Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries

FINAL REPORT

Lot 3: Analysis of Backlog Reduction Programmes and Case Weighting Systems

RegionalCooperationCouncil

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Sarajevo, 2016

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PART I

BACKLOG REDUCTION PROGRAMMES IN SOUTH EAST EUROPE

1. INTRODUCTION

This study collects and delivers updated information on the delay reduction policies undertaken by the six Beneficiaries involved in the project. Data was collected through an ad hoc questionnaire in English and interviews by phone to obtain more in-depth information based on the questionnaire answers. Special attention should be given to the projects already undertaken by the participants under scrutiny.

This information is considered in the wider European context; the policies highlighted in the Beneficiaries are compared and contrasted with the most interesting policies and practices carried out by the select European countries to improve the pace of litigation. Even though it is not possible to design a one-size-fits-all model to reduce case backlogs that could be used by all the courts, some quite specific policies and practices that have been proven to be effective in several participants can be singled out and adapted for consideration by the Beneficiaries. Thus, the report proposes a concrete programme of actions with different options that could be implemented in the judiciaries of the Beneficiaries, based on the policies and practices of the European examples described here.

Therefore, this report consists of: 1) a brief narrative part introducing the court backlog reduction programmes and their importance for the efficiency of judiciary in the Beneficiaries; and 2) a summary of the existing best practices in EU member states. The study has been carried out mainly through a review of the available literature, in particular the publications of the Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) which has over the years produced a number of documents about delay reduction programmes and court performance evaluation of the Council of Europe Member States.

Within this literature, particular attention is given to the "European judicial systems efficiency and quality of justice reports" and most of the work carried out by the CEPEJ Saturn Centre for time management focussing on the development of tools and helping Member States in implementing measures that prevent violations of the reasonable time clause.

Some of these tools include:

- The "Saturn Guidelines for Judicial Time Management" (CEPEJ 2008-8 Rev), which provides a list of 63 possible actions to be undertaken to combat the excessive length of judicial proceedings;
- The "Saturn Guidelines for Judicial Time Management: Comments and Implementation Examples" (CEPEJ-Saturn 2013-4). This guide focuses on the steps to be undertaken to prioritise and implement 15 out of 63 guidelines mentioned above;
- The "Time Management Check List" (CEPEJ (2005) 12 Rev), which is a checklist of indicators for the analysis of the length of proceedings; and
- The European Uniform Guidelines for Monitoring of Judicial Timeframes (Appendix 1EUGMONT CEPEJ 2008/11).

Another European source of information also worth mentioning is the European Network of Councils for the Judiciaries, which has produced some documents on the quality of justice and the length of judicial proceedings. It goes without saying that most literature on backlog reduction comes from the United States and Australia, which will also be taken into consideration.

This literature review complements the statistical data, responses to the questionnaire and interviews with the Beneficiaries, and they together provide a basis for a concrete plan of backlog reduction for the Beneficiaries.

2. COURT BACKLOG REDUCTION PROGRAMMES AND THEIR IMPORTANCE FOR THE EFFICIENCY OF JUDICIARIES

Several countries in Europe experience a heavy caseload and an excessive length of their court proceedings. This is particularly true for civil matters with criminal cases being often affected by this problem as well. A reasonable time to resolve disputes is indeed one of the fundamental principles enshrined by Article 6 of the European Convention of Human Rights, which states that: "everyone is entitled to a fair and public hearing **within a reasonable time**".

In order to support the pursuing of these principles, the Council of Europe has established the Commission for the Efficiency of Justice (CEPEJ), which in its Framework Programme (CEPEJ 2004-19) singles out three major concerns for any European judicial system:

1. The principle of balance and overall quality of the judicial system;
2. The need to have efficient measuring and analysis tools defined by the stakeholders through consensus; and
3. The need to reconcile all the requirements contributing to a fair trial, with a careful balance between procedural safeguards, which necessarily entail the existence of lengths that cannot be reduced, and a **concern for prompt justice**.

Indeed, many judgments from the European Court of Human Rights deal with the excessive length of judicial proceedings in Member States. Since the European Court of Human Rights (ECHR) deals with single cases, it "was reluctant to establish clear-cut rules, arguing that every case must be considered separately" (Calvez and Regis 2012, 5). However, "the analysis and comparison of the large number of cases may provide a useful indication of the approach of the Court […]. The total duration of **up to two years** per level of court in normal (noncomplex) cases was generally regarded as reasonable.[2] When proceedings have lasted more than two years, the Court examines the case closely to determine whether the national authorities have shown due diligence in the process. In priority cases, the Court may depart from the general approach, and find violation even if the case lasted less than two years" (Calvez and Regis 2012, 6).

The ECHR jurisprudence over the years has also listed a set of priorities that may overcome the two-year general rule.

These may change in the future but, as reported by Calvez and Regis, they are as follows: a) labour-employment disputes (dismissals, recovery of wages or the exercise of the applicant's occupation); b) cases on compensation for accident victims (when the death of a family member deprives the applicants of their principal means of financial support); c) length of an applicant's prison term; d) cases of police violence; e) issues relating to individuals' physical state and capacity; and f) child custody or parental authority cases.

2 The European Court of Human Rights considers in its evaluation of the reasonable time clause the complexity of the cases. Indeed, sometimes even long-standing cases have not been considered a violation of Article 6 of the European Convention because of their outstanding complexity (Calvez and Règis 2012).

The ECHR also takes into consideration the applicants' state of health and the 'advanced' age of applicants to assess the reasonable length clause. These hints from the ECHR should be taken into consideration, even though it is worth remembering that the ECHR deals with single cases.

In addition, as stated in the CEPEJ Framework Programme, "We have become accustomed to referring to the concept of reasonable time as provided for in Article 6.1 of the European Convention of Human Rights (ECHR). Yet this standard is a lower limit, which draws the border line between the violation and non-violation of the Convention, and it **should not be considered as an adequate outcome** where it is achieved".

It is well known that if the excessive length of court proceedings is persistent and is not fought in due time, it generates some serious problems. For example, it increases the opportunistic behaviours of debtors, puts at risk the collection of foreign investments that cannot see a prompt legal protection of their money, and jeopardises the legitimacy of the judiciary, which is one of the pillars of a democratic state.

In addition, the excessive length of judicial proceedings causes additional costs for the litigants, the witnesses, and the victims, as well as for the defendants, who have the right to have prompt decisions on the charges against them. Excessive length impedes proper access to justice, in particular for the weaker parties, while it gives an unfair advantage to the stronger or wealthier party, which can better support a long proceeding and therefore can force a settlement or the abandonment of legal action by the opposing party.

The costs of the length of judicial proceedings are also very high for the administration of justice and thus for the taxpayers. The inefficient use of

resources, which is quite often one of the causes of the backlog, and hence the possibility of seeking state compensation for the excessive length of the court proceedings are additional costs that would be much better invested in improving the functioning of the court.

In backlog reduction programmes, court efficiency and effectiveness are sometimes considered as being in competition with the quality of justice, but this is a misleading juxtaposition, since they are all important components of the concept of justice. Indeed, the real outcome of justice comes from a fair decision in due time since "the exercise of legal rights is always devalued if delayed" (Spigelman 2001, p. 749; see also Maier 1999).

The excessive length of judicial proceedings is both "a disease that requires specific treatment and a symptom of unhealthy conditions" of the judicial process. (Hewitt W., G. Gallas and B. Mahoney 1990).

Nevertheless, in addition to the logistical problems with planning court hearings, case allocation, and the administrative tasks of planning court sessions, efforts to negotiate delays by advocates may influence the efficient functioning of the courts. Managing timeliness is at the heart of the legitimacy of the courts and therefore at the heart of the peacekeeping powers of the state, along with judicial impartiality and independence (Langbroek and Fabri, 2007).

These unhealthy conditions should be explored in each context, keeping in mind that empirical research has shown that resources and formal procedural rules, which are often considered the causes of the excessive length of judicial proceedings, have to be related to practitioners' attitudes and practices in each legal culture. Indeed, generally speaking, data show that in each court performance can be very different from court to court, even though the legislation and resources used are similar. Therefore, most of the time the policies to be implemented are highly "context dependent". Notwithstanding the difficulties of accomplishing efficient, quality adjudication, good practices can be found around Europe and they can be used as building blocks in any participant or court as a basis for development of their own way to improve court functioning.

The literature on court management has introduced the concept of **caseflow**, which is the process by which cases go through the court from filing until court jurisdiction is ended (Clifford and Jensen 1983), and the concept of **caseflow management**, which is the active monitoring, supervising and managing of caseflow so that each cases moves through the court without undue delay (Baar 1997; Sackville 1997).

Findings of empirical research carried out in the United States, in particular, have shown that the critical factors of development of a successful backlog reduction programme are the following: a) judicial commitment, leadership and adequate accountability mechanisms; b) involvement of different actors in the system; c) court supervision of case progress; d) definition of goals and standards; e) monitoring of cases by an information system; f) a case management approach; g) a policy against unjustifiable continuances, such as a firm trial date and a 'backup judge' system for the assignment of trials; and h) education and training (Mahoney 1988, Steelman 2000). Similar results have been also found in the European context.

3. COURT BACKLOG REDUCTION PROGRAMMES AND THEIR IMPORTANCE FOR THE EFFICIENCY OF JUDICIARIES

Questionnaires were submitted to representatives of judiciary of each of the Beneficiaries: Albania, Bosnia and Herzegovina, Kosovo*[3], The Former Yugoslav Republic of Macedonia, Montenegro and Serbia. It should be noted that not all persons answering the questionnaire understood the distinction between backlog reduction programmes (which are aimed at resolving old cases) and delay reduction programmes (which are aimed at the prevention of delays and of future backlogs). The information provided in survey responses was supplemented by a review of the existing literature for each Beneficiary, and by presentations of representatives of Beneficiaries at a seminar in Croatia[4], organized by Regional Cooperation Council.

It should be mentioned at the outset that there is not a common definition of backlog in the Beneficiaries. For most of them cases older than 2 years can be defined "backlogs", but for some others the timeframe is 3 years (Montenegro). In the future, it would be useful to have a common and shared definition.

National standards for the length of procedures have been introduced by Bosnia and Herzegovina, Montenegro and The Former Yugoslav Republic of Macedonia. Unfortunately, the survey responses from Bosnia and Herzegovina and The Former Yugoslav Republic of Macedonia do not make it very explicit what the standards are, apart from the statements that those standards have been set by procedural laws. The Cavtat presentation shows that Bosnia and Herzegovina uses a productivity standard:

16 cases a month – decisions on meritum
66 cases a month – default judgment
88 cases a month – other manners of completion'

However, it does not show to whom this standard applies.

The presentation from The Former Yugoslav Republic of Macedonia states the intention, but does not show a standard. Nonetheless, in both Beneficiaries those standards are related to the criteria formulated by the CEPEJ. In Bosnia and Herzegovina, the legal instrument is a Book of Rules issued by the Judicial Council; in The Former Yugoslav Republic of Macedonia, standards are set by the codes of procedure for civil, criminal and administrative cases.[5]

In Montenegro's Court Rules of Procedure, Article 10 states:

> *"Where the annual report indicates that a court or any of its divisions has a backlog*

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4 RCC conference, Cavtat, 13 May 2015.

5 Together with the questionnaire we received the ECtHR decision in the case of Gordana ADŽI-SPIRKOSKA and Others against The Former Yugoslav Republic of Macedonia, nrs. Applications nos. 38914/05 and 17879/05, 3 November 2011. The court here assesses the legislation in The Former Yugoslav Republic of Macedonia that gives the Supreme Court the competences to decide on cases against the unnecessary delay in judicial proceedings and the compensation complainants may be entitled to, if the complaint is judged to be justified.

bigger than the three month new caseload, the president of the court shall enact a programme for elimination of backlog by not later than 31 January of the next business year."

Serbia referred to the USAID Backlog Reduction Template. (USAID Serbia 2012, p. 83). This template starts with the setting of timeframe norms for different court proceedings. We did not learn which standards have been set in Serbia.

According to the presentation in Cavtat, the Albanian Judicial Council has set standard timeframes for different types of cases:

Table 1 Albania High Judicial Council Standard Timeframes

Courts of First Instance of General Jurisdiction								
Criminal cotraven-tions	Criminal contra-ventions Crimes punishable up to 10 years of imprison-ment	Crimes punishable more than 10 years or life impris-onment	Admin-istrative disputes in criminal process	Civil requests non-con-tra-dictory	Com-mercial disputes	Admin-istrative cases	Family disputes	Other civil cases
4 months	9 months	12 months	2 months	2 months	6 months	1 month	4 months	6 months

3.1 National backlog reduction programmes

All the Beneficiaries considered here have developed some kind of backlog reduction programme. Most of these programmes have been sponsored by international donors or were set up in the framework of the EU enlargement process. These programmes have been developed quite recently and no systematic assessment has been carried out yet.

Therefore, a first point of attention is to explore the possibility of planning a systematic assessment of different programmes in different Beneficiaries and of sharing the findings and best practices among the Beneficiaries in order to evaluate what has been successful and what proved not to be. Before a useful assessment can be made, the programmes need to be implemented at least in part for a long enough period of time to demonstrate their results.

In addition, these programmes have been carried out in some pilot courts (in Serbia) or in all the courts (the backlog reduction working party in the courts of The Former Yugoslav Republic of Macedonia). The Book of Court Rules was implemented in Bosnia and Herzegovina as of January 2014. A similar Book of Court Rules has been implemented in Serbia starting in 2011.

More recently, the Serbian Parliament voted for a National Judicial Reform Plan 2013-2018 on 1 July 2013 (National Judicial Reform Plan Serbia, 2013). Resolving case backlogs is an explicit aim of this plan (p.4). Bosnia and Herzegovina too has a strategic plan for the courts (Mid-Term Strategic Plan, March 2013). Its first strategic goals are about backlog reduction in administrative and civil proceedings (p. 16). Kosovo*[6] had a national backlog reduction strategy already in

6 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

2010 (National Backlog Reduction Strategy, 8 November 2010). Montenegro has developed a strategic plan (Analysis towards Rationalisation of the Judicial Network, Podgorica 2013). The Montenegrin report contains a detailed analysis of the (in)efficiencies of courts in Montenegro and indicates what rationalisations are deemed possible when applying CEPEJ-based benchmarks. The implemented programmes have, more or less, taken into consideration the recommendation of CEPEJ and the international literature on backlog reduction.

3.2 Standards developed by courts

The courts in Beneficiaries apparently do not function autonomously. Initiatives for developing standards for delay reduction are part of national programmes. They are guided and supervised by either a national judicial council or by a supreme court. This can be illustrated by the analysis of the Ministry of Justice in Montenegro (Analysis towards Rationalisation of the Judicial Network, Podgorica 2013, p. 70 -73.)

3.3 Delay reduction programmes

To the extent that delay reduction programmes exist, these are national programmes. Examples include the Rules of Court Procedure (Bosnia and Herzegovina), introduction of Working Bodies that supervise and register the caseflow in the courts in The Former Yugoslav Republic of Macedonia, and Kosovo's*[7] National Backlog Reduction Strategy. Serbia has also developed a combined strategy and so has The Former Yugoslav Republic of Macedonia. It is too early to assess the initiatives as fully successful; nevertheless there are some reports of success in numbers[8].

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8 We were not able to work on the numbers for Kosovo* based on 2013 and 2014 annual report of the Judicial Council. Kosovo* is not a member of the Council of Europe.

Because it is not yet clear what has been done in the courts in Kosovo* (in accordance with the National Backlog Reduction Strategy) and in Montenegro, an evaluation of the effectiveness of those programmes is necessary before firm conclusions about best practices could be reached. For example, the analysis of the Ministry of Justice in Montenegro shows steady disposition times in basic courts from 2008-2011, around 240 days (p.30).

Even so, the USAID project on backlog reduction in Serbia shows that such a programme can contribute to improvements (USAID, 2012; Serbia Judicial Functional Review, 2015). The Former Yugoslav Republic of Macedonia reports a reduction of backlogs from 295,769 cases in 2011 to 143,557 cases in 2014. This constitutes a reduction of 50,000 cases per year. The CEPEJ data show a mixed development of clearance rates in 2010 and 2012 data in criminal cases for Beneficiaries, with long disposition times. For civil litigious cases the disposition time decreases considerably when comparing 2010 and 2012 and also the clearance rates are over 100%.[9]

The presentations by the representatives of Beneficiaries in Cavtat showed various results. In Kosovo*[10], backlog reductions have not been realised yet. In 2014 the number of unresolved cases decreased from 456,140 to 430,923 cases. That is a reduction of almost 6%. The Former Yugoslav Republic of Macedonia showed an increase of cases resolved by 6% in 2014 compared to 2013. The number of unresolved cases was reduced by 20% in 2014 compared to 2013[11]. By the same comparison in Bosnia and Herzegovina the number of resolved cases in 2014 was by 19% higher compared to 2013, and the number of unresolved cases in 2014 was by 19% lower than in 2013. The presentation of Albania showed in detail how the backlogs for various types of cases, and according to the time of the backlogs, developed in 2014, both in the district courts and the courts of appeal:

Table 2 Pending cases on 31 December

	2012	2013	2014
Civil first instance courts	17719	14754	12517
Criminal first instance courts	1987	3091	3670
Administrative First Instance Court	3643	1268	3841
Civil Appeal Court	7346	9301	6006
Criminal Appeal Court	2307	2912	3472

Table 2 shows that civil courts decreased the number of pending cases while criminal courts and administrative court increased their number of pending cases.

The number of cases older than 3 years has shrunk to 85 in the district courts and to 6 in the appeal courts.

Montenegro showed numbers regarding the 'efficiency' rate of different types of courts in 2014:

- Basic courts – 99.54%,
- High courts – 97.47%
- Commercial courts – 113.43%
- Appellate Court of Montenegro – 105.65%

9 CEPEJ reports on Evaluation of Judicial Systems 2012 p. 175 and 2014, p. 199

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11 The numbers do not match and this remained unexplained.

- Administrative Court of Montenegro - 90.73%
- Supreme Court of Montenegro – 97.82%

By 31 December, the number of backlogged cases (older than 3 years) was 3192, or almost 30% of all unresolved cases.

Serbia did not show any numbers.

Both from the questionnaires and presentations, all (intended) measures taken are in line with the European best practices but, as mentioned earlier, they need to be carefully monitored and assessed, since their execution in practice is of paramount importance for their effectiveness. This is being done in Bosnia and Herzegovina, Kosovo*[12], Montenegro and Albania. We did not see results from such monitoring from Serbia or The Former Yugoslav Republic of Macedonia.

At the same time, it appears that some other important steps in backlog reduction programmes related to EU "good practices" have not been addressed in full.

For example, the information collected shows a limited involvement of stakeholders, in particular lawyers, in the definition of timeframes and, even more importantly, in the development of policies to improve the pace of litigation and thus increase productivity and decrease the backlog (some stakeholder involvement is explicitly mentioned for Serbia). It is also not clear if the data on the functioning of courts are made public and how they are disseminated and shared within the court and legal community to create a certain peer pressure towards improvement. Finally, we have not been able to collect detailed information on case assignment; however, some form of specialisation should be considered, in particular in the largest courts, to improve productivity.

Most of the programmes seem to focus on combating backlogs by proposing a chronological order in dealing with cases. This is certainly important for backlogs, but the same criteria should be used for the management of the whole caseload. European practices propose the adoption of "differentiated caseflow management" which does not entail strictu sensu the chronological order in dealing with cases but proposes some different tracks based on case complexity and not only on case aging.

3.4 Strict policies against postponements and adjournments

Among the programmes described, we could not find any strict policies against postponements or adjournments, which are indeed a necessary point of attention if the courts want to significantly decrease the length of procedures. In most Beneficiaries, legislation that enables judges to set limits to delays (in civil and criminal procedures for all Beneficiaries and in administrative procedures in four Beneficiaries) and to hold pre-trial conferences so as to avoid unnecessary delays later on is in force. Judges can even impose fines to advocates or parties if delays have been caused deliberately. Judges who do not take responsibility for speeding up proceedings can also receive administrative sanctions, from a warning via a public reprimand to dismissal for failure of function.

The proactive role of judge in managing the entire proceeding and hearings in particular still seems quite weakly developed in Beneficiaries. Indeed, in some questionnaires it was pointed out that: "in practice judges do not have full control of case management and they are prone to letting lawyers and parties having a lead role in time management (scheduling the time of hearings, etc.)" (Bosnia and Herzegovina) and "it is general impression that procedural discipline in courts is not very well respected. The right to introduce new evidences is readily given and only exceptionally refused. Furthermore, delays are very frequent and extension of deadlines is often permitted by judges" (Serbia). This is certainly a point to emphasise, because without a strong commitment and empowerment of judges in case management there will be no improvement in backlog reduction or decrease of the length of proceedings.

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Part of differentiated caseflow management is that some cases can get more priority than others, based on internal criteria developed by courts or based on demands from outside the court.

For example, if new legislation has entered into force, the first conflicts that evolve out of this new legislation seek rapid judicial decision-making so as to prevent large numbers of cases being filed that may flood the courts. However, the courts in most Beneficiaries are under a legal obligation to prioritise certain types of cases such as cases on trespassing and labour conflicts.

In Montenegro the court presidents also set some priorities: "priority cases are those related to corruption, organised crimes, human trafficking, unlawful possession of weapons and explosive substances, attack on public official in discharge of official duty, illegal building construction and cases of violence against journalists". This type of priority setting may have a societal context, but it does not contribute to reducing delays and backlogs in other cases. Differentiated caseflow management (DCM) makes a distinction between different types of cases that may take different amounts of time for hearing and decision (or may not need hearing at all) because of different complexity. Apart from specialisation in specific legal field, DCM is about specification of workflow in the back office (e.g. summary proceedings, ordinary proceedings, proceedings without hearing). These distinctions are also made operational in the case management system. DCM presupposes different tracks for different cases within the court organisation, as well as some flexibility with the judges so as to be able to work in different tracks (for example, Hollo and Solomon 1989).

Most, but not all, the governments have promoted the establishment of timeframes or targets for judicial proceedings, development of monitoring mechanisms using the case management system tools, promotion of mediation, and establishment of "working bodies" and "backlog reduction teams".

3.5 Other delay reduction policies

Policies to limit and strictly supervise the appointment of court experts, which is recognised as one of the most important factors for court delay, have not been reported. More information should be given in this respect, and in any case a policy to manage this issue should be implemented. Policies to inform the parties as to the expected length of proceedings were only noted in The Former Yugoslav Republic of Macedonia and Serbia. Montenegro reports that pre-trial conferences are possible. Some time-research on the length of different procedural steps has been done in Serbia, but the results have not been published yet.

The planning of hearings is a point of attention. If the court just plans court sessions in a general way, without consulting parties and counsel on their ability to participate in a court hearing, chances that they will not show up are high. In most Beneficiaries it is possible to fine parties who do cause delays. Courts will lose less hearing capacity when planning hearings and planning cases in general is done in consultation with parties and counsel. When case hearings have been planned in this interactive fashion, a fine for undue delay caused by a party is much more likely to be legitimate.

Furthermore, mediation in civil proceedings is possible in all Beneficiaries. In criminal proceedings diversion is possible, especially when a complaint asking for criminal prosecution has been filed. Only Kosovo*[13] reports on numbers of mediation cases: there are 149 licensed mediators, and 530 cases were referred to mediation in 2013. Even though a systematic assessment has not been carried out, the general impression is that these programmes have not been very successful in decreasing the court caseload. Based on the European practices, implementation of court-based conciliation procedures should be promoted, and in any case, judges should be stimulated to reach pre-trial settlements as often as possible in

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order to speed up the pace of litigation. In this regard, once again, the involvement of lawyers in the deployment of this policy should be envisaged.

In order to adequately manage the different caseloads in the courts, a reliable case management system is a necessary precondition. Case management systems are the main tool here and reliable case registration is absolutely necessary.

When case registration and electronic monitoring of the progress of cases is functional, a person or a group in the court should be made responsible to actually monitor and take action based on the information.

In all Beneficiaries electronic case management systems have been installed or are in the process of being 'rolled out'. The supervision is usually mandated to the court president, but many Beneficiaries also have supervision by a higher administrative authority. This is strange in so far as the monitoring exercise is not primarily about the right or wrong but it is about enabling the court management to take action when a certain section of the court is flooded with cases or where unexpected delays occur. The idea is that capacity can be brought where necessary, provided judges do everything within their power to reduce the risk of a case being delayed.

It is, of course, possible to complain about the excessive length of proceedings at the court and the national level in all Beneficiaries. Usually, it is up to the court president to take action against excessive delays at the court level while at the national level it is the Judicial Council and/or the Supreme Court. Several Beneficiaries report that these national bodies for court administration indeed have taken action.

Last but not least important is the issue of training of judges. Judges' training academies have been set up in all Beneficiaries. Judges can be trained in caseflow management. Specific delay reduction trainings are organised in The Former Yugoslav Republic of Macedonia, Serbia and Bosnia and

Herzegovina. It would be interesting to know how judges are trained in case flow management and if such trainings are effective.

4. BEST PRACTICES IN COUNCIL OF EUROPE MEMBER STATES

4.1 Summary of the existing best practices for backlog reduction

This section provides an overview of the existing practices in select EU Member States that have been proven useful for improving the pace of litigation and reducing the backlog.

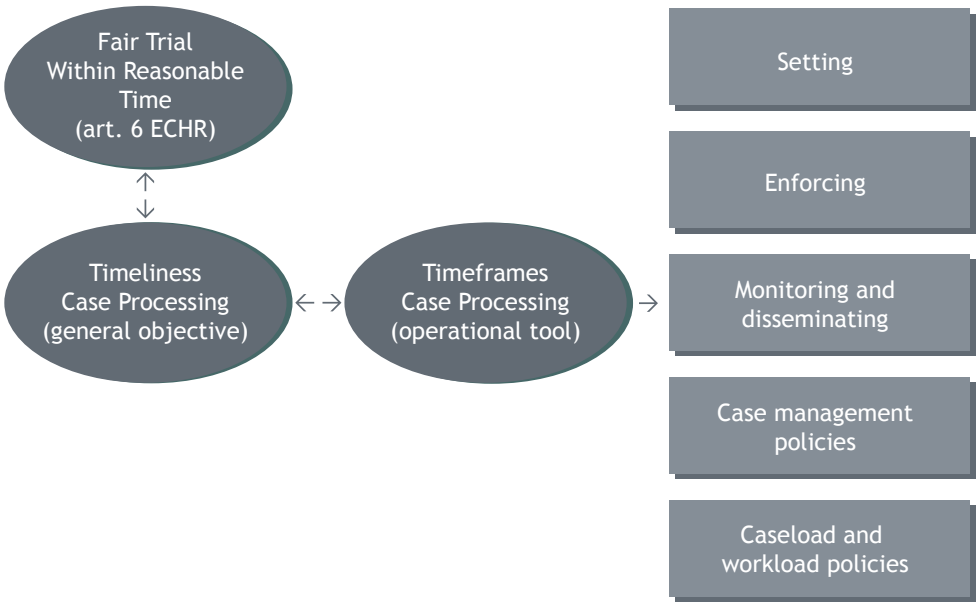
The reasonable time clause of Article 6 of the European Convention on Human Rights is the point of reference of any policy undertaken to reduce the backlog and regain efficiency in court functioning. The reasonable time clause means that each judiciary should have timely case processing - an objective that has to be pursued through the development of tools, policies, procedures, and actions by decision makers, court personnel, lawyers, and parties.

Among the practices that have proven useful for designing a backlog reduction programme is the *setting of timeframes*, as a *condition sine qua non* for measuring and comparing case processing backlogs. Indeed, the cases that are still pending beyond the timeframe or that cannot be resolved within the timeframe are the **backlog**.

Setting judicial timeframes is a necessary tool for decreasing the length of case processing; assessing court functioning; aligning courts closer to citizens' expectations; and for stimulating the sharing of knowledge and good practices across judiciaries.

Figure 1 below, which comes from the "Compendium of best practices of judicial case processing" of the Saturn Centre for Time Management of CEPEJ, shows the logic behind the need to set timeframes, and the elements to be carried out to try to reduce case backlog through case management and caseload and workload policies.

Figure 1 – From reasonable time to measurable timeframes



The setting of timeframes is also mentioned in the Saturn Guidelines for Judicial Time Management, in particular in guideline 1: "The length of judicial proceedings should be planned, both at the general level (planning of average/mean duration of particular types of cases, or average/mean duration of process before certain types of courts), and at the level of concrete proceedings".

Timeframes are *operational tools*. They are concrete targets for measuring the extent to which each court, and more generally the judicial system, deals with judicial cases in a timely manner. Realistic and measurable timeframes should not be introduced once and for all, but they should be **revised from time to time**, on the basis of at least three factors: a) court resources, b) incoming cases, and c) major changes in legislation.

Timeframes should not be confused with *procedural deadlines or time limits* that can be defined as "a limit of time within which something must be done. In judicial proceedings, this term indicates mainly the limits established by procedural rules". Time limits deal with each case, while timeframes are a managerial tool that takes into consideration the whole caseload of the court. The two are complementary: timeframes should also be determined for procedural "milestones" in order to have a detailed analysis of the caseflow within the court. Timeframes should also be tailored for judiciary, court, and type of case, depending on procedural issues, resource available, legal environment, and citizens' expectations.

The importance of setting timeframes as a first step in developing a backlog reduction programme is also supported by the "Time standards for the length of judicial proceedings", which have been used in the courts in the United States for quite a few years. These "model time standards" were developed by the National Center for State Courts in collaboration with the American Bar Association (ABA), the Conference of State Court Administrators (COSCA), and the National Association for Court Management (NACM).[14] These model time standards have then been adopted by the different state judiciaries with some variations from state to state.

Generally speaking, the standards entail three time periods within which the cases should be resolved, depending on the case type. The first time period should encompass 75 percent of the cases, the second 90 percent of the cases, and the third 98 percent of all filings.[15]

The cases that are still pending beyond the third time period are considered the court backlog. The length of each time period is different for the different case categories that are dealt with by the courts.[16]

The model time standards indicate that in civil matters, the starting date is the date on which the case is filed and registered by the court. In criminal matters it is the date on which the formal charge is filed by the public prosecutor. The ending date or disposition date is the date when the case has been decided and it is considered terminated for the court.

In Australia the debate on timeliness of judicial proceedings is very much alive (ACJI 2013). This debate has also been stimulated by the needs of public institutions to report on government services, with the definition of performance indicators.

14 The first ABA court standards were published in 1976, amended in 1984, then revised in 1992. COSCA standards were developed in 1983 and quite a few states adopted them. In 2011, after a two-year project coordinated by the National Center for State Courts, the time standards were reviewed and the new "Model Time Standards for State Courts" (Duizend, Steelman, Suskin 2011) were adopted by the Conference of State Court Administrators, the Conference of Chief Justices, the American Bar Association House of Delegates, and the National Association for Court Management.

15 The reading of these standards should also take into consideration that in the United States courts, generally speaking, settlements and plea bargaining are widely used in both civil and criminal cases.

16 For example in the U.S. time standards the categories of civil cases used are: malpractice tort, automobile tort, product liability, employment disputes, landlord-tenant disputes. In criminal matters, the case categories are felony, misdemeanor, murder, domestic violence, drug, weapon, motor vehicles.

In Europe timeframes have been used in particular in the Nordic countries, which have, by the way, quite good performance in the pace of litigation. In Norway, average timeframes for both civil/administrative and criminal matters were established in 1990s. They do not take into consideration different case categories, but in the criminal matters they do consider if one judge or a panel of judges deals with the case.

Denmark has quite a detailed list of timeframes for case categories that each autumn are reconsidered and adjusted in cooperation between the Chief Judge and the Court Administration Office. The case categories for timeframes in civil matters take into consideration factors such as the value of case, whether it is decided by a panel or by a single judge, case type (e.g., family cases, enforcement cases, small claims cases, etc.). In criminal matters, timeframes are different based on factors including the composition of the "decision making body" (i.e. jury, judge, judge with lay judges); whether the accused has pled guilty; and the type for crime committed (i.e. violent crime and rape are to be disposed at a quicker pace). There are also different timeframes taking into account whether the case is being adjudicated in the first instance or at the appeal stage.

Sample timeframes used in Denmark include:

Criminal cases-Jury Trials
- 60 percent of the cases within 4 months
- 80 percent of the cases within 6 months

Rape cases
- 55 percent of the cases within 37 days
- 75 percent of the cases within 60 days

Violence cases
- 60 percent of the cases within 37 days
- 75 percent of the cases within 60 days

Civil cases-time until judgment or agreement
- 60 percent of the cases within 12 months
- 72 percent of the cases within 15 months

General cases
- 70 percent of the cases within 6 months
- 85 percent of the cases within 12 months

Parental responsibility cases
- 60 percent of the cases within 6 months
- 75 percent of the cases within 8 months

Matrimonial cases
- 56 percent of the cases within 4 months
- 83 percent of the cases within 6 months

In the Netherlands the Judicial Council establishes timeframes for the length of judicial proceedings. Every year the Judicial Council publishes the timeframes for several kinds of cases, for different instances (first, appeal) and for the composition of the court (e.g. single or panel of judges). Sweden has a set of timeframes established in 2007 which are considered "political goals and have no legal consequences"; but they are also considered a frame to be followed. In Finland, timeframes are negotiated every year with the Ministry of Justice in order to keep in mind the peculiarities of each context and the resources available, which have been recently constantly decreasing.

It is important to emphasise that the length of judicial proceedings is the result of a complex interplay of different players (judges, administrative personnel, lawyer, expert witnesses, prosecutors, police, etc.). Therefore, the setting of timeframes and in general any programme of backlog reduction must **involve all the stakeholders**, in particular court personnel and lawyers, due to their relation to the management of the cases.

Their involvement is necessary for at least three reasons: 1) it helps build the commitment among all the key players; 2) it creates a proper environment for the development of innovative policies; and 3) it points out that the responsibility for timely case processing lies not just with the court but also with other players, first of all the lawyers.

Timeframes and the scheduling of the case processing events should be clearly **communicated**

and shared with the parties. This is mentioned in Guideline 2 of the Saturn Time Management guidelines: "The users are entitled to be consulted in the time management of the judicial process and in setting the dates or estimating the timing of all future procedural steps." In Finland, for example, there is a tailored programme for each case and directions are given informing the parties about the estimated timeframe of the pre-trial phase, pre-trial hearings, and trial. Detailed hearing timetables are sent beforehand to the parties. The lawyers and prosecutors are copied in for comments.

The setting of timeframes should be realistic. A picture of the current situation of the court performance and of the judicial systems is necessary for defining timeframes. Therefore, **detailed monitoring of the court functioning is required** to set and to check the compliance with timeframes. The Saturn Guidelines for Judicial Time Management give quite a detailed example of data that should be periodically collected and displayed for this purpose.

The following tables provide an example of data that should be available periodically to monitor the functioning of the court (Adapted from Appendix 1 of the European Uniform Guidelines for Monitoring of Judicial Timeframes EUGMONT CEPEJ 2008/11).

Table 3 - Length of resolved judicial proceedings

Date	Court	Case category	< 1 year	1 to 2 years	2 to 3 years	> 3 years	Average duration of proceedings	Notes
			% and absolute number	% and absolute number	% and absolute number	% and absolute number		
			% and absolute number	% and absolute number	% and absolute number	% and absolute number		

Table 4 - Length of pending judicial proceedings

Date	Court	Case category	< 1 year	1 to 2 years	2 to 3 years	> 3 years	Average duration of proceedings	Notes
			% and absolute number	% and absolute number	% and absolute number	% and absolute number		
			% and absolute number	% and absolute number	% and absolute number	% and absolute number		

It is worth mentioning that in Austria, for example, all judges receive automatically generated checklists with data on their caseload and work output every month.

At a certain date (1st of October), all overdue verdicts and all overlong trials in civil and criminal matters are identified by the Austrian automated case management system.

Just before this set date, all judges receive a report from the data warehouse which lists possible backlog problems, namely a) all the judge's verdicts that would be overdue for more than 2 months, and b) all the judge's trials pending for longer than 6 months. The idea is to support and motivate the judges in time to reduce their backlog before reporting. In October the presidents of courts receive status-reports about overlong trials and overdue decisions. The analysis report is put together by the president of court and sent - via the president(s) of the superior court(s) who can add input - to the Ministry of Justice no later than 31st January of the following year. This late due date gives the judge time to improve the situation in the department and the president to include counter measures and their effects in the report. Then there is quite a detailed "monthly check list" to monitor the development of the judges' work. In addition, each case with no new entry in the electronic registry for more than three months appears automatically in a checklist. This list is given every month to the head of court and to the judges and their staff for check (Fabri and Carboni 2012, 14).

In Germany, the monitoring of case processing is carried out by the chief judge and by the higher regional court whose judges make a visit to the first instance courts every two years with emphasis on the length of judicial proceedings. The pace of litigation is also a matter considered in the assessment of judges' performance for their career. However, there is a team approach within the court to help out judges who may be overloaded with cases; for example, regular meetings are held between judges and court personnel to discuss improvements and a yearly meeting ("Mackerstunde") is convened at which judges and lawyers are invited to share their views about problems and possible solutions. At the insurance court in Finland, a timeframe alarm system was designed to reduce the number of cases pending over 12 months. There are two alarm-levels: a lower alarm-level, when a case starts to draw closer to the set timeframe for the phase, and upper alarm-level, when a case has exceeded the set timeframe for the phase. With the help of the alarm system symbols and listings, a judge can easily control the case inventory situation and plan the work according to the age of the cases. The data system also enables the managers to monitor the overall situation of pending cases and inventories online, as the pending case listings are available from the data system and can be sorted by the whole court, departments, persons, subject groups, complexity, priorities and decision divisions.

In Denmark, the president of the court receives a monthly report on the length of proceedings, and judges can also impose fines to parties that intentionally or without need delay the proceedings. In the administrative courts of Lithuania, cases inactive for more than three months are brought to the attention of the head of court.

These **data** should also be made **available to the public** in order to create some acknowledgement of the function of courts and some external pressure to achieve the established timeframes. Several judiciaries produce annual reports, but these data should be disseminate much more widely among all the court stakeholders and, also in a more readable form, to the general public.

Among the policies that have yielded positive results in combating the backlog is the so-called **differentiated caseflow management system** (DCM). The idea is that the case management should take into consideration not only the age of the case but also the type of case (case complexity). This approach has been implemented in the USA, Australia, England and Wales, and in some other European countries. Usually courts deal with the cases in the order in which they have been filed with the court. DCM replaces this so called "first-

in, first-out" system with a system that takes into account the complexity of each case, and assigns it to a particular track of procedure. In this way, simple cases can be disposed of quickly and do not have to wait for cases filed before them which are much more complex in nature and take longer to dispose. The screening process used to assign each case to the correct track involves the parties and is based on pre-established criteria. There is a different way to process each case in each track, with predetermined events and timeframes for each track. A judge's calendar is then a correctly weighted mix of different kinds of cases that maximise the judge's time and performance. As a consequence, the workloads, as well as the calendars of judges, are supposed to be better managed, which is possible because the courts get substantive information about cases earlier in the legal process. Court personnel can be better allocated on the basis of the caseload for each track. Lord Woolf report for England and Wales proposed, and then adopted, a pre-set "Fast Track System" for simple cases and a "Multi Track system" for varieties of complex cases (1996, section II, chapter 5).

The **case assignment system**, if the size of the court allows it, should consider some kind of specialisation of the judges. Generally speaking, judges' specialisation increases their ability to deal with cases in a more competent and productive manner; therefore it has been pursued in several jurisdictions. Some kind of flexibility in case assignment should be taken into consideration too, since the day-to-day operations in courts will necessitate adapting the case assignment criteria to changing circumstances. Some judiciaries have quite a rigid system of case assignment according to constitutional or legal provisions due to which the court has to identify pre-established criteria for the case assignment to a single judge or a court division. In addition, quite often cases are assigned randomly in order to avoid the so-called "judge shopping", and ensure a judge's

impartiality. However, sometimes these systems are so rigid that they affect the effective functioning of courts and therefore some kind of flexibility in case assignment must be identified for the sake of the length of case processing.
A strict **court policy against unjustifiable continuances or postponements** has been recognised as an important policy for maintaining the established timeframes. The granting of postponements to lawyers should be limited as much as possible in order to avoid delaying tactics and keep the scheduled pace of litigation.

Courts could promote common practices among the lawyers to avoid postponements, which in any case should be only granted if really needed and for just a limited period.

Another point of attention in designing a backlog reduction programme should be the time and length **of giving legal arguments in writing**. If the legislation[17] does not set rules about judge's reasons in writing, the judge's court could draft practice rules and common forms to have a faster way to draft sentences. This is the case in Finland, for example, where a lot of emphasis has been put on this issue.

Policy should be developed on how the length of judicial proceedings is related to the need of **court-appointed experts**. This is considered one of the most important factors of case delays, and therefore backlog prevention. In this respect, the recent "Guidelines on the Role of Court-appointed Experts in Judicial Proceedings of Council of Europe's Member States", prepared by the Commission for the Efficiency of Justice of the European Commission (CEPEJ 2014), can be a useful reference.

Pre-trial settlement procedures between parties should be strongly promoted to decrease the caseload and therefore reduce the accumulation of cases that may cause backlog. It is important to stress that it is not only the presence of these particular procedures that automatically allows timely disposition of cases, but it is the way in which these special procedures are used that can make the difference. Mediations or conciliation within the courts or referred from the courts to an external agency have been implemented in several European countries with some satisfaction.

As reported in the experience in the common law countries, the **proactive role of the judge** in the management of the case can positively affect the caseload management and the pace of litigation. The judge should play a leading role in managing the proceedings, promoting a fair pace of litigation, contrasting the opportunistic behaviours that can characterise the parties' legal strategies (Zuckerman 1999).

For example, this proactive role is well illustrated in Norway where the courts schedule planning meetings in all civil cases shortly after the case has arrived at the court. The lawyers of the parties and the assigned judge - but not the parties - participate and the meetings are supposed to plan all necessary steps until the disposal of the case. The meeting clarifies the claims of the parties, their main supportive arguments and the evidence they offer. During the meeting, the progress of the case is planned, deadlines are established, and the dates and number of days needed for the main hearing are set. In Norway it is exceptional to schedule more hearings than the major hearing. All evidence must be ready before a set date and the parties therefore must plan their collection and presentation of evidence accordingly.

As mentioned earlier, the monitoring of case progress is a fundamental tool to study the court performance status.

In this respect, a **case management system** has to be implemented, even though usually not all courts can autonomously deploy this, but it is in the hands of ministries of justice, supreme courts, or judicial councils. Communication technologies (telephone, email, Internet) should be exploited to increase efficiency.

The possibility to **delegate some authority** to clerks of courts, for example, to deal with non-

17 In the Netherlands, in first instance criminal proceedings concerning lesser crimes a written motivation is only given if a party announces to appeal.

contentious matters is another policy that could be undertaken by the courts to try to increase the productivity and to concentrate judges' capacity on more complex legal matters.

In this respect, the possibility to manage non-contentious payment orders by a web-based procedure with no judge intervention, such as Money Claim Online in England and Wales or a similar automated procedure developed in Estonia and in Portugal, could have a very positive effect on the court's caseload.

The promotion of a new policy to reduce the backlog and the testing of the perception of policies already undertaken can also benefit from **customer satisfaction surveys**, which are used in several European countries, even though sometimes not on a regular basis or nationwide. In Germany, for example, regular meetings with lawyers are organised to discuss customer satisfaction and problems with the service delivered by the court.

Generally speaking, court performances are quite different from court to court within the same judicial system. This means that the ways in which the court is organised and the court personnel performs its work are of paramount importance for the court functioning. However, there may be cases in which there is an unusual peak in the court caseload, for example, a large bankruptcy or criminal case, or an unpredictable lack of court personnel. In these cases, several courts around Europe have put in place **task forces** or **flying brigade** to help deal with the unexpected increase of caseload for each judge in due time.

For example, in the Netherlands, a small centralised unit of judges and staff is deployed to the courts to help deal with the increasing number of pending cases due to unexpected circumstances.

In Sweden there is some flexibility in the court structure to make possible the fair sharing of an unexpected increase in the caseload. Some courts are divided in units of 2-3 judges so that the caseload can be fairly shared among them. For example one judge can concentrate on a big civil case while the others can deal with more simple ones.

Some courts have found it useful to establish a kind of **post-filing filter**, in particular at the Court of Appeal or Supreme Court instance, to check if the case can be resolved in a simple way or it really needs a more in depth analysis. In the Court of Appeal in Norway, for example, the cases are quickly filtered by three judges who can immediately disposed them or refer them to a division of the court for the ordinary procedure. In this way most cases are preliminary examined in two or three days and then some of them can be disposed very quickly if it is clear that they did not really have grounds for appeal.

Some kind of **accountability policies** for court personnel and lawyers should be undertaken in order to enforce the timeframes set and avoid opportunistic behaviours and delay tactics.

Indeed, the Saturn Guidelines for Judicial Time Management emphasise that all efforts should be made to avoid procedural abuses and: "All attempts to willingly and knowingly delay the proceedings should be discouraged [and] There should be procedural sanctions for causing delay and vexatious behaviour. These sanctions can be applied either to the parties or their representatives". If a member of a legal profession grossly abuses procedural rights or significantly delays the proceedings, it should be reported to the respective professional organisation for further consequences".

In England, for example, any departure from the scheduling of the case may render the offending party to a sanctions order and costs. In addition, any party that makes an application for an adjournment of a case, for an order to vary the scheduling or to amend must show good and just cause in doing so and judges will not grant any adjournment without ensuring that a party is unreasonably disadvantaged. Judges and court personnel should justify if the timeframe is not met and be accountable to the chief judge, the judicial council or similar organisation for the length of their caseload.

In the commercial court in Ireland, it is even possible to dismiss cases or impose cost penalties for non-compliance with the Court's directions.
In synthesis, the practices that have been proven useful for backlog reduction in Western democratic judicial systems and that should be examined in the context of the judiciaries of the Beneficiaries are the following:

- Setting realistic timeframes per type of case and per type of procedure
- Timeframes set with the involvement of the stakeholders
- Continuous collection of data and monitoring of court functioning
- Dissemination of data
- Strong commitment and judges' leadership to enforce the timeframes
- Setting prompt intervention if timeframes are not achieved
- Accountability policies for court personnel and lawyers if timeframes are not achieved
- Active case management by the judge
- Strict policy to minimise adjournments
- Specific policy to manage court-appointed experts
- Policy to increase early settlements, mediations and conciliations
- Flexible case assignment system
- Task force to manage unpredictable caseloads
- Delegation of authority to law clerks to increase court productivity
- Development of customer satisfaction surveys on the perceived length of judicial proceedings and the impact of backlog reduction programmes
- Use of information and communication technology (even simple one as email or telephone hearings) to speed up the proceedings
- Post-filing filtering of cases and differentiated caseflow management

5. COURT PERFORMANCE DATA IN THE BENEFICIARIES AND IN 4 OTHER EUROPEAN UNION AND COUNCIL OF EUROPE MEMBER STATES IN 2010 AND 2012

5.1 Methodology

In order to come to a selection of court sectors in EU Member States that may function as a benchmark for court performance in the Beneficiaries in South East European, we have combined scores for judicial independence, quality management and speed, both from the EU Justice Scoreboard[19] and CEPEJ Judicial Systems reports. These scores are of an entirely different character and therefore calculating averages of those combined scores per judiciary cannot be accepted as meaningful. We therefore started the selection based on the essential value 'judicial independence', followed by 'quality management' and finally the 'productivity' of courts. The eventual selection displayed below should be read as the judiciaries with the highest scores for perceived judicial independence also having the highest scores for quality management combined with judiciaries with the highest court productivity. This means that there may be judiciaries with lesser scores on judicial independence and quality management, but with a higher productivity score.

In addition, we have used the CEPEJ productivity data of the selected judiciaries from the 2012 and 2014 Judicial Systems Reports[20] for first instance civil cases and first instance criminal cases to establish the benchmark. For the comparison with Albania, Serbia, The Former Yugoslav Republic of Macedonia, Montenegro and Bosnia and Herzegovina, we also used the CEPEJ 2014 Judicial Systems Report. Kosovo*[21] is not a member of the Council of Europe, and data is not available in the CEPEJ report.

A first indicator is the perceived judicial independence.[22] The best scores in the year 2012-2013 are: Finland, Ireland, UK, Netherlands, Denmark, Sweden and Germany, with scores over 6 on Likert scale from 1-7.[23] Regarding quality management, we selected the best scores for monitoring of courts' activities[24], the general

18 With thanks for assistance to Roos Molendijk, master student at Utrecht School of Law.

19 *http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf*

20 *http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf, and: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf*

21 * This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

22 2014 EU Justice Scoreboard, COM (2014) 155 final, p.25

23 2014 EU Justice Scoreboard, COM (2014) 155 final, figure 29, p.26

24 They concern the publication of the annual activity report, number of decisions, length of proceedings, number of incoming cases, number of postponed cases and other elements. Vgl. The 2014 EU Justice Scoreboard, COM (2014) 155 final, figure 13, p.16

government total expenditure on "law courts"[25] and judges participating in continuous training activities.[26]

Based on these three indicators we identified the top ten for those three indicators and identified eight countries with the highest scores: Slovenia, Austria, Denmark, the Netherlands, Sweden, Finland, Italy and Estonia[27].

Regarding the length of proceedings we have chosen 'time needed to resolve litigious civil and commercial cases' and 'time needed to resolve administrative cases'[28] as the indicator. For these two categories we have identified the top 10 best performing countries. The best performing countries in both categories are[29]: Sweden, Estonia, Poland, Lithuania, Hungary and Romania. When combined, the results of the selection procedure outlined above lead to the following selection of best performance justice sectors regarding independence, quality management and productivity: Finland, the Netherlands, Sweden, and Denmark.

5.2 Productivity of the courts

Tables 5, 6 and 7 below give an overview of the production data of the first instance courts in the benchmark judiciaries and in the select judiciaries of South East Europe, for litigious civil and commercial cases and criminal cases.

Civil and commercial litigious cases

The data concerning the number of cases filed and the number of cases decided in Table 5 is based on Table 9.1 of the CEPEJ Judicial Systems Report of 2014, and on the same data categories in the CEPEJ 2012 report. The presented data on clearance rate and disposition time are based on table 9.2 in the CEPEJ 2014 report.

For civil litigious cases, Table 5 shows that average disposition time in 2010 in Bosnia and Herzegovina, Serbia, Montenegro, The Former Yugoslav Republic of Macedonia and Finland is higher than 200 days, with Bosnia and Herzegovina and Serbia having the highest numbers. In 2012, Bosnia and Herzegovina reduced the average time to disposition to 656 days (a reduction of 170 days); Montenegro Serbia and Finland took more than 200 days on average; and Finland increased the time to disposition by an average of 66 days. The first instance courts of The Former Yugoslav Republic of Macedonia have a disposition time of 175 days and a clearance rate of 131 percent. The clearance rates have increased in all Beneficiaries, and remain below 100 percent in Albania.

For the EU benchmark countries, results show that a clearance rate of over 100 percent is also difficult to achieve (Sweden) or maintain (Netherlands). Table 6 shows that the Netherlands first instance courts have difficulties to decide 70% of cases within a year with regards to trade cases. It shows to be difficult even to deal with 90% of those cases within two years. For all civil cases the Netherlands' first instance courts achieved a clearance rate of 100% in 2010 and of 98% in 2012. The clearance rate for Sweden was 98% in 2010 and 99% in 2010. Denmark had an average disposition time of 165 days and a clearance rate of 109 percent.

25 2014 EU Justice Scoreboard, COM (2014) 155 final, figure 25, p.22

26 2014 EU Justice Scoreboard, COM (2014) 155 final, figure 23, p.21

27 Top 10 indicator 1: DK, EE, ES, LV, LT, HU, AT, PL, RO, SI.
Top 10 indicator 2: LU, UK, DE, SE, NL, AT, FI, SI, DK, IT.
Top 10 indicator 3: IE, SI, NL, UK, SE, IT, EE, DK, FI, AT.

28 For a definition of this type of cases see 2014 EU Justice Scoreboard, COM (2014) 155 final, p.8-9.

29 Top 10 litigious civil and commercial cases: LT, LU, HU, AT, DK, EE, CZ, SE, DE, RO, PL.
Top 10 administrative cases: EE, PL, SE, LT, HU, BG, NL, SI, FI, RO.

Table 5 Productivity of first instance courts in civil and commercial litigious cases according to CEPEJ judicial systems reports of 2012 and 2014

	Population 2010	Population 2012	Incoming cases in 2010	Incoming cases in 2012	Resolved cases in 2010	Resolved cases in 2012	Average disposition time in days in 2010	Average disposition time in days in 2012	Clearance rate in 2010[29]	Clearance rate in 2012[30]
Albania	3 195 000	2 815749	18 645	19170	17 356	18533	173	192	93.1%	96.7%
Bosnia and Herzegovina	3 843 126	3 831 555	156 309	143775	147 049	166675	826	656	94.1%	115.9%
Kosovo*[31]										
The Former Yugoslav Republic of Macedonia	2 057 284	2 062 294	55959	34403	53243	45057	259	175	95.1%	131.0%
Montenegro	620 029	620 029	20 168	20514	18 530	20828	271	254	91.9%	101.5%
Serbia	7 291 436	7 199 077	239 195	231356	219 134	268369	361	242	91.6	116.0%
Denmark	5 560 628	5 602 628	63 428	46213	64 657	50361	186	165	101.9	109.0%
Finland	5 375 276	5 426 674	10 845	10320	10 112	10653	259	325	93.2%	103.2%
Netherlands	16 655 99	16 778 025	ND	N/A[I]	ND	159165	ND	ND	ND	ND
Sweden	9 415 570	9 555 893	63 428	65418	62 095	64651	187	179	97.7%	98.87%

30 Litigious civil cases, figure 9.10 p. 182 CEPEJ Justice Systems report 2010

31 Table 9.2 Clearance Rate and Disposition Time in different types of non-criminal cases in first instance, CEPEJ Justice Systems Report 2012

32 This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence. Kosovo* is not a party to the ECHR.

I According to p. 198 of the CEPEJ report, "it is not possible to say whether incoming or pending cases will be litigious or non-litigious so the distinction is only made for the resolved cases".

Table 6, Netherlands, trade cases, first instance courts, timeframes realised[32]				
	Timeframe realised 2010	Timeframe set in annual plan 2010	Timeframe realised 2012	Timeframe set in annual plan 2012
Ordinary trade cases in presence of defendant within one year	63%	70%	54%	70%
Ordinary trade cases in presence of defendant within two years	87%	90%	84%	90%
Ordinary trade cases in absence of defendant within one month	76%	90%	78%	90%
Civil cases first instance courts clearance rates[33]	2010: 100%		2012: 98%	

33 Source: Annual reports 2010 and 2012, key figures (Kengetallen Gerechten 2010 and 2012) Table 2a, see: *http://www.rechtspraak.nl/Organisatie/Publicaties-En-Brochures/Pages/Jaardocumenten.aspx* [last visited 1 June 2015]

34 Trade cases, insolvencies, family law, summary proceedings.

Table 7 Productivity of first instance courts in criminal cases according to CEPEJ judicial systems reports of 2012 and 2014

	Population 2010	Population 2012	Incoming cases 2010	Incoming cases 2012	Resolved cases 2010	Resolved cases 2012	Average disposition time/days 2010	Average disposition time/days 2012	Clearance rate 2010[34]	Clearance rate 2012[35]
Albania	3 195 000	2 815 749	8473	8492	7857	8947	ND	81	92.7%	105.4%
Bosnia and Herzegovina	3 843 126	3 831 555	181836	168424	90 636	171414	ND	328	104.8%	101.8%
Kosovo*[36]										
The Former Yugoslav Republic of Macedonia	2 057 284	2 062 294	110498	100242	131057	104815	ND	203	118%	104.6%
Montenegro	620 029	620 029	6856	5791	7541	5574	ND	174	110%	96.3%
Serbia	7 291 436	7 199 077	67486	63285		66648	ND	387	77.9%	105.3%
Denmark	5 560 628	5 602 628	114124	152157	121285	158437	ND	37	106.5%	104.1%
Finland	5 375 276	5 426 674	61629	60072	59607	58904	ND	114	96.7%	98.1%
Netherlands	16 655 99	16 778 025	441911	388847	434 066	370102	ND	99	98.2%	95.2%
Sweden	9 415 570	9 555 893	92431	89804	90 768	90866	ND	123	98.2%	101.2%

35 Serious crimes, Judicial Systems Report, CEPEJ 2012, p.204

36 Table 9.16 Clearance Rate and Disposition Time in different types of criminal cases at first instance in 2012, Judicial Systems Report 2014, p.222

37 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

Criminal cases

The numbers of criminal cases shown in Table 7 above refer to both severe criminal offences and misdemeanours. The data shown are based on Table 9.15 in the 2014 Judicial Systems Report of the CEPEJ and the same category of data in the 2012 report. The total number of criminal cases in first instance courts has been used, adding both crimes and misdemeanour cases. The data for the clearance rate and disposition time of 2012 are based on Table 9.16. The data for 2010 were derived from the reports based on data of 2010.

Over the past four years Beneficiaries have been making efforts to increase clearance rates and reduce the backlogs in criminal cases. Serbia made a major improvement from 2010 to 2012. Average disposition time is high in most Beneficiaries, especially considering that the large majority of cases in this table are misdemeanour cases. Albania is an exception with an average time to disposition of 81 days. The table also shows that for the EU benchmark countries, keeping a clearance rate of 100% is far from automatic. An analysis of the ways in which cases are managed in first instance courts is necessary to understand the causes of delay in the Beneficiaries. This has been done, for example, in Albania for civil proceedings in district courts (Faafeng et.al. 2012).

6. COMPARATIVE ANALYSES OF PROGRAMMES AND BEST PRACTICES

Considering the limited nature of information provided in responses to the questionnaires, it is difficult to come up with a comparative analysis and best practices. It is clear that great efforts are being made in the Beneficiaries to improve the efficiency of the judiciaries and the courts. There is enough political will in Beneficiaries to engage in large, top-down court improvement projects. Some Beneficiaries have detailed regulation for the courts on how to deal with backlogs and how to prevent delays.

The CEPEJ data show a considerable improvement in average disposition time in litigious civil and commercial cases in all Beneficiaries, as well as in clearance rates between 2010 and 2012. For criminal cases, differences between clearance rates of 2010 and 2012 show a mixed picture of advances by the first instance courts in some Beneficiaries and setbacks in others. Considering the long disposition times and the large backlogs, working in courts in many Beneficiaries may be, from an internal workload perspective, a discouraging experience because the backlogs appear to be here to stay.

In most Beneficiaries there is a strong, centralised style of policymaking concerning the courts and the judges. The preference appears to be for guiding judicial behaviour with rules as closely as possible, and with supervision, especially concerning backlogs and delays. Consideration should be given to allowing the courts the competencies to develop their own court rules, within certain legal parameters, so that they can adapt the implementation of rules of procedure to local circumstances.

Improvement of court efficiency begins with measuring the incoming and outgoing cases in a year and the elapsed time between filing and disposition. All Beneficiaries have gone through this exercise for the CEPEJ judicial systems evaluation reports. Typically, Montenegro made a comparative analysis of the efficiency of different courts in 2013, with a view to personnel needs. The analysis used numbers about disposition time in days and the clearance rate per type of cases at national and court level for misdemeanour cases.[38]

In some of the Beneficiaries, the High Judicial Council or the Supreme Court has issued rulebooks (e.g., Serbia, Bosnia and Herzegovina). Enhancing judicial caseflow management also involves legislation that enables judges to impose sanctions for parties that obstruct efficient case management. From a backlog reduction perspective, it is good that Beneficiaries have defined backlogs as cases of 2 or 3 years old.

For an efficient caseflow management that prevents delays it is also necessary to set time limits for different kinds of cases that may function as benchmarks. The fulfilment of these benchmarks should be monitored both at the court and at the national level.

Several Beneficiaries noted their use of local delay and backlog reduction teams. These are special taskforces of judges and court clerks responsible for monitoring the caseflow and taking charge if a case is visibly at risk for taking longer

38 Ministry of Justice, Analysis towards Rationalisation of the Judicial Network and Analysis of the Network of Misdemeanour Bodies; Podgorica, February 2013

than the established benchmark. Evaluation of the effectiveness of these teams would be an important next step.

When all is said and done, it is the judges and the court personnel who actually have to do the work of caseload management. For their success, they are also dependent on the cooperation of the advocates. The courts should therefore seek cooperation with the local bar in order to reduce delays.

Finally, it would also be advantageous to pay attention to how judges and attorneys can achieve faster court proceedings. This information must be integrated not only in the training of judges, but also in the training of advocates. Therefore, the organisation of continuous trainings of judges and also the adaptation of law school programmes in this respect is absolutely desirable.

7. CONCLUSIONS AND RECOMMENDATIONS ON BACKLOG REDUCTION PROGRAMMES

Based on the questionnaires and other literature, it is clear that the judges in courts of the Beneficiaries need support in order to deal with backlogs and to prevent delays. Delays and backlogs can have many different causes. Although the responses to the questionnaires provide limited information on the causes of delay, recommendations can be made nonetheless.

7.1 Conclusions

There is a great deal of political will in the Beneficiaries to take measures in order to enhance the efficiency of justice, especially in the courts.

So far Policies have a top-down character. It is not entirely clear from the questionnaires as to how much autonomy court organisations and judges have in taking responsibility for increased efficiency in caseflow management.

Clearance rates and disposition times in courts in the Beneficiaries are improving. At the same time, the data shows that for first instance courts it is difficult to keep pace, especially in criminal cases.

In some Beneficiaries special teams have been installed in courts to monitor and manage the caseflow. It must be noted that such caseflow monitoring presupposes a fully functional case management system.

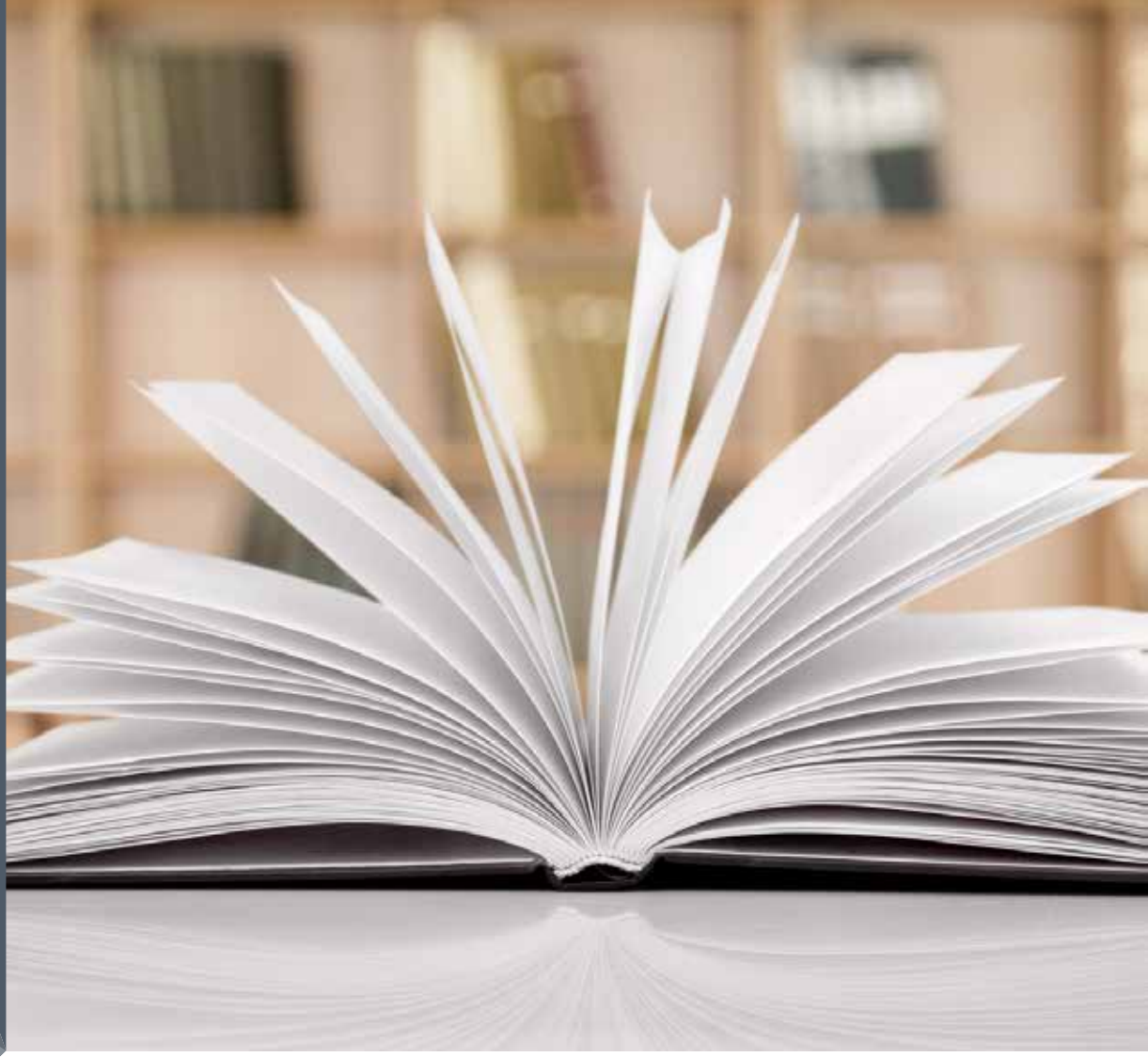
In most Beneficiaries it is possible for courts to refer a case to mediation.

7.2 Recommendations

We suggest the following policies to further reduce delays and backlogs:

- There should be a national legal framework for the governance of the courts, with direct accountabilities for the court management towards court administrators at the national level (presumably a council for the judiciary or a supreme court), regarding court efficiency and quality of court services.
- Procedural legislation should make the court management (the president or a management board) competent to issue procedural rules. It should enable judges to organise pre-trial conferences with parties in more complicated cases.
- These procedural rules should enable judges to impose and enforce pre-set time limits. This should be part of a differentiated caseflow management. For simple cases established standard times for delivering files, responses, and hearings should be allowed, as well as fixed times for the delivery of judgments. For more complex cases time limits should be set by the judge presiding over the case in consultation with stakeholders. Overall, in civil cases, planning of hearings should be done in consultation with the parties and their counsel. This will prevent delays caused by parties that do not show up at the court hearing. Procedural rules should make different standard timeframes possible for different kinds of cases.

- The courts should develop different case flows after filing of the cases, adapted to the subject and the complexity of the cases.
- Courts should give court clerks responsibilities in preparing cases and judgment texts under supervision of a judge as this will enhance court efficiency and lead to shorter average disposition times
- The data from the caseflow monitoring should be made public at least once a year. There is nothing wrong with presenting comparisons of court efficiency by a council for the judiciary.
- Judges should be trained to take responsibility for efficient caseflow management and the initiative to develop efficient caseflow management in cooperation with the local bar, as an active case management role of the judges will chance the work of advocates as well.
- Local working teams for monitoring caseflow should be part of a national delay reduction policy.
- National backlog reduction teams should be part of a national backlog reduction policy (flying brigades). Those teams can also be deployed where unexpected large caseloads pop up.
- The judiciary and the legislature should develop policies for referral of cases to mediation and conciliation.
- The courts should set up user satisfaction surveys, especially concerning the timeliness of proceedings, the quality of services as well as the backlog reduction programmes.
- Special programmes should be set up to manage experts that are appointed by the courts. Expert reports should be delivered in a pre-set timeframe. This requires special arrangements between the courts and the experts of the courts, for example the possibility to dismiss experts from the list if they do not deliver reports on time may be part of this arrangement.
- Effectiveness in caseflow management should be part of the judiciaries' human resource policies. Being a good judge does not only mean a judge who is a good lawyer with good comportment and without bias, but also a judge who is able to apply delay reduction policies on a day-to-day basis. This also involves the ability of judges to work in teams and to deploy the capacity of court clerks to work on the preparation of hearings and court decisions.



Part II

CASE WEIGHTING METHODS FOR SOUTH EAST EUROPE: A COMPARATIVE ENQUIRY

1. INTRODUCTION

For courts across the globe, an objective and standardised measure of judicial officer and/or prosecutor workload is an essential management tool. Across the United States and Europe (e.g., Austria, Germany, the Netherlands, Norway, Spain, Switzerland), case weighting systems have long been recognised as a best practice for measuring court workload. In recent years, jurisdictions undertaking major judicial system reform efforts (e.g., Bulgaria, Kosovo*[39], Mongolia, Serbia, the West Bank) have also begun to adopt case weighting systems to aid in analysing court workload. Case weighting systems have a wide variety of practical applications. On a systemic level, case weighting systems can be used to determine the total complement of judicial officers or prosecutors required to efficiently and effectively handle the workload of the courts; to determine the optimal allocation of judicial officers or prosecutors within and across geographic jurisdictions and court divisions; to aid in the process of redrawing judicial boundaries; and to assess the resources required to clear court backlogs. Case weighting systems can also be applied to the work of individual judges to evaluate judicial productivity and performance. For the sake of editorial simplicity in this report, we will refer to these systems with respect to judges, understanding that the same principles and methods apply to prosecutors as well.

Case weighting systems are founded upon the basic premise that court cases vary in complexity, meaning that different types of cases require different amounts of time and attention from judges and/or prosecutors. Caseload composition, or the relative proportions of different types of cases within a court's total caseload, can therefore have a profound impact on court workload. For example, courts in some border jurisdictions tend to have a higher proportion of human and drug trafficking cases than courts located in a nation's interior. These complex and time-consuming cases create additional work for judicial officers in border courts. Resource models that are based upon population or raw, unweighted case counts ignore this critical aspect of the work of the courts. By weighting cases to account for the differences in workload associated with each case type, a case weighting system provides an accurate assessment of workload that accommodates differences in caseload composition, both over time and across jurisdictions.

A case weighting system calculates judicial need based on total judicial workload. The case weighting formula consists of three critical elements:

1) **Case counts**, or the number of cases of each type handled over the course of one year. Case counts may be expressed either as filings (new cases initiated) or as dispositions (cases resolved). Case counts are obtained from the court's computerised case management system or from annual statistical reports. Accurate and reliable case counts are essential to the proper functioning of the case weighting system. Cases must be counted in an uniform manner across all jurisdictions. In criminal cases, for example, multiple charges may be filed against a single defendant arising from a single incident.
2) If some jurisdictions count all charges against an individual defendant as a single case while other jurisdictions count each charge as a separate case, calculations of court workload will be artificially inflated in those jurisdictions counting each charge as a separate case.
3) **Case weights**, which represent the average amount of time a judicial officer spends to handle cases of each type over the life of the case. Case weights are typically expressed in terms of minutes or hours.[40] Each weight includes all time required for a judge to resolve the case, from pre-filing activity (e.g., reviewing a search

39 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

40 Case weights are also expressed as relative values or units.

warrant or an arrest warrant) to the review of case files and the preparation for hearings through the compilation of judgments and all post-disposition activity (e.g., post-trial motions and probation violations). Both on-bench work (e.g., hearings and trials) and off-bench work (e.g., reviewing case files, writing opinions) are included in the case weights. The case weights are developed during the course of a study known as a workload assessment and may be based upon expert opinion or a time study.

4) The **year value**, or the amount of time each judicial officer has available for case-related work in one year. Like the case weights, the year value is expressed in terms of minutes or hours. The year value includes only the time judges have available to work directly on individual cases; it excludes time spent on work not directly related to the resolution of a particular case, such as committee meetings, court management, staff supervision, and travel. Different year values may be used to accommodate variations in the amount of non-case-related work performed by different types of judges. For example, in rural areas where judges spend a large amount of time traveling from court to court, a smaller year value for case-related work may be applied. Judges with special administrative responsibilities, such as chief judges, may also be assigned smaller year values for case-related work. The year value is developed as part of the workload assessment, and is a policy decision that may be informed by empirical data gathered from a time study as well as expert opinion.

Using these three elements, the total annual judicial workload is calculated by multiplying the annual case count for each case type by the corresponding case weight, then summing the workload across all case types. The workload is then divided by the year value to determine the total number of full-time equivalent judges needed to handle the workload. This calculation may be performed at the level of a single judge, a court division, a court, a jurisdiction, or the entire judicial system.

In the United States, case weighting is typically used to determine the total complement of judges required to handle a judicial system's workload, to support funding requests for the judiciary, to allocate judicial officers among jurisdictions within a state, and to inform the process of judicial redistricting. More than thirty states currently use weighted caseload to calculate judicial need at the statewide level. When current judicial staffing levels are inadequate to handle the workload, case weighting studies provide justification for requests to the legislature to create additional judgeships.

In 2006, for example, the California legislature created 50 new judicial positions in response to a case weighting study; similarly, the Wisconsin legislature approved eight new judicial positions between 2008 and 2010 to address unmet need identified through a case weighting study. In states where caseloads and judicial workload are declining, case weighting systems can be used to manage the process of reducing the size of the judiciary (Kleiman, Lee, and Ostrom, 2013). In Michigan, for example, annual filings in the district and municipal courts decreased by approximately 21 percent from 2002 through 2011, and annual circuit and probate court filings fell by more than 17 percent over the same period. In 2011, the Michigan State Court Administrative Office recommended a 7.7 percent reduction in the state's total complement of trial court judges. The recommendation was based on a case weighting study completed in 2010; this empirical support helped to secure the endorsement of the Michigan Supreme Court, and three associations of Michigan trial judges. The legislature ultimately eliminated 36 judicial positions through attrition, resulting in a final cost savings of approximately $6.3 million annually (Kleiman et al., 2013).

In addition to determining the overall complement of judicial officers, case weighting systems are helpful in allocating judges to individual courts or jurisdictions. North Carolina, for example, uses case weighting systems to distribute Superior Court judges as well as prosecutors among the state's various judicial and prosecutorial districts. When the state legislature authorises funding for new

positions, the Administrative Office of the Courts uses case weighting to allocate the additional positions to the districts with the greatest need for additional resources.

More recently, states have turned to case weighting to assist in the process of judicial redistricting. In 2011, Virginia legislative leaders requested that the Supreme Court of Virginia formulate a plan to realign the boundaries of the state's judicial circuits and districts to increase efficiency. In response, the Supreme Court commissioned a case weighting study that revealed that combining judicial circuits and districts would not reduce the state's total need for judges (Ostrom, Kleiman, Lee, and Roth, 2013). In contrast, a 2014 case weighting study commissioned by the West Virginia legislature revealed that sharing magistrates across county lines would substantially reduce the total need for magistrates, although the study recommended against such sharing of resources in order to preserve access to justice in rural areas (Lee, Kleiman, and Ostrom, 2014).

Case weighting systems can also be used to determine the judicial resources needed to eliminate a backlog of cases. Calculating the amount of work associated with the resolution of pending cases provides guidance on the number of temporary resources (e.g., senior status or retired judges) needed to reduce or eliminate backlog. A recent case weighting system developed for First Instance and Conciliation Courts in the West Bank includes backlog reduction as one if its intended uses (Kleiman and Ostrom, 2013).

Finally, case weighting systems have also been used at the individual judge level to measure productivity and evaluate judicial performance.

In 2000, the Spanish Judicial Council approved a case weighting system (módulos de dedicación) to measure the judicial productivity of individual judges. The system was created to establish performance based remuneration and to provide salary bonuses to judges who exceeded productivity standards (Contini et al., 2014). In Bulgaria, a case weighting system is being developed to allow for the comparison of the workload of individual judges to an established workload standard. This would allow the evaluation to move beyond the basic indicator of the number of unweighted cases disposed. The proposed case weighting system plans to incorporate both legal and factual (e.g., number of parties, volume of evidence) complexity in the weighting of different types of cases (Kleiman and Ostrom, 2015).

The multiple uses and applications of case weighting systems in various jurisdictions in the US and Europe have been well documented (Kleiman, Lee, and Ostrom, 2013; Gramckow, 2011; Leinhard and Kettiger, 2011; Flango and Ostrom, 1996). However, an investigation into alternative methods for developing case weighting systems, particularly as it relates to South East Europe and other regions undergoing major judicial reform efforts, has not been explored in detail.

The remainder of this report is organised around three sections. The first section provides an overview of two alternative methods for developing case weighting systems (Delphi and time study). Each of the methods are introduced and described, advantages and disadvantages of each method are outlined, and summaries of real world applications in the US and other countries are provided. The second section provides individual profiles for the six Beneficiaries (Albania, Bosnia and Herzegovina, Kosovo*[41], The Former Yugoslav Republic of Macedonia, Montenegro, and the Republic of Serbia) on their prior experience with case weighting systems and the current method used to determine the number of judges and prosecutors. Additionally, the feasibility of developing and implementing a case weighting system, based upon a Delphi approach or a time study, is explored. In the final section, a set of recommendations for the development of case weighting systems in the Beneficiaries, specifically as it relates to relieving backlog, are provided.

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2. TWO METHODS FOR DEVELOPING CASE WEIGHTING SYSTEMS

Two primary methods exist for the development of case weighting systems. The first method, the Delphi approach, relies on expert opinion to estimate the amount of judge time associated with particular case events. The Delphi approach was the chosen method for the development of case weighting systems for the US District Courts (Lombard and Krafka, 2005), Israel (Weinshall-Margel et al.), Kosovo*[42] (Kleiman, 2010), and for the ongoing efforts in Bulgaria (Kleiman and Ostrom, 2015). The second method is based upon an empirical time study, during which judges track all of their working time by case type and activity. Over 30 US states (including, California (Ostrom, Kleiman, and Roth, 2011), Michigan (Kleiman and Lee, 2011), Minnesota (Ostrom and Kleiman, 2010), New Hampshire (Kleiman, Hewitt, and Ostrom, 2005), North Carolina (Lee and Kleiman, 2011), Texas (Ostrom, Kleiman, and LaFountain, 2007), Virginia (Ostrom et al., 2013), Wisconsin (Ostrom, Kleiman, and Ostrom, 2006)), Ontario, Canada (Kleiman and Ostrom, 2008), the US Bankruptcy Court (USGAO, 2003), Switzerland (Leinhard and Ketttiger, 2011), and Germany (Gramckow, 2011) have utilised a time study approach. In the following section, the two alternative methods are described along with overviews of direct applications that highlight the variation in the use of the methods.

Delphi Method

The Delphi method is a decision-making technique based on the opinion of experts (Dalkey and Helmer, 1963). The method is characterised by a structured iterative process, with controlled feedback and designed to produce valid assessments of hard-to-measure and hard-to-quantify information. The Delphi method has been used extensively by both government and the private sector and is an accepted and often-used method for developing judicial case weights generated by a panel of experts (Flango and Ostrom, 1996; McDonald and Kirsch, 1978).

For the development of case weighting systems, experts (seasoned judges) are asked to estimate the amount of time that they believe is necessary to process/handle different events for different types of cases. The initial responses are compiled and the group of experts are asked to review the opinion of their peers and modify their individual estimates based upon the group estimates. This process is repeated until a group consensus emerges. The strengths of the Delphi methodology are that it: 1) uses expert opinion; 2) achieves consensus, is less burdensome than large-scale data collection efforts; 4) can be completed relatively quickly; and 5) is less expensive than traditional quantitative statistical methods. The weaknesses of the Delphi methodology are that it: 1) uses responses to specific questions which are somewhat subject to the question design; 2) can be unreliable based upon human perception errors; and 3) creates the illusion of precision despite being based on personal estimates. The Delphi method is typically employed in contexts where administrative data is limited, project timelines and budgets are short, cultural and political barriers impact the likelihood of high judicial participation rates, and a decision is made to limit the data collection burden on judges.

Three examples of how the Delphi method has been used to develop judicial case weighting systems

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are presented below. The three examples all rely on an event-based Delphi approach, but highlight differences in the application of the method, the most fundamental of which lies in the manner in which the initial time and frequency estimates were established (site visits, surveys, and reliance on administrative data).

West Bank

As part of the Palestinian Justice Enhancement Programme (PJEP), aimed at improving the efficiency, fairness, and responsiveness of the justice system, the High Judicial Council of the Palestinian Authority (HJC) undertook a project in 2013 to develop an empirically based, transparent formula to use in assessing appropriate levels of judicial resources necessary to effectively resolve cases for the First Instance and Conciliation Courts. Additionally, the model was intended to: 1) assess the current allocation of judicial resources; 2) provide a means by which to evaluate the impact of new legislation and court organisation on court workload; and 3) assess the resources needed to manage and reduce the existing case backlog.

PJEP staff worked closely with the Optimum Time Standards Committee, comprising members of the HJC, First Instance Court judges, Conciliation Court judges, Court of Appeals judges, and members of the IT Department and Planning and Project Management Unit of the HJC.

The Committee defined the relevant case types and case events for which case weights would be developed.[43] Initial estimates of the amount of judge time spent on different pre-decision and decision-related events and the frequency of these events, for different types of cases, were developed through a series of interviews with judges during site visits to a set of representative courts.[44] For example, for criminal cases in the First Instance Court, judges provided estimates of time and frequency for the first session, the

presentation of prosecutor and defendant evidence, prosecutor pleadings, and defendant pleadings. Time estimates and frequency of occurrence were also obtained for discussing the decision with the panel, reading the file and writing the decision, reviewing of the decision by the panel, reading of the decision in court, sentence deliberations, and editing of the decision. PJEP staff compiled the interview responses into an initial set of time and frequency estimates, by event, for each case type. These initial estimates were reviewed by the Time Standards Committee and a consensus was reached on a final set of case weights (Kleiman and Ostrom, 2013).

As noted above, one of the primary reasons for developing the case weighting system in the West Bank was to assess the resources needed to manage and reduce the existing case backlog. Backlog and delay is a significant challenge confronting the judiciary of the West Bank.

For example, 79 percent of pending criminal cases (as of 1 August 2012) in the First Instance Court are over 12 months (1 year) old, with 34 percent being older than 60 months (5 years). The case weighting system allows for the calculation of the number of judges needed to handle the backlog by multiplying the case weights by the cases that exceed the time standard.[45]

Bulgaria

At the time of this report, the Supreme Judicial Council of the Republic of Bulgaria is involved in an ongoing effort to develop and implement a judicial case weighting system. The study is being designed to provide a method to determine the number of judges needed to hear cases in a just and timely way, assess the equitable distribution of judicial resources, allow for a boundary analysis of the current administrative regions, and support the existing judicial evaluation process.[46] Unlike the West Bank project, which relied upon interviews with a small set of judges, in Bulgaria preliminary estimates for the time and frequency of events are being generated through the use of a nationwide judicial questionnaire (survey).

TNS, a Bulgarian market research agency, is currently working with the Caseload Analysis and Evaluation Committee (the Committee) of the Supreme Judicial Council (SJC) to develop a case weighting system for regional, district, appellate and administrative courts. The Committee assisted TNS in defining the parameters of the study, including the case types and events for which case weights will be developed through the Delphi method. Questionnaires regarding the duration (time) and frequency of events were sent to all judges in regional, district, appellate and administrative courts. In preparation of dissemination of the questionnaires, instructions for participation in the study, an introductory video by a member of the SJC, and the results of a pilot test of the questionnaire were made available for all judges on the SJC website.

The judicial questionnaire employs a retrospective approach to determine the amount of time judges spend handling different types of cases. For all cases, the questionnaire asks judges to estimate the time needed to complete select actions (e.g., preparations for court hearings) for particular types of cases using two distinctions: (a) less time-consuming cases and (b) more time-consuming. Judges are then asked to estimate the share of their cases of the particular case that are less labour intensive and more labour intensive. For criminal and administrative cases only, more specific time estimates are being developed by asking judges to consider the last finished case of a particular type and to describe key facts about that particular case (e.g., number of pages of pre-trial file, number of witnesses) as well as time spent handling select actions in that case (e.g. review of case at court hearing). The idea is that the facts of the particular case will provide additional information on complexity of cases and help improve time estimates. This step was deemed to be irrelevant for the work of civil judges.

Additionally, the survey asks judges to indicate how much time they typically spend on activities

45 See Kleiman and Ostrom, 2013 for a more complete description of the approach taken in the West Bank.

46 See Kleiman and Ostrom, 2015 for a more complete description of the Bulgarian approach.

that extend beyond the disposition of cases. This includes judicial time spent participating in court management activities, mentoring young judges, serving on performance evaluation committees, and the administrative duties of the chief judge. This information on non-case-related time will be used along with the information on case-related time to develop a complete picture of the work of the judges. The final result will be the specification of the judge workload standard, or judge year value.

After TNS has compiled and analysed the survey results a series of Delphi sessions (focus groups) will be held with knowledgeable judges. The goal is to arrive at consensus on a set of judicial case weights.

US District Courts

In 2003-2004, the Federal Judicial Center (FJC), with assistance from the Administrative Office (AO) of the U.S. Courts conducted an event-based, Delphi methodology to develop a new set of case weights for the US Federal District Courts. The weights were developed to determine the need (type, number, location) for additional judgeships. The new study replaced the 1993 time study-based case weighting system. The update to the case weighting system was warranted because it was determined that the 1993 study no longer reflected current practice due to the changing volume and the nature of cases entering the federal system and changes in case management practices.[47] (Lombard and Krafka, 2005).

The decision to adopt an event-based, Delphi approach was based primarily on pragmatic concerns and considerations. It was determined that an event-based approach eliminated the record-keeping burden on judges, could be completed in a shorter period of time, and could be updated more frequently and with less time and expense than a time study-based enquiry. Further, the new study was able to rely heavily on administrative data that came from standard statistical reports already submitted to the AO by courts and from data extractions from district court docketing databases (Lombard and Krafka, 2005).

The FJC relied upon two distinct strategies to estimate the judge time and frequency of occurrence of case events (trials and other evidentiary hearings, non-evidentiary hearings, in-chambers case-related work) associated with 42 civil and 21 criminal case types. First, monthly statistical reports were used to objectively measure the amount of time spent by judges in trial proceedings.

Second, time and frequency estimates were obtained for non-evidentiary proceedings (e.g., motion hearings) and in-chambers activities (e.g., preparing orders for a summary judgment) through a "structured iterative-feedback technique," similar to the Delphi method.[48] Initially, FJC staff held meetings in twelve circuits to obtain regional estimates on activities for case types for which no objective data existed.[49] Over 100 judges, representing 90 courts participated. Following the initial meetings, 22 district court judges, all of whom participated in the circuit meetings, attended a national meeting where consensus was reached on a final set of national case weights.[50]

47 See Lombard and Krafka, 2005 for a full description of this study.

48 A case weighting system was recently developed for the Israeli judiciary. The approach taken by the research team is very similar to that of the FJC. The Israeli model relied heavily on administrative data to calculate courtroom time and frequency of hearings and motions and the Delphi method to estimate time spent preparing for cases and in writing decisions. Further, the case weights are presented as relative weights with the reference being 2.8 minutes, the time for search and entry cases in the magistrate court (Weinshall-Margel et al.).

49 The model also takes into account "case adjustments" (e.g., cases with more than five parties, cases with interpreter) which were estimated through the iterative feedback method.

50 Case weights are calculated by multiplying the judicial time for each type of case event by the event frequency and summing across all case event types for a particular case type. The case weights, expressed as time, were converted into relative weights. For example, firearms (criminal) has a weight of 1.00, while murder, manslaughter, homicide had a weight of 1.99, indicating that the latter requires twice as much district judge work as a firearms case.

Time Study

The time study method relies upon the tracking and recording of all judge time during a discrete data collection period (e.g., one month). During the time study, all judge time spent working directly on different types of cases and activities is recorded.

Additionally, time spent performing administrative work, attending committee meetings, receiving judicial education and training, and work-related travel is recorded. The results of the time study are used to calculate a set of case weights that represent a reliable and accurate profile of current judicial practice. Time studies have served as the foundation for judicial case weighting systems in over 30 US states[51] and the US Bankruptcy Court (USGAO, 2003), Switzerland (Lienhard and Ketttiger, 2011), and Germany (Gramckow, 2011). The time study method is considered the gold standard for case weighting studies.

Unlike the Delphi approach, which primarily relies on retrospective, subjective estimates, the time study approach provides an empirical assessment, based upon real-time records, of the amount of time spent on different case-related and non-case-related activities. Despite the apparent advantages of the time study approach, the method has been criticised for being expensive, time-consuming, and unduly burdensome to judges tasked with tracking time data.

Flango and Ostrom observe that "conducting a time study requires an additional layer of effort to judges and staff who may already feel overworked" (p. 21). Additionally, the method requires extensive training to ensure participants are tracking and recording their time accurately and consistently.

Finally, some participants have expressed concern that their individual-level data will be used improperly for purposes that extend beyond the study.

Over the past twenty years the time study approach has continued to evolve and improve. Methodological and technological changes have altered sampling strategies, the duration of data collection, and the level of detailed information used to investigate differences in local practices. A comparison of two separate case weighting studies conducted by the National Center for State Courts in Wisconsin highlights many of these changes.

A 1995 case weighting study collected data from 79 judges and 40 circuit commissioners in 12 counties (out of 72 counties), over a three-week period.[52] Participating counties were selected to be representative of courts of various sizes and geographical locations and with the fastest case processing times (Ostrom et al., 1996). The most recent update in 2006 was based on a 4-week time study involving all judges and commissioners from across the state of Wisconsin.[53] Web-based data entry provided a more efficient and effective collection strategy that mitigated the need for a sampling strategy to ensure representativeness of the data (Ostrom, Kleiman, and Ostrom, 2006). Further, the use of web-based data entry allows the research team to monitor participation rates in real time, as opposed to prior studies that relied on paper forms that were periodically received by the researcher. Researchers have also made use of web-based training to educate time study participants about the project and to improve the accuracy and reliability of data entry. The training, in conjunction with real-time monitoring of data entry, has resulted in time study participation rates that are in excess of 95 percent of all judges state-wide in many states.

51 A listing of studies conducted in the US can be found at *http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Workload-assessment.aspx*

52 An earlier study, conducted by the Resource Planning Corporation in 1980 was based upon data from 45 judges in 11 counties (Resource Planning Corporation, 1980).

53 The National Center for State Courts has concluded that a 4-week state-wide time study is sufficient to generate accurate and reliable case weights. Earlier studies have relied upon a more extensive data collection period. For example, a study for the US Federal Bankruptcy Court relied on a 10 week time study (United States Government Accounting Office, 2003); a study in the 1990's for Germany was based on a 3 to 6 month time study (Gramckow, 2011); and a study for the Swiss Federal Administrative Court required judges to track and record time for specific cases over a 6 month period (Lienhard and Kettiger, 2011).

Additionally, collecting data from all jurisdictions allows for an examination of differences among practices across jurisdictions. For example, a web-based time study conducted for Justices of the Peace in Ontario, Canada, revealed significant differences in travel demands for judges in different regions. Justices of the Peace in the North East travelled 81 minutes per day and Justices of the Peace in the North West travelled in excess of 100 minutes per day, on average.
Both groups of judges travelled in excess of the travel time of Justices of the Peace in the other five regions, who travel roughly 30 minutes per day. This information was used to develop separate judge year values that accommodate these empirical differences (Kleiman and Ostrom, 2008).

A recent case weighting study for Circuit, General District, and Juvenile and Domestic Relations Courts in Virginia provides an illustration of the state of the art case weighting approach undertaken by the National Center for State Courts for courts in the United States. This method is highly participatory, includes a 4-week time study, a quality-adjustment process, and is typically completed within a 12-to 15-month study period.[54]

Virginia

In 2012, the General Assembly of Virginia directed the Supreme Court of Virginia to develop and implement a weighted caseload system to evaluate the current allocation of judicial resources, determine the appropriate level of judicial resources in each circuit and district, and to examine judicial boundary realignment. The National Center for State Courts (NCSC) was contracted to conduct a weighted caseload analysis. The study was conducted over a 15-month period and utilised a time study to develop an empirical foundation of judicial work. The case weighting system was developed through five inter-related tasks.[55]

First, a Judicial Needs Assessment Committee, consisting of 15 judges and three courts representing Circuit, General District, and Juvenile and Domestic Relations Courts, was established by the Chief Justice of the Virginia Supreme Court. The Committee met four times over the course of the project to advise and comment on the general study design, the selection of case types, alternative boundary alignment models, as well as to participate in a final set of meetings to review and reconcile all aspects of the project.[56] Second, a 4-week, state-wide, web-based time study was conducted. During the time study all Circuit and District court judges in Virginia were asked to track all of their working time by case type category and case-related event and non-case-related work. A total of 375 full-time judges, or 97 percent of all Virginia trial court judges, participated in the study.[57] The time study data and caseload data were used to develop a set of preliminary case weights that represent the average amount of time judicial officers currently spend handling each type of case. The time data was also used as an empirical reference in establishing the judge year value.

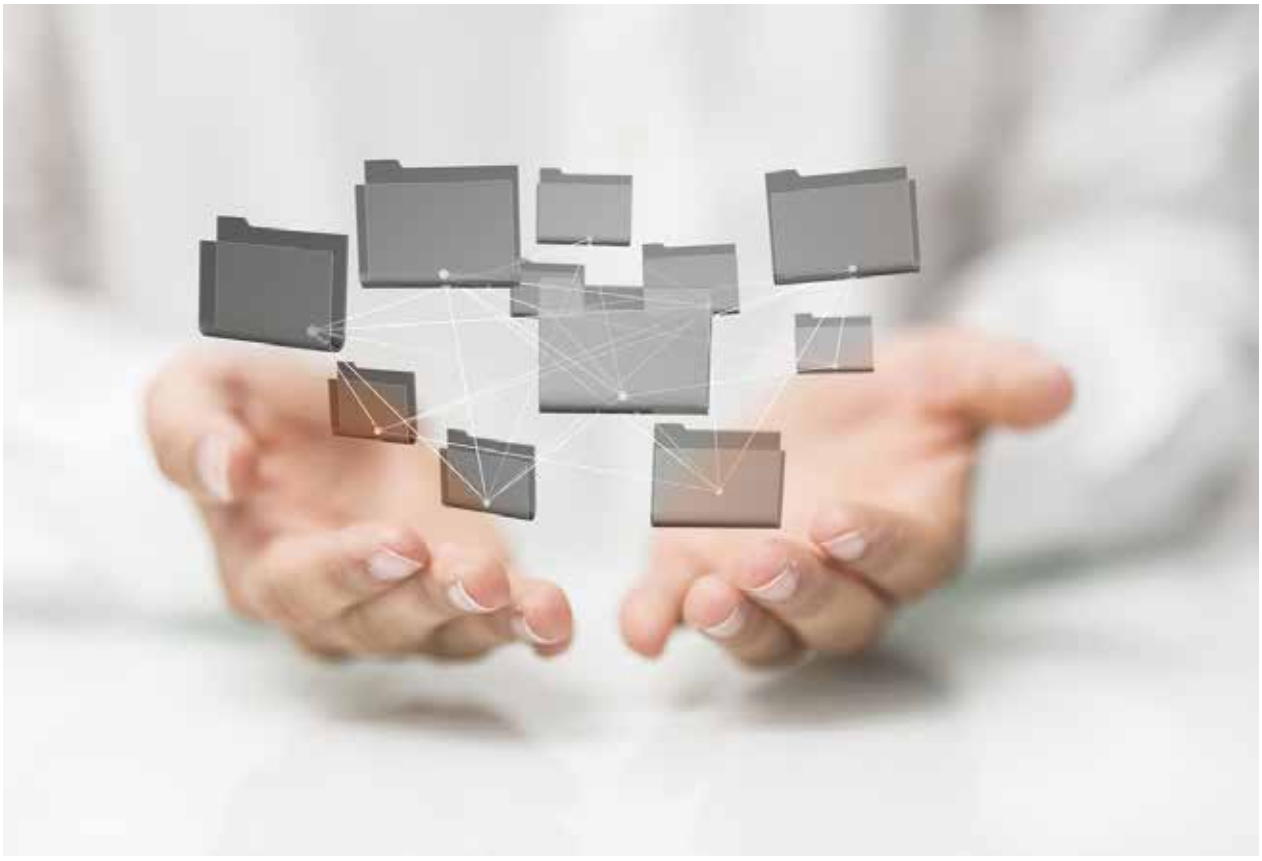
Third, NCSC staff conducted site visits in 11 judicial circuits and districts, including both urban and rural courts from all geographic regions of the state. The interviews conducted during these site visits allowed project staff to document procedures and practices believed to increase efficiency and quality, as well as resource constraints that might inhibit effectiveness. Fourth, a web-based sufficiency of time survey was administered to all judges state-wide to gather perspective on the sufficiency of time to perform key case-related and non-case-related tasks. Fifth, three separate quality adjustment sessions with groups of

54 The NCSC approach is designed to produce the necessary empirical data with minimal intrusion and demands on busy judicial officers. Data from the past ten studies shows that judicial officers spend less than 10 minutes per day to fully participate in the time study data collection process. This is in comparison to the 20 to 30 minutes of judge time per day it took to fill out forms in the development of the case weighting system in Germany (Gramckow, 2011).

55 See Ostrom et al., 2013 for a more complete description of the approach taken in Virginia.

56 Filing data for 2010, 2011, and 2012, by case type and jurisdiction, were provided by the Office of the Executive Secretary.

57 Time study training videos were made available to all judges on the web.



seasoned judges were held to provide a qualitative review of the preliminary case weights. Using the Delphi method, group members were asked to draw on current practice (as measured by the time study), judicial perspective (as measured by the sufficiency of time survey and the site visits), and their personal experience to make recommendations for particular case types where additional time for specific case-related functions would allow a judge to more effectively handle a case. The result was a final set of quality-adjusted case weights.

3.PROFILES OF BENEFICIARIES

NCSC staff proposed to develop individual profiles for the six Beneficiaries (Albania, Bosnia and Herzegovina, Kosovo*[58], The Former Yugoslav Republic of Macedonia, Montenegro, and the Republic of Serbia) documenting their prior experience with case weighting systems and the current method used to determine the number of judges and prosecutors. Additionally, the profiles were designed to focus on the feasibility of implementing either a Delphi-based or a time study-based methodology for workload assessment, with an emphasis on the quality and content of existing data sources in the Beneficiaries.

For efficiency purposes, NCSC staff planned on conducting phone interviews with key contacts in each of the Beneficiaries. An interview protocol was sent out to the designated key contacts with an invitation to speak by phone (or Skype). Of the six Beneficiaries, only two agreed to participate by phone (Bosnia and Herzegovina and Montenegro). The other key contacts sent written responses to the interview protocol. The interview protocol was designed to guide telephonic conversation with the key contacts and was not meant to be used as a written survey. As a result, the written responses were often incomplete and the profiles that follow vary in detail and provide limited input and guidance on the existing barriers to the development and implementation of a case weighting system.

3.1 Profiles of Beneficiaries – Albania

Background

In the Albanian system of justice, the District Courts are Courts of First Instance and operate according to rules laid out in the Codes of Civil Procedure and Criminal Procedure. These courts handle civil, criminal, commercial and administrative cases. The High Council of Justice has responsibility to determine the number and appointment of judges for each first instance court. The High Council also decides on the dismissal of judges, the transfer of judges, and the disciplinary measures taken against judges. In addition, it appoints and dismisses the Chiefs and the Deputy Chiefs of these courts. The Attorney General, in collaboration with the Prosecution Council, determines the number of prosecutors and sets the number of prosecutors in each office.

Current Practice

There are approximately 383 judges (287 judges at first instance and 96 judges at appeals courts) divided into 29 district courts of first instance and 8 courts of appeal. For first instance courts, 22 belong to judicial circuits, 6 are administrative courts, and 1 is a court for serious crimes. The territorial jurisdiction of each court is set by a decree of the President of the Republic, based on a proposal from the Minister of Justice after consulting with the High Council of Justice.

Of the 287 judges at the first instance, 235 are in courts of ordinary jurisdiction, 16 are in the court for serious crime and 36 work in the administrative courts. At this time, there are about 330 prosecutors and 148 judicial police.

Determining the need for judges in each court in Albania is the subject of ongoing study by the Ministry of Justice. Currently, Albania has established caseload quotas for the expected level of work to be performed by a first instance court judge each year (e.g., not less than 200 trials of cases related to family disputes). In addition, time standards have been set for general case type categories (e.g., criminal, civil, family) stating the maximum time limit from the date of assignment to trial.

58 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

There does not appear to be a commitment to implement a case weighting system. Rather, reform efforts launched by the Ministry of Justice focus on increasing "efficiency, professionalism, transparency, and accountability" of judges and prosecutors although these terms are not really defined. Beginning in 2012, a nationwide evaluation of judges was begun and is still under way, although it appears the criteria need to take better account of judicial workload. Consequently, implementation of the new judicial evaluation system has been delayed and has slowed the appointment of judges, as it still needs to be demonstrated that the new system offers sufficient accountability and is based on objective criteria. Likewise, study recommendations on the possible territorial reorganisation of courts and reallocation of the number of judges in the courts have also been delayed.

Issues and Implications for Future Workload Assessment

Recently, the 2012 Law on Administrative Courts was implemented with the establishment of six first instance administrative courts, the Administrative Court of Appeal and the Administrative College of the High Court. However, with the exception of Tirana, these courts operate with only about 50 percent of their allocated judge and staff numbers. Most of the courts' current workload is made up of cases on the dismissal of public servants and property disputes. It is believed that the new administrative courts will ease the workload of other judges and allow specialised judges to deal with these cases - provided that the necessary resources are allocated to these courts.

As of 2012, the effort to implement random case assignment remains an issue. Although Albania has a unified electronic case management system (ICMIS) that supports random case assignment, it is not yet used by the Tirana district and appeal courts, the Serious Crimes Court, the Serious Crimes Court of Appeal and the newly established administrative courts. As a result, the majority of cases are still allocated by a lottery system under the control of the respective court presidents.

There is a rising backlog of cases at all court levels in Albania. The backlog of cases increased by seven percent between 2012 and 2013 (32,972 cases pending before district and appeal courts in January 2013, as compared to 30,972 cases in January 2012). Response from the interview suggests that lack of resources - judges, prosecutors and staff- does cause disruptions but may not be the main problem. Rather, it is largely an issue of efficiency in process and procedure.

Albania is undertaking a review of the Codes of Civil and Criminal Procedure with the goal of reducing court workload and enhancing efficiency. These include, for example, allowing judges to impose fines on lawyers who are repeatedly absent in civil and criminal judicial hearings.

In addition, there are concerns over transparency of court activities, for example, hearings that continue to be held in judges' offices, which can have a negative effect on the impartiality of the proceedings. There continues to be concern that there are insufficient human and financial resources devoted to court management as well as ongoing staff training.

3.2 Profiles of Beneficiaries - Bosnia and Herzegovina

The Cantonal, Municipal, and Basic Courts have first instance jurisdiction for the vast majority of legal cases. The number of judges in these courts was first established by the High Judicial and Prosecutorial Council (hereafter: the Council or HJPC) in 2003 and was re-evaluated in 2009. In 2009, criteria used to determine the number of judges were the number of incoming cases, based on approximately five years of historical caseload data. Caseload data was examined in light of existing quotas (called weights) for the various case types.

Current Practice

Currently, case weights are used to establish the number of cases that a judge is expected to resolve on a monthly and annual basis, by case type and

disposition type. Updated weights (quotas) for the processing of cases in courts and prosecutor offices were established in mid-2012 by the Council in the Book of Rules on Orientational Measurements for the Work of Judges and Judicial Associates of the Courts in Bosnia and Herzegovina. Article 19 of this document lists the case weights for each court, by case type and disposition type. For example, distinctions are made among criminal cases (minor vs. serious offenses), and among dispositions in those cases (e.g., decisions on the merits, verdict based on guilty plea, verdict based on plea agreement, verdict with warrant, other types of case completion). The precise rules for when a case should be considered completed are defined in Article 8 of the Book of Rules.

The weights distinguish among the case and disposition types on the basis of expert opinion about the amount of work represented. More serious or complex cases are given more weight; similarly, a civil case of a given case type that is resolved by default judgment is weighted less than if it was resolved by a decision on the merits. These weights were determined by experts convened by the Council, using historical data to evaluate cases resolved, by disposition type, for a set of case types. Cases are assigned to judges on a random basis. In the smallest courts (e.g., up to 6 judges), judges handle all case types, while in larger courts there may be specialisation among judges handling criminal cases, civil cases, and other case types.

The backlog identified in 2009 was to be addressed in part by using reserve judges, who are assigned to the courts on a temporary basis to work on backlogged cases. Due to a shortage of funds, however, the reserve judges could not be assigned as planned. Nevertheless, each year the president judge of each court is required to file a report on the existing backlog and a plan for addressing it. Judges are obligated to resolve cases in chronological order. The High Judicial Council reviews the quotas annually. It is believed that the larger courts are the ones most challenged by workload and unable to keep up, compared to the smaller courts; national statistics are said to show steady backlog reduction and increased productivity of judges.

Issues and Implications for Future Workload Assessment

The courts share a common case management system (CMS), which is centrally administered for all courts. This CMS was implemented in 2008 and is considered effective, although it is recognised that data quality depends on consistent data entry to provide reliable data. The one large exception to this is the largest court, the Municipal Court in Sarajevo, where the high volume of enforcement cases dealing with utility bills (said to be hundreds of thousands) is not included in the CMS.

The current system of case weights is used primarily to evaluate the performance of individual judges, rather than to allocate judges across courts or geographic areas. About 5 years ago, the Council opposed the creation of additional small courts by the Ministry of Justice, since the Council had previously succeeded in closing these small, inefficient courts and consolidated operations into a smaller number of courts.

Judges do have Internet access and technically speaking could participate in a study using web-based data collection. However, judges recall the negative experience of a USAID project 2007-2010 that sought to implement a time study in a set of pilot courts. This study was done using paper-based data collection and was highly detailed, seeking to establish the number of minutes required for each step/document in the life of a case. This negative experience with previous, overly detailed and burdensome time study is the most serious challenge to any attempt to use this method of data collection again. Judges understand the rationale for counting cases, but they do not accept the method or the need for measuring time spent on an overly detailed set of specific tasks. Currently, the quotas for judges are based on data provided through the case management system on each case, which capture the events and documents over the life of the case.

3.3 Profiles of Beneficiaries – Kosovo*[59] Background

Kosovo*'s experience with the use of case weighting systems began in 2003 with the Justice System Assessment Review Team (JART) proposal for 1st and 2nd Instance Criminal and Civil cases in District and Municipal Courts. The weights were developed through a two-stage process that relied upon judicial interviews to develop initial estimates of case weights, followed by a focus group review and refinement of the initial estimates. The JART case weights were not utilised by the Department of Statistics of the JC Secretariat for planning or for budget requests. Instead, the Department of Statistics relied on a quota system that was based upon the calculation of the number of cases a judge might resolve in a month.

Current Practice

A second case weighting system was developed by the USAID Justice Support Program (JSP) in 2010. The primary goals of the JSP project were to: (1) develop a set of judicial case weights that allow for the measurement of judicial workload in District and Municipal Courts; (2) evaluate the current allocation of judicial resources among courts; (3) establish an empirically-based, transparent formula for the Judicial Council (JC) Secretariat to use in assessing the appropriate levels of judicial resources necessary to effectively resolve cases; and (4) provide a means by which to evaluate the impact of new legislation and court organisation, functioning, and jurisdiction of the courts on court workload (Kleiman, 2010). The update of the case weighting system was conducted through a series of site visits where judges were asked to discuss the way that cases are currently handled, the adequacy of current resources, changes in the way cases are handled since the previous study, and any factors that impact the complexity of handling different types of cases. Additionally, a focus group was held where seasoned judges and members of the JC Secretariat were asked to review and adjust the JART case weights to align them with current practice and recent changes in the law. The JSP developed case weighting system is currently used to determine the number of and assign judges to different jurisdictions. Additionally, it is used by the JC to determine the norm, or performance quota, for judges.

Issues and Implications for Future Workload Assessment

The Director of Judicial Council Secretariat indicated that there is a strong desire for another update to the case weighting study. An update is warranted as two significant changes have occurred that impact the efficacy of the current case weights. First, changes have been made to the criminal procedure code and second, there was a change in the structural organisation of the courts in 2011. It is anticipated that the new case weighting system would be used for backlog reduction, determining the number of judges, and the distribution of judges, especially in light of the new law initiatives.

Backlog is currently a key concern for the judiciary. As of August 2013, there were approximately 142,000 cases designated as backlogged. In response the JC have adopted a National Strategy on Backlog Reduction. The plan calls for reviewing the overall caseload and workload for each judge and reviewing and analysing the workload distribution within each court and within the judiciary overall. Efforts at using data-based management practices have been constrained by the lack of an IT case management system. Strategic Goal #6 of the plan calls for having "adequate automation, computerisation and information management resources so that the JC and the Courts can make timely, informed and reasoned policy and management decisions" (Judicial Council, 2).

3.4 Profiles of Beneficiaries – The Former Yugoslav Republic of Macedonia

According to the Law on Courts, first instance jurisdiction lies primarily with the 27 Basic Courts of The Former Yugoslav Republic of Macedonia, supplemented by a single Administrative Court

59 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

that hears administrative disputes. Articles 31 and 32 outline additional enhanced authority and specialisation for some of the Basic Courts. In addition, there are in addition appellate courts organized on a geographic and functional basis and a single Supreme Court of The Former Yugoslav Republic of Macedonia. Although the judiciary makes extensive use of lay judges in certain proceedings, this report refers only to professional judges. According to the Law on the Public Prosecutor's Office, prosecution offices are organised in three levels: as the Public Prosecutor's Office of The Former Yugoslav Republic of Macedonia, three Higher Public Prosecutor's Offices, and 22 Basic Public Prosecutor's Offices as set out in the Law on the Public Prosecutor's Office. The Council of Public Prosecutors determines the number of prosecutors needed.

Current Practice

The Law on Courts sets out the organisational structure of the courts. The workload of the courts is determined by the Judicial Council on the basis of statistical reports on each court's caseload statistics. Based on these statistics, the number of judges and court staff is determined by the Judicial Council of The Former Yugoslav Republic of Macedonia. Temporary increases in workload can be handled by temporary assignments. Judges can be assigned from one court to another on a temporary basis when it is possible to do so without compromising the work of the judge's home court. When vacancies occur, the Judicial Council determines the need to fill a vacancy and elects a judge after advertising the position from among candidates who have completed basic training at the Academy for Judges and Public Prosecutors.

Cases are assigned to judges on a random basis by the newly implemented case management system, the Automated Court Case Management Information System (ACCMIS), which is used throughout the judiciary. The ACCMIS tracks all cases and generates statistical data defined by the Ministry of Justice in 2011 in its methodology for judicial statistics, which outlines the information being collected: number of cases filed, resolved, duration of the process over the life of the case, and dispositions. This system also captures backlog and other indicators of court performance. The work of judges is assessed on the basis of the number of cases resolved, taking into account case type and legal complexity, as defined in the Book of Rules, as determine by the Judicial Council.

The Judicial Council is currently seeking comment from the courts on the existing complexity ranking and it is expected that some changes will be made to the current rankings and their associated quotas. These quotas are established on an annual basis by the Judicial Council. The quotas are used to equalise workload among judges and to evaluate the work of judges with respect to timeliness. The general perception is that there are a sufficient number of judges to perform the work of the courts. It was reported that the 2014 annual report of the courts indicated cases were being resolved in a timely manner, with the exception of the appellate courts, where a backlog has developed.

Issues and Implications for Future Workload Assessment

It is hoped that the ACCMIS will provide the statistical basis for further refining the management of the workload of the courts, allowing assessment of case complexity on the basis of empirical information. Future workload assessment rests on the ability of the statistical systems to produce reliable, timely, and consistent data throughout all courts and prosecutor's offices. Time is required to develop the data quality auditing necessary to ensure the systems are functioning as intended.

3.5 Profiles of Beneficiaries – Montenegro

First instance jurisdiction lies primarily with the fifteen Basic Courts of the Republic, supplemented by two High Courts (which hear cases for which the law stipulates imprisonment of over ten years and specific criminal acts indicated in the Law on Courts). A single Commercial Court hears commercial cases (e.g., bankruptcy, enforcement, commercial disputes) and a single administrative court hears administrative disputes and both operate on a national basis.

Current Practice

The Law on Courts sets out the organisational structure of the courts. The number of judges and court staff is determined by the Ministry of Justice on the basis of criteria proposed by the Judicial Council, an independent and autonomous body. The Book of Rules dealing with judicial workload sets out the annual quota for each judge in each court, by case type. Within each case type, the quotas vary by disposition type (e.g., settlement, decision on merits, etc.). Case type distinctions are made to reflect different levels of complexity as well as substantive differences in subject matter. The quotas are used to evaluate the work of each judge and their promotion, as well as to determine the number of judges needed in each court.

Historically, the quotas were based on expert opinion. Cases are currently randomly assigned within a court by the case management system, without human intervention.The case management system ensures that there is equity in the allocation of cases, so that judges have equal numbers of similar cases.

The perception is that there are currently a sufficient number of judges, with the exception of the capital city, where judges believe they have too many cases to keep up with due to increasing filings. Backlog has been reduced through a programme under which the presidents of the courts meet monthly at the Supreme Court with Supreme Court leaders to report on backlogged cases and plans for resolving these. In addition, alternative dispute resolution is being encouraged. These efforts at effective management of backlog reduction are taking place against the backdrop of Montenegro's bid to join the European Union.

Issues and Implications for Future Workload Assessment

The courts share a common case management system implemented from 2009 to 2011. This system is regarded as effective at capturing essential data for managing the performance of the courts. Thus, a sound statistical basis of four years of data should provide meaningful context for workload assessment.

Currently a case weighting study has been initiated with the approval of the Supreme Court and the Judicial Council, with the active participation of the Ministry of Justice. The study was designed with the assistance of experts from the European Commission for the Efficiency of Justice (CEPEJ) to capture the workload of judges and court staff. The time study component of this project commenced in January 2015 in nine pilot courts, with judges submitting their time anonymously on a daily basis. Findings will be reviewed and metrics developed will be extended to encompass all courts. The project is expected to extend for six months and the results will be reported in fall 2015.

With respect to prosecutors, generally speaking the same type of quota system exists. However, the prosecutors do not have the benefit of a modern case management system like the courts, and there is no comparable case weighting study being undertaken at this time. The perception is that while there are generally thought to be a sufficient number of prosecutors, the urban prosecutors, like their urban court counterparts, are challenged to keep up with their growing caseloads.

3.6 Profiles of Beneficiaries – Serbia

Background

The 2008 Law on the Organisation of Courts reduced the number of courts from 168 to 64. The law established general jurisdiction courts (Basic, High, and Appellate Courts, and the Supreme Court), and courts of specialised jurisdiction (Commercial Courts, Commercial Appellate Court, Misdemeanour Courts, and the Administrative Court), with approximately 3,000 judge positions.

The new system was developed to address perceived workload inequities between overburdened urban courts and underused rural courts. The responsibility for proposing the number of judges and prosecutors

required for the efficient functioning of the judicial system falls under the authority of the High Judicial Council, an independent and autonomous expert body.

Current Practice

The total number of judges in the Republic of Serbia is determined by the High Judicial Council in accordance with its responsibilities as laid down in Article 13, item 15 of the Law on the High Judicial Council.

The total number of judges is currently determined for each court individually, taking into account the jurisdiction of that court, the average number of items in each matter in the last three years, the area covered by the jurisdiction of that court, as well as the average expected number of issues that were resolved in each matter. In addition, the High Judicial Council utilises a quota system of the expected number of cases that a judge should resolve in a month for the evaluation of the performance of judges and court presidents. The quotas were developed through expert opinion and public debate. For example, on average judges are expected to finish 24 civil cases in a month, or approximately 250 civil cases per year.

Issues and Implications for Future Workload Assessment

The High Judicial Council recently completed a project aimed at developing a case weighting system for Serbia. The project was directed by a team of international consultants, with support from USAID. The project made use of both the Delphi method and a targeted time study to develop case weights. A working group, consisting of 12 judges from all courts and all instances, as well as from the special jurisdiction courts (commercial courts, administrative courts and misdemeanour courts), provided guidance to the project team. The case weighting system was designed to determine the number of judges needed in Serbia, to equitably allocate work to judges in the courts, and as a way to evaluate judges.

The development of the case weighting system proceeded in three stages. In the first stage the working group relied upon the Delphi method to assign cases to a category of complexity: simple, complex, and extremely complex. In phase 2 (February 2012), 386 judges in 37 courts in Serbia kept time logs for four months of every procedural action they conducted. Phase 3 represented the data analysis phase where the time needed to complete a single case was calculated. Despite completion of three phases in 2012, the results have not been officially adopted and no official report is available.[60]

60 The Public Prosecutor's Office does not utilize a case weighting system and lacks a unified electronic system for case management.

4. CONCLUSION AND RECOMMENDATIONS ON CASE WEIGHTING

As outlined in the brief profiles above, the court systems in the six Beneficiaries share some key features while differing significantly with respect to others. For example, Kosovo*[61] lacks an automated case management system; Bosnia and Herzegovina has recently implemented a case management system that is said to produce useful management information; and Albania has acquired a new system that is not fully implemented throughout the courts. Quotas (sometimes called case weights, and defined as the number of cases a judge is expected to resolve) are used in most of the Beneficiaries, although their nature and their utilisation varies; most are used for evaluation of judges, although the additional purposes of assuring equity in the distribution of work among judges within a court and determining the number of judges needed in each court are also described by Montenegro. Finally, the experience of the Beneficiaries with respect to Delphi- or time study-based case weighting systems ranges from no experience (Albania, The Former Yugoslav Republic of Macedonia), to mixed experience (Delphi-based case weights in Kosovo*, Delphi and time study-based weights developed and not used in Serbia) and even negative experience (time-study based case weights developed and not used in Bosnia and Herzegovina). Currently, Montenegro is engaged in a project to create case weights based on a time study.

Three interrelated recommendations are offered that discuss the added value of developing and utilising a case weighting system, inform the selection of the type of method (Delphi v. time study) to utilise, and highlight the importance of accurate and reliable case statistics. The recommendations are provided to ensure that the Beneficiaries' efforts result in a valid, reliable, and useful case weighting system that will inform decisions about the efficient and equitable distribution of resources and efforts aimed at reducing backlog.

Recommendation 1: Each Beneficiary should develop and implement a case weighting system. Around the world, nation-states and jurisdictions within countries are increasingly adopting the weighted caseload method of judicial workload assessment as a best practice. Case weighting systems provide a means to differentiate the work associated with different types of cases that is empirically-determined, based on current practice, and easily understood and explained.

A credible case weighting system provides decision-makers with a robust and valuable management tool that can be used to inform a diverse set of management decisions. Case weighting systems can be used to:

- Determine the complement of judges (or prosecutors) needed to efficiently and effectively handle the workload of the courts. For the judiciary to manage caseloads effectively, dispose of court business without delay, and deliver quality service to the public, adequate resources are essential. A recent report by the Organisation for Security and Co-operation in Europe (OSCE), Mission in Prishtine, states that insufficient judicial resources may have direct adverse repercussions on fundamental human rights (e.g., the right to a trial within a reasonable time; the right to a reasoned decision) and may prevent judges from adjudicating cases within legal time frames which "may deepen public distrust in courts and erode public confidence in the rule of law in general" (OSCE, 6);

61 * This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

- Determine additional resources that are needed to reduce and eliminate existing backlogs. The use of additional resources must take place in the context of a comprehensive backlog reduction strategy that evaluates the way that cases are currently handled and identifies and addresses impediments to the efficient and effective handling of cases;
- Equalise the workload between judges in the same court. Understanding the workload associated with the pending caseload allows for improved assignment and, when necessary, the reallocation of cases to help ensure a balanced caseload. Further, the case weights can be incorporated into the random case assignment algorithm to help ensure that all judges in a court receive a similar, yet random mix of cases of varying complexity;
- Balance judicial workloads among courts of the same type throughout a region or a Beneficiary. An examination of workload and judge need at the court-level will allow for an assessment of the equitable distribution of judicial resources and inform decisions to reallocate cases or to transfer judgeships. Further, it allows for a boundary analysis of current administrative regions. The issue of access to justice for all citizens should play an important part of the decision calculus for any adjustments to the assignment of judges;
- Inform the judicial evaluation process. Comparing the workload of individual judges to an established workload standard will provide additional insights into the existing performance indicators (e.g., time to disposition; age of pending caseload). For example, knowing the workload of individual judges will help answer whether a growing backlog of cases is a result of poor case management or an excessive workload.

Recommendation 2: The Beneficiaries should utilise the Delphi method to develop weighting systems. The Delphi method is less burdensome, less expensive, and can be completed in less time than the time study method. Recent experiences in Bosnia and Herzegovina and Serbia highlight the difficulties in developing and implementing a case weighting system via the time study approach. In contrast, experiences in Kosovo*[62] and the West Bank demonstrate that credible case weighting systems can be developed, and implemented, based upon the Delphi method.

A key to the development of any case weighting system, based on either the Delphi or time study method, is obtaining commitment and buy-in from key stakeholders, including judges, judicial council members, and the Ministry of Justice. This necessitates a clear articulation of the intended uses of the case weighting system and transparency in the process used to develop the case weights. Prior to conducting the study, a comprehensive assessment of readiness should be undertaken. The assessment should determine the capacity for data collection and data analysis and the willingness of judges and other key stakeholders to participate in the study. Objectivity and transparency can be improved by working with an independent consultant.

Ultimately, the selection of the 'best' method (Delphi v. time study) is determined through pragmatic considerations. While the time study is considered the gold standard, Delphi-based case weighting systems can also provide useful and valuable information to manage the efficient and effective handling of cases. Key questions to consider when selecting the most appropriate method include: What is the project timeline? What level of burden (e.g., data collection) are judges willing to take on? How much money is available to conduct the study? What data limitations exist? Have reforms (e.g., changes to the structure of the law or courts) been implemented?

It is the view of the authors that answers to many of these questions would lead most of the Beneficiaries to adopt the Delphi method. As technological and organisation capacities are improved, the Delphi-based case weights can be validated by a targeted time study at a future date.

Recommendation 3: Accurate and reliable caseload statistics are a necessary component of

62 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

any case weighting system. As such, the integrity of the case weighting system depends on maintaining the quality of recordkeeping and statistical reporting. Specifically, accurate calculation of judicial workload requires knowing how many cases of each type are filed with each court. If over- or under-counts of filings regularly occur in some courts, then the estimate of workload will be unreliable and inaccurate.

Regular and thorough auditing and feedback for correcting data collection problems is critical for achieving reliability in reporting across courts. Data reliability and accuracy could also be improved by adopting a uniform, nationwide case management system and providing training to staff on data definitions and input. Often the single most significant source of delay in conducting a workload assessment is the time required to compile, review, and organise the data to ensure its integrity for this purpose. Studies that proceed without this investment will be quickly discredited.

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63 * This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

APPENDIX WITH PART I BACKLOG REDUCTION PROGRAMMES

NOTES FROM THE COLLECTED MATERIALS, BY BENEFICIARY

Serbia questionnaire

No national standards for length of judicial proceedings
No court standards for any type of proceedings

The National Backlog Reduction Programme has been adopted by the Supreme Court of Cassation in December 2013. It contains analysis of the courts' case backlog and recommends the steps necessary to decrease the number of old cases in Serbian courts (for the majority of case types the case is considered old if it is pending for more than 2 years). By decreasing number of old cases and preventing newly filed cases of becoming old, this Programme practically tries to reduce the delays in court proceedings and to shorten the duration of trials. The Programme is available in Serbian language on the court's website.

It envisages four groups of measures:

- Internal measures (such as: establishing court's backlog reduction team, special ways of marking and registering old cases, introducing new case management procedures in court's registry offices, more efficient scheduling of hearings, stimulating e-justice measures, etc.);
- Procedural measures (such as: organisation of preliminary hearings, using guidelines for drafting court's decision, using checklists for efficient organisation of trials, etc.);
- Improved cooperation with external institutions (such as: promoting proactive cooperation and signing MoUs with police, public prosecutors, medical institutions and social care institutions, introducing more efficient service of process through the post office, etc.);
- Improving public trust (such as: using polls with court users to determine the level of their trust and general satisfaction with court's services, etc.).

There is a special part of the Programme dedicated to enforcement cases, because cases of this type represent more than 90% of backlogs in Serbian courts. Subsequently, the Supreme Court of Cassation adopted special set of measures for backlog reduction of enforcement cases.

The Programme also provides monitoring mechanisms and Supreme Court of Cassation appointed a working group in charge of monitoring the adoption of individual court backlog reduction programmes and their implementation.

At the end, the Programme provides indicators that should be tracked (such as number of received, disposed and pending cases; disposition rate; number of cases pending from 6 months to 1 year, 9 months to 1 year, 2 to 3 years, 3 to 5 years, 5 to 10 years, more than 10 years; average duration of closed cases; average duration of pending cases; number of received and disposed cases per judge; number of judges and court staff and ratio between the two; required and received financial resources, and financial resources needed for specific backlog reduction activities).

The Programme has been adopted in December 2013.

The Book of Court Rules (Art.12) prescribes the duty of adopting annual backlog reduction programmes by 31 January for those courts whose annual reports demonstrate high number of old cases. The National Backlog Reduction Programme (from 2013) makes adoption of these programmes mandatory for all courts. The template of court's backlog reduction

programme in English is available on page 83 of the Best Practices Guide – Backlog Prevention & Reduction Measures for Courts in Serbia. By adopting these Programmes, courts will try to reduce numbers of old cases and prevent newly filed cases from pending too long by reducing delays and improving work efficiency.

Ten pilot courts that partnered with USAID funded Separation of Powers Program have reduced their combined backlogs by nearly 50% and improved their disposition rates by 30%.

It is still early to assess the impact these programmes will have in all courts, but the adoption of these programmes by all courts in the system clearly shows willingness of the courts' management to tackle this issue and take necessary steps to improve performance and decrease case disposition time.

The National Backlog Reduction Programme sets goal of 80% backlog reduction by the end of 2018 and first tangible results should be visible at the end of 2015.

In civil cases the presiding judge and parties make a trial timeframe (article 308 of the Civil Procedure Code) that envisages number of hearings, their schedule, list of evidences that will be exhibited at each hearing, court determined deadlines for certain procedural actions, and predicted overall duration of the trial. The judge's decision on trial timeframe is mandatory and court and parties are obliged to follow the plan contained therein.

In practice, judges sometimes make a trial timeframe in other type of court proceedings as well (even when it is not explicitly required by the respective rules of procedures), especially in more complex cases.

Time limits are enforceable and judges have different competences depending on the nature of procedural action.

The parties might lose their right to propose a new witness or furnish other evidences if they do not prove that they couldn't propose a witness or evidence by the deadline set by law or judge. Usually all witnesses, documents and other evidences have to be proposed at the preliminary hearing or at the first hearing if there was no preliminary hearing. Also, judges can sanction parties, witnesses and expert witness by issuing fines, or expel them from the courtroom. In criminal proceedings judges can order police to bring defendants and witnesses by force.

Nevertheless, there is a general impression that procedural discipline in Serbian courts is not very well respected. The right to introduce new evidences is readily given and only exceptionally refused. Furthermore, delays are very frequent and extension of deadlines is often permitted by judges.

The judges are obliged to point out that parties have a right and possibility of resolving their case by the use of mediation. Mediation is mandatory in divorce cases initiated with a lawsuit of one of spouses.

The new Law on Mediation was adopted in 2014 and became effective on 1 January 2015. The previous Law on Mediation had very limited effects in practice and low number of cases was resolved by means of mediation. The effects of the new Law are yet to be seen.

Pre-trial diversion (legal term: deferral of prosecution) has been prescribed by both the old and the new Criminal Procedure Code and is commonly used by public prosecutors in large number of cases for which prescribed maximum sanction is up to five years of imprisonment.

Mediation in criminal cases (article 505) is also possible in cases initiated by a private prosecutor (as opposed to public prosecutor). The judges are obliged to invite both sides and explain them the possibilities of resolving the dispute through mediation.

Both case management systems (AVP and SAPS) can provide data on the length of judicial proceedings. They are capable of listing exact duration of each case, average duration of pending cases of a

certain type and average duration of closed cases of certain type.

AVP system used by majority of Serbian courts (basic, higher and commercial courts) had some problems with the reliability of data in 2014 due to changes in the court network and transfer of cases to the new courts. These problems have been remedied and it is expected that the system will provide accurate data in 2015.

Court presidents are in charge of monitoring the timing of proceedings and alerting if unnecessary delays occur. Furthermore, court presidents have certain competences that allow them to take measures aimed at faster resolution of such cases. Also, court presidents should be assisted by the members of backlog reduction teams (their deputies, heads of departments and other judges designated for these tasks in courts' annual backlog reduction programmes) in performing these duties.

At national level, parties can submit their complaints to the Ministry of Justice, High Court Council and Supreme Court of Cassation.

In accordance with the Law on Court Organisation and the Book of Court Rules, court users have a general right to complain to court presidents about, among other things, the excessive length of proceedings. Court presidents are obliged to decide whether the complaint is grounded or not, and what measures will be taken if it is grounded. Court president's written decision on the matter is delivered to the person that filed complaint and court president of the competent higher court.
The Law on Court Organisation also prescribes specific protection of the right to trial within a reasonable time. A party in court proceedings who deems that his/her right to trial within a reasonable time has been violated may submit a motion for protection of the right to trial within a reasonable time to the higher instance court. If a higher instance court establishes that the motion of the petitioner is grounded, it may define the appropriate compensation for the violation of the right to trial within a reasonable time and define the period during which the lower court shall terminate the proceedings in which violation of the right to trial within a reasonable time was committed.
In December 2013 the Supreme Court of Cassation appointed a working group in charge of monitoring implementation of the National Backlog Reduction Programme. This working group is entrusted, among other tasks, to recommend measures for speeding up processes and decreasing number of pending old cases. Based on the working group's analysis and recommendations the Supreme Court of Cassation issues certain instructions to the courts that contain different measures to tackle cases with excessive duration, such as listing and prioritising such cases, etc. Please note that this competence does not refer to individual cases, but addresses general issues identified in cases with excessive length.

In accordance with procedural laws, judges have the right to sanction participants that intentionally delay the proceedings. These sanctions include admonitions, replacements, fines and cost decisions.

As mentioned above, every year courts adopt annual backlog reduction programmes that entail a set of measures aimed at limiting adjournments as a way of preventing cases from becoming old. These programmes usually include certain policies directed to limit adjournments, such as insisting on stricter procedural discipline, etc.

Judicial Academy with the support of USAID funded Separation of Powers Program held trainings on individual case management. The trainings were dedicated to the first instance judges, primarily those who were recently elected. Students of the Judicial Academy (judges-to-be) were also trained. The main focus of the training was the way to better organise trials in order to efficiently manage and complete a case without unnecessary delays and prolongations.

An example coming from the local initiatives is the 'backlog spring cleaning' conducted by one of the largest courts – Basic Court in Nis, with the support of USAID funded Separation of Powers Program. The aim of this exercise was to analyse

the oldest cases in the court to determine true causes of delays. Following the analysis, the court scheduled status hearings in all the cases older than 10 years to explore the ways to close these cases promptly. The results of this action were very encouraging.

Every court has to designate its 'backlog reduction team' which includes judges, judges' assistants, trainees and court support staff. These teams are in charge of tracking and analysing the status of old cases upon which the team recommends techniques to improve efficiency of court's work and speed up the processes.

The question is a bit unclear, because it does not specify the kind of issues dealing with length of proceedings that are relevant. Most of the procedural time limits, deadlines, etc. are prescribed by the laws and bylaws, thus the courts do not have the competences to change them. However, within the limits of the laws and the Book of Court Rules, court presidents may issue orders and instructions on certain issues that deal with the length of proceedings – such as prioritising certain cases (e.g. pending for more than 5 years), improving procedural discipline, reorganising work of court support services (e.g. registry office to improve document flow), etc.

The most successful policies and practices are contained in the Supreme Court of Cassation National Backlog Reduction Programme and the Best Practices Guide – Backlog Reduction and Prevention Measures for Courts in Serbia.

Montenegro questionnaire

Criminal Procedure Code of Montenegro (CPC) prescribes:

Preparatory Hearing for the Main Hearing

Article 305
(1) If s/he deems it necessary for the purpose of determining the future course of the main hearing and planning as to which evidence, in what manner and at what time shall be presented at the main hearing, the Chair of the Panel shall, within the period of time specified in Article 304 paragraph 2 of the present Code, summon to a preparatory hearing the parties, defence attorney, injured party, proxy of the injured party, and, as needs be, an expert witness and other persons.
(2) At the hearing referred to in paragraph 1 of this Article, which is held without the presence of the public and of which records are made and signed by the parties and other persons present, the Chair of the Panel shall inform the participants of the future course of the main hearing and ask for their comments thereon and for their proposals as to evidence, and shall invite them to state whether they are available to appear at the main hearing at the time planned by the Chair of the Panel.

Mediation is regulated by the special Law and it is conducted through the Centre for Mediation.

It is good to know that the Law on Civil Procedure prescribes judicial settlement:

Article 322
At any time during the procedure the parties may settle their dispute (judicial settlement). Judicial settlement may pertain to the whole statement of claims or to a part thereof. Judicial settlement before the court may not be concluded with regards to the claims of which the parties may not dispose (Article 4, paragraph 2).

When the court renders ruling which does not allow for settlement between the parties the procedure shall be suspended until the ruling becomes final and enforceable.

Article 323
The court shall throughout entire procedure attempt to have the parties settle the case in a manner which does not compromise its impartiality.

Article 324
As a rule, judicial settlement is concluded before the court of first instance. If the appeal procedure has been instituted before the court of second instance, the court of first instance shall notify the court of second instance of the concluded judicial settlement.

Judicial settlement may also be concluded before the court of second instance when the main hearing is held before the court of second instance. If the settlement is concluded after rendering the first instance judgment the court shall reverse that judgment by the ruling.

Criminal Procedure Code
Laying off Criminal Prosecution

Article 272
(1) The State Prosecutor may decide to postpone criminal prosecution for criminal offences punishable by a fine or imprisonment for a term up to five years, when s/he establishes that it is not functional to conduct criminal proceedings having in mind the nature of a criminal offence and the circumstances of its commission, the offender's past and personal attributes, if the suspect accepts to fulfil one or several of the following obligations:

1) To eliminate a detrimental consequence or to compensate the damage caused by the criminal offence,
2) To fulfil obligations as to the payables for material support or other liabilities determined by a final judgment;
3) To pay a certain amount of money for the benefit of a humanitarian organisation, fund or public institution;
4) To carry out some community service or humanitarian work.

Furthermore, it is good to know that Montenegrin CPC stipulates plea bargaining, which means that in case of criminal proceedings for a criminal offence or concurrence of criminal offences for which a prison sentence of up to 10 years is envisaged, the State Prosecutor or the accused person and his/her defence attorney may propose that an agreement on the admission of guilt be concluded.

There is no special person in charge of monitoring the timing of proceedings and alert if unnecessary delays occur.

However, presidents of courts have control screens on which they can monitor each case, including the length of the proceeding. Among other things, the screen displays each case where a decision is not made within the deadline prescribed by the law.

Within the Supreme Court of Montenegro there is an Office for Petitions and Complaints. Everyone can submit complaints about the excessive length of proceedings before any court in Montenegro. The person who files a complaint receives a written response to the allegations contained in the complaint.

President of the court is in charge of taking specific actions regarding the excessive length of a case aimed at speeding up the process.

The party may file a request for control if he/she deems that the court unreasonably delays the proceedings and making decision in the relevant case. The president of the court makes a decision on the request for control. In courts with more than ten judges, apart from the president of the court, a judge who will decide about the requests for control may be appointed under the annual schedule of assignments.

If the president of court does not dismiss the request for control as irregular or as clearly devoid of merit, he/she shall request the judge or the presiding judge of the chamber to whom the case has been assigned to deliver a written report on the length of the procedure and reasons for which it has not been closed promptly within 15 days at the latest.

The report shall be composed according to the prescribed criteria and it shall include the opinion within which timeframe the case can be resolved. The president of the court may request the judge to deliver the case files as well.

If the president of the court establishes that the court unreasonably delays making a decision in the case, he/she will make a decision specifying a deadline to undertake certain procedural actions, not longer than four months, as well as relevant deadline within which the judge must inform him/her of the action undertaken.

The president of the court may order the case to be resolved as a priority if the circumstances of the case or the urgency of the case require so.

If a judge fails to take actions as stipulated by the decision on the request for control, or notification, as well as in any other event of absence of action compliant with the Law, the president of court may remove him/her from the assigned case, pursuant to a separate law.

The president of the court is obliged to make a decision on the request for control no later than 60 days after the date of receipt of request.

According to the Annual Report 2013 (for 2014 the Report has not yet been published) of the Supreme Court, Montenegrin courts began the reporting year with 34,859 backlog cases (older than three years), completed 24,014, and only 10,845 cases or 31.11% remained unresolved.

The percentage of resolved backlog cases within the jurisdiction of the basic courts is 63.34%, for the higher courts this is 96.14%, and for the commercial courts 62.15%. The percentage of resolved backlog cases before the Appellate Court was 82.39%, for the Supreme Court 92.64% and for the Administrative Court it was 100%. At the end of 2013, there were 10,845 unsolved cases remaining from 2012 and earlier years, which constitutes 29.21% of the total number of pending cases in all courts.

When it comes to the length of proceedings in complex cases in all basic courts in Montenegro, as much as 42.34% of all cases were completed up to three months; 20.13% up to six months; 12.36% up to nine months; 8.17% up to one year; and 17.01% over one year.

The basic courts saw an increase of civil cases by 7.60% in relation to the previous year, or less inflow of criminal cases by 20.01%.

The penal policy of the basic courts is in fact something that is statistically representative of and can be viewed as a punitive policy that corresponds to the type and severity of the crimes before these courts. Conditional sentences constituted 58.83% of all the judgments, fines were at 7.42% and imprisonment sentences at 33.14%.

The High Court in Bijelo Polje started the reporting year with 191 backlog cases, received 4,949, resolved 4,900 and only 240 cases, or 4.67%, remained unresolved. The High Court in Podgorica began the reporting year with 2,573 cases, received 10,322, and had the total of 12,611 pending cases, resolved 9831 cases, while 3,064 cases, or 23.76%, remained unresolved.

From the above it follows that, in relation to the inflow, the high courts resolved 96.46% of cases, while the total number of unresolved cases increased by 641 cases compared to the number of unresolved cases at the end of 2012.

In high courts in as much as 68.18% of cases procedures were completed within three months, counting all pending cases.

Two specialised departments within the high courts, which are dealing with cases of organised crime, corruption, terrorism and war crimes, had the total number of 71 pending cases, 52 cases were resolved, and 19 cases, or 26.76%, remained unresolved. It is noticeable that the specialised departments have resolved many more cases in 2013 compared to the previous year while the improvement of the quality of their decisions is evident. The inflow was six cases less, while 10 cases more were resolved relative to 2012.

Commercial courts are up to date, they completed 99.72% of cases compared to the inflow, and only 18.33% cases remained unresolved in relation to the total number of pending cases.

Out of 787 pending bankruptcy cases 477 were completed, and 39.39% remained unresolved, while 45.42% of unsolved civil cases remained.

In 2013 the commercial courts had quite many unresolved litigious cases, although the quality of work was at the level of the previous year; therefore the effectiveness of work of these

courts will be given a special attention in the next period.

During 2013 the Administrative Court achieved good results and quality of work. As a result, the Administrative Court had a decrease in the inflow of cases by 7.22% this year compared to the previous year and resolved as much as 107.13% of the total inflow.

The quality of work of the Administrative Court was reflected by 17.45% of revoked decisions, which was less than in 2012, when revoked decisions were at 28.37%.

The Appellate Court had 69 cases less than the previous year, completed 100.91% of cases compared to the inflow. The quality of decision-making is exemplified by 21.15% of revoked decisions, which indicates good quality.

Out of the total number of cases received - 1,978 total pending cases plus cases from the previous year - the Supreme Court had total of 2,011 cases. Of this number, 1,872 cases were completed while 139 cases remained unresolved, or 6.91%. Most of the cases were received in December 2013, hence the Court did not manage to complete them and pass a valid decision.

It is evident that the backlog from 2012 and previous years was reduced by 69.85% at the level of all courts and for all types of complex cases.

A study for measuring the complexity of cases was adopted and is being implemented in 9 pilot courts from January 2015 onwards. This initial phase, which will last for six months, is needed to collect all relevant statistical data that will be used to define the time required to carry out all the factual actions within the judicial proceedings (civil, criminal, administrative, noncontentious and enforcement cases).

Since the adoption of the new Law on Enforcement and Security in 2014, the proceeding of execution based on authentic documents falls within the responsibility of 29 public bailiffs. They are also responsible for other executions, except those within the exclusive jurisdiction of the court:

- hand over and take away of a child,
- return of employee to work,
- when the defendant is required to do a certain action which another person instead, by law or legal transaction, cannot do.

The bailiff system is private.

Kosovo*[64] questionnaire

The Judicial Council adopted a National Backlog Reduction Strategy. It is a framework plan that requires courts to develop tailored action plans in order to tackle the large number of backlogged cases.

The Strategy was adopted in August 2013, wherein it has determined that all cases submitted to the court up to 31 December 2011 are considered old cases.

As indicated above, every basic court (seven in total) has to produce their own action plans in order to reduce the number of backlogged cases hence contribute to reducing court delays.

The courts are obliged to give priority to the cases which fall under the legal categories such are: detention cases, labour contests, domestic violence, etc.

There are 149 mediators already licensed under the Ministry of Justice who take cases from the courts to resolve. In 2013, 530 cases were addressed by the mediators, 80 cases were addressed by the prosecution, 431 cases were addressed by the courts and 19 cases were self-addressed.

Out of these 530, 303 cases were resolved, 84 unresolved, and 63 were under the process of being resolved. The report for 2014 is currently being prepared.

Although the report does not specify the areas where the cases were addressed from, we can

64 *This designation is without prejudice to positions on status and is in the line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

say that it was a significant progress achieved hereby the procedures of resolving the cases were reduced so much. This information is also valid for the following two questions.

The JC is implementing a project with the aim to develop a case management information system. Its implementation is divided in 2 phases:
The first phase or preparatory phase, one year long, is under implementation.
The main phase of the projects lasts three years.

If there are concerns of this nature parties can complaint to the Office of Disciplinary Counsel in charge, which is under the Judicial Council and Prosecutorial Council.

The president of a court has general administrative authority and ensures effective and efficient administration of justice from all branches, departments and court divisions.

If the case is particularly urgent and could cause damage to the general interest, Judicial Council can decide to give priority to such a case. To this purpose, the JC has made a decision that courts have to deal with corruption cases with priority in relation to other criminal cases.

Bosnia and Herzegovina questionnaire

General standards that determine the length of proceedings are established by procedural laws introduced by legislator (Civil Procedure Law, Criminal Procedure Law, and Administrative Procedure Law).

Based on its competences under the law, in 2012 the High Judicial and Prosecutorial Council of BiH introduced a Book of Rules on timeframes for processing cases in courts and prosecutor offices in Bosnia and Herzegovina. This BoR sets criteria and methodology for determining and monitoring optimal and foreseeable timeframes for processing cases in courts and prosecutor offices – in accordance with the guidelines of the European Commission for the Efficiency of Justice (CEPEJ).

With regards to adopting internal standards or rules, the issue was not addressed by the courts individually. Some ad hoc activities regarding everyday monitoring might have been taken since. The courts are obliged to apply standards set at national level (Book of Rules on timeframes for processing cases in courts and prosecutor offices in Bosnia and Herzegovina).

The Book of Rules on timeframes for processing cases in courts and prosecutor offices in Bosnia and Herzegovina was piloted in several courts and prosecutor offices in 2013. It has been implemented in all courts and prosecutor offices as of January 2014.

They are about to start issuing notifications on the expected timeframes for resolving cases; and this will start on 1st March 2015.

In accordance with BoR, each court has to establish its own foreseeable timeframes. BoR has prescribed a methodology for determining individual foreseeable timeframes for solving each type of case in each court and prosecutor office. These timeframes are being determined taking into account the timeframe prescribed by the law and other objective inputs, such as backlog, existing resources of the relevant institution and quotas set for certain type of cases.

So far the implementation of BoR has increased awareness among courts and prosecutor offices of the necessary improvements in planning the usage of available resources in order to shorten the length of proceedings.

Courts and prosecutor offices do not have this type of interaction with users.

The exception is criminal proceedings, where, during the preparation for the main trial, the judge or the presiding judge may hold a hearing with the parties and the defence attorney to consider issues relevant to the main trial.

The judge should organise activities in case processing in most efficient way, especially regarding scheduling hearings and rendering

decision and, in doing so, respect the deadlines set by the law.

Even in cases where there is such possibility to enforce deadline for certain action, judges are reluctant to use measures provided by the law (etc. sentencing the witness expert for being late with expertise, etc.).

It was noted in practice that judges do not have full control of case management and they are prone to letting lawyers and parties have a lead role in time management (scheduling the time of hearings etc.).

Certain types of cases are determined "urgent" by the law, i.e. family disputes, labour cases when dealing with status rights, trespassing, and all criminal cases are being considered urgent. Furthermore, cases arising from the above mentioned, such as enforcement cases, are also to be considered urgent.

Summary proceedings are considered as an effective fast alternative for dispute resolution. However, BiH legal system recognises summary proceedings only in criminal matters.

Civil Procedure Law allows judges to pass default judgements; however, it does not recognise summary proceedings, only special proceedings for certain type of cases where deadlines are shorter than those in regular procedure (labour cases, trespassing and small value claims).

Mediation in BiH is established as "out of court" mediation for all type of cases except criminal cases. In criminal cases mediation is possible only with regards to property claim.

"In court" mediation is being used in a form of court settlement, as part of regular civil procedure under the Civil Procedure Law.

Case Management System was introduced in BiH judiciary in 2008. Proceedings are fully automated; however the reliability of data depends on the quality of input registration by the system users. For example, some recent analyses show that information on the length of court hearings are not registered accurately because starting and ending time of each hearing is not registered properly.

Court president is responsible for general legal, regular and efficient organisation of work processes in the court, which implies monitoring the timing of proceedings and alerting if unnecessary delays occur.

Also, all the judicial position holders are obliged to comply with the Book of Rules on timeframes for processing cases in courts and prosecutor offices in Bosnia and Herzegovina.

Court presidents and chief prosecutors are obliged to organise work in a way to provide implementation of determined optimal and foreseeable timeframes. They are also obliged to continuously monitor and analyse implementation of such timeframes.

Monitoring and analyses are also being conducted by the HJPC continuously.

HJPC has the competencies to receive complaints against judges and prosecutors, conduct disciplinary proceedings, determine disciplinary liability, and impose disciplinary measures on judges, lay judges, reserve judges and prosecutors. Disciplinary offences for judges include, among others, unjustified delays in issuing decisions or any other act related to the exercise of judicial functions, or any other repeated disregard of the duties of the judicial function. Within the HJPC, the Office of the Disciplinary Counsel is processing this type of complaints and the final decision is made by the Council.

Within his/hers general competencies and duties, court president is also obliged to take care of complaints about the excessive length of the proceedings. Court president does not have the power to conduct disciplinary proceedings against judges, but he or she can initiate the proceeding before the Office of the Disciplinary Counsel. Court president can also apply certain "soft" measures (i.e. transferring the judge to less favourite department; giving him or her lower annual grade for work done; not allowing the judge to participate in projects, seminars or other

educational activities more than the prescribed minimum, etc.).

Within the continuous monitoring of resolving all cases in BiH judiciary, the HJPC identifies all old and long-lasting cases. The data on these cases is delivered to the respective courts. Later on, they are monitored with special attention and the statement of progress for each individual case is requested from the acting judge, until the final resolution of the case.

This kind of monitoring is being conducted at the statistical level. Also, the HJPC Office of Disciplinary Counsel plays a significant role in terms of the length of proceedings. According to its data, the most often complaint on the breach of disciplinary liability by the judges relates to the matter of excessive length of proceeding. However, even if the judge is found liable for the breach, the Counsel Decision cannot influence speeding up the process in the relevant case. This means that the principle of judicial independency is preserved even in this matter.

Each judge is responsible to resolve the cases chronologically, as they are submitted to the court (exceptions are the above mentioned "urgent" cases). They are also responsible for meeting the prescribed deadlines. Court president and heads of departments (appointed in bigger courts) are in charge of monitoring the entire work process.
In this matter, if they notice certain misconduct in respect of the length of proceedings, the head of department or court president should make a remark and suggest to the acting judge that he or she speeds up the proceeding.

For the breach of disciplinary liability, the Council may impose one or more of the following disciplinary measures prescribed by the Law on the HJPC:

(a) A written warning which shall not be made public;
(b) Public reprimand;
(c) Reduction in salary up to a maximum of 50% (fifty per cent) for a period of up to one (1) year;
(d) Temporary or permanent reassignment to another court or prosecutor's office;
(e) Demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor;
(f) Removal from office.

As a separate measure, instead of or in addition to any of the disciplinary measures set out above, the Council may, if appropriate, order that a judge or prosecutor participate in rehabilitation programmes, counselling, or professional training.

As stated above, the courts are obliged to implement measures to ensure cases are at all times being resolved chronologically and in set deadlines. However, specific policies regarding this particular issue have not been introduced in courts yet.

Presentations regarding the implementation of Book of Rules on timeframes for processing cases in courts and prosecutor offices in Bosnia and Herzegovina have been organised for the courts.

Furthermore, following the HJPC initiative, entity Judicial and Prosecutorial Training Centres* have included certain topics that can be related to delay reduction issue in their annual training programmes (such as "conducting of a hearing", "time management", "strategic planning" etc.).

The HJPC did not register any requests or initiatives by the courts in this regard.

A court may introduce certain in-house rules which would provide for more efficient dealing with the caseload. The laws and the bylaws provided by the HJPC on the length of proceedings represent the minimum of standards that are to be followed. The HJPC encourages courts to organise their work processes as efficient as possible, in line with their resources.

Albania from 2014 enlargement report

Draft amendments to the Codes of Civil and Criminal Procedure that have been assessed by the Venice Commission are expected, once adopted, to

reduce the workload of courts and thereby increase their efficiency. These include allowing judges to impose fines on lawyers who are repeatedly absent in civil and criminal judicial hearings, and limiting the types of cases that can be filed to the High Court. Further measures are necessary to rationalise the High Court's procedures and reduce its significant current backlog, including through modifying the composition of panels reviewing criminal cases; the High Court needs to be transformed into a cassation court. The impact of the 2012 provisions enabling the disciplinary committee of the Chamber of Lawyers to penalise lawyers for contempt of court and misconduct is still to be assessed. The backlog of cases has increased by 7% (32 972 cases pending before district and appeal courts in January 2013, as compared to 30 972 cases in January 2012) and remains an issue of concern. A school for lawyers, providing for one-year compulsory education following university level law studies, was set up in September 2013 by the Chamber of Lawyers. The School of Magistrates continues to face problems due to limited budgetary resources, despite a 6% increase in its annual budget compared to 2013. The School of Magistrates has taken steps to introduce good quality curricula; the overall level of training provided still needs to be assessed.

The Former Yugoslav Republic of Macedonia from the enlargement report

The accountability of state judicial bodies is monitored by means of multiple complaints mechanisms available to citizens. The Judicial Council, the Ministry of Justice and the Ombudsman's Office received 1 061, 339 and 732 complaints respectively in 2013, relating to the work of the judiciary. The most common grounds for complaint are the length of court proceedings, but increasingly also lack of impartiality or equal access to justice. The Supreme Court continued to receive claims for compensation for unreasonably lengthy court proceedings.

It received 434 such claims (down from 676 in 2012) and awarded over €116,000 in compensation and costs. The government also agreed to pay out over €445,000 in friendly settlements, to applicants who had made claims before the European Court of Human Rights, most of which also related to the excessive length of court proceedings. As regards individual accountability, five judges were dismissed so far in 2014, on the catch-all grounds of 'unprofessional or unconscientious exercise of judicial office' and one judge resigned during an ongoing dismissal procedure. The Council of Public Prosecutors dismissed two prosecutors on the grounds of incompetence. Two high-level corruption investigations were concluded in autumn 2013 with the prosecution, conviction and imprisonment of a judge, two prosecutors, a former judge, a former investigative judge, an employee of the prosecution service and a lawyer. The State Commission for the Prevention of Corruption also initiated misdemeanour proceedings against 32 judges for failure to submit legally-required statements of interest.

As regards the efficiency of the court system, 23 out of the 27 basic courts maintained a positive clearance rate (meaning that they managed to process more cases during 2013 than they received) as did the four appeal courts, the Administrative Court and the Supreme Court. In terms of caseflow management, there are no backlogs to speak of. However, the equally serious issue of lengthy court proceedings still needs to be addressed. Whereas individual stages of the court procedure are generally concluded within the legal deadlines, the overall length of proceedings from initiation to final judgment remains one of the main causes of complaints and requests for compensation by citizens. The robust steps taken in recent years to address court backlogs, including the imposition of monthly targets and heavy emphasis on productivity in the annual evaluation process, risks a deterioration in the quality of justice, as a result of judges' limited ability to devote appropriate time and attention to preparing sound, fully reasoned judgments based on all available evidence.

The Former Yugoslav Republic of Macedonia questionnaire

National standards are in a form of legal provisions. They are established by the legislator, on proposal of the Ministry of Justice, in the following laws: the Law on Courts, the Law on Civil Procedure, the Criminal Procedure Law, and the Law on Caseflow Management).

There are standards for the length of the procedure before courts and they are stipulated in the procedural laws (Law on Civil Procedure, Criminal Law Procedure, Law on Administrative Disputes). There are standards for the procedures themselves also stipulated in the procedural laws. They refer to all courts equally.

At the level of courts, performances targets are prepared and presented in the courts' annual work programmes in accordance with the targets defined by the Supreme Court of The Former Yugoslav Republic of Macedonia.

Also, according to the Law on Caseflow Management, President Judge establishes a working body for caseflow management in the court (Working Body), managed by the court administrator or a person designated by the President Judge in courts that do not have court administrator. The Working Body is composed of the heads of court departments and court employees ranked at least at the level of professional court employees.

The responsibilities of the Working Body are the following:

- preparing a draft Annual Plan for caseflow management in courts, preventing creation of backlog cases or reducing the backlog of pending cases and preventing caseflow delay, which include in particular: analysis of the causes of caseflow delay and case backlog, proposing measures to overcome the caseflow delay and the occurrence of backlog cases, and analysis of caseflow management in the courts;
- preparing draft internal procedures for certain processes concerning caseflow management in the courts, based on procedural activities and deadlines regulated by the Law on Civil Procedure, Law on Criminal Procedure, Law on Administrative Disputes, Law on Noncontentious Proceedings, and the Court Book of Rules, prepared by the Minister of Justice and regulated by the Law on Courts; and submitting monthly report to the President Judge regarding the implementation of the Annual Plan for caseflow management in courts and the measures to prevent creation and reduce the backlog cases and the delay of caseflow management in the courts.

Upon the proposal of the Working Body for caseflow management in the courts, the President Judge:

1. Adopts the mentioned internal procedures for certain processes related to the caseflow management in the courts based on procedural actions and deadlines regulated by the laws;
2. Adopts the Annual Plan for caseflow management in the courts aimed at preventing creation and reducing the backlog of unresolved cases and preventing caseflow delay in the courts.

The Annual Plan format and content requirements are set by the Judicial Council of The Former Yugoslav Republic of Macedonia.

The Judicial Council of The Former Yugoslav Republic of Macedonia receives monthly report on courts from the President Judge and assesses the reports and work of the courts.

Also, Ministry of Justice prepares a communique regarding the implementation of the Law on Caseflow Management, according to the statistical data and information obtained from the Judicial Council, especially in view of resolving the unsolved cases and decreasing the backlog.

Statistical data proves the successfulness of court's plans and programmes:

- At the end of 2011 there were 295,769 unresolved cases in all courts in The Former Yugoslav Republic of Macedonia, while at the end of 2014 there were 143,557 unsolved cases.

The EC 2014 Progress Report for The Former Yugoslav Republic of Macedonia noticed that:

- The legislative framework governing the judiciary, as well as its physical and technical infrastructure, has developed considerably as a result of the comprehensive reforms carried out over the past decade. Many of the overarching issues facing all candidate countries have been tackled, including the elimination of court backlogs, the establishment of the Academy for Judges and Prosecutors, the formal independence of the judicial governance body (the Judicial Council), the introduction of a system of administrative justice and improvements to both civil and criminal procedure legislation. As a result, now is an advanced phase requiring more complex and challenging improvements.
- As regards the efficiency of the court system, 23 out of the 27 basic courts maintained a positive clearance rate (meaning that they managed to process more cases during 2013 than they received) as did the four appeal courts, the Administrative Court and the Supreme Court. In terms of caseflow management, there are no backlogs to speak of. However, the equally serious issue of lengthy court proceedings still needs to be addressed. Whereas individual stages of the court procedure are generally concluded within the legal deadlines, the overall length of proceedings from initiation to final judgment remains one of the main causes of complaints and requests for compensation by citizens. The robust steps taken in recent years to address court backlogs, including the imposition of monthly targets and heavy emphasis on productivity in the annual evaluation process, risks a deterioration in the quality of justice, as a result of judges' limited ability to devote appropriate time and attention to preparing sound, fully reasoned judgments based on all available evidence.
- In early 2014, the Judicial Council and the Ministry of Justice took steps to identify 'old cases' using the courts' automated case management system. Across all court instances, 3 155 cases were identified as having been in the court system for more than three years, of which 822 cases were more than five years old and 56 cases more than 10 years old. The clearance rate in 2014 is 108, or 89% (according to CEPEJ standards).

At the pre-trial hearing previously shall be discussed about the issues referring to the obstacles for the further course of the procedure, regardless whether the president of the council after reviewing the lawsuit postpones the deciding upon these issues, regardless whether they are stated in the response to the lawsuit or at the pre-trial hearing. When necessary, evidence can be exhibited upon these issues on the pre-trial hearing.

At the preparatory hearing the court will determine the day and hour when the main hearing will be held, within the time limit which cannot be shorter than eight days nor longer than 60 days, and for more complex cases 90 days at the latest, from the day when the preparatory hearing was held, the evidence that will be disclosed, witnesses and expert witnesses that will be summoned to the main hearing. The court may determine the main hearing to be held immediately after the preparatory hearing. The court will warn the parties of the consequences of a failure to appear at the main hearing.

According to Articles 297 throughout 300 (Law on Civil Procedure):

The duty of the judge is to pay attention that the subject of the case is reviewed comprehensively, but that the procedure is thus not delayed so that the hearing is possible to be completed in a single hearing.

When the Council decides to postpone the hearing for the main hearing, the President of the Council shall mind that at the following hearing all the evidence whose exhibition is determined for that hearing are obtained, as well as to perform other preparations so that the main hearing can be completed at the hearing.

During the procedure, the court, according to Article 10, may fine the party, its legal representative, the authorised agent or the involved person, which by their actions abuse the rights recognised by this Law.

According to the type of court case, the cases stipulated as urgent by the law are resolved with priority.

In administrative procedure there are urgent procedures for administrative disputes before Administrative Court in the following fields: elections, public procurements, asylum, temporary measures and misdemeanour cases which involve seized items.
There are two urgent special procedures defined by the Law on Civil Procedure: procedure in labour disputes and procedure in disputes for disturbance of possession.

Namely, Article 405 of the Law on Civil Procedure defined that in the labour dispute procedure, and especially when determining the time limits and the hearings, the court will always pay special attention to the need of quick resolving of labour disputes. The time limit for response to a complaint in labour dispute procedures is eight days. Also, it is defined that in labour disputes referring to termination of employment, the main hearing must be held within thirty days from the day of receipt of the response to the complaint. In this procedure, the procedure before a first instance court has to be completed within six months from the day the complaint was filed. Also, in the labour dispute procedures, the court of second instance is obligated to make a decision upon an appeal filed against the decision of the first instance court within thirty days from the day of receipt of the complaint, i.e. within two months if a hearing is held with the court of second instance.

Regarding the procedure in disputes and hearings for disturbance of possession it is important to mention that when determining the time limits, the court will always pay special attention to the need of a quick resolution according to the nature of each individual case. In this procedure, the time limit for a response to a complaint is eight days and the main hearing must be held within thirty days from the day of receipt of the response to the complaint.

Also, in the procedure for disputes for disturbance of possession, the procedure before a court of first instance has to be completed within six months from the day the complaint was filed, while the court of second instance is obligated to make a decision upon an appeal filed against the decision of the first instance court within thirty days from the day of receipt of the complaint, i.e. within two months in case a hearing is held before the court of second instance.

Furthermore, the bankruptcy procedure is an urgent procedure.

The Law on Juvenile Justice and the Law on Criminal Procedure define that proceedings in cases involving juveniles and detention are urgent. Criminal procedure also includes urgent procedure for detention cases.

The Law on Civil Procedure includes a special part titled SEPARATE PROCEDURE which contains the following: labour dispute procedure; procedure for disputes for disturbance of possession; issuing a payment order; procedure for small claims; commercial dispute procedure; and procedure before the selected courts.

The administrative procedure includes urgent procedures for administrative disputes before the Administrative Court in the following fields: elections, public procurements, asylum, temporary measures and misdemeanour cases which involve seized items.

The Law on Criminal Procedure contains simplified procedure for criminal offence for which the sanction of imprisonment of up to 5 years is prescribed.

The Law on Mediation provides a legal framework for alternative dispute resolution, but in practice the system is still underdeveloped and more awareness-raising measures are needed to bring it to the mainstream. There is always the intervention of a judge or a public prosecutor who facilitates, advises, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to

mediation if they believe that more satisfactory results could be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example, to establish a compensation agreement).

Private mediation is available in civil and commercial cases, family law cases (e.g. divorce), and criminal cases.

Fulltime arbitration is provided by the Commercial Chamber of The Former Yugoslav Republic of Macedonia. It performs arbitration in commercial cases among the legal entities that are its members.

Chapter 13 of the Law on Civil Procedure regulates the PROCEDURE IN SELECTED COURTS.

The Law on Civil Procedure also regulates the procedure for COURT SETTLEMENT.

An important segment influencing the efficiency and transparency of the judiciary is the functioning of electronic judiciary. Outstanding progress in the area of information technology in judiciary is achieved through the introduction of Automated Court Cases Management Information System (ACCMIS), which is fully functional and regularly generates reports for judges and court management to track the court cases and hearings for all cases, dates, courtrooms and judges.

To ensure ACCMIS functioning, additional technical equipment was installed (hardware, software, additional services and central data backup solution) in all courts in 2010, providing state-of-the-art IT equipment to support ACCMIS in the judiciary. All courts in The Former Yugoslav Republic of Macedonia have functional Internet and anti-virus protection as well as displays and touch-screen facilities, continuously publishing data on scheduled court hearings. The Legal Database Information System (LDBIS) continuously and daily receives entries of new laws, regulations and acts published in the Official Gazette of The Former Yugoslav Republic of Macedonia. Also, the Database of International Legal Instruments is available at the Ministry of Justice website. The process of upgrading the ICT in the Public Prosecutor's Offices which will be connected to the courts' ICT system is underway.

Also the Court Council software for generating, processing and analysing statistical information for the work of courts was developed.

In July 2011 Minister of Justice adopted the Methodology for Judicial Statistics. It contains a framework for gathering, analysing and processing statistical data regarding the number of received and resolved cases in courts; the duration of the procedure for all types of cases; the duration of the procedure in all phases of all types of cases; sanctions pronounced to perpetrators of criminal offences; pronounced confiscation measures; sanctions pronounced to legal entities; data regarding the courts' case backlog; structure of the perpetrators of criminal offences; etc. The Methodology includes 11 indicators to measure court performance.

In 2014, a new software system was developed to alarm judges about the timeframe of criminal and misdemeanour cases.

Actually, the judge gets warnings every day three months before the case falls under the statute of limitations.

This system will generate reports about the cases that can fall under the statute of limitations according to which the judges will be warned of the number of unresolved cases, of unresolved cases with the date of statute of limitations, of unresolved cases that will fall under the statute of limitations in the next three months, and of unresolved cases that have felt under the statute of limitations and are not resolved.

Court President is obliged to monitor the timing of proceedings. Moreover, the Working Body prepares monthly reports, as mentioned in the answer to question number 5.

Appellate courts and Supreme Court of The Former Yugoslav Republic of Macedonia visit lower courts, and produce reports, according to the previously prepared plan of the visit.

According to Article 83 of the Law on Courts, the Ministry of Justice has competence to examine citizens' complaints about the work of courts related to the delay of court proceedings as well as about the work of court services.

The Law Amending the Law on Judicial Council of The Former Yugoslav Republic of Macedonia (adopted in 2010) prescribes that a public session of the Council discussing all petitions and grievances submitted by citizens and legal entities regarding the work of judges and courts will be held at least once a month.

According to Article 12 of the Law on Ombudsman, the Ombudsman shall undertake actions and measures for protection against unjustified delay of court proceedings or unconscientious and irresponsible performance of the work of court services, hence not infringing the principles of independence and autonomy of the judicial authority.

In 2008 the Parliament of The Former Yugoslav Republic of Macedonia adopted the Law on Complains and Proposals which regulates the entire procedure for proceeding with complains and proposals.

At the national level, these authorities are in charge of taking specific actions:

- at the level of concrete court case - The Judicial Council
- at the level of legal framework -, Ministry of Justice
- at the level of performance and analysis of the work of courts - The Supreme Court of The Former Yugoslav Republic of Macedonia.

Every court prepares an annual plan for case-flow management.

Also, courts can propose measures to amend the Law and submit them to the Ministry of Justice.
Common initiatives given at trainings, seminars, conferences.

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