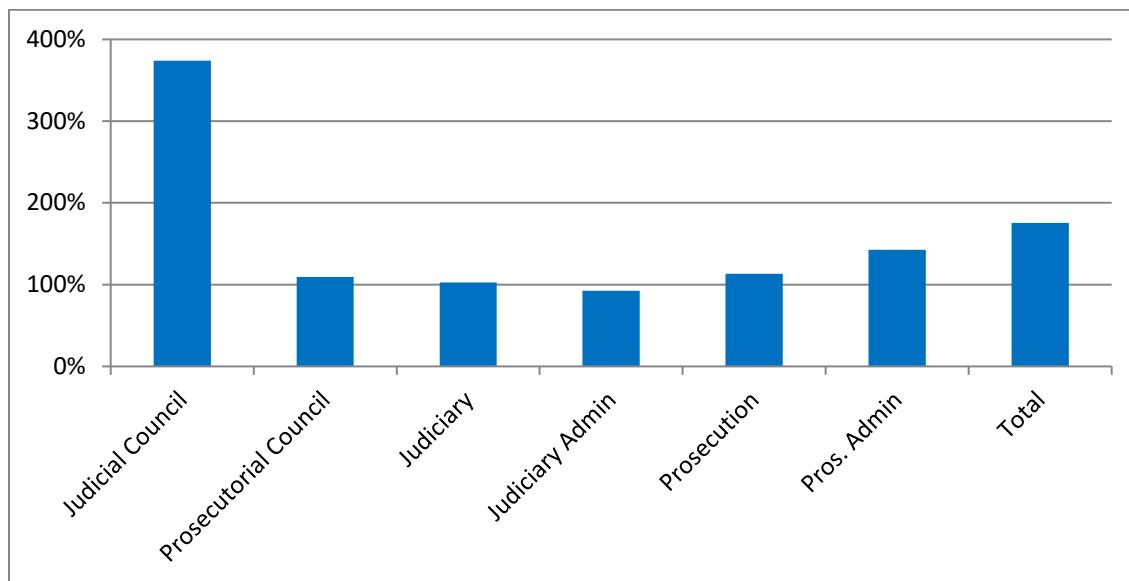
⁸ Prosecutor offices must still receive MOF approval to fill positions. The judiciary plans to provide them with individual budgets as well.

⁹ Law on Final Budget Account for 2014, Official Gazette 078/15, 31.12. 2015.

¹⁰ As other countries may also have increased judicial and prosecutorial salaries since the 2014 CEPEJ study, it is not possible to compare current salary ratios between Montenegro and EU member states.

13. Controls on expenditures for “other personal income” appear weak, exceeding the budget for that item by 70% in 2014.

Figure 4: Execution of Other Personal Income (€0.6m) - 2014¹¹



14. Because the sectors’ budgets are appropriated at a high level (e.g., for all courts) and subsidiary controls are not maintained, it is not possible to identify if given courts or prosecutors’ offices spend a much higher than average amount on this category. However, the total Euros spent in this category (€0.6m) and the percentage of budget spent on non-salary compensation is quite low, ranging from 0.3% for judiciary administration to 3.4% for prosecutorial administration. Only the Judicial Council spends a significant portion of its budget (21.2%), likely for payments to those serving on the Council on secondment from other institutions. This issue should be investigated further by the justice sector.

15. Ensuring adequate control of other personal income will be particularly important with the introduction of incentives offered to judges to relocate from under- to over-burdened courts. The Judicial Council should evaluate the cost effectiveness and necessary duration of these incentives.

c. Staffing Levels and Methodology

i. Number of Judges and Prosecutors

16. Montenegro has traditionally lacked a methodology for determining the number of needed judges and prosecutors. Over time, the number of judges and prosecutors has been determined by additions to a baseline number without considering changes in caseloads, procedural changes or new needs of the judiciary. As most

¹¹ Law on Final Budget Account for 2014, Official Gazette 078/15, 31.12. 2015.

judges were unwilling to move locations, staffing patterns have become rigid.¹² However, the judiciary has begun to transfer cases from busy to less-busy courts. For example, nearly 1,000 litigation cases have been transferred to the relatively less-busy Cetinje Basic Court from the Kotor and Podgorica Basic Courts, with an expectation of another 400 to follow. This is a good practice but should not undercut the need to evaluate long-term staffing needs.

17. Once positions are created, vacancies are typically filled even if there is not an objective need to fill them. Appointments of judges and prosecutors should always be considered cautiously, recognizing that judges and prosecutors are permanent and significant investments. Once appointed, they are difficult to remove or transfer and generate high unit costs to the system in terms of salaries, allowances, accompanying staff, etc.

18. At present, 99% of authorized Basic Court judgeships are filled, with 94% of all judgeships filled:

Table 1: Number of Judges by Court Type, 2015¹³

Court type	# of Judges	
	Authorized*	Filled
Basic Courts	149	147
Higher Courts	57	49
Misdemeanor Courts	50	43
High Misdemeanor Court	7	7
Appellate Court	13	12
Administrative Court	12	12
Commercial Court	16	16
Supreme Court	19	19
TOTAL	323	305

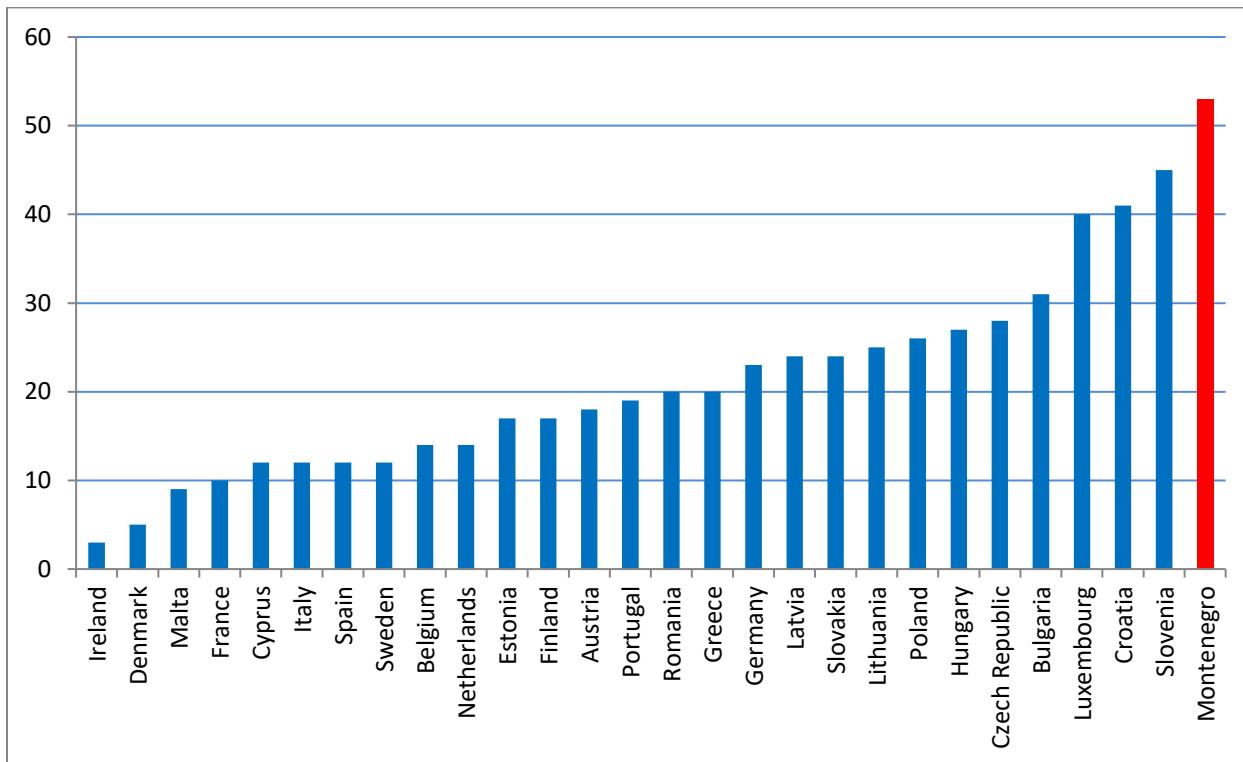
19. At 5.3 judges per capita, Montenegro currently has approximately twice the average of filled judge positions per capita as other jurisdictions in Europe had in 2012. Figures for Montenegro should be compared to those from CEPEJ 2014 when that data is available. The number of judges by court type in Montenegro is shown in Table 1 above, and comparative figures are shown in Figure 5 below.

Figure 5: Number Judges per 100,000 Inhabitants, Montenegro and EU Member States, CEPEJ 2012¹⁴

¹² The Judicial Council should evaluate how many judges have voluntarily changed court seats in the last five years, survey judges about why they are reluctant to relocate and continue evaluating voluntary relocations under its new incentive program.

¹³ Authorized judgeships: 2015 Decision on the number of judges; includes 57 recently authorized misdemeanor judges. Filled judgeships: Website sudovi.me (lists of judges).

¹⁴ Data from EU Member states: CEPEJ EU Justice Scoreboard 2014 based on 2012 data. Montenegro data: 2015 Decision on the number of judges; includes 57 recently authorized misdemeanor judges.



20. CEPEJ notes that states with over 30 judges per 100,000 inhabitants can be found primarily among the states coming from the Former Yugoslavia, including Croatia, Serbia, Macedonia, Montenegro and Slovenia.¹⁵

21. Montenegro's high proportion of judges to population is not due to a higher per capita caseload than in EU member states. Other countries have more incoming cases per capita and yet have many fewer judges per capita. For example, comparing other Eastern European countries' civil and commercial caseload with Montenegro entire court caseload,¹⁶ we find that:

- Croatia has 80% of the per capita judges of Montenegro but more than twice the number of cases per capita;
- Slovenia has slightly fewer per capita judges but three times the per capita cases;
- Poland functions with about half the number of judges per capita but more than 2 1/2 times the number of per capita cases.¹⁷

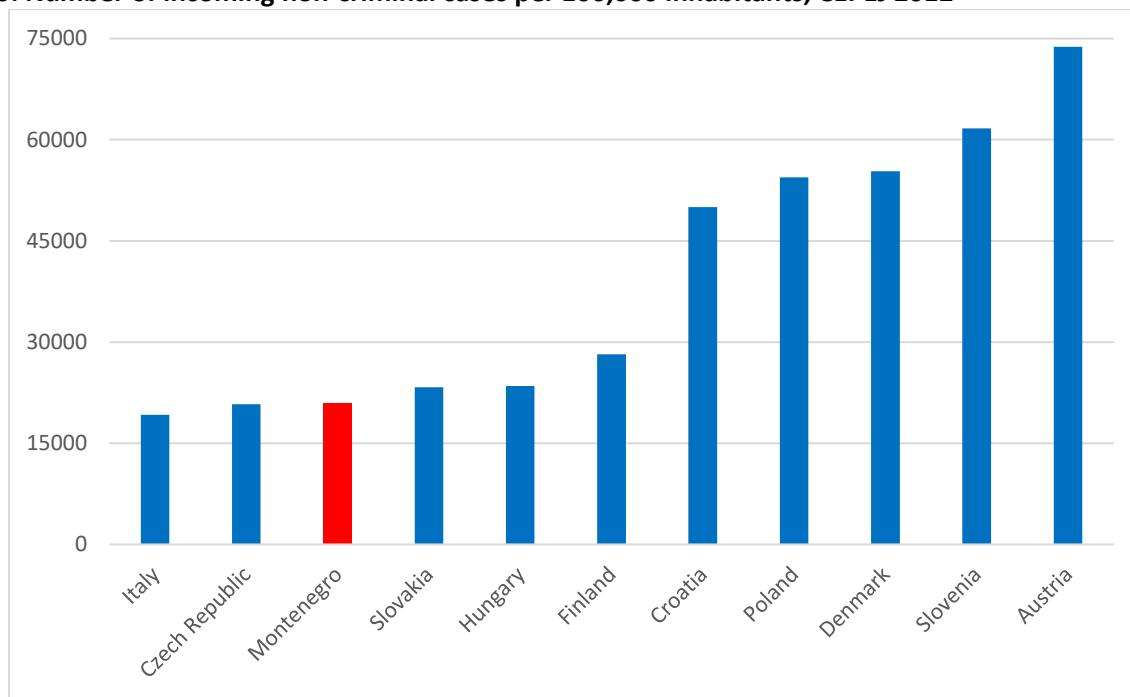
Montenegro has approximately twice the filled judge positions per capita compared with other jurisdictions in Europe, despite a lower than average number of cases per population.

¹⁵ See CEPEJ Evaluation Report, 2014 (based on 2012 data).

¹⁶ Includes criminal cases.

¹⁷ Other EU member states such as Austria and Denmark show even greater disparity between judges per capita and caseloads per capita.

Figure 6: Number of incoming non-criminal cases per 100,000 inhabitants, CEPEJ 2012¹⁸



22. The Judicial Council is not required to determine the needed number of judges on a regular basis as in other countries in the region.

23. The judiciary has also failed to seize opportunities to adjust the number of judicial positions when the functions of courts have been reduced. For example, when prosecution-led investigation commenced in 2010, criminal investigations became largely a prosecutorial rather than court responsibility; the impact analysis accompanying the authorizing statute indicated that the workload of 20 investigating judges would be eliminated. While investigating judges were encouraged to consider transferring to the prosecution service, it is unclear how many did so. In addition, the role of trial judges has changed as they may now return cases to prosecutors if more needs to be done (this was previously done by the judges). Despite this significant reduction in court jurisdiction, three judgeships have since been added to the system since that time.¹⁹ These additions jeopardize the sector's ability to find resources necessary for ICT, innovation and infrastructure upgrades.

24. Recently, MOJ, with the assistance of EUROL, engaged in a rigorous examination of whether the number of judges, advisors and court staff comport with the time needed in the court to dispose of cases given their level of complexity.²⁰ This type of study, known as a weighted caseload study (CWS in Montenegro),²¹ found that the judiciary has an excess of 64 judges to maintain its current workflow but would need a few more judges (5 total) on a temporary basis than are in place at present to eliminate the backlog. The CWS found the system

¹⁸ Includes only countries that submitted data in civil, commercial and enforcement cases. As a significant outlier with many fewer per capita cases than other countries, France was excluded from the comparison.

¹⁹²⁰ According to the 2011 Court Performance Report, there were 260 authorized judgeships in 2011, while there are 263 at present, excluding misdemeanor judges.

²⁰ The analysis for support staff is being revised.

²¹ Montenegro Case Weighting Study, Final Report with Recommendations, Maja Grubišin, EUROL STE, October 2015.

employed between 72 and 101 excess advisors, even given the current backlog.

Table 2: Comparison of Authorized Judges and Advisors to CWS Results

Judges					
Court	Budgeted (Decision)	Need Assuming No Backlog	Need Assuming Ongoing Backlog	Budgeted Versus Need with No Backlog	Budgeted Versus Need with Ongoing Backlog
Commercial Court	16	8	13	-8	-3
Subtotal High Courts	57	49	63	-8	6
Subtotal Basic Courts	149	101	151	-48	2
Total	222	158	227	-64	5
Advisors					
Court	Budgeted (Decision)	Need Assuming No Backlog	Need Assuming Ongoing Backlog	Budgeted versus Need with No Backlog	Budgeted versus Need with Ongoing Backlog
Commercial Court	20	4	7	-16	-13
Subtotal High Courts	63	17	21	-46	-42
Subtotal Basic Courts	94	55	77	-39	-17
Total	177	76	106	-101	-72

25. The figures assuming maintenance of the usual rate of dispositions (rather than eliminating the entire backlog) appear more realistic. Of the 3,671 cases unresolved as of December 31, 2015,²² 68% (2,489) are less than three years old and do not represent a backlog that requires special attention to eliminate. At the same time, some of the oldest backlogged cases –dating back as far as 1982²³ -- are very unlikely to require a level of effort equivalent to that for current cases. The EUROL study also assumes continued use of current work methods and does not consider measures to improve efficiency through better use of support staff²⁴, revised procedures, and increased use of technology. Even if all of the 64 judgeship positions found to be excess were reduced (for example, through attrition by retirement, transfer to prosecution etc.), MNE would still be at 4.2 judges per 100,000 population, the very high end of the population to judge ratio. Based on the experience of other countries, more efficiencies can be achieved, particularly given the Montenegrin judiciary's recent experience of individuals being willing to transition between the role of judge and prosecutor.

26. With an apparently larger-than-necessary pool of judges, new judicial appointments should not be made. The Judicial Council should fulfill its obligation to systematically determine the number of needed judges. Until those methodologies are developed and formalized, there is no reasonable or transparent basis to justify adding more people to the already-bloated system.

²² See Pregled rjesavanja starih predmeta na 31.12.2015, MOJ.

²³ 10% of unresolved cases filed more than three years ago – representing an actual backlog – have been unresolved for ten or more years. It is unclear how much work effort these cases require.

²⁴ Including advisors, who could serve a stronger role in case processing.

27. On the other hand, the ratio of population to prosecutor places Montenegro at the low end of countries of Central and Eastern Europe. Montenegro currently has 14 prosecutors per 100,000 inhabitants,²⁵ compared to a regional range of 14.8 to 25.7 prosecutors per 100,000 population in Poland, Hungary, Slovakia, Montenegro, Bulgaria and Lithuania.²⁶ Montenegro's ratio is high compared to that in Western Europe where, however, prosecutors are more likely to be supported by larger numbers of mid-level specialist staff.

28. In 2015, Montenegro counted 131 Prosecutors and Deputy Prosecutors organized across four prosecution levels (see Table 3 below).

Table 3: Number of Prosecutors and Deputy Prosecutors in Montenegro, 2015²⁷

Type of Office	# of Prosecutors	
	Authorized	Filled
Basic Prosecutors' Office	85	82
High State Prosecutor's Office	24	19
Special Prosecutor's Office	11	11
Chief State Prosecutor's Office	11	9
TOTAL	131	121

29. The number of prosecutors has remained relatively stable, other than a notable increase in election of 35 new state prosecutors, 30 advisors and 50 state employees with the introduction of prosecutor-led investigations in 2010.

ii. Distribution of Judges and Prosecutors

30. The ratio of judges and prosecutors per 100,000 population per institution vary by as much as 85%. The number of judges per population is not related to the overall size of the court: many small courts have a high population to judge ratio and one large court (Kotor) has a low population to judge ratio.²⁸

²⁵ 2015 Decision on the Number of Prosecutors.

²⁶ Judicial Systems of the European Union Countries – Analysis of data by the European Commission for the Efficiency of Justice (CEPEJ) Council of Europe, June 2013, available at <http://www.canestrinilex.com/assets/Uploads/en/CEPEJ-report-2013.pdf>.

²⁷ Source authorized prosecutors: 2015 Decision on the number of prosecutors. Source filled prosecutor/deputy prosecutor positions: <http://tuzilastvocg.me/media/files/ODLUKA%20O%20BROJU%20DRZAVNIH%20TUZILACA.pdf>

²⁸ Permanent area population is one but not the only indicator of needed resources; seasonal swings in population may also impact filings in prosecutors' offices and courts.

Figure 7: Population per Judge in Basic Courts - 2015²⁹

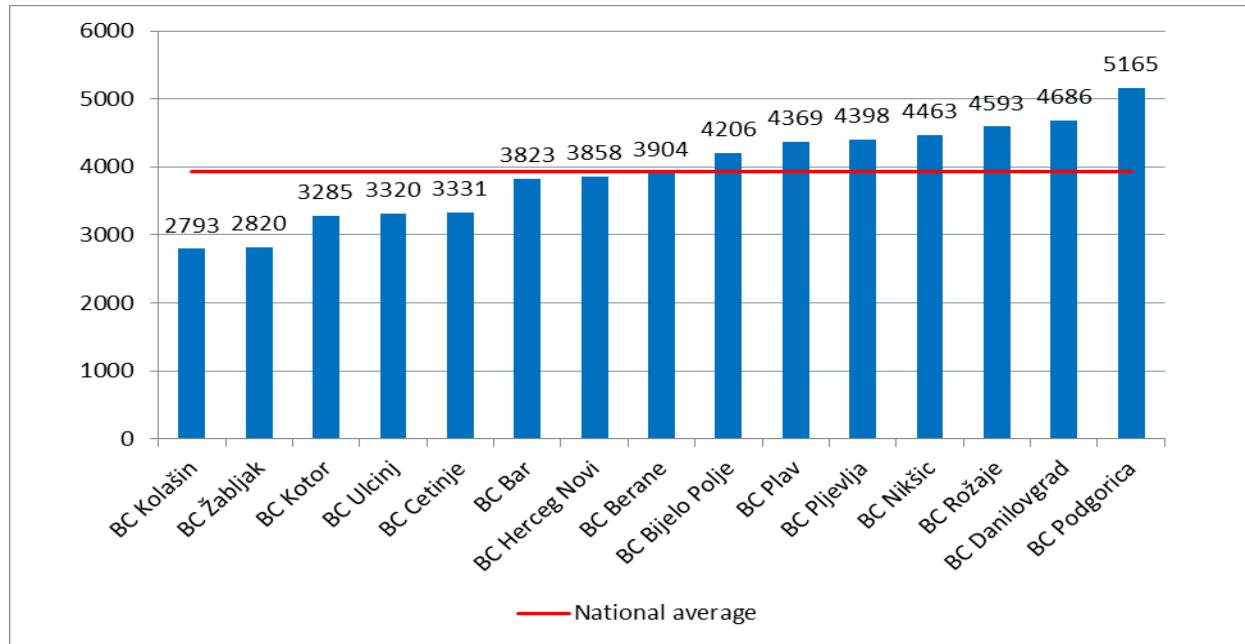
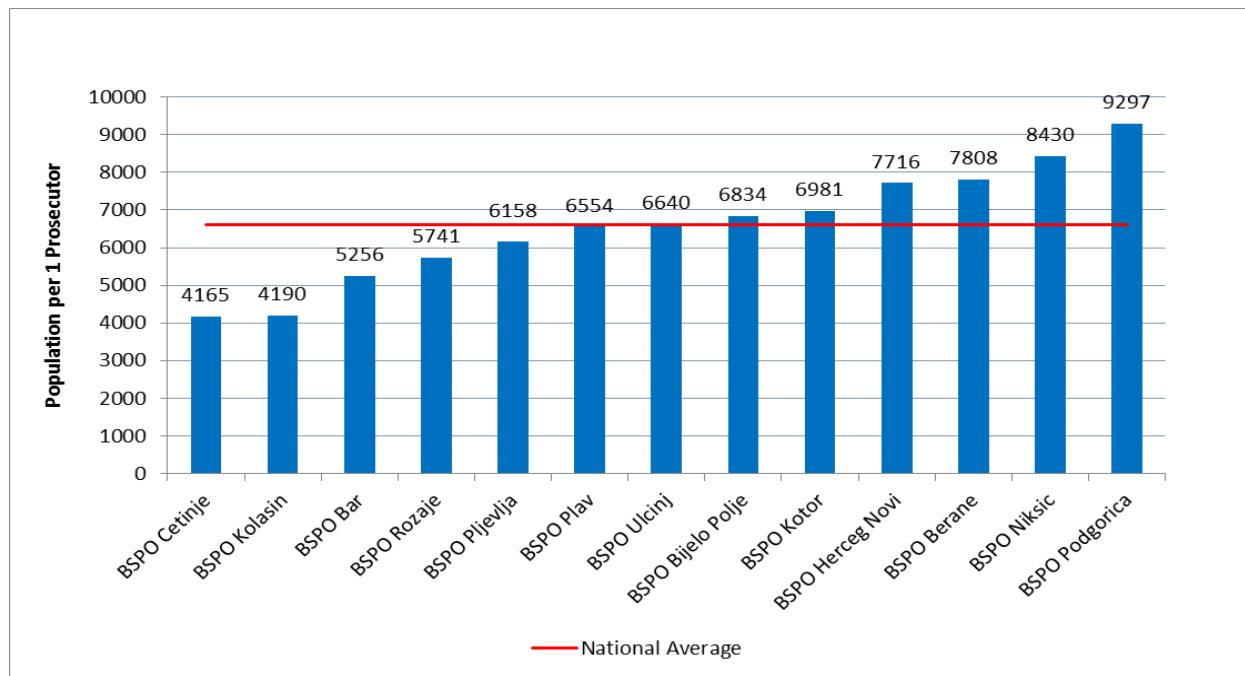


Figure 8: Population per prosecutor in basic prosecutors' offices – 2015³⁰



²⁹ Source authorized judges: 2015 Decision on the number of judges; includes 57 recently authorized misdemeanor judges.
Source (population): Government Analysis on Need for Rationalizations of Judiciary Network.

³⁰ Budgeted prosecutor positions: 2015 Decision on the Number of Prosecutors by Office. Population: Government Analysis on Need for Rationalizations of Judiciary Network.

31. Wide regional variations in the distribution of these resources is also evident. The Central Region has approximately 50% more judges and prosecutors per capita than the southern region, regardless of whether planned or filled positions are considered.

Figure 9: Per Capita Regional Differences in Filled Judge Positions - 2015³¹

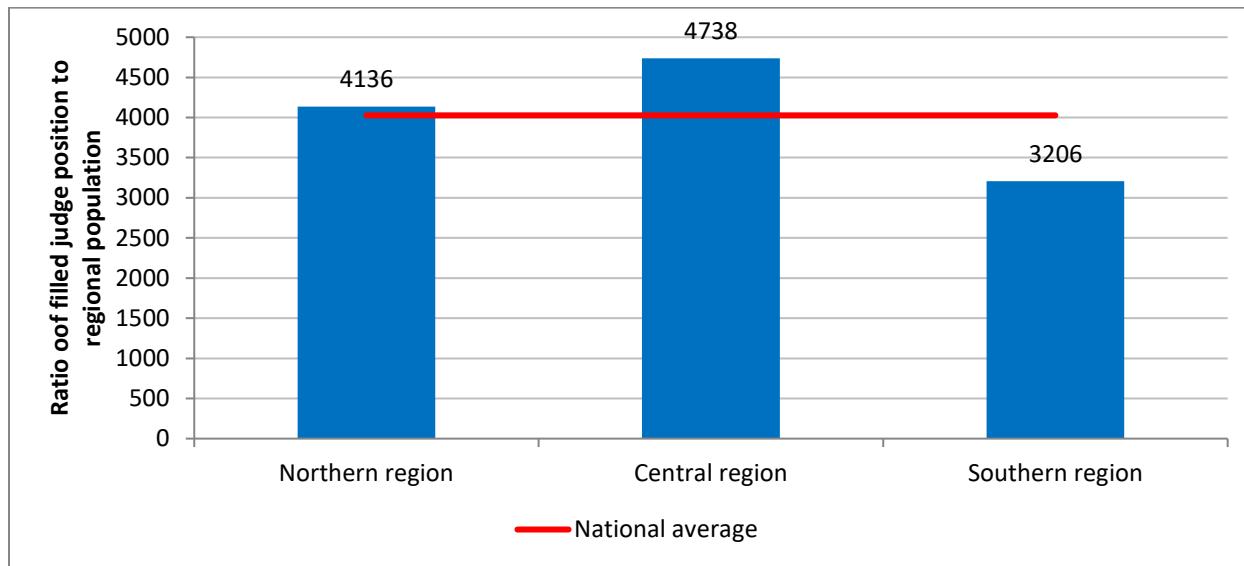
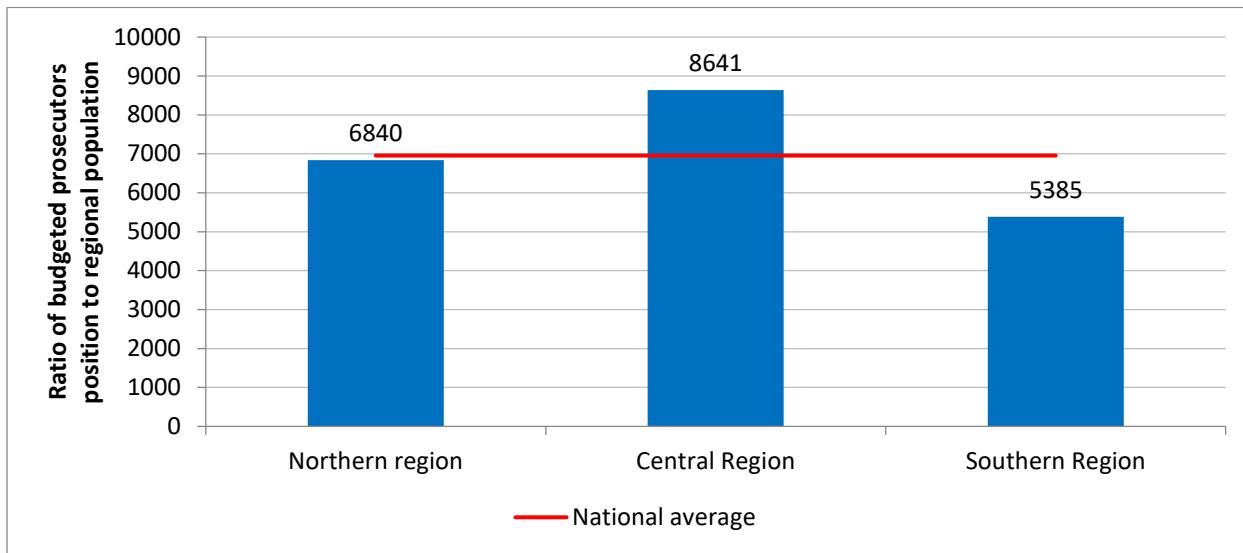


Figure 10: Regional Differences in Budgeted Deputy Prosecutor Positions – 2015³²

³¹ Filled judgeships: Website sudovi.me (lists of judges). Regional populations: Government Analysis on Need for Rationalizations of Judiciary Network. Regions defined as northern (Berane, Bijelo Polje, Zabljak, Kolasin, Plav, Pljevlja, Rozaje), central (Danilovgrad, Nikšić, Podgorica, Cetinje) and southern (Bar, Kotor, Ulcinj, Herceg Novi).

³² Budgeted prosecutor positions: 2015 Decision on the Number of Prosecutors by Office. Regional populations: Government Analysis on Need for Rationalizations of Judiciary Network. Regions defined as northern (Berane, Bijelo Polje, Zabljak, Kolasin, Plav, Pljevlja, Rozaje), central (Danilovgrad, Nikšić, Podgorica, Cetinje) and southern (Bar, Kotor, Ulcinj, Herceg Novi).



32. Population is only one indicator of possible workload. Direct indicators such as filings and dispositions tell a more complete story. Preliminary data indicate that institutions with more judges or prosecutors per capita perform no better than their less well resourced counterparts. For example, increased clearance rates,³³ a primary idicia of performance, do not increase with the per capita number of judges or prosecutors.

Figure 11: Court Clearance Rates Compared to Resources- 2015³⁴

³³ Clearance rate as used here is the number of disposed cases as a percentage of the number of filed and pending cases in a given time period. A clearance rate of 100% means the court has disposed of as many cases as were filed or open at the beginning of a given year. A clearance rate under 100% means the court has disposed of fewer cases than were filed or open at the onset of the year, resulting in an increase in cases awaiting disposition. The more traditional definition of clearance rates considers only newly filed cases and not those in inventory at the beginning of a given year. In impacted justice systems, considering cases that remain at the beginning of a year is critical.

³⁴ 2015 Annual Report on Performance of the Courts, Supreme Court; comparative analysis by World Bank.

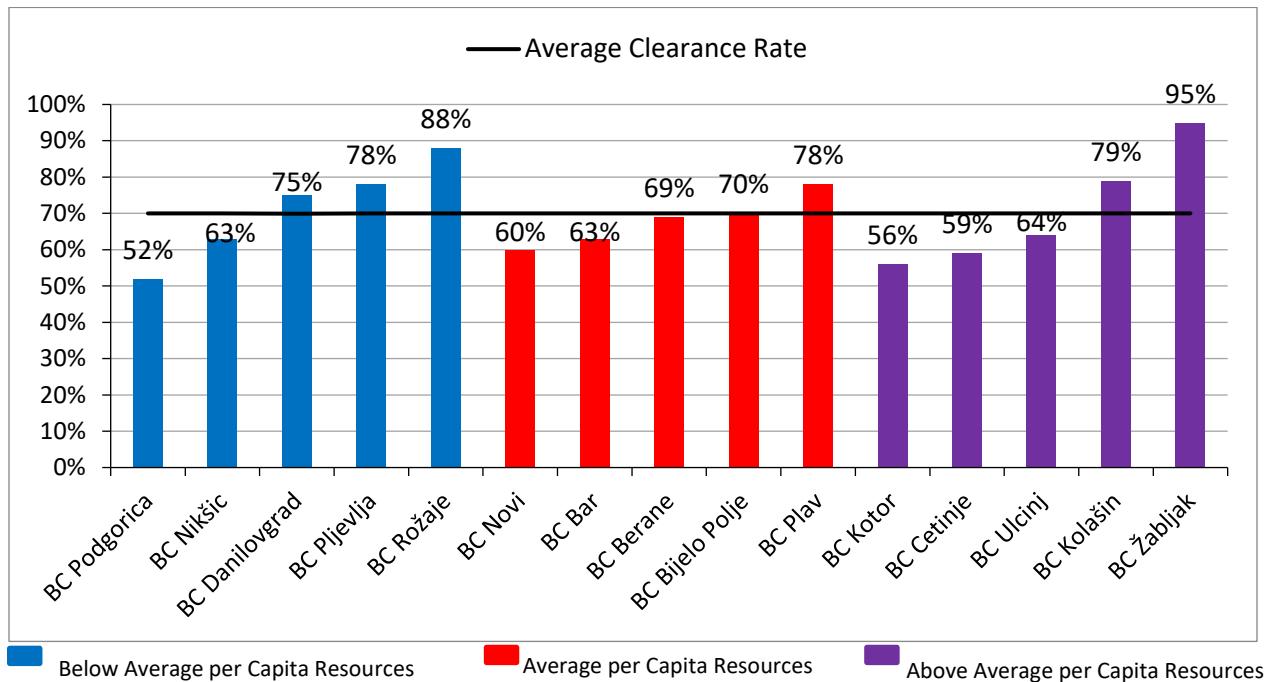
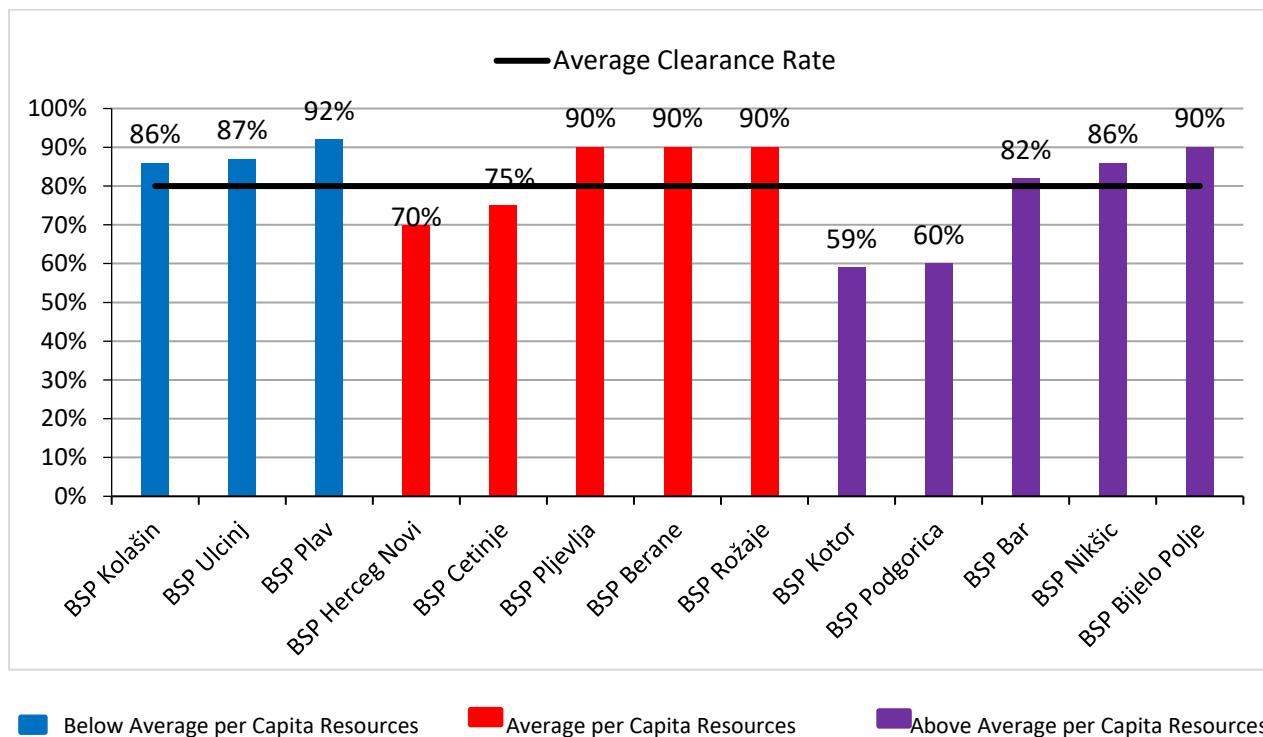


Figure 12: Basic Prosecution Clearance Rate Compared to Resources-2015³⁵



³⁵ 2015 Annual Report on Prosecution Services, Chief Prosecutor's Office; comparative analysis by World Bank.

33. Drawing conclusions from this data is difficult as data elements, are not clearly defined, particularly by prosecutors' offices. For example, prosecutors' offices may include only indictments in dispositions, ignoring rejected criminal charges, dismissals or other prosecutor decisions. A "charge" upon which filings, pending cases and dispositions are based for prosecution offices is also ill-defined and may represent individual counts separated out or multiple offenses in a single crime counted collectively; similarly, either individual defendants may be counted or collections of individuals accused of a single offense grouped together. The justice sector needs to clearly define the manner in which filings and dispositions are to be counted both for courts and prosecutors and perform periodic data audits to ensure compliance. Once data definitions are clear, performance should be compared again to resource allocations.

34. Even absent these comparisons with performance, it is clear that judges and prosecutors are not well distributed through the country. The January, 2016 implementation report for the justice sector action plan indicates that since adoption of the Plan for Vacant Court Seats in May, 2015, only judges from the Bijelo Polje Commercial Court have been voluntarily relocated to the Podgorica Commercial Court. The pace of transfers needs to be increased, particularly given the small distances between some institutions of like kind.

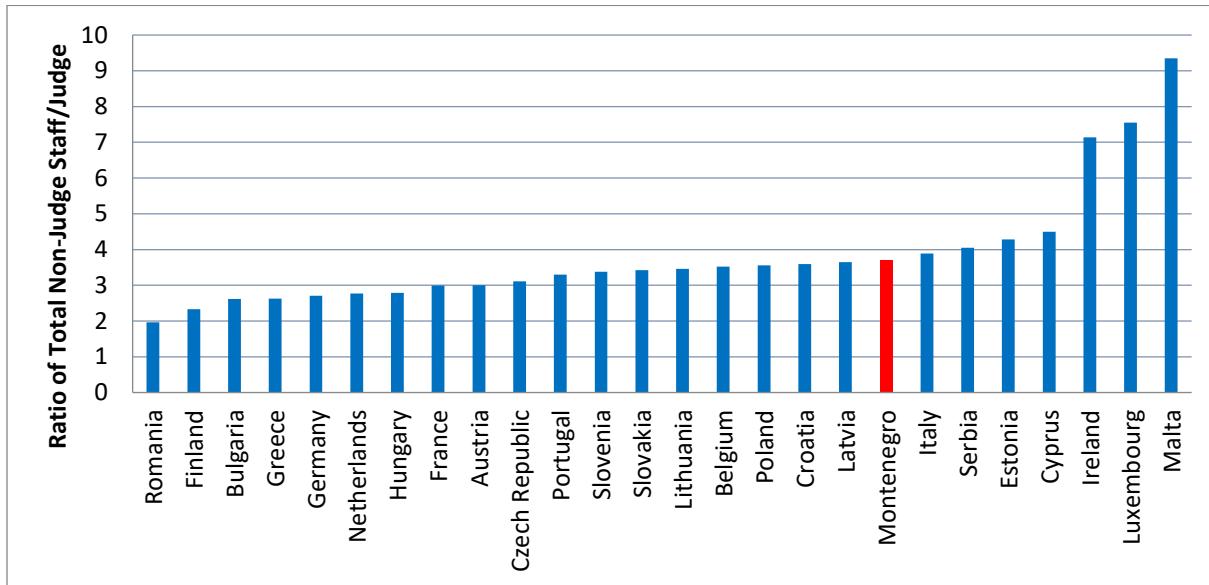
35. The justice sector should consider more proactively reallocating judge and prosecutor positions through expanded use of incentives and as attrition occurs. The Prosecutorial Council should consider an incentive system similar to that recently introduced by the Judicial Council. Both councils could consider surveying judges and prosecutors about their willingness to accept relocation.

iii. Number of Court Staff

36. The very high ratio of judges to population in Montenegro compared to other European countries is not explained by a low ratio of staff/judge as Montenegro is also at the high end of the staff/judge ratio. This ratio is higher than 18 of the 25 EU Member States that submitted data on this point to the CEPEJ for 2012 (see Figure 5).

Figure 13: Ratio of Court Staff to Judges, Montenegro and EU³⁶

³⁶ Data from EU Member states is from the CEPEJ EU Justice Scoreboard 2014 based on 2012 data. (Denmark, Spain, and Sweden not included, as data were unavailable).



37. In 2015, Montenegro had an average of 3.7 non-judicial employees per judge, with an average of 0.8 advisors per judge.

Table 4: Number of advisors and total staff per Judge – 2015³⁷

Court	Judges (Authorized)	Advisors (Authorized)	Ratio Advisors /Judges	Total Employee (Authorized)	Ratio Total Employees /Judges	Case Related Staff
Supreme Court	19	18	0.9	39	2.1	38
Appellate Court	13	9	0.7	33	2.5	32
Administrative Court	12	13	1.1	37	3.1	37
High Court Podgorica	40	41	1.0	101	2.5	97
High Court Bijelo Polje	17	22	1.3	57	3.4	53
Commercial Court	16	20	1.3	80	5.0	79
Higher/Special Courts	117	123	1.1	347	3.0	336
Basic Courts	149	94	0.6	645	4.3	586
All Courts	266	217	0.8	992	3.7	922

38. The number of support staff per judge or prosecutor varies by as much as 100% between institutions and do not match staffing norms.³⁸ Staffing ranges from 3.5 and 6.0 per judge at the Basic Courts and from 0.8 to 2.0 per (deputy) prosecutor in basic prosecution offices (see Figures 14 and 15 below).

Figure 14: Number of Staff per Judge in Basic Courts³⁰

³⁷ Staff systematizations dated as far back as 2009, which continue in force. Excludes 91 court guards added to Supreme Court staffing authorization in 2016.

³⁸ Rulebooks on Framework Criteria for Determining the Number of Judges and Court Staff in Courts (Pravilnik o orjentacionim mjerilima za odredjenivanje potrebnog broja sudija i ostalih zaposlenih u sudu).

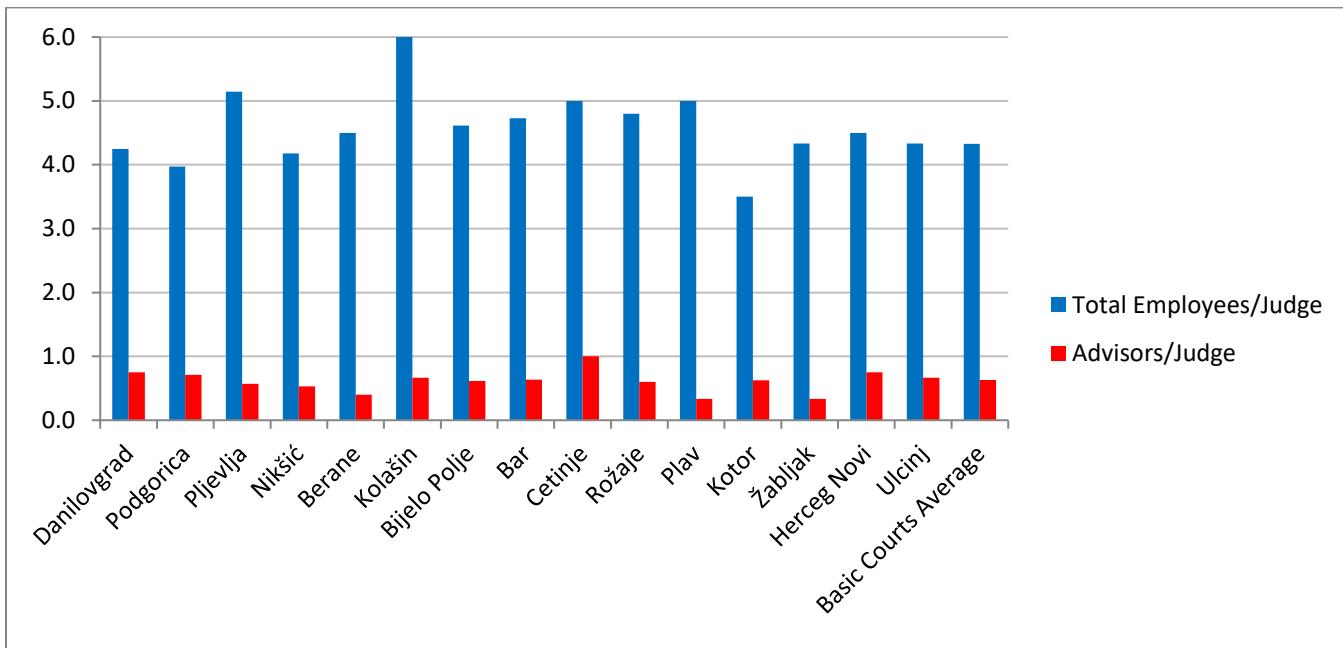
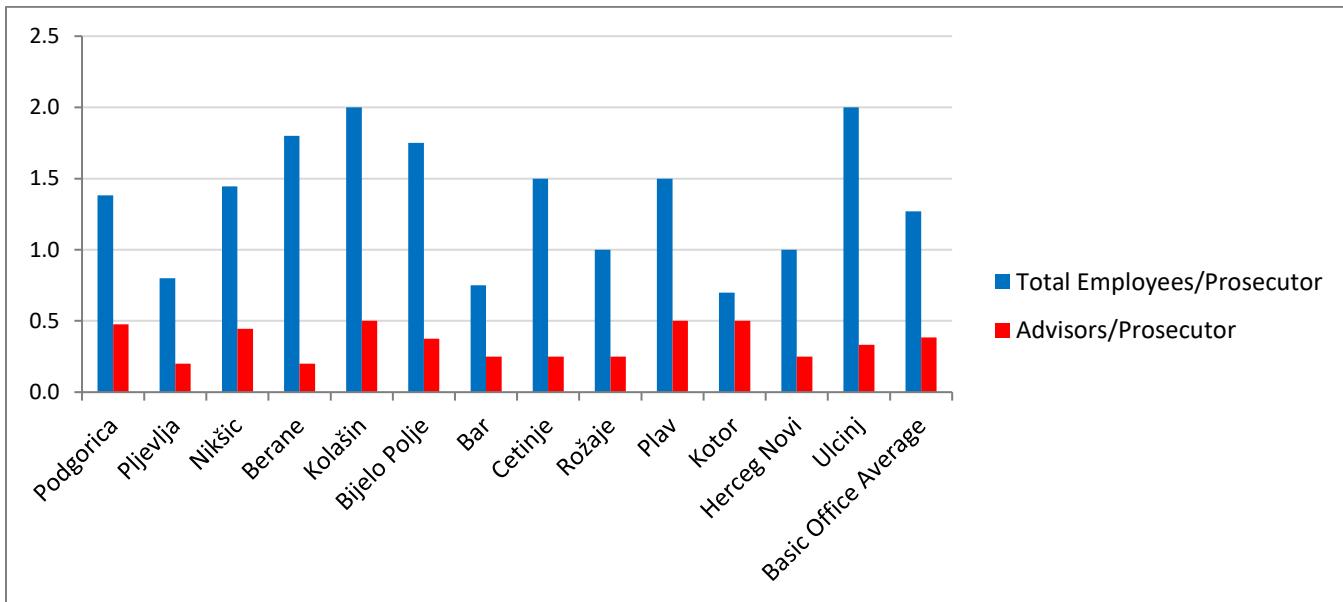


Figure 15: Number of Staff per Prosecutor in Basic PPOs³¹



39. There are significant differences in the number of judicial assistants budgeted per judge (see Figure 14 above). These positions are most closely related to case processing, and their numbers should correspond to the number of judges which in turn should be objectively determined by caseloads, none of which is occurring. The average ratio of advisors/judges is 0.8 (metrics call for 0.5) ranging from 0.3 to 1.0. One of the two higher courts has nearly twice the number of advisors per judge as the other. The range for prosecutor offices (from 0.2 to 0.5 per prosecutor) is not as large.

40. While staffing norms exist in theory to set personnel allocations, they are not enforced in practice. Instead, staffing ratios have evolved on an ad-hoc basis, as individual Court Presidents have made and were granted requests by the MOJ and MOF for new positions. The norms may themselves be too simplistic a way of determining staffing levels given the complexity of justice institutions and the absence of a case weighting methodology, and it may be reasonable for systematizations to vary from these prescribed norms. However, variations between the norms and the systematizations and the subsequent personnel budget should in future be justified and documented by courts based on objective need.

While, staffing norms exist in theory to set personnel allocations, they are not implemented or enforced in practice and may not reflect current needs.

41. Staffing is also not adjusted when circumstances such as caseloads or technologies change or in light of the devolution of certain responsibilities to other agencies or private agents. For example, since the introduction of private enforcement agents in 2014, there remain significant court-employed bailiffs. The judiciary indicates that this is because civil servants cannot be moved without their consent from the courts to other bodies – and even between individual courts.³⁹ Similarly, staff were not moved from courts to prosecutors' offices when prosecutors adopted the responsibility for investigations; instead, new staff positions were added to prosecutors' offices. Meanwhile, there is a general reluctance to eliminate positions, therefore creating inertia. Not taking action to eliminate unnecessary positions only jeopardizes the sector's ability to fund the necessary ICT, innovation and infrastructure upgrades.

42. No analysis has been conducted of the staff savings in the courts of the introduction of private notaries in 2011. The transfer of verification services should have resulted in large-scale redundancies among registry staff, particularly in Basic Courts. Instead, these staff were absorbed into the general staffing of the Basic Courts. With staff made available for case processing, the performance of courts in certain areas should have improved, but this seems not to have occurred. Just having more resources available without planning for their optimum use does not guarantee improved outcomes.

Public sector positions can be reduced through layoffs with provision of severance pay. The funds saved through right-sizing could then be allocated to improving the capacity of existing people in the system.

43. A strategy for eliminating excess staff positions through layoffs, attrition or other means such as transfers is needed. Public sector positions can be eliminated through layoffs and severance pay provided, and much can also be achieved through attritions and transfers, particularly in view of the availability of ICT and the small size of the country. The funds saved through right-sizing could be invested in much-needed areas, such as in technical and advisory positions or improvements in ICT or case management functionality or through much-needed infrastructure improvements that justice stakeholders so strongly desire. In addition, rather than adding employees to meet temporary workload needs, the Judicial Council is considering creating a roving support team employed by the Council which could be deployed to courts as needed.

44. Further, staffing patterns do not generally reflect economies of scale (see Figures 16 and 17). The Basic Courts and prosecutors' offices do not become more efficient as they grow, as would be expected; in fact, the number of staff per judge or prosecutor appears to bear no relationship to court size. This confirms that staffing patterns have not been reconsidered based on need.

³⁹ Staff systematizations dated to as far back as 2009, which continue in force.

Figure 16: Ratios of Budgeted Staff Positions to Basic Court Judges by Court Size, 2015³²

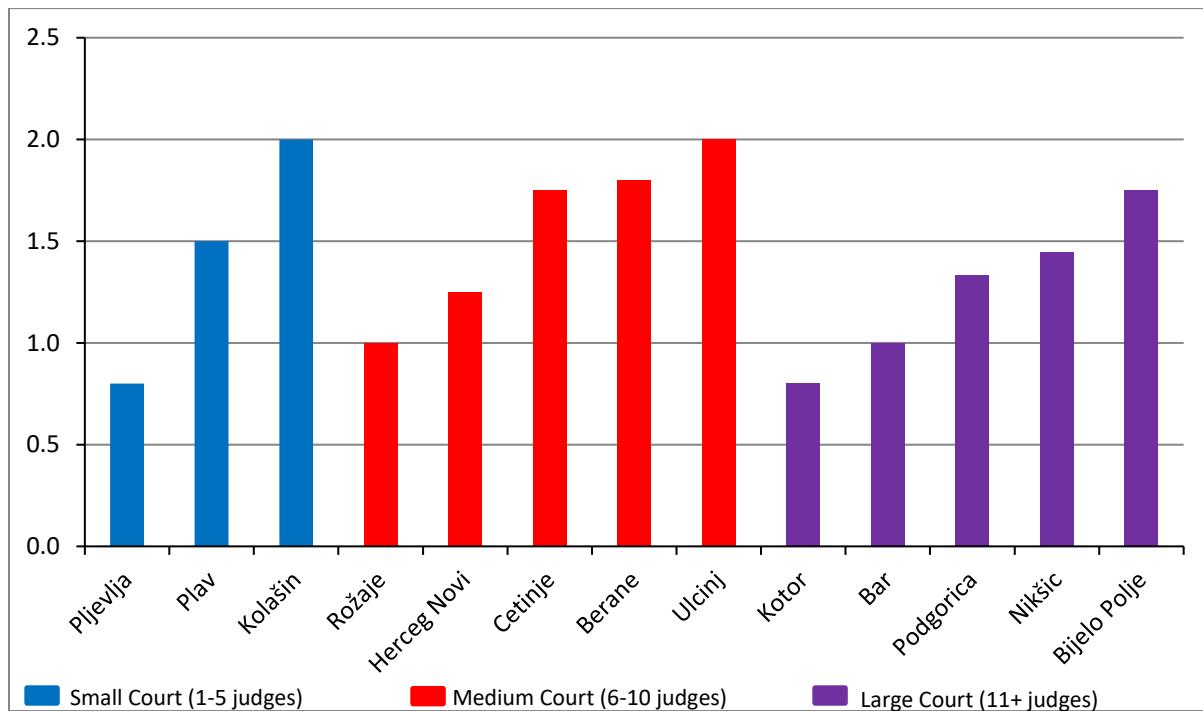
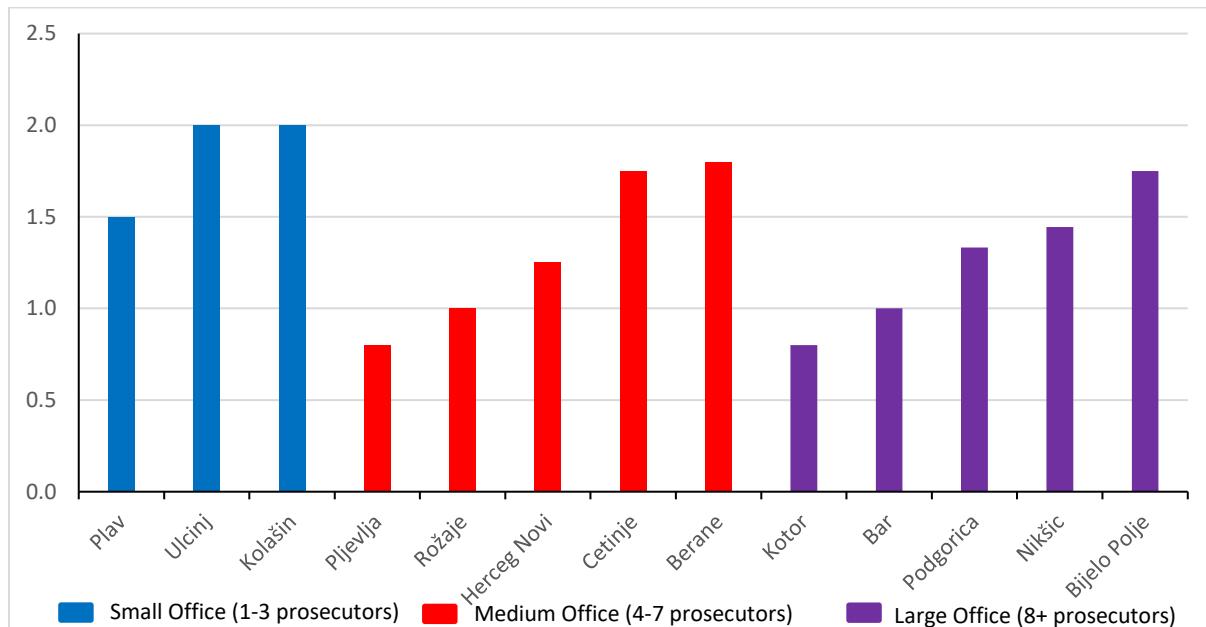


Figure 17: Ratios of Budgeted Staff Positions to Basic Prosecutor by Office Size, 2015³³



45. Many authorized positions remain unfilled. Court staff vacancies range from 2% of the authorized workforce to over 20% in one court.⁴⁰ While five prosecutors' offices have no vacancies, one has a 68% vacancy rate. Vacancies are not concentrated in any particular region but are somewhat lower in the central part of the country.

Figure 18: Vacancies in Authorized Court Positions – 2015⁴¹

⁴⁰ The average is 10%.

⁴¹ Employee lists from each court (data for Ulcinj Basic Court unavailable). Since employee lists do not consistently specify whether an individual is a temporary or permanent employee, court websites may include temporary employees; thus, the percentage of positions that have not been permanently filled may in fact be understated.

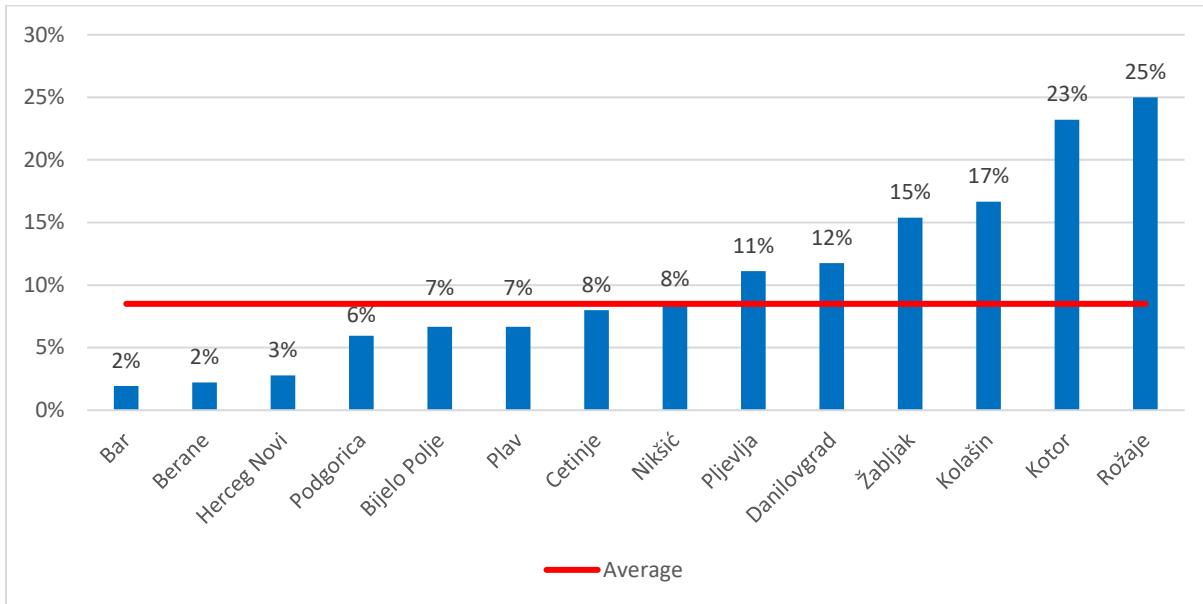
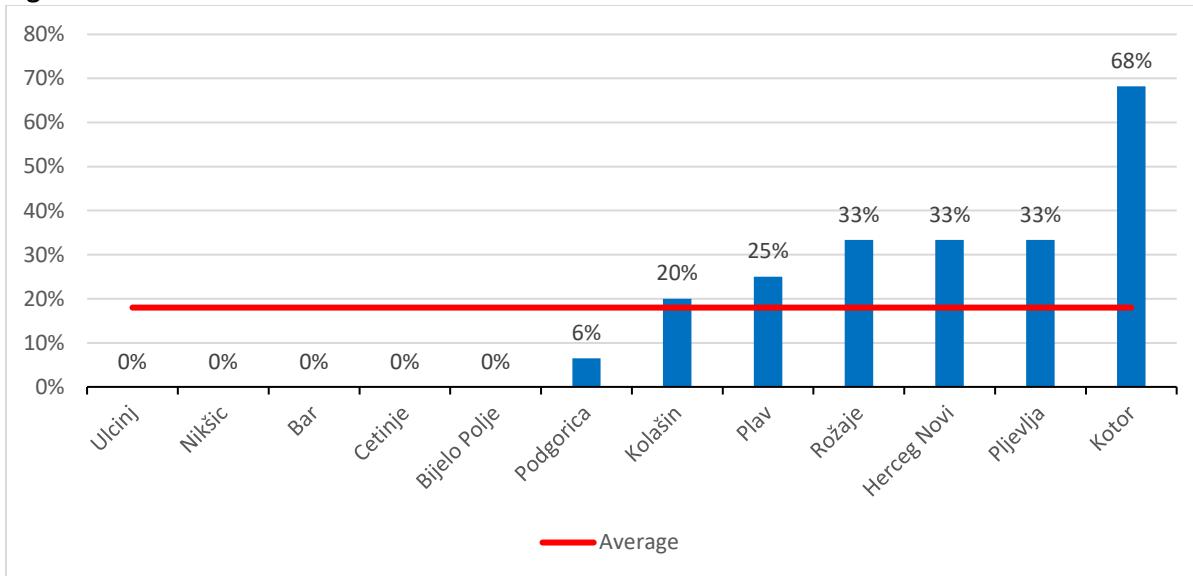


Figure 19: Vacancies in Authorized Prosecutor Positions – 2015⁴²



46. Without an objective basis for the staffing ratios, it is not possible to assess whether all vacancies should be filled or whether the ratios should be downgraded and money allocated to other resources. MOJ, courts and prosecutors' offices do not regularly examine vacancies for patterns that might reveal positions to be unneeded or for which recruitment difficulties need to be addressed. Salary savings could be reallocated to other positions that would provide more benefit to the judiciary, for example, court managers, budget and finance staff, IT administrators, planners, and statisticians or to improvements in ICT that would better leverage existing staff to perform their work. Many budget systems automatically deduct a fixed proportion of salary budgets in recognition

⁴² Employee lists from each prosecutor's office (data for Berane excluded as list shows more filled than budgeted positions). Since employee lists do not consistently specify whether an individual is a temporary or permanent employee, court websites may include temporary employees; thus, the percentage of positions not been permanently filled may in fact be understated.

that there will be vacancies. Some of these savings could be captured at a central level for use in system-wide improvements. Such improvements are much needed and much-desired by people working in the system – they have the potential to more significantly boost morale and performance.

iv. Extent and Impact of Temporary Staffing

47. The judiciary employs over 309 temporary, intern and contract employees,⁴³ of whom 279 work for the courts, representing 29 percent over the courts' authorized workforce.⁴⁴

The 'shadow workforce' is reported to be extensive but their precise numbers and roles are unknown.

Table 5: Employment of Interns, Temporary Staff and Contractors – Courts 2016⁴⁵

Court Level	Judicial Interns		All Other Temps		Contractors		Total	
	#	% of Total Approved Positions	#	% of Total Approved Positions	#	% of Total Approved Positions	#	% of Total Approved Positions
Basic	126	19.0%	50	7.8%	21	3.3%	197	30.1%
Higher	27	17.0%	7	4.4%	6	3.8%	40	25.2%
Commercial	14	17.5%	0	0.0%	22	27.5%	36	45.0%
Administrative	1	2.7%	0	0.0%	1	2.7%	2	5.4%
Supreme	3	7.7%	1	2.6%	0	0.0%	4	10.3%
Total	171	17.9%	58	6.10%	50	5.2%	279	29.2%

48. In less than 20% of these instances are positions utilized to backfill positions of individuals on leave. In some cases, courts use temporary employees while changes in permanent systematizations are being approved.⁴⁶ The remainder of temporary employees, other than interns, are hired under provisions allowing them to be used for special projects or work overflow.⁴⁷ However, this occurs without considering whether an institution absorbing

⁴³ Excludes MOJ and Training Center.

⁴⁴ According to a World Bank survey of each institution about the number of temporary, intern and contract employees conducted as part of this assessment and confirmed before the conclusion of the report.

⁴⁵ Survey conducted by World Bank during the Human Resources Assessment.

⁴⁶ Notably, the Commercial Court was delayed in adopting a new rulebook to accommodate the court network rationalization and elimination of the Bijelo Polje Commercial Court, and therefore also from recruiting any new staff. Permanent staff will be hired by May, 2016.

⁴⁷ Three courts report extensive use of temporary and contract employees to manage special projects and workoverload. The Podgorica Higher Court reports its workload increased due to establishment of the Special Division, an increase of four judges, and a large inflow of new cases. Cetinje Basic Court indicates that nearly 1,000 litigation cases have been delegated to it from the Kotor and Podgorica Basic Courts, with an expectation of another 400 to follow. Podgorica Basic Court indicates that it relies on temporary staff to manage increases in the civil litigation and enforcement department related to decisions on the objections filed by private bailiffs, which totaled to 2,829 last year and 665 for 2016 to date, and a 120,000 case backlog concerning enforcement of authentic title, and to manage other changes in statutory responsibilities.

an additional responsibility in fact already has more than enough employees; instead, new positions are added incrementally without an overall assessment of resources. While filling these position may be justified, the large extent to which positions are filled outside of the regular civil service employment system is concerning. Most of these circumstances could have been anticipated and permanent staffing approved.

49. Interns represent 61% of the unregulated workforce. Their roles are particularly ill-defined. At present, there are 0.65 interns per judge, in contrast to proposed, pending legislation providing for 0.35 interns per judge. If passed, this legislation will require the courts to reduce the number of interns by 78 to 93 in total.

50. There is no effective position control for individual institutions (e.g., a given court) or budget users (e.g., all courts). Additional positons may and do at times result in an institution exceeding its personnel complement and/or the total personnel budget, as shown in Figure 3 above.

51. A list of the precise number of temporary staff, contractors, interns and volunteers is not regularly or transparently maintained.⁴⁸ This workforce has grown incrementally rather than having been planned. The roles of these additional employees are not transparent as they are not enumerated but reportedly range from legal assistants to staff in the registry office. Only some institutions include temporary employees on their staff lists.

52. Temporary employees, interns and contractors are hired at the discretion of the head of each institution and are subject to irregularity in employment. Stakeholders report that recruitment practices are neither open nor transparent and are not merit-based. Temporary employees must also be taken off the payroll after their limited, two-year terms. Temporary employees are likely to be lower-skilled and less productive than their permanent equivalents.

53. The extensive use of temporary staff creates an environment without a stable workforce. Courts are less able to build staff knowledge and expertise, or engage in integrated resource planning. Ultimately, high numbers of temporaries and contractors impact quality and court efficiency.

54. By contrast, the total number of temporary employees in PPOs is more modest. The survey of prosecutors' offices revealed 30 temporary, intern and contract staff, mainly in Basic prosecutors' offices, or a little less than 15% of the authorized workforce.

d. Recruitment, Evaluation and Promotion of Judges and Prosecutors

i. Recruitment and Nomination of Judges and Prosecutors

55. The Montenegrin judiciary historically lacked an objective entry point for the judicial profession. Criteria for judicial appointments to the Basic Courts or basic prosecutor offices were based on the generic criteria of education and years of experience, resulting in significant discretion in appointments.

56. The Judicial Training Center was reinvigorated in 2015 with the goal of establishing an objective basis

⁴⁸ The World Bank surveyed each institution about the number of temporary, intern and contract employees as part of this assessment.

for entry into the judicial profession line with principles established by the CoE.⁴⁹ Graduation from the Center became a mandatory precondition for initial selection to a Misdemeanor or Basic Court. The election of candidates for initial training is made by the Judicial and Prosecutorial Councils. The Councils are also responsible for determining the number of initial training enrollees at the Center based on the projected number of judicial vacancies in the year in which trainees are to graduate. The first class at the Center has not begun.

57. The initial training program relies heavily on mentors in the courts and PPOs. Much of the training received by initial trainees is in the form of on-the-job training in the courts or prosecutors' offices. Trainees receive the equivalent of 70% of a Basic Court judge's salary.⁵⁰

58. In comparison to the previous process of selecting new judges and prosecutors, the selection of trainees for the Judicial Training Center is relatively transparent and far superior. However, the Center will not be used to vet and rank trainees. Since the Councils indicate that the number of entrants will match the number of projected needed judges and prosecutors at the conclusion of the three years of the training period, there is no room for candidates to fail the training. It is assumed that entrants to the Center will successfully conclude training, raising questions as to the rigor of the training process and the final examination in particular.

59. Once training is successfully concluded, trainees are to be ranked according to their rankings before entering training, implying that training is not considered an important vehicle for evaluating candidates. Criteria or methods for court or prosecutor mentors to evaluate trainees are not yet in place nor planned for.

60. Using the Center as a primary entry point to the profession assumes a national career service, whereby judges and prosecutors can be placed in any court that needs them. As in many European systems, graduates of a Judicial Training Center are not allowed to refuse judicial appointment to a certain location. In Montenegro, trainees who refuse appointment to the specific court offered in the employment contract will be terminated ex officio. This is an important first step in expanding the view of judges and prosecutors as part of a national career service.

61. However, once appointed, judges and prosecutors will remain employees of the local institution and cannot be moved without their consent. Few institutional incentives exist to encourage that consent. This approach is particularly poorly-suited to a small country.

62. The Center's resources for example, may be better utilized in providing continuing training to existing judges rather than training new judges. As discussed above, Montenegro already has an excessive number of permanent judges relative to need and, given the existing balanced age structure of the judges, including a sizeable number of younger judges the number of new judges needed to replace judges as they retire is not expected to be significant. Thus, investing in a pipeline of future judges represents a less than optimal use of judicial sector funds which could be used in areas of greater need. Investing heavily in initial training is also likely to only raise expectations among trainees of future appointments, which the judicial sector cannot afford, and should not, meet. In light of these factors, the sector could consider a freeze on initial training.⁵¹

⁴⁹ European Charter on the Statute for Judges, Independence of the Judiciary, item 7, principles 1 and 2 b, Recommendations no R (94)12 of the Committee of Ministers of the Council of Europe, 1.1.6.

⁵⁰ Article 53 of the Law on Judicial Council and Judges (Official Journal 11/2015).

⁵¹ For further discussion on succession planning, see the Long Term Planning section below.

63. Looking forward, the Judicial Council should limit promotional appointments to candidates from within the judiciary. Given the excessive number of judges already in the system, it is necessary to fully utilize existing resources, at least for the medium term until the number of judges falls by attrition. It is also important to create viable career paths for existing judges and to enable junior judges to develop their skills through experience, training and successive positive evaluations to advance on the professional ladder. Internal promotions could also add value in terms of increased consistency of decision-making and uniformity in the application of the law, as well as greater continuity and collegiality within the judiciary.

ii. Criteria for the Evaluation and Promotion of Judges and Prosecutors

64. Judges in Montenegro have not to date undergone any rigorous evaluation of their performance.

65. Existing productivity norms that have existed for some time for judges do not incentivize good performance. Existing productivity norms rely almost entirely on the number of dispositions compared with filings. This encourages judges to ‘cherry pick’ simple cases or resolve cases too quickly while avoiding complex cases or backlog reduction. The degree to which individual judges even meet these norms depends on whether their individual Court President monitors those norms.

66. Formal rules for the evaluation of judges were adopted by the Judicial and Prosecutorial Councils in September and December, 2015, respectively. The evaluation rules for judges are being piloted. Their stated purpose is to promote judicial competence, to motivate judges to improve performance, and to enhance public confidence in the judiciary. The rules demonstrate a substantial improvement from the past. Judges will be evaluated based on the quality and quantity of their decisions.

67. There need to be clear rules about how evaluations will be used to determine promotions, identify performance defects or discipline judges and prosecutors. Rules on promotion should build in positive incentives for judges and prosecutors to contribute to the judiciary’s performance. Promotion criteria can be used as a way to incentivize good behavior and signal the kinds of attributes that office holders should develop if they seek career advancement. This is especially true for judiciaries that have a balanced age structure, because permanent younger judges and prosecutors need clear signal for career progression to maintain motivation and morale. In Montenegro, promotion applications could include ‘highly desirable’ criteria that encourage applicants to have:

- a. served in more than one court of prosecutor’s office (thus encouraging judges to agree to move locations at least once in their career, which may also foster consistency in practice and procedure and stronger collegiality);
- b. undertaken management training (thus encouraging a modern management approach in courts), including understanding of court administration and case management techniques etc.;
- c. undertaken continuing training, particularly in European law (thus encouraging increased capacity in line with European standards);
- d. mentored less experienced judges;
- e. contributed to performance improvements, such as participation in a backlog reduction teams or led an innovative project within their court.

68. Judicial evaluation procedures that utilize statistical data (such as number of cases resolved, decisions overturned on appeal, etc.) depend on the data being reliable and readily available. As discussed above, the manner in which filings, pending cases and dispositions are counted by prosecutors’ offices makes accurate assessment of performance difficult. Rectifying those problems before utilizing data in performance evaluations

is warranted.

69. The evaluation process will present a significant administrative burden and workload for the judiciary. Ensuring that professional staff be assigned to assist in managing the work and paper flow entailed in the evaluation process is key.

70. For both the Judicial Council and Prosecutorial Council evaluation rules, implementation and monitoring will be essential. After a reasonable period of implementation, the rules should be reviewed and amended to apply any lessons learned from the rollout.

e. Training

i. Capacity of the Judicial Training Center to Meet Training Needs

71. State funding for the Center has been stabilized but significant shifts in donor funding can still impact the Center's ability to plan and offer training over the years. Funds are now dedicated by the state budget for the operation of the Judicial Training Center. Targeting more of the state funding to continuing training would help smooth out spending and allow the Center to better plan for continuing training.

72. As a priority, the Center should conduct a systematic training needs assessment to elevate the capacity of the judicial system. Trainings most likely to impact court efficiency or quality in light of changing legal and organizational arrangements should be prioritized. The judiciary itself should identify these needs. International support may be useful, particularly in areas such as EU law and best practice court management, but the process should not be donor driven. Should a comprehensive needs assessment be developed; the Center would be well placed to source significant multi-year donor contributions.

73. Montenegro is eligible to have an observer at the European Judicial Training Network⁵² and has pursued this option. Participation in the network will help the judiciary perform its own assessment.

ii. Continuing Training

74. The Montenegrin judiciary should expand its continuing training program in institutional and case management as part of a strategic effort to improve performance. Continuing training in these matters could be delivered more intensively for all categories of permanent personnel, including judges, prosecutors, assistants, and court staff. By improving the performance of existing permanent employees, the Center could be at the forefront of the Montenegrin judiciary's transformation. The Action Plan identifies this type of training for judges and prosecutors under the umbrella of the Judicial Training Center as a priority but to date that training has been limited. According to the third report on implementation of the justice sector Action Plan, in late 2015 and early 2016, the Center developed and delivered four workshops for Court Presidents on cooperation between the judiciary and the media in Montenegro, attended by nine Court Presidents. No other training for President Judges, Prosecutors or other managers is mentioned. Participation in the training could be mandatory in basic capacities, and could be encouraged in specialized topics. In this area, the continuing training provided by the training center

⁵² Participation in the network requires annual training assessments. The network also provides training standards and curricula, judicial training exchanges and programs and training expertise.

in the Federation of Bosnia and Herzegovina provides an excellent example that the Judicial Training Center in Montenegro could seek to emulate.

75. Methods of enhancing training include:

- Providing dedicated training for managers, such as Court Presidents and heads of departments, whose capacity and skills are pivotal to the success of courts and prosecutors' offices.
- Taking advantage of the Center's core competency in structuring the form of curricula. This includes the balance of provision of legal knowledge and practical exercises, the length of training, the qualifications of trainers, the creation of 'bench books' or manuals that trainees can utilize after the course is complete, and conduct and analyze training evaluations. Stakeholders report that the Center has begun to play this role even when the training is donorfunded.
- Increasing peer-to-peer learning by creating a national network of peers for sitting judges. Institutional linkages with European judiciaries could be intensified to provide greater peer-to-peer exchange. Routine colloquia could be convened to discuss specific issues, share experiences, and adopt best fit practices from abroad. Such efforts may further boost capacity, morale, and performance.
- Providing information on upcoming continuing trainings to all judges and prosecutors (including listing all courses on the Center's website) and instituting a process for individuals to independently apply to attend courses.⁵³

iii. Training for Assistants and Court Staff

76. While assistants are permitted to participate in subject-specific training at the Center, a rigorous, skill-based training program has not been developed to prepare them for their current duties.⁵⁴ Representing nearly 260⁵⁵ professional employees, this resource is critical to court performance. A large injection of training for this group could help harness their potential to contribute to the transformation of the judiciary. Assistants should be issued appropriate certifications to reflect and value their important role in the judiciary.

77. Similarly, no training of administrative court staff has taken place at the Center. While the state's Human Resource Management Agency provides staff training in general topics, most administrative staff have not undergone any training in subjects specific to the judiciary since their appointment. Like for the continuing training of judges, prosecutors and their assistants, a large injection of training for court staff could elevate the capacity, morale, and performance of the judiciary across the board.

f. Support Staff Planning and Utilization

i. Human Resource Systems for Court Staff

78. The responsibility for setting policy for managing human resources and labor relations of non-judge staff has historically been unclear, other than determining the number of authorized staff. Key areas of staff human resources include approving court employee classifications, developing selection techniques, and determining how to fill positions. Court Presidents and Public Prosecutors test, select, assign, promote, and

⁵³ Invitations for trainings are sent to the president of the court or the chief prosecutor, who decides who will attend the training (perhaps after soliciting interest from the court's staff).

⁵⁴ Three trainings were offered to 44 counselors in development, adoption and implementation of integrity plans.

⁵⁵ 217 in courts and 42 in prosecutors' offices.

terminate civil servants⁵⁶ without guidance from the SCC, Chief Prosecutor, MOJ or the Judicial or Prosecutorial Councils. Responsibility for performance management of civil servants is not adequately addressed.

79. Most critically, the status of judicial assistants and judicial trainees has not been formalized. This limits the courts in using them to their full potential to contribute to service delivery. When properly used, these positions perform duties and play a role in case management that would otherwise have to be performed by judges or Deputy Prosecutors.⁵⁷ The gaps relating to these positions include:

- a. a lack of specific position descriptions, resulting in assistants performing widely different functions;
- b. as noted above, a lack of formal training in their capacity as judicial assistants.
- c. absence of job-specific evaluation criteria or a rigorous evaluation process for use by the assistants' supervisors. Assistants are formally evaluated using the general form for civil servants, which does not recognize their specific roles. The working criteria for their evaluation rely on self-reported statistics not verified by registry offices. Evaluations are not used to establish their career progression from junior to senior assistant, and on to advisor;

80. Uniform civil servant and labor processes for other employees have not been established to ensure transparency, fairness, and consistency:

- d. Court position descriptions included in systematizations are generic and do not include the responsibilities, skills, and abilities needed to successfully carry out the job. A more structured approach to classification, ranking, and selection is required;
- e. There are no position-specific methods for recruitment or promotion. Applicants are only screened for minimum education levels, and even less so for promotional criteria than for entry levels. They rely on knowledge of and preference for candidates by Judges/ Prosecutors/managers, and there is not a clear career ladder to tie performance to promotion, encourage superior performance, or help the organization retain talented staff. Few promotional applicants come from outside the system;
- f. Court Presidents determine their court employees' assignments location without criteria (e.g. seniority) or a transparent process for employees to request certain assignments.

81. Employee performance evaluations are generally perfunctory and do not follow standardized procedures. Performance evaluations are also not periodically reviewed at a level above the Court President. Taken seriously, performance management can help shift compliance with legislation to managing for results.

82. Performance evaluations could be harnessed to drive performance improvements among staff. Evaluation can be a valuable personnel management tool to help employees improve their skills or advance in their jobs by identifying training needs and development assignments. Evaluations and promotions can also build in 'desirable criteria' which create incentives for staff to develop capacities in areas of priority such as IT skills, analytic skills, and contribution to priority efforts such as backlog reduction of innovation in case processing. Signaling positive behaviors can thus boost individual motivation, team morale, and system performance.

83. The former liberal use of staff bonuses, comprising up to three months' pay, have been replaced throughout Montenegro's state service with performance bonuses. Performance bonuses should not be used extensively until a rigorous performance evaluation system is put in place in justice institutions. At present, there is insufficient basis to know what represents exemplary performance to provide such bonuses. Once rigorous

⁵⁶ As well as public employees.

⁵⁷ For example, Judicial Assistants uniformly draft opinions but only in some courts do they preside over hearings.

evaluation systems exist, bonuses may be a useful tool to drive performance by incentivizing individuals to excel.

ii. Division of Labor between Judges and Support Staff

84. There are no processes to evaluate the judiciary's technical methodology of work, such as the effective division of labor between judges or prosecutors and support staff. A heavy administrative burden impacts the Court Presidents' and Public Prosecutors' ability to focus on case management and overall institutional management. Court and prosecutor processes need to be re-engineered to ensure work is effectively assigned and to relieve judges of administrative tasks where possible. Some courts and prosecutor offices' systematizations reveal they are assigning staff to functions in an effort to shift work from judges and prosecutors but staffing patterns are not evaluated for effectiveness or replication.

85. Courts and prosecutors' offices generally need more analytical staff to contribute to improvements in performance in exchange for the oversupply of other employees. The departure of many lower-paid staff due to increased social welfare payments to women with large families offers an excellent opportunity to consider reducing the staffing complement and changing the staffing mix. Analysis needs are increasing in scale and complexity, and will continue to do so as Montenegro moves towards the accession. Very few, if any, institutions employ analytical staff. Given the specialized skills required for these functions, these employees will likely have to be recruited from outside the courts. This renders an effective and transparent system for selection more critical.

g. Planning for the Future

86. Human resources management requires making predictions and planning for future human resource needs both in numbers of people and their capacities to face new and growing challenges.

87. An automated personnel tracking database is needed to allow for human resource management and improved performance by individual judges. It should include the history of positions held by the incumbent, training received, and complaints registered against her or him which will help the Judicial Council track career progression and improve individual judicial performance. The database could be easily developed in EXCEL or another database program.

88. The HR information database should be used for planning future resource needs, not solely for individual assessment purposes. By examining information about past employee turnover and projecting future trends by classification, the justice sector could plan to transform the judiciary by changing the resource mix as turnover occurs. Information about performance issues or training gaps should be consolidated and evaluated for where changes can be made in the system.

h. Equity in Employment in the Montenegrin Judiciary

i. Gender Equity

89. Gender equity in employment in the Montenegrin judiciary is generally appropriate. Montenegro has more female than male judges and deputy prosecutors at all levels of institutions.

90. However, women fall far below parity in leadership positions, with fewer than 30% of Court Presidents being women and less than half of the complement of leadership in most other institutions.

Table 6: Percentage of Women in Leadership Positions⁵⁸

Court Presidents	29%
Public Prosecutors	35%
Judicial Council	44%
Prosecutorial Council	56%

91. According to data submitted to the CEPEJ by Montenegro for 2012,⁵⁹ there are no specific provisions for facilitating gender equality within the procedure for recruiting or promoting judges or prosecutors' framework.

'Diversity within the judiciary will enable the public to trust and accept the judiciary as a whole... it should be open and access should be provided to all qualified persons in all sectors of society'

The Venice Commission

92. The justice sector could work with donors to enhance equal opportunity in employment in the judiciary.

The sector should increase its capacity to assess and implement equal opportunity practices. In particular, we encourage the Judicial and Prosecutorial Council to ensure that a transparent process for recruiting the best candidates for judicial management positions regardless of gender be pursued.

ii. Pay Equity

93. Recent⁶⁰ salary increases for magistrates, assistants, and typists changed the pay gradients between positions quite significantly. The largest percentage increases are for judges above the Basic Court level and Supreme Court fellows. The differential between Supreme Court and Appellate Court judges thus grew (it had been zero) as did that between High and Basic Court judges. The percentage increases for Basic Court judges was not much more than that for typists. Thus, differentials between judges and support staff were not significantly changed.

Table 7: Salary Differentials⁶¹

Position	Pre-April, 2016 Salary	% Salary Increase	April, 2016 Salary	Former Differential	Current Differential
Basic Court Judge	1,031.3	14.6%	1,181.9		
High Court Judge	1,153.3	33.1%	1,534.6	12%	30%
Administrative Court Judge	1,307.8	33.1%	1,741.2	13%	13%
Court of Appeal Judge	1,364.8	27.6%	1,741.2	4%	0%

⁵⁸ Annual report of the Judicial Council, 2015.

⁵⁹ Reference, Questions 110.1, 112.1, 117.1 and 119.1.

⁶⁰ April, 2016.

⁶¹ Judicial Council financial data.

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Supreme Court Judge	1,364.8	43.8%	1,962.8	0%	13%
Associate*	452.0	5.5%	477.0	128%	148%
Fellow**	495.0	92.2%	951.1	192%	212%
Typist*	320.7	11.5%	357.7	222%	230%

* Differential for Associates and Typists are those between them and Judge of Basic Court. Associates work at Basic, Higher, Economic, and Administrative Courts; typists at all levels of courts.

** Differential between Fellow and Supreme Court Judge

Conclusions and Strategic Direction

94. The Montenegrin justice sector could make significant strides in improving its performance through enhanced human resource management by:

A. Optimizing the human rights envelope:

1. Bringing the number of per capita and per case judges, prosecutors and advisors closer to those in the rest of Europe and to the results of the case weighted study (CWS)
2. Ensuring resources for functions transferred from the courts (e.g., enforcement, notary services, investigations) match need and transparently redeploying those that exceed it.
3. Ensuring functions transferred from the courts are adequately provided by the private sector across Montenegro's regions.

B. Improving controls on personnel expenditures:

1. Increasing the proportion of the budget expended on non-personnel items to enhance performance
2. Establishing budget controls and eliminating overspending on personnel line items.
3. Increasing transparency of and controls over vacant positions and temporary, intern and contract employees.
4. Insuring relocation incentives are cost effective.

C. Equalizing distribution of human resources and workload:

1. Distributing resources in line with workload and efforts to improve performance rather than according to historical patterns.
2. Building on efforts to date by increasing voluntary reallocation of judge and prosecutor positions through expanded use of incentives and of staff through reconsideration of standards for relocation.

D. Enhancing staff capacities and skills and better managing people's performance:

1. Furthering the aims of a single, transparent entry point into the judiciary by introducing rigorous evaluation criteria for participants in the Judicial Training Center.
2. Improving judicial office holder performance by finalizing judge and prosecutor evaluation criteria and linking deficits identified in performance evaluations to common training needs.
3. Strengthening the role of president judges and public prosecutors by expanding training on judicial branch management, creating unique performance evaluation criteria for them and linking their performance evaluation to common complaints received against institutions.
4. Enlarging the role of advisors in courts and prosecutors' offices by developing a standard position description, a unique evaluation process and a mandatory training program for them.
5. Increasing analytical and management capacity in institutions by altering the staffing mix.
6. Better utilizing support staff by expanding on and clarifying knowledge, skills and abilities for each position, using position announcements as an opportunity to describe unique characteristics of positions and institutions, and using performance evaluations to summarize staff performance deficits that could be rectified through training.

E. Implementing improvements in ethics, discipline and discharge identified in the Justice Strategy and Action Plan:

1. Insuring sanctions imposed are consistent and appropriate based on offense.
2. Increasing the functional separation of the disciplinary prosecutor and disciplinary commission in both Councils.
3. Building on training already offered on integrity plans, anti-corruption, and ethics.