

# RESULT ORIENTED REVIEW OF DELIVERY OF JUSTICE IN MONTENEGRO

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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 functioning 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 Svirčev, (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).

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## Acronyms and Abbreviations

|       |  |
|-------|--|
| AO    | Administrative Office  |
| BSL   | Budget System Law  |
| CCJE  | Consultative Council of European Judges                                    |
| CCPE  | Consultative Council of European Prosecutors                               |
| CEPEJ | European Commission for the Efficiency of Justice                          |
| CMS   | Case management system   |
| CPC   | Criminal Procedure Code  |
| ECHR  | European Convention on Human Rights  |
| ENCJ  | European Network of Councils for Judiciary                                 |
| EU    | European Union   |
| EUD   | European Union Delegation  |
| EUR   | Euro   |
| FMIS  | Budget execution software  |
| FR    | Functional Review  |
| GRECO | Group of States Against Corruption   |
| HR    | Human Resources  |
| ICT   | Information and communication technology                                   |
| JC    | Judicial Council   |
| KTR   | Various criminal cases which have not reached the formal investitive stage |
| MoF   | Ministry of Finance  |
| MoI   | Ministry of Interior   |
| MoJ   | Ministry of Justice  |
| PC    | Prosecutorial Council  |
| SRJ   | Strategy for Reform of the Judiciary                                       |
| SPO   | State Prosecutor Office  |
| SSPO  | Supreme State Prosecutor Office  |
| TNA   | Training Needs Assessment  |
| WB    | World Bank   |



# Table of Contents

|  |    |
|--|----|
| 1. OBJECTIVE, SCOPE AND STRUCTURE .....                      | 1  |
| 2. OVERALL CONCLUSIONS AND PRIORITIES.....                   | 5  |
| 3. GOVERNANCE AND MANAGEMENT .....                           | 13 |
| General Findings.....  | 13 |
| Recommendations on Improving Governance and Management ..... | 18 |
| 4. EFFICIENCY AND EFFECTIVENESS OF JUSTICE SERVICES .....    | 23 |
| General Findings.....  | 23 |
| Recommendations on Increasing Efficiency.....                | 27 |
| 5. QUALITY OF JUSTICE SERVICES .....                         | 33 |
| General findings .....                                       | 33 |
| Recommendations on Improving Quality .....                   | 36 |
| 6. ACCESS TO JUSTICE SERVICES .....                          | 40 |
| General Findings.....  | 40 |
| Recommendations on Improving Access .....                    | 43 |
| 7. FINANCIAL RESOURCE MANAGEMENT .....                       | 49 |
| General findings .....                                       | 49 |
| Recommendations .....  | 51 |
| 8. HUMAN RESOURCE MANAGEMENT .....                           | 57 |
| General Findings.....  | 57 |
| Recommendations .....  | 58 |
| 8. ICT MANAGEMENT .....                                      | 65 |
| General findings .....                                       | 65 |
| Recommendations .....  | 66 |
| 9. INFRASTRUCTURE MANAGMENT.....                             | 69 |
| General findings .....                                       | 69 |
| Recommendations .....  | 71 |







## 1. 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.<sup>1</sup> Consequently, this Review focuses more directly on

*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.*

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<sup>1</sup> 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;

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 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.<sup>2</sup>**

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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.”

<sup>2</sup> 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

**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,<sup>3</sup> 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

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of USD 16,680.68.<sup>2</sup> These discrepancies complicate comparisons of Montenegro’s reform results to the results of other CoE members.

<sup>3</sup> 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.

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 financing (the 'envelope affair') in early 2019, the opposition largely returned to boycotting Parliament. These allegations also triggered mobilization of citizens through regular street protests..."<sup>4</sup>

**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.**

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<sup>4</sup> Montenegro 2019 Report, paragraph 1.2, found at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>.



## 2. OVERALL CONCLUSIONS AND PRIORITIES

**10. European integration process shaped judicial reform activities in Montenegro.** Under the framework of Chapter 23 based on Action plan adopted by Government of Montenegro,<sup>5</sup> 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*

**11. 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<sup>6</sup> Consultative Opinion 10 (2007), GRECO's<sup>7</sup> recommendation and case law of the European Court of Human rights<sup>8</sup> 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.<sup>9</sup>

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<sup>5</sup> Action Plan for Chapter 23, Judiciary and Fundamental Right, Government of Montenegro, June 27, 2013.

<sup>6</sup> 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.

<sup>7</sup> The Group of States against Corruption is the Council of Europe body competent to monitor States' compliance with the organisation's anti-corruption standards.

<sup>8</sup> Cases *Ramos Nunes de Carvalho E Sá v. Portugal* - 55391/13, 57728/13 and 74041/13 - and *Tato Marinho Dos Santos Costa Alves Dos Santos and Figueiredo v. Portugal* - 9023/13 and 78077/13.

<sup>9</sup> Law on the Judicial Council.

**12. 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).

**13. 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.

*Efficiency and Effectiveness*

**14. 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.

**15. 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.

**16. 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.

**17. 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.<sup>10</sup>

#### *Human Resources*

**18. 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;

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<sup>10</sup> European Judicial Systems – Efficiency and Quality of Justice, *Council of Europe, 2018* (<https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>)

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.

**19. 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*

**20. 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.

**21. 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*

**22. 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*

**23. 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.<sup>11</sup> 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 “pulling strings”, 29 percent gave a present, and approximately 20 percent used “services for a service”.

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<sup>11</sup> 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](https://ec.europa.eu/info/sites/info/files/2018_eu_justice_scoreboard_quantitative_data_web_ok.pdf).

*In its 2017-2018 Global Competitiveness Index, the World Economic Forum reported corruption was the third most problematic factor for doing business in Montenegro, behind access to financing and inefficient government bureaucracy. Montenegro also ranked 68<sup>th</sup> out of 140 countries in judicial independence.*

**24. 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.

**25. 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.

**26. 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.



### 3. GOVERNANCE AND MANAGEMENT

#### General Findings

**27. 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.

**28. 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.

**29. 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<sup>12</sup> Consultative Opinion 10 (2007), recommendations of

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<sup>12</sup> 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.

GRECO<sup>13</sup> and the case law of the European Court of Human Rights<sup>14</sup> 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.

**30. 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. 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.

**31. 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

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<sup>13</sup> The Group of States against Corruption is the Council of Europe body competent to monitor States' compliance with the organisation's anti-corruption standards.

<sup>14</sup> Cases *Ramos Nunes de Carvalho E Sá v. Portugal* - 55391/13, 57728/13 and 74041/13 - and *Tato Marinho Dos Santos Costa Alves Dos Santos and Figueiredo v. Portugal* - 9023/13 and 78077/13.

prosecutors. The Councils also had very limited numbers of personnel to deal with financial planning and budget execution.

**32. 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.<sup>15</sup> 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).

**33. 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.

**34. 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).

**35. 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.

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

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<sup>15</sup> More details are available in para 63 and 64.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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.<sup>16</sup>

**42. Montenegrins had mixed views on the integrity of the judicial system.** In a 2016 survey<sup>17</sup>, 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.

**43. 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.

**44. 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,<sup>18</sup> 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.

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<sup>16</sup> The Council of Europe Resolution on the “Twenty Guiding Principles for the Fight against Corruption”, No. 97/24. The Council of Europe Recommendation of the Committee of Ministers to Member States on “Codes of Conduct for Public Officials”, No. 200/1, UN Convention against Corruption, General Assembly Resolution, No. 55/61. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21.11.1997.

<sup>17</sup> Montenegro – Experiences and perceptions of judicial performance : survey on perception of general population of citizens, business sector, lawyers, judges, public prosecutors, and court administrative staff, World Bank 2017, available at: <http://documents.worldbank.org/curated/en/673881525871078007/pdf/Experiences-and-Perceptions-of-Judicial-Performance-in-Montenegro.pdf>

<sup>18</sup> See Articles 109 and 110 of the Law on State Prosecution and of the Law on Judicial Council and Judges.

## Recommendations on Improving Governance and Management

**45. 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.<sup>19</sup> 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).

**46. 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.**<sup>20</sup> 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).

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<sup>19</sup> 2019 EU Progress Report.

<sup>20</sup> 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.

- ✓ 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.<sup>21</sup> (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-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)

**47. 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

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<sup>21</sup> 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.

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).

**48. 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 these repetitive cases into the oldest case, and their handling by the original assigned judge. (MoJ, Judicial Council – medium term).
- ✓ 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 and Prosecutorial Councils. (Judicial and Prosecutorial Councils – short term and ongoing).



## 4. EFFICIENCY AND EFFECTIVENESS OF JUSTICE SERVICES

### General Findings

49. **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.

50. **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.

51. **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.

**52. In terms of timeliness of case processing using the CEPEJ disposition time indicator,<sup>22</sup> 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<sup>23</sup> remained well under 0.50, indicating reasonable performance.

**53. 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 in Misdemeanor Courts. The disposition times for civil and commercial litigation, as expected, were the longest and 48 days above EU averages.<sup>24</sup>

**54. 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.

**55. 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

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<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> CEPEJ EU averages in this study are averages calculated using CEPEJ data for 28 EU Member States.



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.

**56. 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.

**57. 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.

**58. 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.

**59. 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).**

**60. 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

while the EU average was almost double at 3.55.<sup>25</sup> 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.

**61. 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.

**62. 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.

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<sup>25</sup> For detailed data see CEPEJ 2016 report, p. 220.

## Recommendations on Increasing Efficiency

**63. 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<sup>26</sup> 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 specialized training of prosecutors and SPO staff. (MoJ, Judicial Council, Prosecutorial Council - short term and continuing)

**64. 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

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<sup>26</sup> The reports should not refer to any personal information about individuals protected from disclosure by any Montenegrin laws.

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:

- 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)
  - 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)
  - Defining the data needed to facilitate generating of the defined reports. (Working group - short term)
  - Conducting quality checks of data until the Inspector General's office can assume this work. (Working group, JC, PC - short term)
  - 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]
  - 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]
  - 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)

**65. 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)

**66. 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)

**67. 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)

**68. 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)

**69. 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)

**70. 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).





## 5. QUALITY OF JUSTICE SERVICES

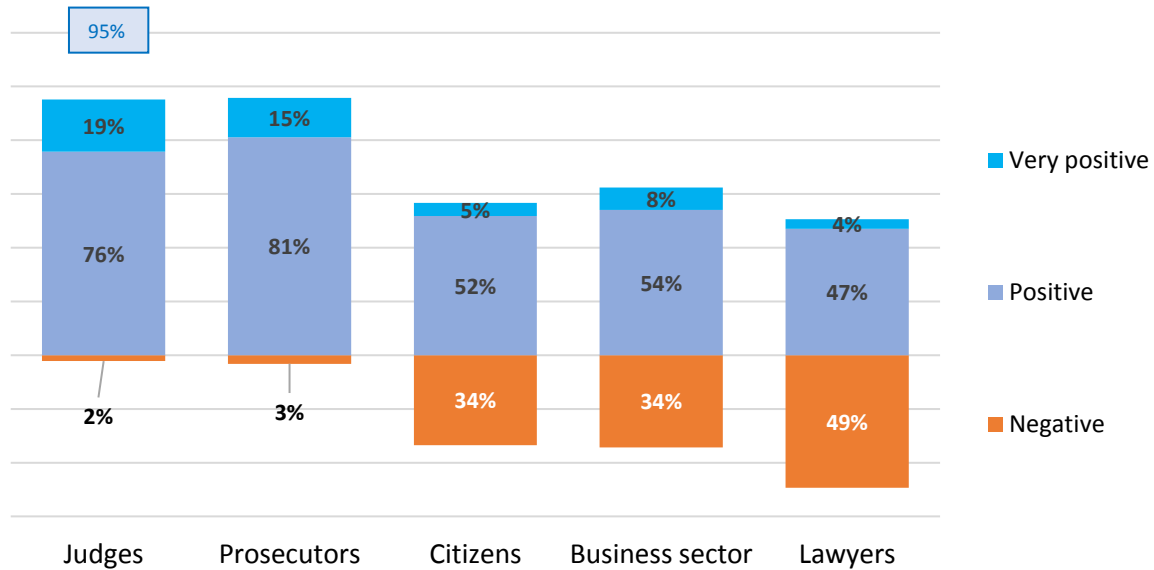
### General findings

- 71. 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.**
- 72. Most quality measurement techniques rely on a survey<sup>27</sup> conducted by the World Bank in 2016.** This was necessary because surveys of perceptions by users of the system provides insight into quality of justice services and can be validated against statistical evidence only to a very limited extent.
- 73. 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.

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<sup>27</sup> The survey questioned 1,125 citizens, 266 business sector representatives, 120 lawyers, 243 judges, 95 prosecutors and 112 court administrative staff. The survey „Montenegro – Experiences and perceptions of judicial performance: survey on perception of general population of citizens, business sector, lawyers, judges, public prosecutors, and court administrative staff“ is available online at <http://documents.worldbank.org/curated/en/673881525871078007/pdf/Experiences-and-Perceptions-of-Judicial-Performance-in-Montenegro.pdf>.

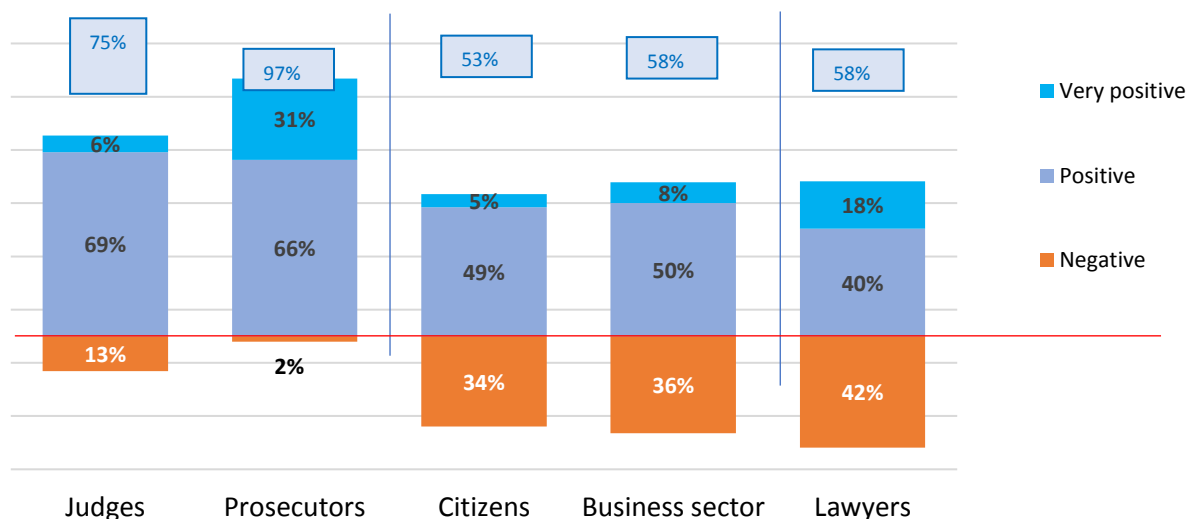
Figure 1 - General perception of quality of work of courts<sup>28</sup>



**74. 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.

<sup>28</sup> 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

Figure 2 - General perception of the quality of the work of state prosecution<sup>29</sup>



**75. 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.

**76. 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.

<sup>29</sup> 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

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

**78. 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.

**79. 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.

## Recommendations on Improving Quality

**80. 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, 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)

**81. 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)

**82. 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)



## 6. ACCESS TO JUSTICE SERVICES

### General Findings

**83. 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.

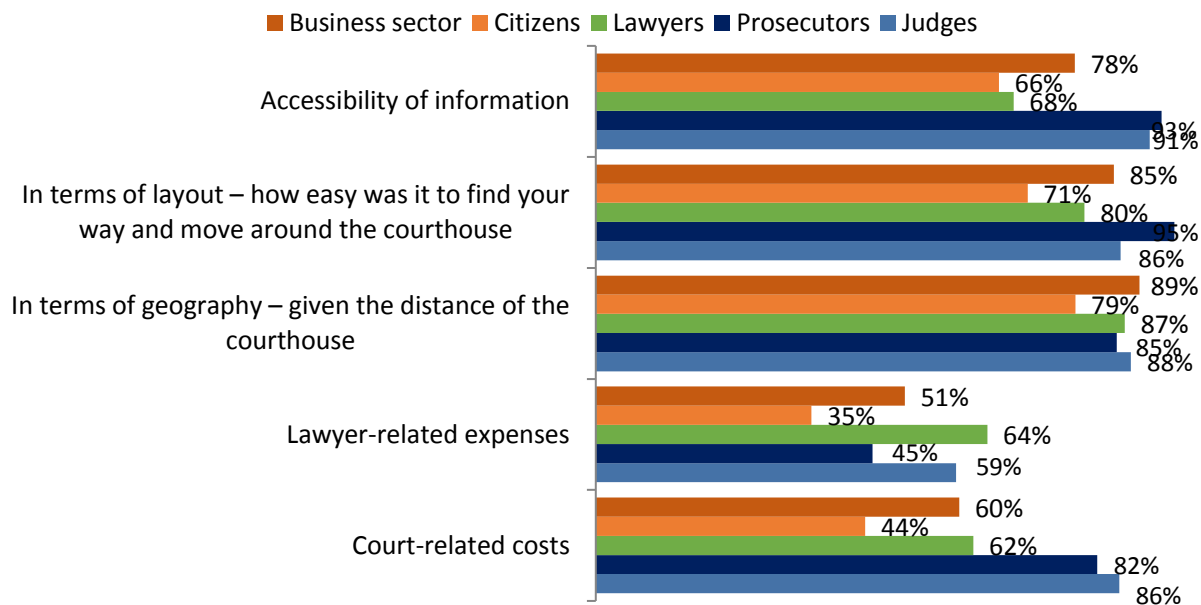
**84. World Bank's Survey results suggest that improving access to justice is not limited to the relatively simple tasks of demystifying court operations or raising awareness about access to their services.<sup>30</sup>** Rather, it requires efforts to address the more complicated barriers experienced by court users, especially those related to costs.

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<sup>30</sup> The survey results in this chapter are from the survey conducted in December 2016: *Montenegro – Experiences and perceptions of judicial performance : survey on perception of general population of citizens, business sector, lawyers, judges, public prosecutors, and court administrative staff, World Bank, 2018*, <http://documents.worldbank.org/curated/en/673881525871078007/Montenegro-Experiences-and-perceptions-of-judicial-performance-survey-on-perception-of-general-population-of-citizens-business-sector-lawyers-judges-public-prosecutors-and-court-administrative-staff>



Figure 3 - 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<sup>31</sup>



**85. 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 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.

<sup>31</sup> 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.

**86. 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.

**87. Attorney fees and attorney costs are highly regulated, which restricted the ability of parties to negotiate fees with their lawyers.**<sup>32</sup> 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.

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

**89. 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.

**90. 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.

**91. 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

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<sup>32</sup> Attorney fees of the Montenegro Bar Association, Official Journal no. 12/2005,.45/2008, 11/2015.

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.

**92. 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.

## Recommendations on Improving Access

**93. 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 simplify 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).

**94. 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)

**95. 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)

**96. 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 identify 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)

**97. 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)





## 7. FINANCIAL RESOURCE MANAGEMENT

### General findings

**98. 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.

**99. 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.

**100. 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.

**101. 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.

**102. 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.

**103. The fact that the courts and SPOs are not integrated in the FMIS (SAP<sup>33</sup>) and maintain their subordinate status to JC and PC impairs their financial accountability and could hurt their 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).

**104. 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.

**105. 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

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<sup>33</sup> SAP is the system which acts as FMIS. FMIS is referred to as SAP for the rest of this analysis.

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.

**106. 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.

## **Recommendations on Strengthening Financial Resource Management**

**107. 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:
  - 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).

- 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)
- 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)
- 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)
- 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)
- 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 retain control of the budget preparation process and monitor the system’s budget execution. (Judicial Council and Prosecutorial Council - medium-term).

**108. 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/accounting 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).
- 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).
- 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).

**109. 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:
  - Allow the elements of a payment request to be pre-formulated in the existing accounting software.
  - Allow SAP to report on the processed payments for accounting purposes.
  - 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).

**110. 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)





## 8. HUMAN RESOURCE MANAGEMENT

### General Findings

**111. 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.

**112. 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.

**113. 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.

**114. 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.

**115. There were fluctuations in the number of prosecutors.** Their number dropped significantly in 2012<sup>34</sup> 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).

**116. 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.

**117. 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.**

**118. 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 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.

**119. 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.

## Recommendations on Strengthening Human Resource Management

**120. To ensure the equitable treatment of everyone working with the judicial system and evidence-based decision-making on human resource issues<sup>35</sup> Montenegro should:**

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<sup>34</sup> The CEPEJ 2016 Report attributed the drop to retirements and resignations.

<sup>35</sup> 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.

- ✓ 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).
- ✓ 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).

**121. 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 Center - 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)

**122. 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 - 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)

**123. 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

**124. This chapter provides an outline of ICT management<sup>36</sup> 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.

**125. 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.

**126. 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.

**127. 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

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<sup>36</sup> 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).

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.

**128. 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.

**129. 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 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 is in place, as outlined by the ICT strategy.

## Recommendations on Strengthening ICT Management

**130. 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)

**131. 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

**132. 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.

**133. 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 mid-term 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.

*As CEPEJ has observed, the European trend has been towards fewer courts, a consequent increase in their size and a greater specialization within the judicial system.*

**134. 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,<sup>37</sup> five first-instance specialized courts,<sup>38</sup> four second-instance courts<sup>39</sup> and the Supreme Court.

**135. 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

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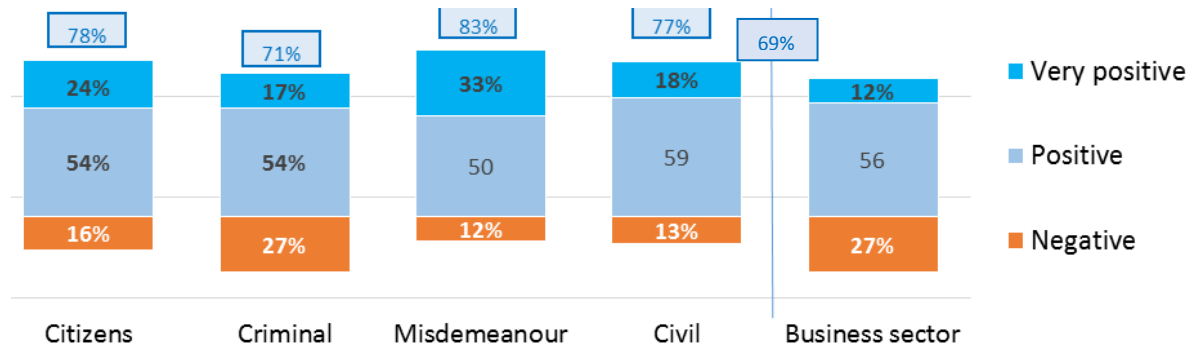
<sup>37</sup> Basic courts

<sup>38</sup> Three Misdemeanor Courts, and the Administrative and Commercial Court

<sup>39</sup> Two high courts that adjudicate at first but also at second instance, Higher Misdemeanor and Appellate Court

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 4 - Citizens and business sector representatives: the satisfaction with infrastructure in judiciary<sup>40</sup>



**136. 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<sup>41</sup> 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.<sup>42</sup>

<sup>40</sup> 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.

<sup>41</sup> 47 percent of judges and 37 percent of prosecutors

<sup>42</sup> For more details please refer to chapter discussing efficiency and accessibility

## Recommendations on Strengthening Infrastructure Management

**137. 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)

**138. 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)



**139. 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)

