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Strengthening justice for business in Serbia

Commercial Courts Needs Assessment

June 2024

Acknowledgments

The Commercial Courts Needs Assessment analyzes the performance of Serbian Commercial Courts in managing commercial cases and presents recommendations for improving the efficiency and quality of their processing. The analysis highlights challenges and provides recommendations to address these challenges. This report is one of the deliverables of a technical assistance project – Multi Donor Trust Fund for Justice Sector Support in Serbia - Phase 3 (P181302). The project is implemented with funding from the Swedish International Development Agency.

The Needs Assessment was requested by the Serbian Ministry of Justice and was prepared by a World Bank team comprising Mr. Srdjan Svircev (Senior Public Sector Specialist), Mr. Zoran Skopljak (Public Sector Specialist), Ms. Marina Matic Boskovic (Justice Reform Expert), and Ms. Ana Krnic Kulusic (Justice Reform Expert). This report would not have been possible without the support of the World Bank office in Belgrade for organizing missions and providing valuable guidance through the process. The team also benefited greatly from feedback from World Bank peer reviewers, Klaus Decker (Senior Public Sector Specialist) and Igor Matijevic (Senior Operations Officer). The team is also grateful to Nicola Pontara (Country Manager, ECCYU) and Fabian Seiderer (Practice Manager, EECG2) for their valuable guidance and insights.

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Table of Contents

Acronyms and Abbreviations

ACC	Appellate Commercial Court
ADR	Alternative Dispute Resolution
AVP	Automated Case Management System
CC	Commercial Court
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIPA	European Institute of Public Administration
EU	European Union
FIC	Foreign Investment Council
GDP	Gross Domestic Product
HJC	High Judicial Council
ICT	Information and Communication Technology
IFC	International Finance Corporation
JA	Judicial Academy
MoJ	Ministry of Justice
MSMEs	Micro, Small, and Medium Enterprises
NCC	Netherland Commercial Court
OSCE	Organization for Security and Co-operation in Europe
SAPS	Standardized Software Application for the Serbian Judiciary
SC	Supreme Court
SMEs	Small and Medium Enterprises
SOEs	State-Owned Enterprises
TNA	Training Needs Assessment
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
USAID	United States Agency for International Development

Executive Summary

1. **The functioning of the judiciary is one of the most significant constraints for doing business in Serbia, as evidenced by both international reports and surveys of the business sector.** A well-functioning judiciary is of a crucial importance for the functioning of a market economy, as it ensures the protection of property rights and the enforcement of contracts. Even though effective legal protection is important for all businesses it is of particular importance for micro, small and medium-sized enterprises (MSMEs). Their relative power imbalance vis-à-vis other market players makes them less capable of equitably resolving disputes and upholding their rights. MSMEs encounter unique challenges that make them particularly reliant on an effective judiciary. MSMEs often operate with tight budgets, making it difficult to afford prolonged legal disputes or expensive legal representation. Protracted legal disputes can divert critical time and resources away from the core business operations, hindering growth and innovation. Unlike large corporations, MSMEs often lack dedicated legal departments which makes them more vulnerable to legal complexities and procedural errors. Considering that MSMEs represent 99 percent of the Serbian economy, the importance of a functional judiciary is further amplified.

2. **At the request of the Ministry of Justice, the World Bank conducted a rapid assessment on commercial justice in Serbia.** The assessment was aimed at evaluating efficiency, accessibility, and effectiveness of the commercial justice system within the country. Rapid assessment was designed to provide quick insights and recommendations without imposing significant data collection burden on the commercial courts.

3. **Almost half (43 percent) of Serbian businesses that have experience with the judiciary have interacted with commercial courts (CCs). CCs adjudicate most of commercial matters including civil disputes between legal entities, liquidation, bankruptcy and intellectual property protection**. Bearing in mind the subject matter competence of CCs in Serbia, their importance for the business environment exceeds the relatively small share of cases (6 percent) in commercial courts in relation to the total number of cases in the entire judiciary. Strengthening commercial justice in Serbia will, therefore, improve the business environment and contribute to sustainable economic growth.

4. **The demand for commercial justice services increased steadily from 2017 to 2021, primarily due to commercial offenses and trial within reasonable time cases.** Other case types had a much weaker impact on the overall caseload, except for a rise in litigious cases in 2021. The rising trend reversed in 2022 when the incoming caseload began to decrease.

5. **The disposition of both the CCs and the Appellate Commercial Court (ACC), increased proportionally with the caseloads, indicating that judges resolved as many cases as they received or even slightly more.** The CCs consistently achieved favorable clearance rates each year, while the ACC faced challenges in 2021.

6. **While the congestion ratio indicator suggests that overall, there is no significant congestion in the CCs or the ACC, commercial courts struggled with certain case types such as bankruptcy cases.** The CCs maintained their congestion ratios below 1.00 with a

declining trend. The ACC's had slightly higher congestion rates, but still within an acceptable range. After a rising trend noted in 2020 and 2021, the congestion ratio of the ACC fell to 0.38 in 2022. However, congestion ratio for litigious and bankruptcy cases, which are particularly important for business, was higher. Litigious cases had the highest congestion in the ACC, reaching 0.74 in 2022, while bankruptcy cases were the most congested in the CCs, mostly exceeding 2.00 over a six-year period. Even though the CCs have managed to gradually decrease the number of unresolved bankruptcy cases, the problem persists with cases 'trapped' in the system for many years.

7. **The commercial justice system has limited resources to ensure timely and quality services to the business sector.** The information and communication technology (ICT) and Automated Case Management System (AVP) are outdated, and equipment is not adequate across the CCs. The distribution of human resources does not ensure an equal workload among judges. In 2022, the lowest average caseload per judge per year was in the Zrenjanin CC with 292 cases, while judges in Subotica and Belgrade received two and a half times that number, averaging 783 and 732 cases per year, respectively. The infrastructure conditions vary, but most of the buildings need reconstruction, especially the archive, registry offices, courtrooms, and cabinets. Outdated infrastructure and underinvestment in commercial courts are further negatively impacting the performance of commercial justice.

8. **While a significant portion of businesses in Serbia express concerns about unequal treatment by the justice system, businesses that had direct experience with courts have more positive perception of fairness.** This difference between general perceptions and personal experiences underscores the complexity of how businesses view the justice system. While there are widespread concerns about inequality and discrimination based on structural and location factors, direct involvement in legal proceedings often leads to more positive evaluations. Efforts to enhance transparency and accessibility in legal proceedings could help bridge the gap between perceived inequalities and actual judicial fairness perceived by businesses.

9. **Access to justice is a crucial issue to the business sector, primarily due to two major challenges: the affordability of the justice system and access to information.** These factors significantly impact how business perceive and navigate legal system, influencing their ability to operate fairly and competitively. Affordable access to justice is essential for maintaining a level playing field among businesses. When legal costs are disproportionately high, larger enterprises with more financial resources may gain an advantage over smaller competitors, potentially stifling innovation and market diversity. Stakeholders report that access to justice for businesses is inadequate, particularly for micro, small, and medium enterprises (MSMEs), while affordability presents barriers for accessing court services.

10. **The Green Agenda for the Western Balkans,[1] endorsed by Serbia in 2020 at the Sofia Summit to align with the key elements of European Green Deal, requires increasing the courts' capacities to deal with environmental law.** Furthermore, the new EU

[1] For implementation of the Green Agenda for Western Balkans, the Commission prepared the staff working document – Guidelines for the Implementation of the Green Agenda for the Western Balkans, An Economic and Investment Plan for the Western Balkans, SWD (2020) 223 final.

Environmental, Social and Governance (ESG) supply chain compliance Directive[2] is a significant development that is likely to impact business in Serbia, especially those that are involved in trade with or supply goods to EU member states. Proactive adaption to ESG standards can strengthen competitiveness and sustainability in the evolving global marketplace. Since CCs have jurisdiction over environmental commercial offenses, there is a need to ensure adequate specialization and to strengthened knowledge and skills to process these types of cases. Furthermore, the modernization of business processes in the CCs, as well as the introduction of e-justice and videoconferencing, will contribute to the introduction of green justice in Serbia through the reduction of paper usage and emissions associated with travel to hearings.

11. **Four priority reform focus areas have been identified in consultation with judicial stakeholders.** These priority reform focus areas cover a range of issues, including procedural inefficiencies, an outdated legal framework, limited ICT infrastructure and solutions, professional specialization of judges, court network and physical infrastructure. Identified priority reform focus areas are:

I. The efficiency and quality of the delivery of commercial justice

- **Bankruptcy proceedings.** Despite some progress, the bankruptcy proceedings remain complex and inefficient, as suggested by the relatively high congestion ratio. In handling bankruptcy cases, courts are depending on other state bodies. The limited effectiveness of this interaction directly impacts the ability of commercial courts to resolve cases efficiently.
- **Trial within reasonable time.** Commercial courts are overwhelmed with claims alleging violations of the right to a fair trial within a reasonable time. This results in diverting resources from other cases thus affecting efficiency and quality of commercial justice.
- **Commercial offenses.** This type of cases represents a significant share of total caseload of commercial courts in Serbia, comprising 20-25 percent of the total. Resolving commercial offenses cases consume significant portion of available resources of CCs. Commercial offenses are *sui generis* quasi criminal proceedings, established in 1977 covering certain wrongdoings related to commercial and financial dealings for which legal entities and their responsible officers could be liable. As designed in Serbia, commercial offenses are not clearly delineated from standard criminal proceedings and will require significant modernization to address contemporary challenges.
- **Enforcement cases.** A notable portion of the enforcement cases remained in the commercial courts even though the profession of bailiffs was created several years ago. In 2022, enforcement cases constituted 40 percent of the total cases received by the commercial courts.

[2] Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

II. Access to justice for MSME

- Affordable access to justice is essential for maintaining a level playing field among businesses. When legal costs are disproportionately high, larger enterprises with more financial resources may gain an advantage over smaller competitors, potentially stifling innovation, and market diversity.

III. Human resources

- **Organization and staffing of CCs.** The Human Resource Strategy of the Judiciary in Serbia for 2022–2026 identifies the need for reassessing the organization of the commercial justice system and the number of judges in CCs due to its relevance for economic development.
- **Specialization of judges.** Specialization of judges is relatively limited given that only the largest commercial courts have enough judges to allow for the specialization and the achievement of corresponding improvements in the efficiency, quality, and uniformity of the case law.

IV. Infrastructure and court network

- **Physical infrastructure.** Outdated infrastructure and underinvestment in commercial courts are further negatively impacting performance of commercial justice.
- **IT infrastructure.** The reliance on an outdated Automated Case Management System (AVP) in commercial courts, resulting in limited functionalities, underscores the importance of modernizing technological infrastructure to enhance efficiency and effectiveness.
- **Court network.** Some commercial courts still have remote court units which impose an additional burden on the court management and drain their resources.

12. **Based on this analysis and in consultation with key stakeholders, the World Bank, identified recommendations for the improvement of the commercial justice system in priority reform focus areas in Serbia**. Implementation of those recommendations is expected to improve efficiency and quality of commercial justice in Serbia. The recommendations lay out a series of steps to implement reform activities over the short, medium, and long term (Please see chapter 7 – Identified Needs and Recommendations for more detailed recommendations):

I.	**The efficiency and quality of the delivery of commercial justice**

1. Improve backlog reduction through an impact assessment of individual backlog reduction programs.
2. Strengthen case law harmonization through enhancement of the case law software and establishment of a comprehensive case law database.
3. Further streamline enforcement cases through legislative changes and technological solutions.
4. Remove bottlenecks in bankruptcy procedures by addressing the most frequent underlying reasons for congestion in bankruptcy cases.
5. Improve mechanisms for the protection of the right to a trail within reasonable time through identifying and assessing feasibility of other options to deliver efficient and effective protection of the right to a trial within reasonable time.
6. Reexamine and enhance processing of commercial offenses through legislative reform bases on the thorough assessment.
II. **Access to justice for MSME**
1. Improve legal literacy of MSMEs through development of self-representation guides for MSMEs and awareness campaigns.
III. **Human resources**
1. Equalize caseload per judge through effective monitoring, refine the case weighting system and adjust the territorial jurisdiction of courts.
2. Strengthen HR strategic approach within the High Judicial Council through developing and implementing a human resource plan.
3. Improve training opportunities through development of a skills program and robust evaluation tools to assess impact of training on judges' performance.
4. Promote specialization of judges through identification of areas that would benefit from specialization.
5. Build capacity of judges in environmental commercial offenses through development of a training program based on the training needs assessment (TNA) and organization of regular trainings.
IV. **Infrastructure and court network**
1. Upgrade the outdated infrastructure in line with business needs through development of a comprehensive plan for the modernization of registry offices, development a plan to ensure adequate archive space and development a long-term maintenance plan.
2. Leverage modern ICT tools and e-justice through introduction of obligatory electronic communication, electronic notifications and videoconferencing.

3. Improve CC network in line with business needs through the optimization of court units.
4. Improve the energy efficiency of physical infrastructure through development and implementation of the infrastructure reform plan.

1. Background

1.1. Business Climate and Commercial Courts in Serbia

13. **One of the key factors impeding the business climate in Serbia is the inefficient judiciary.**[3] According to the Investment Climate Statement 2022, investors are deterred by a number of obstacles, including bureaucratic delays and corruption, loss-making state-owned enterprises (SOEs),[4] a large informal economy, and an inefficient judiciary. Serbia is actively taking measures to address existing challenges, particularly in the areas of anti-corruption and state-owned enterprises. Serbia, with the support of the European Commission, is in the process of developing a new Anticorruption strategy which should address these impediments. In April 2024 Serbia adopted an Action plan for the implementation of the Strategy of state ownership and management of economic entities owned by the Republic of Serbia for the period from 2021 to 2027.[5] These efforts are expected to contribute to greater economic stability.

14. **The court system is recognized as one of the biggest constraints for the business environment in Serbia.** According to the 2019 World Bank survey on Understanding Barriers to Doing Business, a sizable percentage of respondents in Serbia (31 percent) reported that the justice system has a negative impact on the business environment.[6]

15. **Lack of efficiency and independence are perceived as the biggest challenges of the judiciary in Serbia.** The World Justice Project 2022 ranks the duration of cases (unreasonable delay) as the most serious issue facing the judiciary in Serbia, followed by improper government influence.[7]

16. **The Foreign Investors Council (FIC) 2022 White Book for Serbia states that improvements in the judiciary should be among the priorities to improve investor confidence**.[8] Specifically, the specialization of judges' portfolios should be introduced, electronic communication between the parties and the court should be implemented, efficiency should be improved, among other measures.

17. **Inconsistencies in the legal framework increase the need to resort to courts for interpretations and clarification.** According to the World Bank survey from 2019 in Serbia, just over half of the respondents (52 percent) agree that the justice system is fair, unbiased, and uncorrupted.[9] Deliberations during focus group discussions and the individual interviews confirmed that in most cases, the legal framework (i.e., law on the books) is sound, but

[3] See Investment Climate Statement 2022 Executive Summary, https://www.state.gov/reports/2022-investment-climate-statements/serbia/

[4] Need for the reform is recognized by the World Bank https://www.worldbank.org/en/news/opinion/2023/11/30/reforming-serbian-state-owned-enterprises-may-unleash-growth-and-investments and OCED https://www.oecd-ilibrary.org/docserver/56a2fc2c-en.pdf?expires=1718463714&id=id&accname=guest&checksum=D37533592CAE977CF0961470F7C005AD

[5] Action plan is available at: https://privreda.gov.rs/dokumenta/propisi/strategije/akcioni-plan-za-sprovodjenje-strategije-drzavnog-vlasnistva-i-upravljanja-privrednim-subjektima-koji

[6] World Bank. 2019. "Understanding Barriers to Doing Business: Survey Results of How the Justice System Impacts the Business Climate in South East Europe."

[7] See World Justice Project Rule of Law Index 2022, https://worldjusticeproject.org/rule-of-law-index/country/2022/Serbia/Civil%20Justice

[8] See Foreign Investors Council White Book - Serbia 2022 https://fic.org.rs/wp-content/uploads/2022/11/White-Book-2022.pdf

[9] World Bank. 2019. "Understanding Barriers to Doing Business: Survey Results of How the Justice System Impacts the Business Climate in South East Europe."

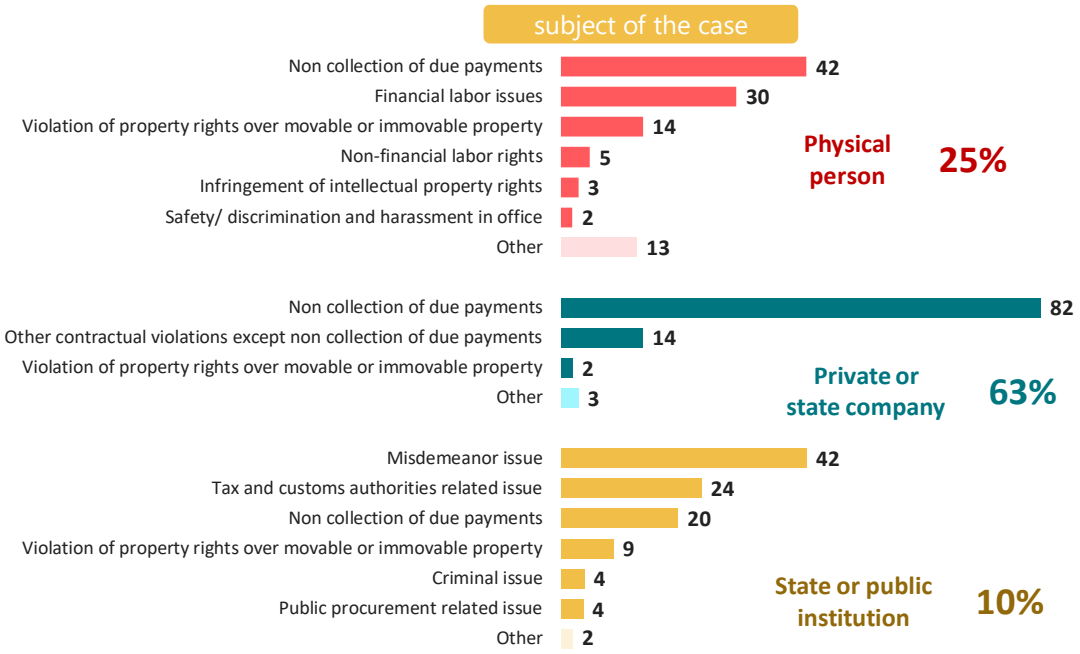
challenges arise due to inconsistencies between the laws, bylaws, and other regulations, which result in uneven interpretation and implementation of the law.

18. **Micro, small, and medium enterprises (MSMEs) are likely to be negatively affected by court performance.** Their relative power imbalance vis-à-vis other economic players makes them less able to equitably resolve disputes and uphold their rights, either in or out of court. They are less likely to have in-house legal expertise or to afford attorney and expert fees. When legal disputes affect their operations, they have less capacity to absorb the long wait times for adjudication of disputes. These vulnerabilities also make them more susceptible to vexatious litigation and abusive practices by competitors. With less of a buffer, they are more in need of an effective court system for protection.

19. **The structure of enterprises in Serbia influences their capacity to engage with the judicial system.** Micro, small and medium enterprises (SMEs) represent 99 percent of the Serbian economy, contribute 57.7 percent to the gross domestic product (GDP) , and employ over 65 percent of the workforce in the nonfinancial sector.[10] Of the total 90,111 enterprises in Serbia, 75,201 are micro (up to 9 employees), 11,689 are small (10–49 employees), 2,635 are medium (50–250 employees), and 586 are large (250 or more employees).[11]

20. **Businesses in Serbia most frequently have experience with CCs (43 percent), followed by courts of general jurisdiction in civil cases (30 percent), and misdemeanor courts (19 percent)**.[12] According to business representatives, non-collection of due payment is the predominant reason for commercial disputes (Figure 1).

Figure 1: Subject of the case



Source: World Bank. 2020. "Regional Justice Survey - Serbia."

[10] Ministry of Economy. https://privreda.gov.rs/ministarstvo/organizaciona-struktura/sektor-za-razvoj-malih-i-srednjih-preduzeca-i-preduzetnistva.
[11] Republic Statistical Office, Statistical Yearbook 2022, p. 203. https://publikacije.stat.gov.rs/G2022/Pdf/G20222055.pdf
[12] World Bank. 2020. "Regional Survey – Serbia." p. 21.

21. **In recognition of the importance of commercial justice for the business climate in Serbia, the Ministry of Justice (MoJ) requested the World Bank to carry out the Needs Assessment of commercial justice in Serbia**. The report includes sections on Organization of Commercial Justice in Serbia, Commercial Justice and Green Agenda, Efficient and Effective Delivery of Commercial Justice, Accessibility of Courts for Business, Human Resources, Infrastructure and Identified Needs and Recommendations. Annex 1 is dedicated to Detailed Efficiency Indicators, while Annex 2 includes list of Average age of computers per court.

22. **The World Bank team conducted a rapid assessment of commercial justice in Serbia using a streamlined methodology to avoid placing additional data collection burden on commercial courts**. The methodology employed included a series of interviews with key judicial stakeholders including judges and court presidents. These interviews provided qualitative insights into the functioning and challenges of commercial courts. The team reviewed existing annual statistical reports to gather quantitative data. This approach leveraged available resources without requiring courts to produce new and additional reports. Focusing on qualitative interviews and quantitative data review provided a balanced perspective, capturing both statistical trends and insights from those directly involved in the commercial justice system.

23. **The assessment deliberately excluded detailed analysis of infrastructure, information and communication technology (ICT), and human resources (HR).** Including these areas would have necessitated additional time and resources, potentially delaying the assessment. By relaying on existing data and interviews, the team avoided imposing extra demands on the commercial courts, which could have hindered their regular operations. While it did not delve into infrastructure, ICT and HR in detail, it provided insights into the current state and immediate needs of the commercial courts. Future assessments may consider a more detailed exploration of these areas to build on the findings of this rapid assessment.

1.2. Organization of Commercial Justice in Serbia

24. **The period 2010–2020 in Europe is marked by two trends in court organization.** On the one hand, there was the specialization of courts, with the main types of specialization being administrative, commercial, and labor courts, while on the other hand, the number of courts was decreasing.[13]

25. **Serbia's judicial system distinguishes between CCs and courts of general jurisdiction.** In addition to CCs, the Serbian judicial system has specialized courts for misdemeanors and administrative cases. However, CCs have the longest tradition in the judicial organization of Serbia.

26. **Serbian commercial justice is organized in a three-tier system - CCs hear first instance cases, the ACC decides on appeals against lower court decisions and the Supreme Court (SC) decides as a cassation instance.** According to the Law on Court Organization,

[13] Csuri, A. (2020) *CEPEJ: 8th Evaluation Report on European Judicial System, Eucrim, , Issue 4, pp. 299-300.* https://eucrim.eu/news/cepej-8th-evaluation-report-on-european-judicial-systems/

there are 16 CCs with specifically defined territorial jurisdiction.[14] Some CCs have court units outside their main seats, so in addition to 16 CCs, there are seven court units.[15]

27. **The number of enterprises per CC varies significantly across Serbia, from 50,585 enterprises in the territory of Belgrade CC to 1,430 enterprises in the territory of the Zajecar CC.** The number of enterprises established in the territory of the specific CC has an impact on the demand. As a consequence, such difference result in uneven workloads of CCs.

[14] CCs in Belgrade, Valjevo, Zajecar, Zrenjanin, Kraljevo, Kragujevac, Leskovac, Nis, Novi Sad, Pancevo, Pozarevac, Sombor, Sremska Mitrovica, Subotica, Uzice, and Cacak.

[15] Article 5, Law on court seats and seats of public prosecution offices, Official Gazette RS, No. 101/2013: CC in Valjevo has a court unit in Loznica and a court unit in Sabac, CC in Kraljevo has a court unit in Krusevac and a court unit in Novi Pazar, CC in Kragujevac has court unit in Jagodina, CC in Leskovac has court unit in Vranje, and CC in Pozarevac has court unit in Smederevo.

Figure 2: Map of CCs' territorial jurisdictions and number of enterprises per court

28. **First instance CCs are competent for a variety of commercial disputes.** These include commercial matters, including disputes involving business organizations, business contracts, foreign investment, foreign trade, maritime law, aeronautical law, bankruptcy, economic offenses committed by commercial legal entities, and intellectual property rights.

29. **However, not all legal disputes of commercial entities are resolved before CCs.** When only one of the parties is a business and the other is not, the courts of general civil jurisdiction decide the dispute. As an exception, CC always have jurisdiction in bankruptcy cases, even when one party is not a business.

30. **The ACC rules on appeals against CCs' decisions.** In addition, the ACC decides on the conflicts of jurisdiction and the transfer of jurisdiction of CCs, determines legal positions for the purpose of uniform application of laws under the jurisdiction of CCs, and performs other tasks specified by law. The judgments of the ACC may be subject to an appeal for revision before the SC, except for bankruptcy cases.

31. **Unlike other CCs in former Yugoslavia, CCs in Serbia have a jurisdiction over economic offenses.** Commercial offenses are quasi criminal proceedings. The Law on commercial offenses, adopted in 1977 and amended in 2005, establishes the jurisdiction of CCs for commercial offenses while specific offenses are regulated by subject matter laws relevant to specific commercial and financial operations (such as, energy, mining, prevention of money laundering, capital market, traffic, accounting, food safety, intellectual property, mergers, and acquisitions). Each specific law defines fines for commercial offenses within a range defined by the Law on commercial offenses. Fines are ranging from RSD 10,000 to RSD 3 million (approximately US$91 to US$27,400) for commercial legal entities and from RSD 2,000 to RSD 200,000 (approximately US$18 to US$1,820) for the responsible natural person. In addition to the fine, the CC may impose one or more protective measures on perpetrators of economic crimes, provided that the perpetrator has been sentenced: publication of the judgment, confiscation of objects, prohibition of a legal entity to engage in certain economic activities, and prohibition of the responsible person from performing certain duties. Since economic offenses are criminal procedures, one of the parties in the procedure is the public prosecutor. Economic offenses fall under the scope of acts that are prosecuted *ex officio*; therefore, the authority for prosecuting the perpetrators is entrusted to the public prosecutor who, after investigative actions, submits an indictment to the competent court.

32. **The competence of commercial courts in Serbia may be increased in the near future due to several legislative initiatives currently under discussion.** These reforms have the potential to significantly impact the workload and operational dynamics of the commercial courts. Two major areas of focus are the jurisdiction over natural person bankruptcies and handling of intellectual property (IP) related cases. The introduction of the Law on personal bankruptcy has been under discussion for the past few years. This law would extend the jurisdiction of commercial courts to include cases of natural person bankruptcies, which has potential to increase caseload. Judges and court staff will need specialized training to effectively manage and adjudicate personal bankruptcy cases. Furthermore, there is an ongoing discussion about transferring the competence of IP cases from the Belgrade Commercial Court to all commercial courts across the country. Spreading IP cases across all commercial courts

will distribute the workload more evenly, potentially reducing bottlenecks at the Belgrade Commercial Court. While redistribution of cases can alleviate pressure of the Belgrade court, it will require robust coordination and resource allocation to ensure all commercial courts can manage the new responsibility efficiently.

2. Commercial Justice and Green Agenda

33. **The development of the term '*environmental rule of law'* by the United Nations Environment Programme (UNEP) Governing Council Decision 27/9 in February 2013 reinvigorated the integration of the rule of law in environmental matters to reduce the violation of environmental law and achieve sustainable development**.[16] The 2019 UNEP Report recognizes the environmental rule of law as "*offering a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals … institutions [judiciary] are key drivers of sustainable development*."[17] The environmental rule of law is no longer an option but a prerequisite without which equitable economic growth, inclusive social development, and environmental sustainability are unachievable. The 2030 Agenda places justice and the environmental rule of law at the heart of development.

34. **The Green Agenda for the Western Balkans, endorsed by Serbia in 2020 at the Summit in Sofia, to align with the key elements of the European Green Deal, requires increasing the courts' capacities to deal with environmental law. [18]** The Green Agenda recognizes the need to strengthen the capacities of competent authorities of the Western Balkans countries to monitor, promote, and enforce compliance with environmental obligations. This includes ensuring administrative capacities for combating environmental crime and other serious offenses through effective environmental inspections and administrative and criminal enforcement.

35. **The judiciary is regarded as a lever for transformative change through the application of the environmental rule of law.** The judiciary contributes to the environmental rule of law by making reasoned and evidence-based decisions in environmental law cases and, consequently, compelling the executive, legislature, and private sector to apply fundamental rules.[19] For example, a recent verdict in this field was passed in September 2022 by the High Court in Belgrade, following a lawsuit filed by an NGO - The Regulatory Institute for Renewable Energy and the Environment. The Court ordered the national power utility company "Elektroprivreda Srbije" (EPS) to reduce sulfur dioxide emissions from thermal

[16] United Nations Environment Programme. 2013. "Decision 27/9: Advancing justice, governance and law for environmental sustainability."
[17] United Nations Environment Programme. 2019. *Environmental Rule of Law: First Global Report*, p. 8.
[18] For implementation of the Green Agenda for Western Balkans, the Commission prepared the Staff working document - Guidelines for the Implementation of the Green Agenda for the Western Balkans, An Economic and Investment Plan for the Western Balkans, SWD (2020) 223 final.
[19] Preston, B. J. 2016. "The Contribution of the Courts in Tackling Climate Change." *Journal of Environmental Law* 28: 11–17.

power plants due to their impact on health and the environment. The judgment is final and it is yet to be seen if it will be enforced.

36. **The role of the judiciary in ensuring compliance with environmental law is recognized in the Aarhus Convention[20], which Serbia ratified in 2009.** The convention protects every person's right to access to justice, which includes the public's right to review by a court to ensure that public authorities respect environmental law. The judiciary plays a critical role in the enhancement and interpretation of environmental law and the vindication of public interest in a healthy and secure environment.

37. **As a European Union (EU) candidate country, Serbia needs to align its legislation with the EU acquis in the area of Chapter 27 - environment and climate change – and to effectively implement it.** Chapter 27 requirements have an impact on the commercial justice in Serbia. As part of the accession negotiation process the EU highlighted[21] the necessity to work on the effective implementation and enforcement of horizontal legislation, especially the Environmental Crime[22] and Environmental Liability Directives.[23] Also, the EU stressed the importance of strengthening the capacities of the judiciary and environmental inspectorates.

38. **The new EU Environmental, Social, and Governance (ESG) supply chain compliance Directive is a significant development that is likely to impact businesses in Serbia.** The EU ESG supply chain compliance Directive aims to enforce stricter regulations on companies operating within the EU or doing business with EU entities. It focuses on ensuring that businesses adhere to environmental sustainability, social responsibility, and governance standards throughout their supply chains. Serbian businesses exporting goods to the EU will be subject to higher scrutiny regarding their compliance with ESG criteria. The Directive may necessitate changes in Serbian regulatory framework to harmonize with EU ESG standards. Implications of the Directive extend to national courts and enforcement of the rules, including adjudication of disputes related to violation of the Directive.

39. **In Serbia, CCs have jurisdiction over commercial offenses and violations of environmental legislation.** The Law on Environmental Protection[24] envisages commercial offenses and prescribes fines ranging from RSD 1.5 to 3 million.[25] In addition to the general law on environmental protection, Serbia adopted a set of specific environmental laws (i.e., Law on the Protection of Air, Law on Waste Management, Law on Noise Protection in the Environment, Law on Protection Against Ionizing Radiation and on Nuclear Safety, Law on Geological Research, Law on Agricultural Soil, Law on Fishing, Law on Water). Each of these regulations also incorporates penal provisions and establishes cases of criminal liability for commercial offenses.

40. **In this context, well-performing judges play an important role in achieving better climate outcomes and implementing the Green Agenda.** That requires judges to have

[20] United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, was adopted in 1998.
[21] EU Common Position on Chapter 27: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/27_eu_common_position.pdf.
[22] Directive 2008/99/EC.
[23] Directive 2004/35/EC.
[24] Official Gazette RS, No. 135/2004, 36/2009, 72/2009, 43/2011, 14.2016, 76/2018, 95/2018.
[25] Article 116 of the Law.

adequate capacity. Environmental law cases are multidisciplinary and require a holistic solution. The importance of the specialization of judges to ensure adequate capacity in environmental law led to the development of specialized chambers in Greece, Finland, Italy, and Spain.[26] The complexity of environmental cases was recognized in Serbia by the High Judicial Council (HJC) and the Judicial Academy (JA), which organized environmental law trainings for CC judges each year with the support of the development partners.

41. **In addition, there are a series of practices that the judicial system itself may adopt to promote the goals of the Green Agenda.** These relate to the energy efficiency of physical and ICT infrastructure and the reduction of carbon footprint by digitalizing its way of doing business (e.g., remote hearings, electronic communication).

3. Efficient and Effective Delivery of Commercial Justice

42. **Despite the low share of commercial cases in the total Serbian caseload, the significance of commercial justice remains high.** This is largely due to the critical role that commercial courts play in handling bankruptcy and liquidation cases, which are vital for maintaining a stable and conducive business climate in the country. Predictable and reliable commercial justice ensures that relevant legal and regulatory frameworks are applied consistently, and contracts are enforceable, providing businesses with the confidence to enter into agreements and plan for both short- and long-term investments. Simultaneously, the efficient and fair resolution of disputes minimizes costs and time for businesses, thereby reducing the risk. Conversely, in systems lacking these qualities, businesses may face failure while awaiting the resolution of disputes. In 2022, commercial cases made up 6 percent [27] of the total caseload. The demand for commercial justice services at first and second level increased by 27 percent from 2017 to 2021, from 112,114 to 142,426 cases. However, the demand decreased by 19 percent (26,405 cases) in 2022 compared to 2021.

[26] UNEP (United National Environment Programme). 2022. "Environmental Courts and Tribunals - 2021: A Guide for Policy Makers." p. 6. https://wedocs.unep.org/handle/20.500.11822/40309
[27] In 2022, 116,021 out of 1,808,813 received cases.

Box 1. Statistical Reports and Data Availability

This assessment uses statistical data on cases heard in the CCs and the ACC from the official website of the SC, available at https://www.vrh.sud.rs/sr-lat/izve%C5%A1taj-o-radu-suda. The analysis also includes the calculations of performance indicators such as clearance rate, disposition time, and congestion ratio in line with CEPEJ methodology. The term caseload is used to cases received in a year, while the term workload is used to describe all cases pending in a year regardless of their age.

CC cases are disaggregated as provided in the SC reports. However, the available data, although comprehensive, lack important dimensions which hamper detailed analysis. For instance, there is no disaggregation of cases deeper than the seven predefined categories, and there are no records kept on the actual average duration of cases. From 2022, the statistical data of the CCs are displayed per registry and grouped into these categories, while the data for the ACC are consistently presented per registry. Nevertheless, even at the registry level, there is insufficient data for an in-depth analysis of the case structure.

CCs seven statistical case categories:

Commercial offenses – cases concerning violations of regulations related to the commercial or financial operations of companied.

Bankruptcy cases – bankruptcy of companies conducted through liquidation or reorganization.

Enforcement cases – enforcement proceedings involving companies based on enforceable and authentic documents and proceedings for securing claims.

Orders for payment – claims which pertain to a due monetary obligation, proven by an authentic document.

Litigious cases – cases involving a dispute among companies.

Non-litigious cases - cases processed by a court which does not involve the determination of a dispute among parties.

Trial within reasonable time cases – cases in which claimants seek legal protection and redress due to a violation of a right to a fair trial within a reasonable time as guaranteed by Article 6 of the European Convention on Human Rights (ECHR).

43. **The main drivers of the increase in demand from 2017 to 2021 and the decrease in 2022 were changes in the numbers of commercial offenses and trial within reasonable time cases.** Specifically, commercial offenses increased from 23,165 cases received in 2017 to 27,376 in 2021, which decreased to 22,841 received cases in 2022. Concurrently, trial within reasonable time received cases increased from 8,549 in 2017 to 27,732 in 2021 and dropped to 17,875 in 2022. The influence of other case types on overall figures was much lower, apart from an increase in litigious cases in 2021 and their corresponding decrease in 2022. Namely, 14,695 litigious cases were received in 2020, 22,820 in 2021, and 12,222 in 2022. The reasons for the said variations in litigious cases remained unknown in this analysis.

44. **Over the analyzed period of six years, the number of incoming cases at the ACC increased by 63 percent, while the number of cases filed in the CCs reduced to values lower than those in 2017 after several years of increases.** As the increased number of trials within a reasonable time for bankruptcy appellate cases dictated the overall trend in the ACC,[28] in the CCs it was commercial offenses, enforcement cases, trial within reasonable time cases, and litigious cases. CCs received 19 percent more cases in 2021 compared to 2017; however, in 2022, the number of incoming cases reduced to values 4 percent lower than those in 2017.

[28] Additionally, in 2021, the ACC reported a 93 percent rise in the appellate litigious cases over the previous year, and in 2022, a 25 percent fall.

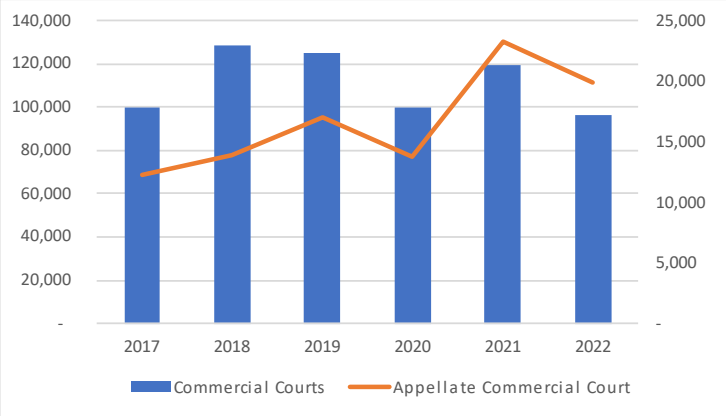
45. **Caseloads, workloads, and the dispositions of CCs are unevenly distributed across the CCs' network and correlate to economic activity.** In 2022, Belgrade's CC received and resolved about 40 percent of the first instance total, followed by other regional centers, the CC in Novi Sad and Nis with about 8 percent of received and resolved cases each.[29] The shares of other CCs ranged from 2 to 7 percent due to their smaller territorial scope and a persistent decline in economic activity in those parts of Serbia.

Box 2: How heavy is the commercial caseload in Serbia?

In 2022, CCs received 96,117 cases, compared to 119,112 cases received in 2021 and 99,903 cases in 2017. Per case type, 37,994 enforcements were received along with 17,875 trials within reasonable time cases, 22,841 commercial offenses, 12,222 litigious cases, 3,872 non-litigious cases, 721 bankruptcy cases, and 592 orders for payment. Most of this caseload was received by the CC in Belgrade - 38,054, followed by the CC in Nis and Novi Sad with 7,717 and 6,984 received cases, respectively.

In parallel, the ACC received 12,211 cases in 2017, which jumped to 23,314 in 2021 due to the receipt of 12,053 appellate litigious cases and 8,838 trials within a reasonable time for bankruptcy appellate cases. In 2022, the number of received cases in the ACC decreased to 19,904.

Figure 3: Incoming cases in CCs and the ACC from 2017 to 2022



Source: Annual SC Reports 2017–2022.

46. **The number of disposed cases in both the CCs and the ACC increased and mainly followed the caseloads, indicating that judges resolved as many cases as they received or slightly more.** The number of dispositions of the CCs increased by 2 percent and those of the ACC by 80 percent, from 2017 to 2022.[30] However, there were strong variations during this period, such as a 12 percent increase in CCs' dispositions reported from 2020 to 2021, from 108,837 to 122,380 cases. Particular imbalances primarily related to the fluctuations of the number of judges or sudden, one-time increases or decreases in the caseload complicate this general picture, as elaborated further in Annex 1.

47. **The CCs produced favorable clearance rates each year (with a slight decrease in 2018), while the ACC encountered difficulties in 2021.** Only in 2018 did the CCs' clearance rate slide to 99 percent, and this was due to the sudden surge in commercial offenses and trial

[29] In 2022, the CC in Belgrade received 38,054 cases and resolved 43,640 cases, CC in Novi Sad received 6,984 cases and resolved 8,489 cases, while the CC in Nis received 7,717 cases and resolved 8,073 cases.
[30] From 12,470 to 22,500 resolved cases in the ACC, and from 104,080 to 106,629 resolved cases in the CCs.

within reasonable time cases. Clearance rates in CCs were lowest in litigious cases, but only slightly below 100 percent, thus not creating a significant backlog. Individually per CC, clearance rates were mostly favorable with only sporadic deviations from this trend such as 89 percent reported by the CC in Leskovac in 2018. In the ACC, however, clearance rates indicating strong performance for previous years decreased to 82 percent in 2021 due to the increased demand. In 2022, the ACC was able to cope and improved the clearance rate to 113 percent.

48. **The unresolved stock of the ACC increased by 2 percent from 2017 to 2022, while it decreased by 67 percent for the CCs.** In 2021, a surge in unresolved cases in the ACC was reported[31], predominantly due to incoming litigious cases. The unresolved stocks of litigious cases and trial within reasonable time cases were the only ones to increase in the CCs from 2017 to 2021, by 48 percent and 61 percent, respectively. At the end of 2022, the number of unresolved cases of all types decreased significantly compared to the previous year's results. Notably, the only sizeable pending stock of 9,597 cases remained in Belgrade.

49. **While the congestion ratio[32] indicator suggests that overall, there is no significant congestion in the CCs or the ACC, bankruptcy cases are facing serious congestion.**[33] The CCs maintained their congestion ratio below 1.00 with a declining trend. The ACC's values were slightly higher throughout the observed period but remained within an acceptable range. After a rising trend noted in 2020 and 2021, the congestion ratio of the ACC fell to an optimal value of 0.38 in 2022. In the ACC, congestion was the highest in litigious cases, but still relatively low - 0.74 in 2022, while in the CCs, bankruptcy cases caused the most congestion - mostly above 2.00 over the six years. Although the CCs have managed to gradually decrease the number of unresolved bankruptcy cases, the problem persists with cases 'stuck' in the system, likely due to various impediments that hinder the effectiveness of the bankruptcy procedure.

50. **Disposition time[34] reveals that both the CCs' and the ACC's theoretical time to disposition is well below one year and declining..** The overall disposition time of CCs has decreased significantly and rather consistently over the past six years, in general, from 193 days in 2017 to 62 days in 2022. The disposition time of the ACC also decreased during that period, from 244 to 138 days. However, pockets of longer-lasting cases remained, such as 270 days for litigious cases in the ACC and two to three years for bankruptcy cases in the CCs.

51. **There is still room for improvement regarding backlogged cases[35].** In 2022, 96 percent of the backlogged cases in the ACC were litigious appellate cases. In the first instance, by far, the largest share of backlogged cases consisted of litigious and bankruptcy cases with 1,284 and 1,040 cases, respectively. Moreover, 65 percent of the bankruptcy cases unresolved at the end of 2022 were considered as backlogged while 16 percent of litigious

[31] By 61 percent from 2020 to 2021, from 6,911 to 11,112 unresolved cases.
[32] Calculated from the number of unresolved cases at the end of one year divided by the number of resolved cases during the same year.
[33] An ideal congestion ratio would be under 0.50, meaning that the pending stock is far lower than what the courts are disposing of.
[34] Calculated as (pending cases / resolved cases) × 365. It gives a theoretical time to disposition considering the current pending stock.
[35] In Serbia, cases are considered as 'old' or backlogged if pending for more than three years.

cases fell into the same category. A year into the new cycle of the National Backlog Reduction Programme 2021–2025, some progress has been made to reduce the backlog but there remains much to be done.[36]

52. **Declining appeal rates in the CCs from 2017 to 2021 may indicate an improvement in legal certainty and case law harmonization; however, in 2022 they started increasing again.** From 2017 to 2022, appeal rates varied from 3 to 7 percent in the ACC and from 10 to 18 percent in the CCs. The parties appealed the most in litigious cases and trial within reasonable time cases. While in litigious cases, the appeal rate decreased from 2017 to 2021 from 40 percent to 29 percent, it increased again to 49 percent in 2022. In trials within reasonable time cases, it increased from 19 percent to 46 percent from 2017 to 2022.

53. **The ACC's department for case law harmonization plays a crucial role in achieving uniformity among CCs.** It oversees judicial practice, ensures the appropriate application of adopted legal opinions, and maintains consistency throughout the legal system. Still, improvements could be made in the education of judges, the utilization of the case law database, and the implementation of a structured process to harmonize case law in complex areas. These enhancements would improve the quality of work for judges at both instances.

3.1. Bankruptcy cases

54. **Serbian bankruptcy proceedings remain complex, slow, and cumbersome**. As demonstrated by the congestion ratio and disposition time indicator below, despite the relatively low number of cases in the system there are far too many bankruptcy cases 'stuck' in courts for years or even decades (see Box 3).

55. **Although the Serbian bankruptcy system has undergone a range of reforms since 2004, many challenges have persisted.** The Law on Bankruptcy Procedure adopted in 2004[37] tackled major areas of concern by introducing strict deadlines, bankruptcy trustees, and priority rankings for secured creditors. It inaugurated two main procedural options (as in comparator jurisdictions): liquidation and reorganization of enterprises. In 2009, a brand-new Bankruptcy Act was adopted [38] to incentivize the timely initiation of the proceedings, improve the quality of the proceedings, increase debt recovery, lower costs, and reduce the duration of proceedings. It was amended multiple times since - most recently in 2018. Although legal professionals and courts reported improvements in the bankruptcy system, many problems persist. Additionally, the interviewed judges reported that the most challenging cases have now already gone through the system in the decade and a half following the privatization of SOEs in Serbia in early 2000s. However, this does not diminish the importance of the unresolved cases and the effort still required to finally resolve them.

[36] In line with the National Backlog Reduction Programme, each court is obliged to adopt an individual programme tailored to its specific situation.
[37] Official Gazette RS No. 84/2004 and 85/2005.
[38] Official Gazette RS No. 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018 and 95/2018.

Box 3: The longest ongoing bankruptcy proceeding in Serbia

The bankruptcy proceedings of the construction company Rad and the company Rad International have extended for over 22 years. The procedure was opened on March 13, 2001, and has not yet been resolved. On a more positive note, some of the most complex cases have managed to come to an end, such as the bankruptcy of Agrobank which was completed in early 2023 after 12 years.

Over the analyzed period, only in 2019 and 2022 did the calculated disposition time for bankruptcy cases fall under two years (683 and 677 days, respectively). However, it overall decreased by 204 days, from 881 to 677 days. In comparison to 2017, in 2022, the number of unresolved bankruptcy cases 5–10 years old decreased by 52 percent, but the category of cases older than 10 years increased almost fivefold—indicating these are the cases that are 'stuck' in the system and merely getting older.

56. **The ability of the courts to come to a timely and satisfactory resolution is limited due to external factors.** In some cases, this may just be the lack of a timely response from other state bodies to requests by the courts for information they need. In other cases, unresolved land issues hamper the maximization of the value of assets and recoveries of firms by creditors. Some cases are, in fact, impossible to resolve due to legal dead ends (e.g., succession issues concerning ex-Yugoslav firms). Over time, some assets become undesirable to prospective buyers, which hampers the court from carrying out the bankruptcy proceedings and closing the case. Reportedly, due to the complexity of the method, courts rarely resort to converting creditors' claims into equity shares, which would help in resolving a case. Additional caseload derives from litigious cases due to the attraction of jurisdiction in favor of the court conducting the bankruptcy proceedings. Namely, any dispute in which the debtor is the party, even if already in progress in a general jurisdiction court, is transferred to CCs once the bankruptcy procedure is opened.[39] The interviewed CCs unanimously acknowledge these impediments but feel constrained and perceive these problems as unsolvable. Addressing this could involve establishing a government-sponsored coordination body comprising representatives from all stakeholders. This body would identify specific problems and propose, promote, and implement solutions.

57. **International Finance Corporation (IFC) also concluded in its 2022 analysis that external factors drive the inefficiency in bankruptcy cases in Serbia thus causing delays.[40]** These factors include the inefficiency or untimeliness of other authorities[41] (and creditor committees), poor legal solutions or frequent changes in the law, procedural actions and deadlines, problems with assets and buyers, late initiation of bankruptcy proceedings, long-lasting connected litigious procedures[42], etc.

One of the issues identified by Foreign Investors Council (FIC) in the 2023 White Book is that in some procedural situations, it is not clear whether a creditor who did not initiate arbitration before the opening of bankruptcy proceedings can determine the merits of

[39] There are some exceptions to this rule such as labor cases.
[40] See more in the analysis "Trial Within Reasonable Time in Bankruptcy Proceedings: Analysis and Recommendations", International Finance Corporation, 2022.
[41] Republic Geodetic Authority, Agency for Restitution, and Bankruptcy Supervision Agency.
[42] It is recommended in the IFC analysis that courts should decide on all disputed issues arising from bankruptcy proceedings as a priority to minimize waiting times.

the claim through arbitration. To eliminate uncertainties, FIC recommended clarifying the relationship between bankruptcy and arbitration proceedings in the Bankruptcy Law.[43]

3.2. Trial within reasonable time cases

58. **CCs are flooded with a substantive caseload of claims for the protection of the right to a trial within reasonable time, though many factors causing delays are beyond their control.** Besides the weight of the caseload, another burdening factor for the CCs is that a substantial portion of their budget is being paid out to the claimants thus causing frequent blocking of court accounts.[44]

59. **The Law on the Protection of the Right to a Trial Within Reasonable Time was adopted in Serbia in 2015 as a response to massive delays in case resolution and a substantial backlog of cases among courts.** It was aimed to prevent and reduce delays in case processing[45] that possibly represent a violation of Article 6 of the ECHR. The Law allows parties to file a complaint with the court president if they believe their case is taking too long to resolve. The Law also provides for a one-time monetary compensation[46] for material damages and immaterial damages from 300 to 3,000 EUR.

60. **Almost immediately after its adoption in 2015, the Law on Protection of the Right to a Trial Within Reasonable Time became counterproductive.** In total, 19 percent of the received cases and 18 percent of the resolved cases in CCs in 2022 became so-called trials within a reasonable time stemming from claims related to the alleged violation of the right to a fair trial within reasonable time (see Box 4). The Law did not lead to the expediting of the procedures; rather, it burdened the courts with new claims and turned into a means for aggravated parties claiming compensation. Before the passing of the 2023 amendments to the Law, it was reportedly often misused by some of the parties and attorneys to collect compensation in long-lasting bankruptcy cases in which the resolution depends on external factors, rather than court actions.

[43] See FIC. 2023. *White Book*. p. 101, https://fic.org.rs/wp-content/uploads/2023/11/White-Book-2023.pdf
[44] IFC found that just one case of prolonged bankruptcy of a state-owned enterprise under the jurisdiction of the CC in Nis, with over thousand creditors, could cost the taxpayers over nineteen million euros if all claims for the protection of right to a fair trial within reasonable time are upheld. See "Trial Within Reasonable Time in Bankruptcy Proceedings: Analysis and Recommendations", International Finance Corporation, 2022., p.119.
[45] A backlogged case is in Serbia considered a case that is pending for three years or longer. However, the violation of the right to a fair trial within reasonable time is assessed on a case-to-case basis.
[46] Until the 2022 ACC opinion and the 2023 amendments to the Law, claimants could seek for multiple monetary compensations.

Box 4: Protection to a trial within reasonable time proceedings in numbers

Of the total incoming cases in CCs, the share of cases related to the protection of the right to trial within reasonable time increased from 9 percent in 2017 to 21–-25 percent in the following four years, reaching 19 percent in 2022. In absolute numbers, 8,549 cases were received in 2017 and 17,875 in 2022, while the demand peaked in 2019 with 31,616 received cases. At the end of 2022, 912 cases were left unresolved compared to 19,347 resolved cases, and a calculated disposition time of 17 days.

In the ACC, the increased inflow of trials within a reasonable time for bankruptcy appellate cases dictated the overall trend. Each year, except for 2020 and 2022, this case type doubled in incoming cases. Finally, 8,316 cases were received in 2022, constituting 42 percent of the ACC total. There were significantly fewer or none of the other trials within reasonable time case types (litigious, enforcement, and so on).

Since the processing of trial within reasonable time cases is regulated by strict time limits, these cases are prioritized by the CCs and the ACC and turned over rather quickly, leaving very few of them unresolved at the end of the year.

61. **The number of requests has declined since 2022 due to an ACC opinion that each party may submit a claim only once for a particular case; accompanying amendments to the Law on Protection of the Right to a Trial Within a Reasonable Time followed in 2023.**[47] This means that once the procedure has been completed (and the compensation paid), there is no repetition of a claim.[48] However, the effects of this still need to be measured in the upcoming period through targeted data collection in the CCs, followed by an analysis to be carried out by the MoJ.

62. **This mechanism introduced in Serbia is based on similar reforms in Italy[49] and some other European countries.** In Italy, rather than speeding up court proceedings and lowering the number of applications before the European Court of Human Rights (ECtHR), it resulted in an increase in caseloads of already burdened domestic courts, late payment of compensations, and an increase in the length of proceedings.[50] The Italian style of reforms appears to work well in systems that, in general, function well and where the violation of the right to trial within reasonable time is an exceptional circumstance.[51] In Croatia, Romania, and Slovenia similar mechanisms have yielded mixed results since the expected reduction in the number of backlogged cases did not occur.

63. **Comparative examples confirm that remedies such as a motion for setting a deadline or a supervisory appeal appear to work better than pecuniary compensation.** The Serbian authorities could use Recommendation (2010)3 of the Committee of Ministers of the Council of Europe to Member States, accompanied by a Guide to Good Practice,[52] as an exceptional source of information on the fundamental legal principles that apply to effective

[47] Official Gazette, No. 40/2015, 92/2023.
[48] In October 2023, the National Assembly adopted amendments to the Law on Protection of the Right to a Trial Within a Reasonable Time with the aim to prevent numerous compensations in the same case (amendments to the article 13 of the Law). Furthermore, the amendments introduced limitation of the Law application. The Law does not apply to bankruptcy and enforcement proceedings in which the debtor is company with major state capital.
[49] IMF Working Paper No. 14/32, Judicial System Reform in Italy—A Key to Growth, Gianluca Esposito, Sergi Lanau, and Sebastiaan Pompe, February 2014.
[50] Interim Resolution CM/ResDH(2009)42.
[51] See The Right to Trial within a Reasonable Time and Short-Term Reform of the European Court of Human Rights, Roundtable organized by the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe, 2009.
[52] Recommendation CM/Rec (2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings (adopted by the Committee of Ministers on 24 February 2010) and the Guide to Good Practice accompanying this recommendation.

remedies for the excessive length of proceedings and examples of good practices. An example of good practice form Austria is available in Box 5. Following a targeted analysis carried out by the MoJ, the current legislative solution should be revised in line with the European best practices.

Box 5: Example of good practice of effective remedies for the excessive length of proceedings

In Austria, Section 91 of the Courts Act provides for a remedy to expedite civil proceedings, as follows:

"(1) If a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step; unless sub-section (2) of this section applies, the court is required to submit the request to the superior court, together with its comments, forthwith.

(2) If the court takes all the procedural steps specified in the request within four weeks of receipt, and so informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request.

(3) The request referred to in sub-section (1) shall be determined with special expedition by a Chamber of the superior court consisting of three professional judges, one of whom shall preside; if the court has not been dilatory, the request shall be dismissed. This decision is not subject to appeal."

In the case of *Holzinger v. Austria*, the court found this remedy to be effective. It has since reiterated this finding in other cases against Austria.

3.3. Commercial Offenses - Criminal Law in Commercial Courts

64. **Commercial offenses, as criminal cases processed by CCs, made up roughly 20–25 percent of the CCs' caseloads, workloads, and dispositions, resulting in absorbing a disproportionate amount of resources compared to what is at stake.** The Serbian commercial offenses model, inherited from ex-Yugoslavia, has been abandoned by Slovenia and Croatia, which transferred these types of cases to other courts (e.g., Misdemeanor Courts) or even non-judicial institutions (e.g., state agencies). While in those countries, pursuit of offenders is in the hands of authorized complainants such as a Business Register Agency, the cases in Serbia are still handled by prosecutors. This is problematic because specialized commercial judges, prosecutors and jurors are all substantially engaged in simple matters rather than attending to complex cases.

65. **Most commercial offenses are not serious offenses but, according to the 1977 Law on Commercial Offenses,[53] they are nevertheless processed before a jury consisting of a professional judge and two jurors.** The commercial offenses system has not been reformed significantly over the years; in fact, it was last amended almost 20 years ago. Reportedly, most of these cases are complaints about commercial offenses against legal entities that did not submit annual financial statements or statements of inactivity in line with the Accounting Act.[54]

66. **By comparison, eight-year imprisonment may be decided by a single judge in Serbia, but for a fine for a commercial offense, a jury is needed.** In first instance criminal cases in Basic Courts, a single judge decides on criminal offenses for which a fine or a prison sentence of up to eight years is prescribed. In commercial offenses, fines range from RSD

[53] Official Gazette No. 4/77, 36/77 - correction, 14/85, 10/86 (consolidated text), 74/87, 57/89 i 3/90 and 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 i 64/2001 and 101/2005.
[54] Official Gazette No. 73/19 and 44/21 - other law.

10,000 (approximately US$91) to RSD 3 million (approximately US$27,400) for legal entities and RSD 2,000 (approximately US$18) to RSD 200,000 (approximately US$1,820) for responsible persons in legal entities.[55]

67. **The processing of commercial offenses could be improved by modernizing the current legislation to redirect available resources to more pressing issues, such as litigious cases or bankruptcy.** The jurisdiction of CCs over commercial offenses should be revised in line with comparator jurisdictions to identify possibilities for legislative amendments that would alleviate the burden of the CCs and the prosecutors. As the jury trial system seems to be outdated, eliminating it by amending the governing law should be one of the first steps. The entire penal law system should be reformed to avoid partial solutions. Commercial offenses should be redefined in line with the reform of misdemeanors and criminal offenses.

Box 6: Amendments to the Accounting Act - An unplanned onslaught on the commercial justice system

As of 2015, the Accounting Act requires the Business Register Agency to submit complaints about commercial offenses against all legal entities that did not submit annual financial statements or statements of inactivity. This led to the caseload of commercial offenses increasing fivefold the following year, to 14,063 received cases, and peaking in 2018 at 30,714 cases. The figures have decreased slightly since but still range from 23,000 to 27,000 received cases each year. These cases posed a burden not only to courts but also to assigned public prosecutors. Over the first three years, CCs could not manage the new caseload, but this changed as of 2019 once commercial offenses became one of the main drivers of their productivity.

3.4. Enforcement Cases - Still Occupying the Courts

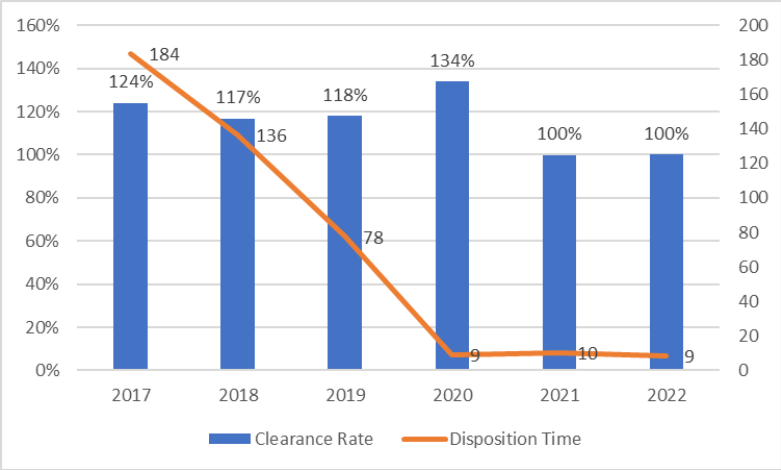
68. **The lack of effective enforcement is one of the biggest challenges for the Serbian court system, as the World Bank Serbia Functional Reviews concluded both in 2014 and 2021.**[56] In 2013, Serbian courts were flooded with backlogged enforcement cases, mostly concerning unpaid utility bills. Over 70 percent of pending cases in CCs in 2013 were enforcement cases. The introduction of private bailiffs in 2012 reduced courts' caseloads, workloads, and dispositions by redirecting a significant portion of the cases to private bailiffs. In 2015, a new Law on Enforcement and Security[57] was adopted to increase procedural efficiency, address the number of cases still in the courts, and provide for a two-instance appeal system. The 2020 Amendments to the Law introduced new measures to tighten efficiency and introduce additional safeguards (limited execution against salaries and pensions, prevention of executions on homes in case of claims worth less than EUR 5,000), reduce the costs of executions to parties, and so on.[58]

69. **Despite the introduction of private bailiffs, a notable portion of the enforcement cases remained in the CCs.** In 2022, 40 percent of the received cases in CCs were enforcement cases, a reduction of 3 percentage points from 2017. However, increasing clearance rates consistently meeting or exceeding 100 percent and decreasing disposition times indicate no difficulties in CCs handling these cases. The clearance rates ranged from 100 percent in 2021

[55] Article 18, Law on Commercial Offenses.
[56] Effective Enforcement sections, p. 97. of the 2014 study and p. 80 of the 2021 study.
[57] Official Gazette RS No. 106/2015, 106/2016, 113/2017, 54/2019 i 9/2020.
[58] More on enforcement reform is available in the World Bank report 2021 Serbia Judicial Functional Review available at https://www.mdtfjss.org.rs/en/mdtf_activities/2022/2021-serbian-judicial-functional-review-final-report.

and 2022 to 134 percent[59] in 2020. Disposition time decreased from 184 days in 2017 to 9 days in 2022.

Figure 4: Clearance Rates and Disposition Times of CCs in Enforcement Cases from 2017 to 2022



Source: Annual SC Reports 2017–2022.and WB Calculations

70. **Although the courts have been relieved of a significant number of cases by transferring them to private bailiffs, it is hard to estimate if enforcement has actually improved overall.** As stated by the 2021 Serbia Judicial Functional Review, the lack of genuinely effective enforcement, particularly in large courts, remained one of the biggest challenges of the Serbian judicial system despite the reforms. Furthermore, the Functional Review indicated that there were insufficient data to conclude that overall private bailiffs were doing an effective and/or reasonably priced job of enforcing cases.[60]

71. **A more detailed overview of the efficiency and effectiveness of commercial justice in Serbia is available in Annex 1.**

4. Accessibility of Courts for Business - Lack of Access Generates Unresolved Legal Problems

4.1. Equal Treatment and Fairness of the Justice System

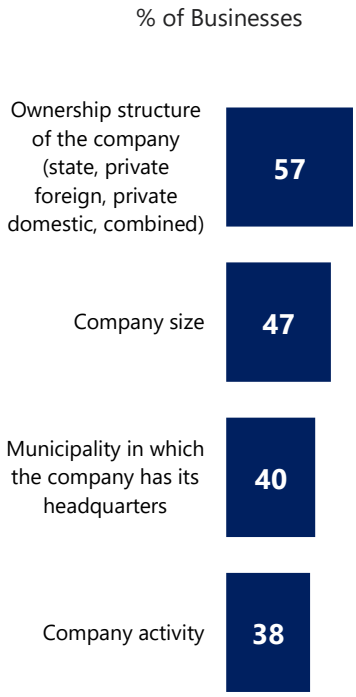
72. **Many businesses in Serbia believe that the justice system does not treat them equally.**[61] While a significant portion of businesses in Serbia express concerns about unequal treatment by the justice system based on ownership structure, company size, location, and activity, businesses that had direct experience with courts have more positive perception of fairness.

73. **Many businesses feel that the justice system discriminates against them based on different factors.** Almost 60 percent reported that the justice system discriminates against businesses based on their ownership structure, and nearly half of the businesses cite the same for the size of the company. This could relate to disparities in legal resources or the perceived

[59] Most likely connected to legislative amendments and dismissal of dormant cases.
[60] Effective Enforcement section, available at https://www.mdtfjss.org.rs/sjfr_2021/en
[61] World Bank. 2020. “Regional Justice Survey - Serbia.” p. 145.

ability of larger companies to influence legal outcomes. Additionally, 40 percent state that the justice system treats them unequally based on the municipality of the company's headquarters and company activity. This suggests concerns about regional biases or regulatory interpretations based on industry sectors.

Figure 5: Reported grounds of discrimination



Source: World Bank. 2020. "Regional Justice Survey - Serbia."

74. **Direct experience with courts positively influences the business perception of the fairness of the justice system.** Business representatives evaluate the fairness in their own cases more positively than the fairness of the judiciary in general. More than half of businesses believe the justice system in Serbia is fair, while one-third cite the opposite. However, when it comes to fairness in their case, 85 percent of companies that participated in a court case claim that they had a fair trial.

4.2. Affordability of Justice

75. **Affordable access to justice is essential for maintaining a level playing field among businesses**. When legal costs are disproportionately high, larger enterprises with more financial resources may gain an advantage over smaller competitors, potentially stifling innovation and market diversity.

76. **Stakeholders report that access to justice for businesses is inadequate, particularly for MSMEs.** Businesses often face substantial costs when engaging with the legal system. Due to their size, MSMEs are particularly constrained by an inefficient judicial system as their economic strength is insufficient to ensure an equal opportunity to protect their rights vis-à-vis larger market players. MSMEs are frequently constrained by a lack of in-house expertise and the inability to afford attorney fees and other related expenses. They are also more likely to

suffer from long wait times for resolution of cases. MSMEs with assets 'locked' in long-lasting court disputes are often liquidated before the court case is adjudicated.

77. **The cost of court proceedings is high, and almost 40 percent of businesses perceive courts as financially inaccessible.** On average, the cost of proceedings for businesses of EUR 2,293, is four times higher than for citizens.[62] Most costs are related to court costs, including taxes (61 percent) and lawyers' fees (26 percent).[63] Lawyers' fees are important for business since in court proceedings more than 80 percent of businesses were represented by a privately hired lawyer.

78. **According to the World Justice Project, while dispute resolution time is the most pressing issue facing the Serbian judiciary, court fees and attorney fees also present significant challenges to the judicial system.** Together, these factors impede individuals' and businesses' access to the courts. According to the World Justice Project Rule of Law Index 2023, Serbia scores 0.57 out of 1 on the accessibility and affordability of civil justice, while regional average is 0.59.[64]

Figure 6: Accessibility and affordability of civil justice

Source: World Justice Project, 2023.

79. **Alternative Dispute Resolution (ADR) provides an imperfect alternative to filing in court.** According to the World Justice Project, inefficient ADR methods are a serious problem facing the Serbian judiciary. Serbia scores 0.61 out of 1 for the accessibility, impartiality, and effectiveness of ADR mechanisms, which is lower than the regional and global averages of 0.66.[65]

4.3. Access to Information and Legal Literacy

80. **An easy access to legal information enables businesses to proactively manage legal risks and compliance obligations**. Uncertainty or misinformation about legal requirements can lead to inadvertent legal violations, regulatory penalties, or reputation damage.

81. **Firms can self-represent in Serbian courts, but most firms choose to hire an attorney to represent them.** Firms report hiring attorneys mainly because the relevant legal expertise cannot be found among their employees.

[62] Idem, p. 37.
[63] Idem, p. 38.
[64] See Rule of Law Index 2023, https://worldjusticeproject.org/rule-of-law-index/country/2023/Serbia/Civil%20Justice/
[65] See Rule of Law Index 2023,

82. **To increase access to justice for MSMEs that cannot afford attorneys, guides for navigating the legal systems could be developed.**[66] The availability of various guides for MSMEs is a good practice. Such guide can help MSMEs better understand court processes and gain the basic knowledge necessary for self-representation in courts. The guides provide answers to questions the MSMEs might have before deciding whether to litigate and how to navigate through the court process as a plaintiff or if they are being sued.

5. Human Resources

83. **The Human Resource Strategy of the Judiciary for 2022–2026 identifies the need for reassessing the organization of the commercial justice system and the number of judges in CCs due to its relevance for economic development**.

5.1. Human Resource Management

84. **The requirements for the appointment of CC judges are higher than for misdemeanor court and basic court judges.**[67] General and special conditions for the appointment of judges are prescribed by the Law on Judges. For a judge of the CC, six years of experience in the legal profession, acquired after passing the bar exam, are required.[68] This work experience requirement is the same as for judges of the higher courts and the Appellate Misdemeanor Court, indicating that these judges are expected to have greater expertise than judges of the other first instance courts.

85. **The HJC has a central role in the process of appointing judges.** The latest amendments to the Constitution, made in February 2022, removed the role of the Parliament from the process of appointment and dismissal of judges, with the aim to strengthen the independence of the judiciary. In the 2015–2020 composition of the HJC, one of the members was a judge of the ACC. The presence of CC judges in the HJC is important for the administration of commercial justice and for considering their specifics in policy development and management of resources.

86. **The number of judges remained stable between 2017 and 2022 across CCs except in the Belgrade CC.** According to the Law on Judges, the number of judges for each court is determined by the HJC. The total number of judges in the CCs was 188 in 2017, while in 2021, the number of judges increased to 203. Between 2017 and 2021, the number of judges in the Belgrade CC increased by over 20 percent—from 42 in 2017 to 52 in 2022.

[66] One such guide was developed by the World Bank under the Multi Donor Trust Fund for Justice Sector Support in Serbia - Phase 3 (P181302) - Guide for MSMEs on commercial offenses and misdemeanors is available at: https://www.mdtfjss.org.rs/en/mdtf_activities/2023/increasing-legal-literacy-of-micro-small-and-medium-sized-enterprises-in-serbia

[67] The structure of commercial courts in most countries is a mix of professional and lay judges who are practitioners in business. More information are available in Improving Commercial Case Management in the Federation of Bosnia and Herzegovina, (2016) World Bank, p. 32. See: https://documents1.worldbank.org/curated/en/736251485261261184/pdf/112223-WP-P158166-PUBLIC.pdf

[68] Article 44 Law on judges, Official Gazette No. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012, 101/2013, 111/2014, 117/2014, 40/2015, 63/2015, 106/2015, 63/2016, 47/2017 and 76/2021.

87. **More than 30 percent of all CC judges are appointed in the Belgrade CC.** A total of 10 out of 16 CCs have fewer than 10 judges, which prevents specialization and the creation of specialized panels in these small courts.

Table 1: Number of judges in CC 2017–2021

Court	2017	2018	2019	2020	2021	2022
Appellate CC	34	34	31	34	34	35
CC in Belgrade	42	40	41	50	51	52
CC in Valjevo	6	7	7	8	7	7
CC in Zajecar	4	4	5	6	6	6
CC in Zrenjanin	5	5	5	6	5	5
CC in Kraljevo	7	7	7	8	8	10
CC in Kragujevac	9	11	11	10	9	10
CC in Leskovac	9	4	8	10	9	10
CC in Nis	13	12	12	11	12	11
CC in Novi Sad	18	17	16	18	17	16
CC in Pancevo	6	6	6	6	6	6
CC in Pozarevac	5	5	5	6	6	6
CC in Sombor	5	5	5	5	5	6
CC in Sremska Mitrovica	8	8	7	8	7	7
CC in Subotica	5	5	5	5	6	5
CC in Uzice	6	5	6	6	6	6
CC in Cacak	6	6	6	5	5	5

88. **The number of judges is sufficient considering the size and the structure of the caseload.** It is not entirely clear how the HJC decides on the number of judges in individual courts, given that there is no publicly available information about the methodology for determining the required number of judges. The Law on Judges stipulates that the HJC reviews the required number of judges every five years, based on the annual influx of cases. Before the expiry of that period, the HJC may review the decision on the number of judges on its own initiative or on the initiative of the president of the court, the president of the immediate higher court, the president of the SC, or the minister of justice.[69]

89. **In 2019, over 50 percent of judges were older than 50 years, indicating a significant aging trend within the judiciary.[70]** This demographic shift is also relevant for commercial courts, where generation turnover raises concerns regarding the skills of recently appointed judges. By proactively developing and implementing a human resource plan that will include skills development for newly appointed commercial judges, recruitment strategies, and knowledge transfer, the High Judicial Council can strengthen the capabilities of commercial courts, enhance the quality of judicial decision-making, and ensure the sustainability of the judiciary in the face of demographic changes. This strategic approach is essential for

[69] Article 10 Law on Judges, Official Gazette RS, no. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012, 101/2013, 111/2014, 117/2014, 40/2015, 63/2015, 106/2015, 63/2016, 47/2017 and 76/2021.
[70] 2021 Serbian Judicial Functional Review, World Bank, p. 261. See: https://www.mdtfjss.org.rs/archive/file/2021_Serbia_Judicial_Functional_Review-_Full_Report_-_EN.pdf

maintaining a competent and effective judiciary that meets the evolving demands of the legal and business environment.

5.2. Training of Judges

90. **The continuing education courses offered through the JA include commercial law as one of nine areas of law in which it organizes training.** According to the annual program of the JA, commercial law trainings are split into six subjects: commercial offenses and criminal liability of legal entities, civil procedure in commercial justice, bankruptcy, contracts in commerce, environmental law, and open issues in specialist areas.

91. **In 2022, there was a notable decrease in the number of training sessions and workshops that were organized for commercial courts judges**. In 2022, judges of the CCs participated in 4 trainings and workshops organized by the JA[71] compared to 32 trainings organized in 2019.[72] In 2022 all trainings were organized as one-day events and topic was violation of the right to a trial within a reasonable time in bankruptcy proceedings.

92. **Significant change in 2022 was the format of these training sessions**. Unlike the varied formats in previous years, all training events in 2022 were streamlined into one-day sessions. This restructuring was likely aimed at optimizing time management for judges and ensuring focused learning on specific topic.

93. **The chosen topic for the 2022 training session reflects a targeted approach to addressing pressing legal issues**. This topic is critical as it addresses procedural efficiency in bankruptcy cases, where timely resolution is crucial for all parties involved.

94. **The decrease in training sessions may raise concerns about the breadth of educational opportunities**. Future planning may involve balancing the frequency and depth of training sessions to ensure comprehensive professional growth among commercial courts judges. This is especially relevant for newly appointed judges.

95. **Funds for the realization of trainings were often provided within projects financed from EU funds or bilateral support.** The World Bank supported the organization of training in the area of bankruptcy law, the Organization for Security and Co-operation in Europe (OSCE) on environmental law, the EU on commercial offenses, and so on.[73] In cooperation with the European Center for Judges and Lawyers in Luxembourg of the European Institute of Public Administration (EIPA), the JA organized training on environmental law.

96. **In addition to typical commercial justice topics, environmental law is recognized as an important area.** In 2019, the JA organized two four-day trainings for the judges of the CCs and ACC on strengthening the skills of judicial authorities in the field of environmental protection laws.

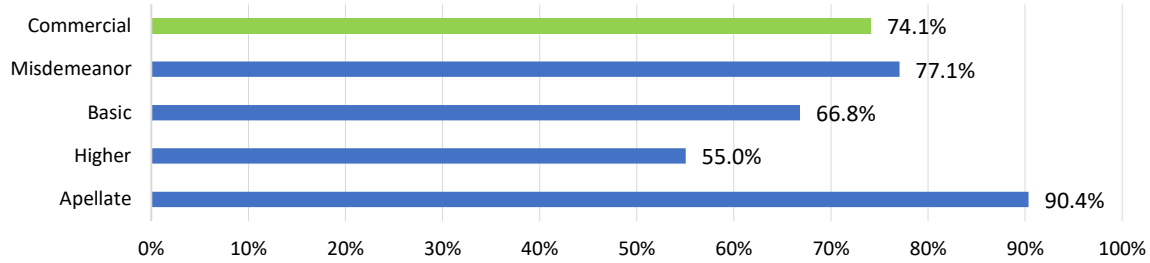
[71] 2022 Annual report of the Judicial Academy. Available at: https://www.pars.rs/public/inline-files/Godisnji-izvetaj-o-radu-Pravosudne-akademije-2022.pdf
[72] 2019 Annual report of the Judicial Academy Available report. https://www.pars.rs/images/dokumenta/2020-godina/godisnji-izvestaj-2019/GODISNJI-IZVESTAJ-PA-_2019.pdf
[73] 2019 Annual report of the Judicial Academy, pp. 53–56.

5.3. Wage Bill in the Commercial Courts

97. **The salary of judges of the CCs is higher than the salary of first instance court judges and is equal to the salary received by judges of higher courts.**[74] Only judges of the ACC, the Appellate Courts, the Administrative Court, and the S C receive higher salaries than judges of the commercial courts.

98. **The share of wage expenses in the budget of CCs' was on average 74.1 percent in between 2014 and 2019.** Only the misdemeanor and appellate courts had a higher share of wages and wage-related expenses of the courts' expenditures compared to their overall budget.

Figure 7: Share of wages per type of court 2014–2019

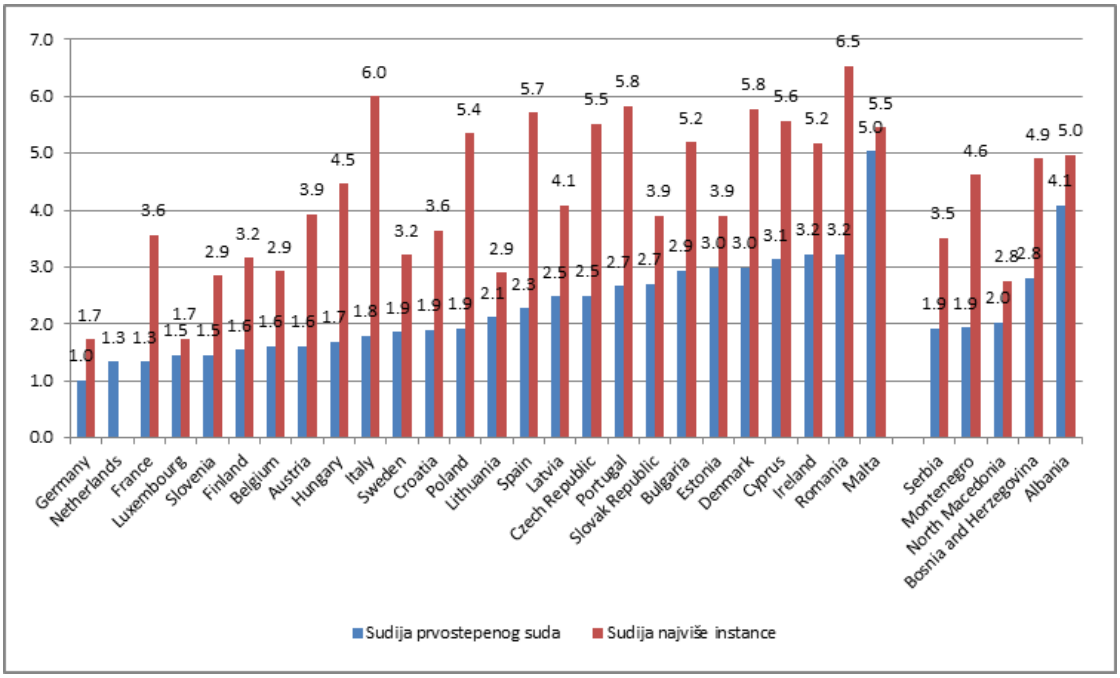


Source: World Bank. 2021. "Judicial Functional Review."

99. **Compared to the average salary in Serbia, judges' salaries are similar to those earned by their colleagues from the EU.** In 2020, a judge's salary was on average 2.7 times higher than the average gross salary in Serbia (1.9 times higher for judges of first instance courts and 3.5 times higher for judges of the highest court instance). This is within the range of 2020 data available for EU member states through the European Commission for the Efficiency of Justice (CEPEJ) where the range for the first instance courts was from 1.5 to 3.5 and for highest courts from 2.5 to 6.5.[75]

[74] Articles 37–39 Law on Judges, Official Gazette RS, no. 116/2008, 58/2009, 104/2009, 101/2010, 8/2012, 121/2012, 124/2012, 101/2013, 111/2014, 117/2014, 40/2015, 63/2015, 106/2015, 63/2016, 47/2017 and 76/2021.
[75] European Judicial Systems CEPEJ Evaluation Report, Part 1, 2022 Evaluation cycle, p. 81.

Figure 8: Average salary of judges in comparison to national average salary for 2020 - EU member states and Western Balkan



5.4. Specialization of Judges - A Real Chance Only in Few Larger Courts

100. **Only the largest CCs in Serbia have a real chance to ensure the specialization of judges and reap the benefits of such specialization in terms of improved efficiency, higher quality, and harmonization of case law.** According to FIC, improvements regarding the length and quality of court proceedings through the creation of special court panels for intellectual property within the CCs and the Higher Court in Belgrade are clearly visible, with first instance proceedings lasting up to a year on average. However, this positive achievement could be reversed by an announced change in territorial jurisdiction. To relieve courts in the capital from the excessive workload and distribute cases more evenly across Serbia, amendments to the Law on Seats and Territories of Courts and Public Prosecutions,[76] which would abolish the exclusive jurisdiction of the Belgrade Higher Court and CCs in intellectual property disputes, have been announced. The change in jurisdiction could cause challenges in resolving complex intellectual property disputes.

101. **As the laws become more complex in some fields, the provision of appropriately qualified judges who are responsible for specific fields is recommended by the Consultative Council of European Judges (CCJE).**[77] Comparative practice shows different approaches toward the specialization of judges. A good example is the Netherland Commercial Court (NCC) in Amsterdam, which introduces three specialized chambers: competition law, intellectual property law, and restructuring law. However, even without the creation of specialized chambers, specialized expertise can be available in courts, but needs to be factored into case distribution rules.

[76] Official Gazette No. 101/13.
[77] Opinion (2012) No. 15 of the Consultative Council of European Judges on the specialization of judges, adopted at the 13th plenary meeting of the CCJE (Paris, 5–6 November 2012).

6. Infrastructure and court network

6.1. Physical infrastructure

102. **The inadequate infrastructure of CCs affects service delivery.** The lack of courtrooms in some CCs affects the scheduling of hearings, while at other locations, the lack of archive space in the court building affects access to court files. In addition, the existence of court units affects access to justice since judges travel to court units once a week. As part of the EU accession process, significant investments in judicial infrastructure are necessary to support the improvement of the performance of judicial institutions including CCs.

103. **CCs lack office and archive space, and working conditions in some locations are not satisfactory and negatively affect business processes.** Additional offices should be provided primarily in Nis and Kraljevo, courts located in old buildings (such as, Sombor) reconstructed, and adequate archive space across the system should be ensured.

104. **CCs are in 17 locations in 16 bigger towns, with significant differences in terms of the population living in the territories covered by the individual court.** The number of inhabitants in the territories covered by individual CCs ranges from 1.68 million for the area of the Belgrade CC to 0.19 million people in the Cacak CC.

Table 2: Number of judges per 100,000 inhabitants per court

Commercial court	Number of inhabitants - 2021	Number of enterprises	Number of judges - 2021	Number of judges per 100,000 inhabitants
Belgrade	1,688,667	50.558	51	3.1
Valjevo	429,423	4.379	7	1.6
Zajecar	209,186	1.430	6	2.9
Zrenjanin	242,278	2.018	5	2.1
Kraljevo	543,082	5.241	8	1.5
Kragujevac	467,204	4.588	9	1.9
Leskovac	386,401	1.811	9	2.3
Nis	516,032	4.958	12	2.3
Novi Sad	563,918	12.127	17	3.0
Pancevo	272,560	2.776	6	2.2
Pozarevac	340,470	2.746	6	1.8
Sombor	219,654	2,303	5	2.2
Sremska Mitrovica	292,579	3.738	7	2.4
Subotica	234,993	4.016	6	2.6
Uzice	233,771	2.404	6	2.6
Cacak	194,072	2.641	5	2.6

Note: Number of inhabitants was calculated based on data from the Republic Statistical Office in June 2021.[78]

[78] https://www.stat.gov.rs/sr-Latn/oblasti/stanovnistvo/procene-stanovnistva.

105. **There are significant variations between the CCs in terms of the number of judges per 100,000 inhabitants.** This indicator ranges from 1.5 judges per 100,000 inhabitants in Kraljevo to 3.1 in Belgrade.

106. **CCs are generally located in buildings where other judicial authorities or other institutions (such as, Chamber of Commerce) are present**. The only CCs located in a separate building are those in Belgrade, Leskovac, Sombor, and Valjevo. This organization affects infrastructure management, since the host of the building is responsible for maintenance.

107. **Independently of the fitness for purpose discussed earlier, the physical condition of the buildings in which the CCs are located is generally satisfactory; however, there are significant variations between conditions.** The best conditions are in the Kragujevac CC, which was moved to a newly built building in December 2021, while there are buildings that require urgent renovation. One of the courts that that need renovation is the CC in Sombor, which is located in a building from 1906 that has not been refurbished for decades.

108. **Except for the CCs in Kragujevac, Uzice, and Belgrade, other CCs are located in buildings that have not been renovated for more than a decade**; thus, there is a need to assess conditions and prepare a priority plan that includes aspects such as the energy efficiency of buildings in addition to fitness for purpose and physical condition.

109. **In many locations, CCs are facing lack of office space and courtrooms.** The CC in Nis is located in the building of the Chamber of Commerce and the court does not have a proper courtroom. Similarly, the CCs in Sombor and Cacak only have one courtroom in their building.

110. **Due to a large number of cases, the CCs lack archive space.** Since the available archive space is almost filled, the CCs are forced to keep part of the case files in their offices or rent separate spaces for the archive. **According to the agreements on the use of premises, the maintenance costs are covered by the institution responsible for the management of the building.** For example, for the newly built building in Kragujevac, a Joint Building Maintenance Service was formed, which monitors and reports malfunctions (fire protection; audio and video monitoring; elevators; air conditioning; hydro, electrical, and mechanical installations; and so on). The CC participates in the costs of equipment and consumables for these purposes, while the personnel for these jobs are provided by other judicial bodies. There is also a different practice with regard to the payment model for monthly costs (electricity, heating, fixed telephony, internet, water supply, wastewater, communal waste, and so on). For the CC in Novi Sad, all these costs are covered in proportion to the area of the premises used in the facility.

6.2. IT Infrastructure

111. **The currently used outdated AVP system should be replaced soon by a new and more advanced 'Super SAPS' to provide a modern system which supports interoperability, modern business intelligence and a higher degree of automation.**[79] The development of Super SAPS is currently underway and should be completed within two years.

[79] SAPS stands for Standardized Software Application for the Serbian Judiciary.

Representatives of the CCs are part of the working group and have the opportunity to present their specific requests. The introduction of a new system is an excellent opportunity to overcome the shortcomings of the current system which is found outdated and limited in its functions such as reporting.

Box 7: USAID[80] support to the development of case management system in CCs

Between 2004 and 2008, USAID provided support to connect CCs into a single network and reduce the number of old cases. The case management system in all 16 CCs, as well as in the Higher Commercial Court, improved efficiency and transparency. This system was later introduced by the MoJ in all basic and higher courts in Serbia.[81] This was a useful initial investment then, which would benefit from upgrading now.

112. **As reported by the CCs, the number of computers is adequate, but the use of many older and slower computers impedes their efficiency and effectiveness.** A sizeable quantity of computers is over 10 years old and use Windows XP, for which the support ended in 2014, and another substantial batch uses Windows 7, for which the support stopped in 2020. Not only are these operating systems insufficient to support most modern technologies, but they are also susceptible to ongoing security threats and vulnerabilities. In this regard, cybersecurity measures could play a crucial role in the transition to new system by protecting data, managing risks, ensuring compliance, ensuring business continuity, and enhancing cyber resilience.

113. **Providing adequate equipment continues to be one of the key challenges in utilizing ICT technologies in courts.** The MoJ has provided batches of new equipment over the last few years and some deliveries were provided by the donors, but the average age of computers[82] is still seven years. The newest computers, four years old on average, are reported in the ACC and CCs in Nis, while the oldest ones were on average 11 years old in CCs in Belgrade and Zajecar (see Annex 2 for a more detailed table). A part of the printers, local servers, and scanners are also obsolete. Courts reported difficulties in finding spare parts or materials such as cartridges due to differences in procured equipment.

114. **Although the system uses ICT and its benefits to some extent, more could be done to ease and modernize the work of CCs.** A system could be installed for holding remote hearings and presenting individual evidence with using appropriate audiovisual devices and technological platforms for remote communication. Such technological solutions should in parallel be accompanied by legislative amendments and the adoption of new regulations if needed. Analyzing similar videoconferencing solutions that have already been adopted across Europe may be a starting point.[83]

115. **The introduction of official and obligatory electronic communication for CCs, businesses, and attorneys would bring many benefits and could be a first step toward an electronic case file.** There are numerous advantages to this system: communication is quicker and cheaper, documents are delivered instantly, and there are significantly fewer unsuccessful services of process. However, this is not only a technological change but also an operational

[80] United States Agency for International Development (USAID).
[81] https://2017-2020.usaid.gov/sites/default/files/documents/1863/US_Aid_Brochure_SRB-FINAL.pdf.
[82] Calculated from individual court averages as given in Annex 2.
[83] The CEPEJ Working Group on Cyberjustice and Artificial Intelligence (CEPEJ-GT-CYBERJUST) prepared the Guidelines on videoconferencing in judicial proceedings, https://www.coe.int/en/web/cepej/cepej-working-group-cyber-just.

one. An interesting example may be found in neighboring Croatia.[84] There are situations in which courts already communicate with parties electronically, as reported by the CC in Novi Sad, but there are no clear regulations and bylaws in this field.

116. **Serbian commercial justice would further benefit from more robust investments in ICT, which would result in increased efficiency, quality, and access to judicial services.**[85] Additional analyses could be conducted to identify more possibilities for better use of modern ICT tools. The tools generally have a positive impact not only on courts services but also on society as a whole. Less time is spent on activities that could be automatized, fewer human resources are needed, and the carbon footprint is reduced. Videoconferencing and electronic communications are excellent examples of how justice can be greener.

6.3. The court network

117. **The Serbian judicial network underwent a series of changes in 2010 and 2014.** In 2010, several courts were closed; to mitigate the challenges, the MoJ established so-called court units, many of which remained in the buildings that had been courts before. Court units were managed by the seat court president. The network was restructured again in 2014 when many court units were reconverted to courts. Both changes to the judicial network, administered without comprehensive analysis and preparation, further deepened the existing problems in the system. The 2010 reorganization primarily demonstrated the practical unsuitability of court units as organizational forms.

118. **Some CCs still have remote court units, which complicate the management of the courts and consume their resources.** The CC in Valjevo even holds two court units in Loznica and Sabac. Maintaining the premises in distant locations, frequent travel of judges (one each day) and other personnel, and travel expenses are just some of the challenges. Although access to justice is an important principle, it is questionable if this concession to businesses is worth the extra burden placed on the system. Court units are generally a good means to ensure access to justice in distant locations. However, a reassessment of the current state is necessary to make an informed decision on whether all existing CC units justify the efforts required to maintain them. The reassessment could also conclude that some of the court units deserve to become courts, or that another reorganization of work is required.

7. Identified Needs and Recommendations

119. **Based on this analysis and in consultation with key stakeholders, the World Bank, identified recommendations for the improvement of the commercial justice system in priority reform focus areas in Serbia**. Implementation of those recommendations is expected to improve efficiency and quality of commercial justice in Serbia. The recommendations lays out a series of steps to implement reform activities over the short, medium, and long term:

[84] https://usluge.pravosudje.hr/komunikacija-sa-sudom/.

[85] Substantial investments that refer to significant funding allocated to upgrading and expanding digital infrastructure, enhancing cybersecurity, adopting new technologies like artificial intelligence and cloud computing, and improving connectivity and communication networks. However, they need to be accompanied by appropriate planning, management, and funding to ensure their effectiveness.

I. The efficiency and quality of the delivery of commercial justice

Recommendation I. 1 – Improve backlog reduction

Despite the two comprehensive National Backlog Reduction Programmes, 2014–2020 and 2021–2025, the backlog in the CCs needs to be reduced to produce tangible results. The goal of the 2014–2020 Programme (including 2016 amendments) was met only partially while there is still no progress under the current regime adopted in 2021. This assessment identified litigious and bankruptcy cases as the areas of greatest concern. To facilitate further advancements in this domain, the following actions are recommended:

- Conduct an impact assessment of individual backlog reduction programs (short term - SC, ACC).
- Revise individual backlog reduction programs in line with impact assessment findings (medium term - SC, ACC).
- Implement the revised programs (medium term - SC, ACC).

Recommendation I. 2 - Strengthen case law harmonization

The department for case law harmonization within the ACC oversees the judicial practice and ensures the proper application of adopted legal opinions. Nevertheless, there is a need for further improvement, particularly through the increased utilization of ICT tools.

To initiate this improvement process, the following steps are recommended:

- Assess the current state of play and explore practices in comparative jurisdictions to identify areas for enhancement (short term - ACC).
- Enhance the case law software to streamline and optimize its functionality, thereby facilitating more efficient case law harmonization (medium term - ACC).
- Establish a comprehensive case law database (medium term - ACC, MoJ). This database will serve as a valuable resource for legal professionals, enabling easy access to relevant legal opinions and supporting the harmonization efforts.

By implementing these recommendations, the department for case law harmonization can bolster its effectiveness and contribute to the overall improvement of the judicial system.

Recommendation I. 3 - Further streamline enforcement cases

Despite the significant efforts invested in improving enforcement in Serbia, the CCs are still burdened with a significant number of enforcement cases. Moreover, it remains unclear whether the system in general improved end to end or a part of the problem merely shifted from the courts to private bailiffs. For that reason, this recommendation explores other opportunities to alleviate the burden of the courts and provide for better service for citizens through the following actions.

- Conduct process mapping of the existing procedure and identify bottlenecks, to the extent possible by collecting and analyzing relevant case processing data (short term – MoJ).
- Assess additional options to improve the enforcement procedure by analyzing comparative European jurisdictions. Pursue not only legislative but also organizational and technical solutions that can relieve the courts further (short term - MoJ).
- Prepare an action plan for the adoption and implementation of identified applicable solutions (short/medium term - MoJ).
- Include potential technological solutions that could further enhance effectiveness and efficiency of the enforcement processes (short/medium term - MoJ).
- Adopt and implement the amendments (short/medium term - MoJ).

Recommendation I. 4 - Remove bottlenecks in bankruptcy procedures

Despite the relatively low number of bankruptcy cases in the system and numerous reforms to bankruptcy procedures, the courts often remain hamstrung due to their dependence on external factors. Issues such as land registry complications or succession disputes involving former Yugoslav firms create a seemingly endless loop, preventing case resolution. Addressing these problems on a national level with targeted measures to eliminate specific impediments could significantly improve the efficiency of bankruptcy proceedings, specifically in cases currently ‘stuck’ in the system.

- Establish a government-sponsored coordination body consisting of representatives from relevant stakeholders, including state bodies and commercial courts. Ensure buy-in from all stakeholders. (short term – Government, MoJ)
- Determine the most frequent underlying reasons for congestion in bankruptcy cases. (short term – Coordination body)
- Draft and adopt an actionable plan to tackle each identified issue, appoint a lead person for each issue depending on the domain in question. (short/medium term – Coordination body)
- Ensure sustainability by scheduling regular meetings and reporting, at least every three months. (short/medium term – Government, Coordination body)

Recommendation I. 5 - Improve mechanisms for the protection of the right to a trial within reasonable time

The current legislative solution for the protection of the right to a trial within reasonable time in the Serbian judiciary has proven to be counterproductive. Rather than providing for more timely processing of cases, it burdened the courts even more and turned into a means for collecting compensation. The legislative amendments have limited the number of possible claims for monetary compensation to only one per case which resulted in lower demand. However, this change will not affect actual delays. Since the current state of play is not viable, it is recommended that other options are assessed to improve the right to a fair trial protection.

- Identify and assess feasibility of other options to deliver efficient and effective protection of the right to a trial within reasonable time. Explore solutions in comparative jurisdictions across Europe and the ECtHR case law (short term - MoJ, SC).
- Establish a working group to prepare legislative amendments to the current regime and identify measures needed for their implementation in judicial practice (short/medium term - MoJ, SC).
- Adopt and implement the legislative amendments and complementary measures (medium term - National Assembly, MoJ, SC).

Recommendation I.6. - Reexamine and enhance processing of commercial offenses

This assessment has identified a need to thoroughly improve the processing of commercial offenses to mainstream them into the criminal justice system. While commercial offenses make up a significant part of the CCs' caseload, the current system is outdated and overly complicated. It employs not only the courts but also the prosecutors and a jury. Therefore, the jurisdiction of CCs over commercial offenses should be revised in line with comparator jurisdictions to identify possibilities for legislative amendments that would alleviate the burden of the CCs and the prosecutors. As the jury trial system seems to be outdated, eliminating it by amending the governing law should be one of the first moves. The broader system of penal law should be reformed to avoid partial and inconsistent solutions. Commercial offenses should be redefined in line with the reform of misdemeanors and criminal offenses.

- Assess the current state of play and explore legislative solutions in other European countries (short term - MoJ, ACC, Chief Prosecutor).
- In line with findings, prepare legislative amendments to modernize processing of the commercial offenses and reform the penal legislation. (short term - MoJ, ACC, Chief Prosecutor).
- Adopt and implement legislative changes (medium term - National Assembly, MoJ, ACC, Chief Prosecutor).

II. Access to justice for MSME

Recommendation II. 1 - Improve legal literacy of MSMEs

MSMEs account for 99 percent of the Serbian economy. However, these enterprises often face financial and capacity limitations, making the affordability and accessibility of justice a significant concern. To improve access to justice for MSMEs that cannot afford attorneys, it is essential to develop various legal literacy instruments. Business representatives have identified a series of judicial topics that are also relevant to them: liquidation, enforcement procedure, bankruptcy, labor law, administrative law, and so on.

- Prioritize the topics for guides aimed at self-represented MSMEs (short term - Chamber of Commerce, nongovernmental organization [NGOs]).
- Develop self-representation guides for MSMEs accompanied by supplementary tools, such as video materials and infographics (medium term - CCs, NGOs). These comprehensive guides will provide MSMEs with the necessary information and guidance to navigate legal processes effectively, enabling them to self-represent with confidence. The inclusion of additional visual materials will enhance accessibility and ease of understanding.
- Conduct awareness campaigns to ensure stakeholders are aware of relevant tools (medium term – CCs, NGOs).

III. **Human resources**

Recommendation III. 1 - Equalize caseload per judge

The average caseload per judge exhibits significant variation, ranging from 321 cases in the CC in Zajecar to 919 cases in the CC in Belgrade. This discrepancy is amplified by the fact that most CCs have fewer than 10 judges, resulting in substantial deviations caused by changes in the number of judges and demand. Furthermore, the number of enterprises per CC varies significantly across Serbia, from 50,585 enterprises across the jurisdiction of the Belgrade CC to 1,430 enterprises at the jurisdiction of the CC in Zajecar.

- Introduce effective monitoring of case data to identify areas of imbalance and take appropriate measures to address them (short term - ACC, HJC).
- Refine the case weighting system to ensure fairness and efficiency in workload distribution among judges (medium term - ACC, HJC, SC).
- Evaluate the geographical distribution of enterprises and caseloads to determine if adjustments to the territorial jurisdiction of courts are necessary (medium term - MoJ, ACC).

Recommendation III. 2 - Strengthen HR strategic approach within the HJC

To address challenge of the generational shift in the commercial courts and to ensure the sustainability of the judiciary in the face of demographic changes the High Judicial Council needs to strengthen human resource strategic approach within the HJC.

- Conduct a detailed analysis of the current workforce demographics, including age, tenure, and retirement projections (short term – HJC)
- Identify future staffing needs based on anticipated retirements and the evolving demands of commercial courts (short term – HJC)

- Identify critical roles within the commercial courts that will be impacted by generational shifts (short term – HJC)
- Develop and implement comprehensive onboarding programs that familiarize new hires with the key commercial justice area (medium term – HJC, JA)
- Develop plan to pair new judges with experienced judges (mentors) to facilitate knowledge transfer and smoother integration (medium term – HJC, ACC)

Recommendation III. 3 - Improve training opportunities

Despite the JA's efforts to provide various training opportunities for judges, there is still room for improvement. FIC has recognized the need for further specialization of judges' portfolios, leading to this recommendation, which aims to explore options to enhance training focusing on judges' skills. By implementing this recommendation, the judiciary can further elevate its training efforts, ensuring continuous professional development and enhancing the capabilities of commercial judges in handling complex commercial cases.

- Develop a comprehensive TNA specifically tailored for commercial judges to help identify specific areas where training and skill development are needed to enhance their efficiency and effectiveness (short term - JA, ACC).
- Based on the results of the TNA, prepare a new training program to address the identified gaps and provide targeted training to improve the specialized skills required in commercial cases (short term - JA, ACC, HJC).
- Develop a skills program focusing on key areas such as case management and communication to enhance the practical skills of commercial judges, enabling them to effectively manage cases and improve their communication skills within the legal environment (short term - JA, ACC).
- Develop robust evaluation tools to assess impact of training on daily work of commercial judges (medium term - JA, ACC).

Recommendation III. 4 - Promote specialization of judges

Rather than eliminating the existing exclusive jurisdiction in intellectual property disputes, the MoJ should identify other areas that would benefit from specialization and place them under a similar regime. Courts other than the one in Belgrade, particularly the larger ones in Novi Sad, Nis, and Kragujevac, should also be included. To avoid the negative aspects of specialization, such as judges losing interest in other areas of law and the need to maintain the right to random judge assignment, the areas of specialization among judges could be periodically rotated. (MoJ, ACC – short term).

Specialization should be accompanied by a (i) training needs analysis, (ii) development of a curriculum, and (iii) inauguration of a training program for specialized judges. (MoJ, JA – short/medium term).

Recommendation III. 5 Build capacity of judges in environmental commercial offenses

The judiciary plays a key role in enforcing compliance with environmental law. To ensure effective application of environmental law and implementation of criminal provisions that provide the required teeth, regular specialization of commercial court judges in environmental commercial offenses should be ensured.

- Conduct a training needs assessment (TNA) (short term - JA, ACC).
- Develop a training program based on the TNA and regularly update (medium term - JA, ACC, HJC).
- Organize regular trainings in line with the training program (continuous - JA).

IV. Infrastructure and court network

Recommendation IV. 1 - Upgrade the outdated infrastructure in line with business needs

Despite continuous investments in judicial infrastructure across Serbia, certain CCs still face challenges such as the lack of courtrooms, adequate archive space, and registry offices. Significant investment in CCs' infrastructure is needed to support the improvement of the performance of CCs. CC buildings should be modernized to respond to the modernization of businesses.

- Assess the current conditions and prepare a priority plan that includes evaluating the energy efficiency of buildings and constraints to effective operation of the courts (short term - MoJ, ACC).
- Develop a comprehensive plan for the modernization of registry offices, aiming to improve their functionality, accessibility, and efficiency (short term - MoJ, ACC).
- Develop a plan to ensure adequate archive space and promote the use of e-archive (short term - MoJ, ACC, Office for information technologies and eGovernment).
- Develop a long-term maintenance plan to ensure the sustainability of infrastructure investments (short term - MoJ, ACC).

Recommendation IV. 2 - Leverage modern ICT tools and e-justice

Although the CCs were once frontrunners in introducing the AVP in Serbia, they are presently using the outdated AVP and a number of older computers that cannot efficiently support the work of judges and court staff. Serbian commercial justice would benefit from a more robust investment in ICT. Further digitalization of business processes in the CCs' would have a positive effect on the performance of the courts and the environment.

- Identify more possibilities for better use of modern ICT tools. The analysis should also foresee how to close the current infrastructural gap. (short term - MoJ, ACC).
- Introduce official and obligatory electronic communication of the CCs, businesses, and attorneys (short term - MoJ).
- Introduce electronic notifications for the attorneys and the parties (short term - MoJ).
- Introduce videoconferencing and remote hearings (medium term - MoJ).

Recommendation IV. 3 - Improve CC network in line with business needs

120. Maintaining multiple court locations has become a genuine challenge for the affected CCs with probably little gain in terms of access to commercial justice. Some of the CCs still maintain remote court units, which complicates the management of courts and consumes scarce resources. Maintenance of premises and travel of judges and other personnel exhaust the courts resources. To avoid burdening the system with unnecessary legacy court units, the following is recommended.

- Conduct a performance audit of active court units in CCs which will include the following aspects: caseloads and workloads, human resources, physical and ICT infrastructure, and financial (short term - MoJ, HJC, ACC).
- Prepare and adopt an action plan for the optimization of court units (short term - MoJ, HJC, ACC).
- Implement the action plan (medium term - MoJ, HJC, ACC).

Recommendation IV. 4 - Improve the energy efficiency of physical infrastructure.

To promote the goals of the Green Agenda, it is crucial for the judiciary system to adopt and implement practices aimed at enhancing the energy efficiency of physical infrastructure and reducing of carbon footprint. CC buildings mostly do not meet energy efficiency standards due to poor infrastructure conditions—a deficiency that needs to be addressed.

- Conduct an infrastructure assessment (short term - MoJ, ACC).
- Develop a plan for infrastructure reform accompanied by a timeline and cost estimation (medium term - MoJ, ACC).
- Implement plan for infrastructure reform (long term - MoJ).

Annex 1: Detailed Efficiency Indicators

120. **This Annex 1 furnishes figures on the caseloads, workloads, efficiency, and timeliness of the commercial justice system, offering comprehensive insights into its operational dynamics.** By presenting quantitative data on caseloads and workloads, it provides a clearer understanding of the volume of cases handled by the ACC and the CCs. Additionally, it offers metrics on efficiency, shedding light on the performance of these institutions in processing cases. This additional information serves as a valuable resource for policymakers, stakeholders, and researchers, aiding in evidence-based decision-making, performance evaluation, and policy formulation aimed at enhancing judicial effectiveness and efficiency.

121. **This analysis relies on clearance rate, disposition time, and congestion ratio as indicators of performance, in line with the CEPEJ methodology and previous work done by the World Bank in this field.** However, there are other methods that could be employed as well, such as data envelopment analysis (DEA), which allows for the measurement of how much each CC can increase its efficiency while holding existing resources constant. These methods would also help guide decisions on how to improve organization. Such approaches and studies have been used in various countries to assess the efficiency of courts, including Italy, Brazil, Sweden, and Poland. This type of study may also have additional benefits, such as providing suggestions for refining the case weighting system to ensure fairness and efficiency in workload distribution among judges.

1. Demand for Commercial Justice

122. **Although commercial cases were only 6 percent of the total caseload in Serbia,[86] their impact on the business climate is of paramount importance.** The demand for commercial justice services increased from 2017 to 2021, while in 2022 the trend reversed. In 2021, the Serbian judicial system received 27 percent more commercial cases in both tiers combined compared to 2017, while in 2022, 19 percent fewer cases were received than in the previous year.

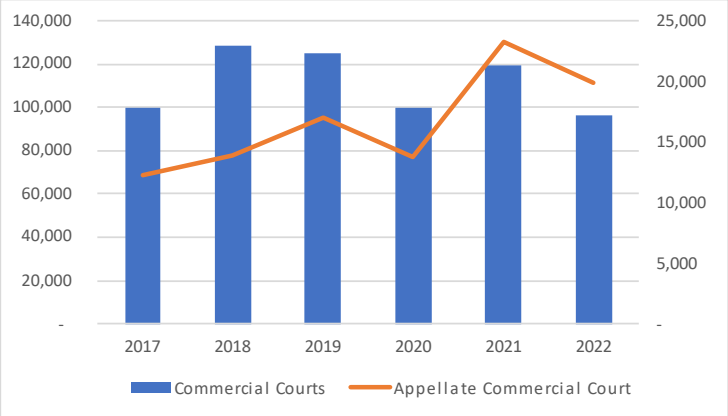
123. **CEPEJ figures on civil and commercial cases for Serbia are not illustrative when it comes to commercial justice.** CEPEJ does not specifically report on commercial cases as a category; instead, commercial cases are combined with civil cases. For instance, in the 2022 CEPEJ Evaluation cycle (2020 data), commercial litigious cases made up only 4 percent of the reported caseload.

124. **The ACC's inflow of cases increased significantly, by 63 percent from 2017 to 2022.** If it were not for the 2020 decline caused mainly by COVID-19 effects, the growth would have been consistent from 2017 to 2021, while in 2022 a decrease of 15 percent was reported. Although there were some variations in all case types, the increased inflow of trials within a reasonable time for bankruptcy appellate cases dictated the overall trend. Each year, except for

[86] In 2022, 116,021 out of 1,808,813 received cases.

2020 and 2022, this case type doubled in incoming cases.[87] The 2021 jump in incoming cases was also supported by a 93[88] percent rise in incoming appellate litigious cases over the previous year due to the significant increase in litigious dispositions in the first instance.

Figure 9: Incoming cases in CCs and the ACC from 2017 to 2022

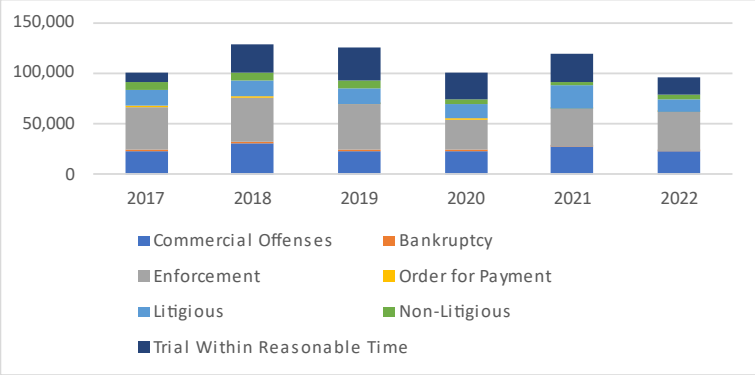


Source: Annual SC Reports 2017–2022.

125. **CCs received 19 percent more cases[89] in 2021 compared to 2017; however, in 2022, the incoming case stock reduced to values lower than those in 2017.** In total, 119,112 cases were received in 2021 and 99,903 in 2017, while 96,117 cases were received in 2022. During the 2017-2021 period, the figures fluctuated, with the lowest caseload reported in 2020 when 100,116 cases were received.

126. **Commercial offenses and trial within reasonable time cases contributed notably to the increase in demand for CCs from 2017 to 2021.** The influence of other case types on overall figures was much lower, apart from an increase in litigious cases in 2021. The drop in caseload in 2022 was caused by a 17 percent decrease in received commercial offenses, a 46 percent decrease in litigious cases, and a 36 percent decrease in trial within reasonable time cases. The details are displayed in the following sections.

Figure 11: Incoming cases in CCs per case type from 2017 to 2022



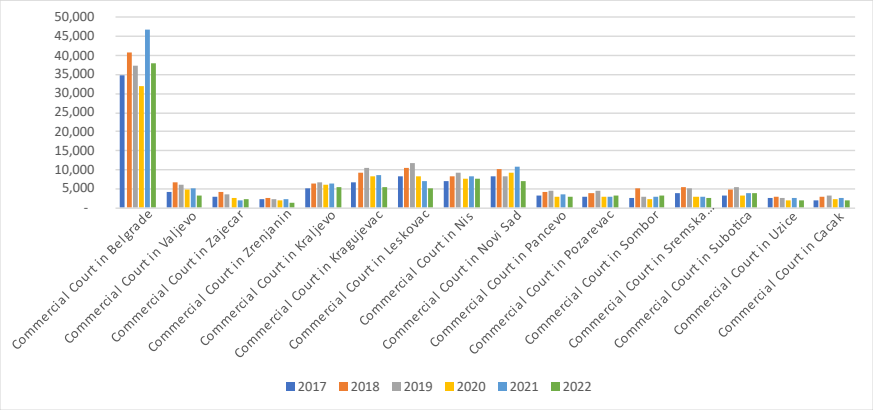
Source: Annual SC Reports 2017–2022.

[87] 1,607 cases were received in 2017, 3,700 in 2018, 6,523 in 2019, 4,578 in 2020, 8,838 in 2021, and 8,316 in 2022.
[88] From 6,241 to 12,053 cases.
[89] In line with the SC methodology, these cases consist of commercial offenses, bankruptcy cases, enforcement cases, orders for payment, litigious cases, non-litigious cases, and cases concerning the trial within reasonable time.

127. **Although the competence of the CC is broad, four types of cases made up most of the CCs' caseload: commercial offenses, enforcement cases, trial within reasonable time cases, and litigious cases.** In contrast, bankruptcy cases, orders for payment, and non-litigious cases occupied a smaller portion of the total caseload throughout the analyzed period. In 2022, enforcement cases made up 40 percent of the caseload, commercial offenses 24 percent, trial within reasonable time cases 19 percent, and litigious cases 13 percent. Simultaneously, the shares of bankruptcy cases and orders for payment were under 1 percent while 4 percent referred to non-litigious cases.

128. **Cases are not evenly distributed across the CC network.** Two-fifths of the national caseload was reported by the CC in the capital Belgrade, in 2022. Belgrade's court received five times more cases (38,054) than the second-ranked CC in Nis (7,717). A total of 10 out of 16 CCs received under 5,000 cases.

Figure 10: Incoming cases per CC from 2017 to 2022

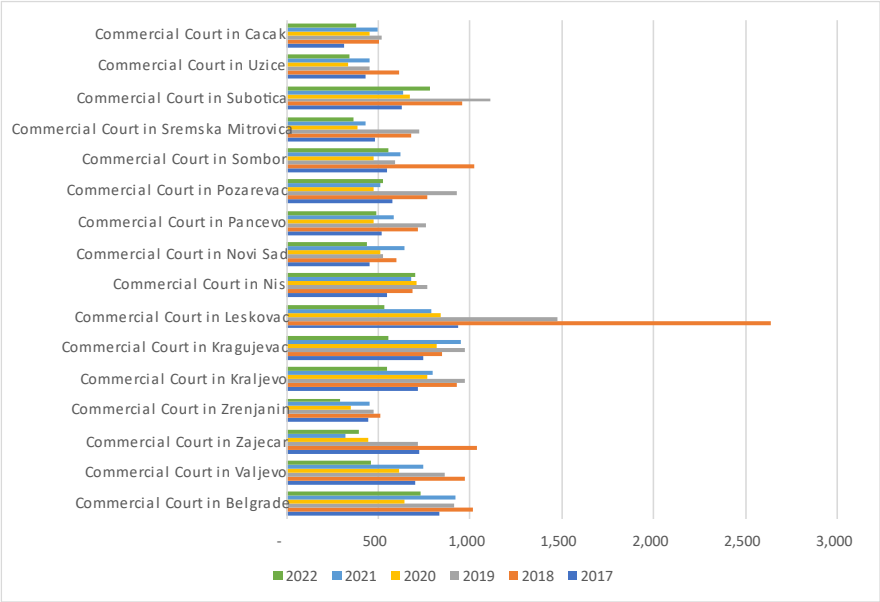


Source: Annual SC Reports 2017–2022.

129. **The average caseload per judge was 507 cases in 2022; nonetheless, the differences among individual courts were substantial throughout the studied period.** In the preceding years, it varied from 560 cases in 2020 to 907 cases in 2018.[90] In 2022, the lowest average caseload per judge appeared in the Zrenjanin CC with 292 cases, while judges in Belgrade and Subotica received triple that number, or 732 and 783 cases, on average respectively. Similar or even higher variations may be found in other examined years as well.

[90] In other years, the averages were 600 cases in 2017 and 797 cases in 2019.

Figure 11: Average caseload per judge in CCs from 2017 to 2022



Source: Annual SC Reports 2017–2022.

130. **Only a couple of larger CCs in Serbia are capable of managing significant changes in the number of judges and the demand.** In the CC in Leskovac, judges received on average 2,640 cases in 2018 and 1,476 in 2019 due to a sudden reduction in the number of judges and a concurrent rise in demand.[91] Similar but milder deviations could be found in other CCs such as in Subotica, Sombor, Pozarevac, and Zajecar.

131. **To improve the caseload distribution and inform decision-making, the new case weighting formula was introduced in January 2022 in all basic, higher, and commercial courts.** An evaluation of its effectiveness is reportedly underway.

2. Disposition of Cases

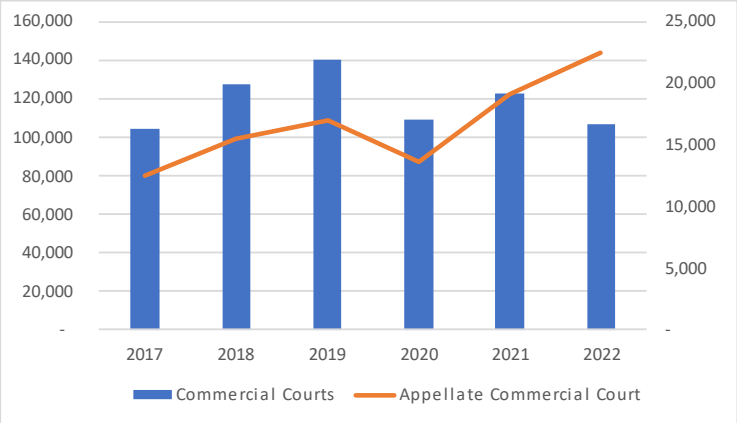
132. **The dispositions of the CCs and the ACC mostly followed the caseloads, meaning that the judges resolved as many cases as they received or somewhat more.** Particular imbalances have resulted in a couple of exceptions to this rule, as explained in more detail below.

133. **Both the CCs and the ACC noted an increase in dispositions, by 2 percent and 80 percent, respectively.** In 2022, 22,500 cases or 16 percent of the resolved stock were reported by the ACC, while 106,629 cases were resolved in the first instance.

134. **In connection to caseloads, the ACC's dispositions increased rather consistently, except for 2020.** The increases were, over the whole period, mostly due to appellate bankruptcy trials within reasonable time cases and in 2021 and 2022 due to litigious appellate cases. Other case types displayed fewer variations.

[91] Namely, nine judges in 2017 fell to only four in 2018 and then eight in 2019. Simultaneously, the caseload increased by roughly 40 percent. Although the number of judges increased slightly by 2022 and the demand decreased, over the six observed years, the court's average caseload per judge remained above the national average.

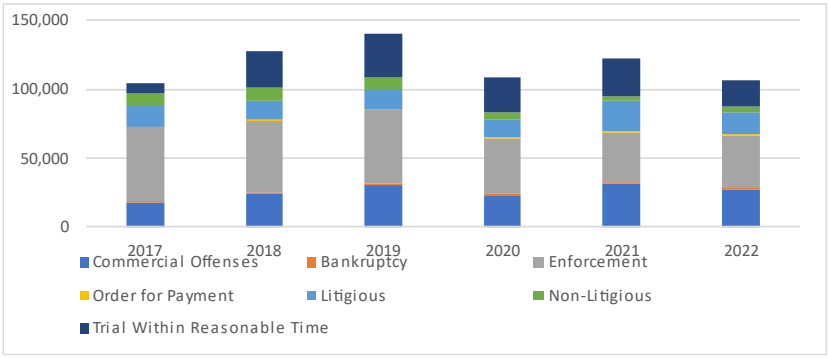
Figure 12: Disposed cases in CCs and the ACC from 2017 to 2022



Source: Annual SC Reports 2017–2022.

135. **The dispositions of CCs varied - from a minimum of 104,080 cases in 2017 to a maximum of 140,082 cases in 2019.**[92] In 2020, the year of the COVID-19 pandemic, 20 percent fewer cases were received and 22 percent fewer were resolved. Per case type, the decreases in caseloads were followed by decreases in resolutions. For example, 14,703 fewer enforcement cases were received in 2020 compared 2019, while 12,499 fewer enforcement cases were resolved.

Figure 13: Resolved Cases in CCs per Case Type from 2017 to 2022



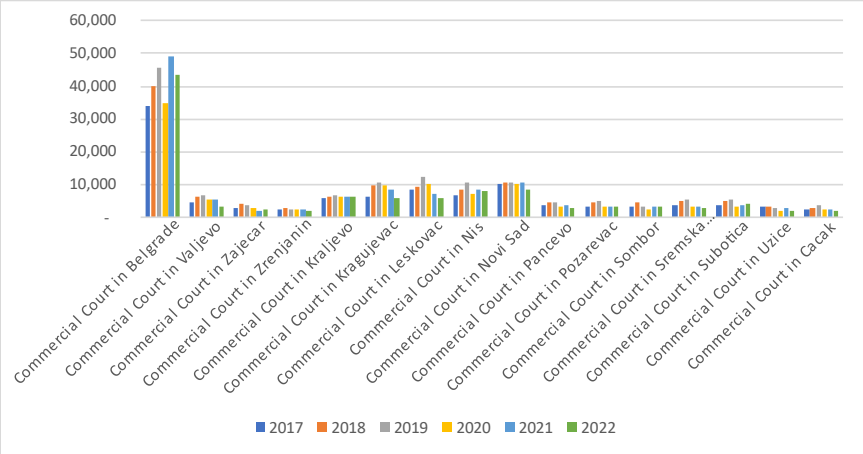
Source: Annual SC Reports 2017–2022.

136. **Caseloads and dispositions correlate to concentrations of economic activity; in the CC in Belgrade, caseloads and disposition were by far the highest throughout the observed period.** In 2022, Belgrade's court resolved 41 percent of the first instance total, followed by the CC in Novi Sad and Nis with 8 percent each. [93] Other courts' share of dispositions ranged from 2 to 6 percent due to relatively smaller territorial jurisdiction and a persistent decline in economic activity in those parts of Serbia.

137. **From 2017 to 2022, 56 percent of the courts noted a decrease in their caseload, while 69 percent of them reported decreases in dispositions.** The decrease in dispositions can be explained by the reduced demand in commercial justice.

[92] 127,720 cases were resolved in 2018, 108,837 in 2020, 122,380 in 2021, and 106,629 in 2022.
[93] 43,640 cases were resolved by the CC in Belgrade, 8,489 by the CC in Novi Sad, and 8,073 by the CC in Nis.

Figure 14: Disposed cases per CC from 2017 to 2022

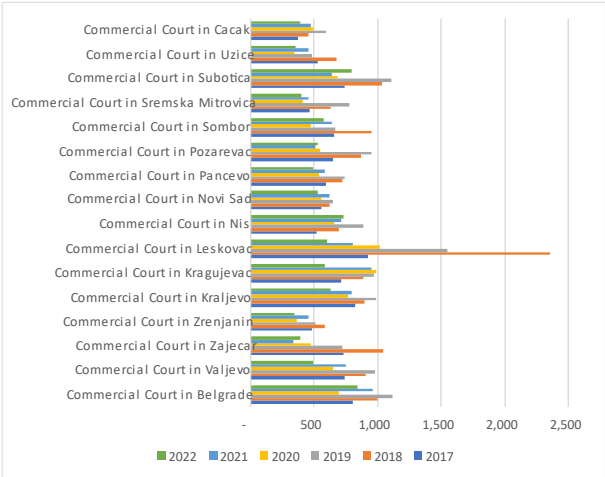


Source: Annual SC Reports 2017–2022.

138. **The average disposition per judge varied significantly over the assessed period due to changes in demand for judicial services.**[94] It peaked in 2018 and extended to 2019 due to the increase in commercial offenses (by 33 percent) and right to a trial within reasonable time cases (by 222 percent), which the courts managed to respond to. The 2020 drop was caused by the impact of the pandemic while the 2022 decrease was caused by the decreased demand in commercial offenses, litigious cases, and trial within reasonable time cases[95].

139. **Although the individual court averages varied over time, in 2022 seven CCs resolved above the average number of cases per judge.** These were courts in Belgrade, Kraljevo, Kragujevac, Leskovac, Nis, Sombor, and Subotica. Concurrently, these seven courts reported increased average caseloads per judge, suggesting the judges were keeping up with the demand for judicial services mostly due to a combination of commercial offenses, litigious and enforcement cases, and trials within a reasonable time.

Figure 15: Average dispositions per judge in CCs from 2017 to 2022

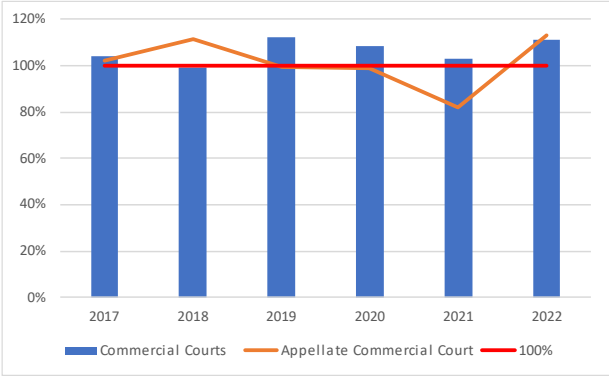


Source: Annual SC Reports 2017–2022.

[94] In 2017, the judges disposed of 646 cases on average each, 898 cases in 2018, and 859 cases in 2019, which fell to 606 cases in 2020, increased again to 638 cases in 2021, and then fell again to 546 cases in 2022.
[95] By 17, 46, and 36 percent, respectively.

140. **First instance CCs produced favorable clearance rates each year (with a slight decrease in 2018), while the ACC encountered difficulties in 2021.** Only in 2018 did the CC's clearance rate slide to 99 percent, and this was because of the sudden surge in commercial offenses and trial within reasonable time cases. In the ACC, however, favorable values from previous years decreased to 82 percent in 2021 due to the increased demand for judicial services, as explained earlier. This, however, improved to 113 percent in the next year.

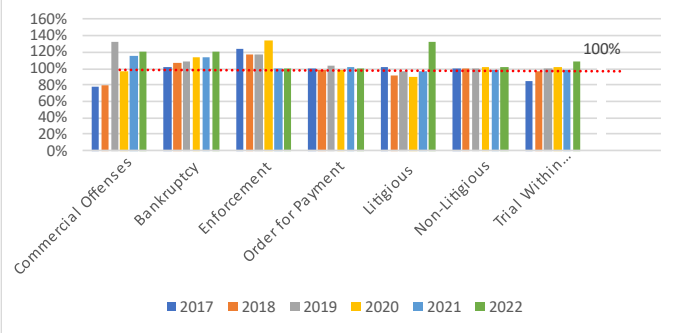
Figure 16: Clearance rates in CC and the ACC from 2017 to 2022



Source: Annual SC Reports 2017–2022 and World Bank calculations.

141. **2022 was the first year in the observed period in which clearance rates were 100 percent or higher in all case types.** In 2017, the CCs managed to reach 101 percent in litigious cases. In the remaining years, their clearance rates ranged from 90 percent in 2020 to 97 percent in 2019. However, in 2022, the calculated clearance rate for litigious cases jumped to 132 percent due to an almost fifty percent decrease in demand. Lower clearance rates in commercial offenses and trial within reasonable time cases in 2017 and partly 2018 were linked to a significant increase in demand. Simultaneously in enforcement and bankruptcy cases, the clearance rates were consistently 100 percent or higher over the observed six-year period.

Figure 17: Clearance rates per Case Type from 2017 to 2022



Source: Annual SC Reports 2017–2022 and World Bank calculations.

142. **Clearance rates in individual CCs were mostly favorable from 2017 to 2022; a few courts sporadically reported results that were somewhat under 100 percent.** 2022 was the first year in the observed period in which clearance rates were 100 percent or higher in all CCs. The lowest individual clearance rate of 89 percent was reported in 2018 in the CC in Leskovac because of an increase in caseload and a reduction in the number of judges by half. In 2019 and 2020, only the CC in Pancevo (98 percent) and the CC in Nis (93 percent) did not achieve a favorable clearance rate. In 2021, courts in Novi Sad and Cacak were the only ones with

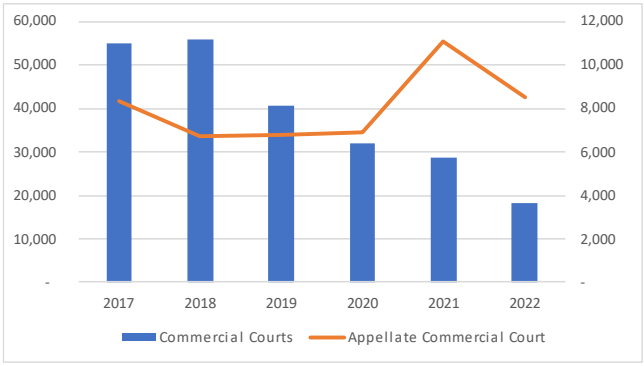
clearance rates under 100 percent. The highest clearance rate individually in 2022 was reported by CC in Novi Sad at 122 percent, followed by 120 percent reported in Zrenjanin.

3. Timeliness in Case Processing

143. **In 2022, the pending stock of the ACC returned to the 2017 values after the highest year-over-year jump of 61 percent was reported from 2020 to 2021.** In the meantime, from 2018 to 2020, the pending stock was rather stable at approximately 6,700 to 6,900 cases. The 2021 surge in unresolved cases was predominantly due to incoming litigious cases.

144. **Concurrently, the overall pending stock of CCs decreased almost consistently from 2017 to 2022 with an overall decline of 67 percent.**[96] The number of carried-over unresolved cases from year to year in the CCs declined almost consistently, with only a slight increase in 2018 due to commercial offenses, litigious cases, and trial within reasonable time cases.

Figure 18: Unresolved cases at the end of the year in CCs and the ACC from 2017 to 2022

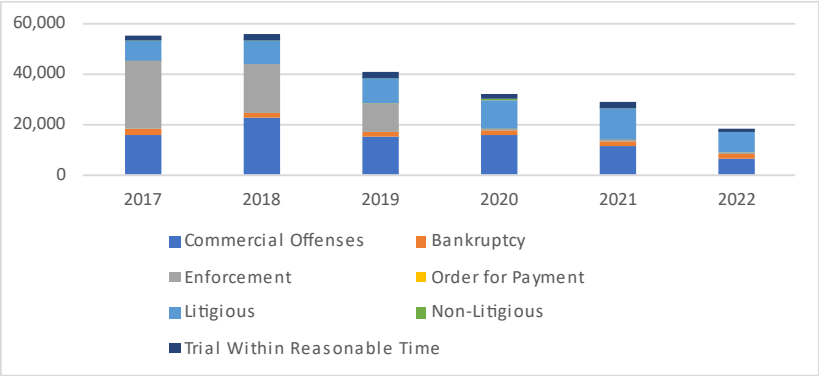


Source: Annual SC Reports 2017–2022.

145. **From 2017 to 2022, the unresolved pending stock of all case types reduced significantly, while only litigious cases remained almost unchanged.**[97] Previously, from 2017 to 2021, the pending stocks of litigious cases and trial within reasonable time cases were the only ones to increase, by 48 percent and 61 percent, respectively. Concurrently, the pending stock of enforcement cases declined by 97 percent from 2017 to 2022, dropping to 903 cases. Over the entire period, pending bankruptcy cases declined by 23 percent, while 2022 ended with six unresolved orders for payment and 72 unresolved non-litigious cases.

[96] In total 54,927 unresolved cases at the end of 2017 increased slightly to 55,891 cases at the end of 2018 and then decreased to 40,628 cases in 2019, 31,908 cases in 2020, 28,636 cases in 2021, and 18,125 in 2022.
[97] Reduced by 1 percent.

Figure 19: Unresolved cases at the end of the year in CC per case type from 2017 to 2022

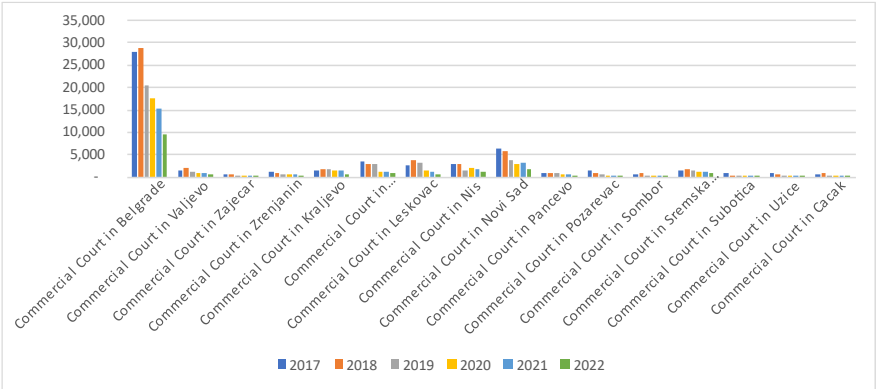


Source: Annual SC Reports 2017–2022.

146. **The only sizeable pending stock of commercial cases was found in Belgrade, even though the court more than halved its unresolved cases in comparison to 2017.** At the end of 2022, 9,597cases were left unresolved in Belgrade and 1,765 in Novi Sad. In all other remaining courts, under 1,500 cases were unresolved.[98]

147. **All CCs, apart from one, reported a significant decrease in unresolved cases.** On average, the unresolved pending stock more than halved. Only the CC in Kraljevo kept its pending stock rather stable over the first five years of the observed period although its number of judges was steady and even increased by one. This overturned in 2022 when CC in Kraljevo gained an additional two judges and reduced their pending stock by more than half over the previous year.[99]

Figure 20: Unresolved cases at the end of the year per CC from 2017 to 2022



Source: Annual SC Reports 2017–2022.

3.1. Congestion ratio and disposition time - Improved results

148. **The congestion ratio indicator suggests that overall there is no congestion in the CCs or the ACC.[100]** The CCs kept their congestion ratio well under 1.00 and declining.[101] The

[98] In the CC in Nis 1,313 cases were unresolved by the end of 2022. In other CCs, well under 1,000 cases were left pending.
[99] From 1,587 to 726 cases.
[100] An ideal congestion ratio would be under 0.50, meaning that the pending stock is far lower than what the courts are disposing of. Between 0.50 and 1.00 is also a satisfactory value, while everything over 1.00 is concerning. It is calculated from the number of unresolved cases at the end of one year divided by the number of resolved cases during the same year.
[101] 0.53 in 2017, 0.44 in 2018, 0.29 in 2019 and 2020, 0.23 in 2021, and 0.17 in 2022.

ACC's values were a bit higher but still well within the acceptable range. A rising trend noted in 2020 and 2021 reversed in 2022.[102]

149. **In the ACC, the congestion ratio was the highest in litigious cases—0.74 in 2022 or almost double the overall court congestion ratio.** This came as an improvement over the 1.12 congestion rate reported in litigious cases in 2021. In previous years, the congestion ratio of litigious cases was also not optimal but still under the threshold of 1.[103] Conversely, the other case types, including trial within reasonable time cases, demonstrated lower values.

150. **Individually, with ratios mostly above 2, congestion was highest in bankruptcy cases in CCs.** Minor congestion in criminal offenses ceased to be problematic in 2021 while in litigious cases it was still perceptible, although improving.

Table 3: Congestion ratios in CC per Case Type from 2017 to 2021[104]

	2017	2018	2019	2020	2021	2022
Commercial Offenses	0.89	0.92	0.49	0.68	0.35	0.24
Bankruptcy	2.41	2.16	1.87	2.34	2.16	1.85
Enforcement	0.50	0.37	0.21	0.02	0.03	0.02
Order for Payment	0.03	0.05	0.01	0.02	0.01	0.01
Litigious	0.52	0.66	0.68	0.85	0.55	0.50
Non-Litigious	0.03	0.03	0.02	0.02	0.04	0.02
Trial Within Reasonable Time	0.20	0.09	0.07	0.08	0.09	0.05

Source: Annual SC Reports 2017–2021 and World Bank calculations.

151. **Although the CCs manage to handle their bankruptcy caseloads, as proven by favorable clearance rates, the problematic segment remains the backlogged pending stock.** These are cases 'stuck' in the system for a long time with no prospect of being resolved soon, most probably due to various impediments that hold back the effectiveness of the bankruptcy procedure. Nevertheless, there is some progress, which caused the number of unresolved 'old' bankruptcy cases to decline gradually over the years.[105]

152. **Congestion ratios calculated per court also display no congestion difficulties, especially in 2022 when all courts reported ratios well under 0.50.**[106] In total, 12 out of 16 CCs kept their congestion ratios under 0.50 over the studied five years.[107]

153. **Disposition time,[108] as a mirror indicator to congestion ratio, reveals that both the CCs' and the ACC's theoretical time to disposition is well below one year and declining.** The overall disposition time of CCs has decreased significantly and rather consistently over the past six years, in general, from 193 days in 2017 to 62 days in 2022. The ACC's disposition

[102] 0.67 was reported in 2017, 0.44 in 2018, 0.40 in 2019, 0.51 in 2020, 0.58 in 2021, and 0.38 in 2022.
[103] 0.98 in 2017, 0.69 in 2018, 0.76 in 2019, and 0.93 in 2020.
[104] Orange values represent congestion ratios from 0.50 to 1.00, red values are over 1.00.
[105] From 1,449 in 2017 to 1,040 in 2022.
[106] The highest congestion ratios were in 2022 reported by courts in Sremska Mitrovica (0.29) Belgrade (0.22), and Zrenjanin and Novi Sad (both 0.21).
[107] Belgrade CC showed substantial improvement from 0.82 in 2017 to 0.22 in 2022, Zrenjanin CC from 0.54 in 2017 to 0.21 in 2022, Kragujevac CC from 0.53 in 2017 to 0.14 in 2022, Novi Sad CC from 0.63 in 2017 to 0.21 in 2022.
[108] Calculated as (pending cases/resolved cases) × 365. It gives a theoretical time to disposition considering the current pending stock.

time also decreased in that period, from 244 to 138 days. Still, from 2020 to 2021, it increased from 146 to 212 days. In litigious cases, specifically, it amounted to 408 days in 2021 and 270 days in 2022.

154. **Per case type, the highest disposition time was calculated for bankruptcy cases - roughly two to three years.** Litigious cases are disposed of in 190 days in 2017, 310 days in 2020, and 183 days in 2022. Commercial offenses' time to disposition fell from 324 days in 2017 to 86 days in 2022. The most remarkable decrease, supported by legislative changes, is noted in enforcement cases, from 184 days in 2017 to 9 days in 2022. In 2022, the disposition time was four days for orders for payment, seven days for non-litigious cases, and 17 days for trial within reasonable time cases.

155. **Favorable disposition times do not mean that there are no specific practices that hinder the efficiency of courts' proceedings.** For instance, FIC, in its 2022 White Book, warns on the position of the CC in Belgrade that it is necessary to state the number of the non-resident bank account of the creditor even when there are no actual benefits from it and despite it leading to a significant prolongation of initiation of the enforcement procedure and increase in the cost.[109]

156. **As the pending stock decreased, only one CC displayed disposition time that exceeded 100 days in 2022 – CC in Sremska Mitrovica with 105 days.** In 2021, four CCs had disposition times over 100 days. These were courts in Belgrade (112 days), Zrenjanin (106 days), Novi Sad (112 days), and Sremska Mitrovica (127 days). However, in all four courts, the values improved from 2017 to 2022.[110]

3.2.Backlog reduction - Still room for improvement

157. **The share of cases older than three years (so-called 'old' or backlogged cases) is higher in the ACC than in the CCs by 4 percentage points.** In total, 18 percent of unresolved cases in the ACC at the end of 2022 were backlogged cases while 14 percent were in the same category in CCs.

158. **In the ACC, 96 percent of the backlogged cases refer to litigious appellate cases.** Concurrently, 78 percent of the backlogged cases were three to five years old, 19 percent were five to ten years, and 3 percent were over ten years old.

159. **By far, the largest share of the backlogged cases in the first instance were litigious and bankruptcy cases.** In total, 65 percent of backlogged cases were bankruptcy cases, 16 percent litigious cases, and other case types made up 13 percent. Individually, the majority of backlogged cases were litigious ones that were three to five years old (792 cases).

[109] FIC, White Book 2022, p.89, https://fic.org.rs/wp-content/uploads/2022/11/White-Book-2022.pdf.
[110] By 221 days in Belgrade, 119 days in Zrenjanin, 153 days in Novi Sad, and 44 days in Sremska Mitrovica.

Table 4: Age structure of unresolved cases in CCs and the ACC in 2022

	Unresolved Cases 31 December 2022	Backlogged Cases	%	3 to 5 Years	%	5 to 10 years	%	Over 10 years	%
ACC	8,515	1,525	18%	1,185	78%	295	19%	45	3%
Commercial Courts	18,125	2,551	14%	1,154	45%	841	33%	556	22%
Commercial Offenses	6,500	186	3%	182	98%	4	2%	-	-
Bankruptcy	1,602	1,040	65%	160	15%	427	41%	453	44%
Enforcement	903	37	4%	18	49%	17	46%	2	5%
Order for Payment	6	-	-	-	-	-	-	-	-
Litigious	8,130	1,284	16%	792	62%	392	31%	100	8%
Non-Litigious	72	4	6%	2	50%	1	25%	1	25%
Trial Within Reasonable Tim	912	-	-	-	-	-	-	-	-

Source: Annual SC Reports 2017–2022 and World Bank calculations.

160. **The examined period was covered by two National Backlog Reduction Programmes, 2014–2020 and 2021–2025.** In the 2016 amendments to the programme, a goal was set for the CCs to end 2020 with a maximum of 855 backlogged cases and additionally 5,800 enforcement cases. However, at the end of 2020, there was still a backlog of 3,178 cases and 55 enforcement cases.[111]

161. **Two years into the new cycle of the programme, some progress has been made to reduce the backlog, but there is still a lot to do.** The current programme set a new goal for 2025, which is 2,065 backlogged cases with no backlogged enforcement cases. The programme contains a broad set of measures, some of which relate to the previous measures, such as filling vacant positions and adopting backlog reduction plans. The measures also include legislative amendments, training, and software upgrades.

4. Effectiveness of the Appeal System - Appeal Rates and Reversal Rates

162. **Declining appeal rates in CCs from 2017 to 2021 may indicate an improvement in legal certainty and case law harmonization; however, in 2022 they started increasing again.** From 2017 to 2022, appeal rates varied from 3 to 7 percent in the ACC and from 10 to 18 percent in CCs. The parties appealed the most in litigious cases and trial within reasonable time cases. While in litigious cases, the appeal rate decreased from 2017 to 2021 from 40 percent to 29 percent, it increased again to 49 percent in 2022. In trials within reasonable time cases, it increased from 19 percent to 46 percent from 2017 to 2022.

163. **The highest but also decreasing reversal rates are reported in bankruptcy cases—from 57 percent in 2017 to 43 percent in 2022.** Non-litigious cases followed with high variability in reversal rates, from 44 percent in 2018 to 4 percent in 2022. The reversals in litigious cases decreased by 8 percentage points in total, from 19 percent to 11 percent. The nonexistence of reversals in trial within reasonable time cases is related to procedural rules which do not foresee that possibility. Instead, the appellate judge is obliged to modify the first instance decision/decide without reversal.

164. **The ACC's department for case law harmonization plays an important role in achieving the uniformity of case law among CCs.** It overlooks the judicial practice and

[111] The decrease in enforcement cases is predominantly a result of a long-lasting and comprehensive legislative reform of the Serbian enforcement system that among others included the introduction of private bailiffs.

ensures the appropriate application of adopted legal opinions. It also ensures consistency throughout the legal system.

165. **A range of measures could be adopted to improve the quality of decision-making:** education of judges, better use of the case law database, and a structured process to harmonize case law in difficult areas. Appellate judges should, wherever possible, replace the decision of the lower court with their own rather than sending back decisions for a retrial. In case of reversal, higher instance decisions should contain a precise explanation and instructions to be followed in ensuing proceedings.

Annex 2: Average Age of Computers per Court[112]

	Number of computers	Average age in years
ACC	116	4
CC in Belgrade	324	11
CC in Valjevo	47	7
CC in Zajecar	34	11
CC in Zrenjanin	42	8
CC in Kraljevo	42	7
CC in Kragujevac	75	6
CC in Leskovac	53	8
CC in Nis	61	4
CC in Novi Sad	95	9
CC in Pancevo	42	6
CC in Pozarevac	32	5
CC in Sombor	34	10
CC in Sremska Mitrovica	56	5
CC in Subotica	31	5
CC in Uzice	37	8
CC in Cacak	37	7
	Average	7

[112] Data aggregated and provided by the ACC.