INCREASING THE EFFICIENCY OF MACEDONIA'S AND MONTENEGRO'S JUSTICE SYSTEM

INTRODUCING AN INNOVATIVE EU MONITORING AND EVALUATION MECHANISM IN THE SPHERE OF ADMINISTRATIVE LAW

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Acronyms

AC – Administrative Court
ACCMIS – Automated Court Case Management Information System
CEPEJ – The European Commission for the Efficiency of Justice
EU – European Union
GOJUST – Guidelines on Judicial Statistics
HAC – Higher Administrative Court
JC – Judicial Council
TEU – Treaty on European Union

Country codes

AT – Austria
BE – Belgium
BG – Bulgaria
CY – Cyprus
CZ –Czech Republic
DE – Germany
DK – Denmark
EE – Estonia
EL – Greece
ES – Spain
FI – Finland
FR – France
HR – Croatia
HU – Hungary
IE – Ireland
IT – Italy
LT – Lithuania
LU – Luxemburg
LV – Latvia
ME – Montenegro
MK – Macedonia
MT – Malta
NL – Netherlands
PL – Poland
PT – Portugal
RO – Romania
SE – Sweden
SI – Slovenia
SK – Slovakia
UK (EW) – United Kingdom (England and Wales)
UK (NI) – United Kingdom (Northern Ireland)
UK (S) – United Kingdom (Scotland)

1. Introduction

Rule of law, democracy and human rights are enshrined as some of common values on which the European Union is founded, and which help bind the Member States together.[2] Accordingly, this is also reflected in the political criterion for membership and the overall EU accession process. Respect for the rule of law is considered to be one of the main preconditions a candidate country has to fulfil to become a Member of the Union. In the case of Bulgaria and Romania, even after gaining membership, the Union continued to assess their progress in addressing shortcomings related to the judiciary, corruption and organized crime.

The quality, transparency and efficiency of justice systems of EU candidate countries are important structural components for a sustainable track record in the area of rule of law and thus, are fundamental to the effective implementation of EU law. The European Commission progress reports for 2012 and 2013, both for Macedonia and Montenegro, noted that additional efforts are needed in tackling the transparency challenges within the judicial sector. In the case of Macedonia, the report emphasizes the need of developing an overall strategy for increasing the transparency of judicial institutions while mentioning that challenges related to the efficiency and quality of justice should be addressed in a more comprehensive manner. Furthermore, it stresses that the existing judicial strategy does not contain any analysis on how to make the existing court network and activities more efficient, nor does it project future needs in terms of clear, verifiable indicators. Following this line of reasoning concerning the efficiency of the judiciary and in particular the administrative court, the reports for Montenegro highlight that accurate assessment of court performance is lacking. Additionally, the European Commission claimed that the available information does not provide full or easily accessible information about courts' performance, the length of proceedings and clearance rates, thus creating problems with the consistency of data and with the effective follow-up related to the efficiency of Montenegro's judicial institutions.

Such criticism comes despite the years of judicial reforms that both Macedonia and Montenegro have underwent, and which were precisely intended to improve the monitoring and evaluation of judicial performance, as well as to enhance judicial efficiency, quality and independence. On the other hand, perhaps due to the fact that the European Union Member States have quite varying judicial setups and similarly colourful judicial performance track records, it may seem as though the Commission lacks a coherent and plausible approach when advocating judicial reforms in aspirant countries.

This is the wider context in which the 'EU Justice Scoreboard' was presented. The Scoreboard is an information and early warning mechanism that aims to present objective, reliable and comparable data on the justice systems in the Member States. The then European Commission Vice-President and Commissioner for Justice, Viviane Reding

[2] Article 2 of the Treaty on European Union (TEU), as well as the Preambles to the Treaty.

announced its launch will assist the Commission to systematically assess the efficiency, quality and independence of the justice systems in all Member States.[3] Process wise, the Scoreboard would enable the Commission, as impartial arbiter, to identify tendencies regarding the functioning of national justice systems and propose country-specific recommendations on how to improve their effectiveness. The Scoreboard is a compulsory segment of the European Semester, the EU's yearly cycle of economic policy coordination process which ensures that the EU and its Member States co-ordinate their economic policies and their efforts to promote growth and jobs.[4] Furthermore, it contributes by identifying issues that deserve particular attention in order to ensure implementation of justice reforms.

While the Justice Scoreboard benchmarks the judicial performance of Member States, it may also be utilized as a model to harmonize the aspirant countries mechanisms for evaluating judicial performance with those of the EU. Such an approach has the potential to improve the objectivity when assessing the results and outcomes from judicial reforms within aspirant countries, while simultaneously enabling the commission to demonstrate that it is holding them to the same standardized evaluation indicators applied to EU Members States. Also, the application of these mechanisms would enable national authorities of aspirant countries to compare and benchmark with EU Member States on the performance and efficiency of judicial institutions.

The paper aims to analyse Macedonia's and Montenegro's judicial performance monitoring and evaluation systems and initiate their alignment with innovative EU mechanism in this sphere. Additionally it seeks to compare and benchmark judicial performance and efficiency of administrative courts of the two countries' with those of EU Member States.

The research methodology employed a combination of desk research of existing data, and face-to-face interviews with judicial system representatives in Macedonia and Montenegro. During the desk research, an analysis was conducted on the indicators and areas which are covered by the EU Justice Scoreboard. The analysed documents revealed the data sources used in the Scoreboard. In addition to the 2014 and 2013 version of the Scoreboard, documents and data from other institutions and projects were also analysed, such as the CEPEJ reports, the World Economic Forum reports and the World Justice Project.

The research component which aimed to gather data from primary sources was guided by four semi-structured questionnaires. In Macedonia, 21 interviews were conducted with judicial representatives such as judges, presidents of courts and judicial servants from the Administrative court and the Higher Administrative Court, as well as Judicial Council

[3] Viviane Reding, Vice-President of the European Commission, EU Justice Commissioner. The 2013 EU Justice Scoreboard. Press Conference 27 March 2013. European Commission, Web. http://ec.europa.eu/justice/effective-justice/files/vr_speech_justice_scoreboard_en.pdf

[4] European Commission. COMMUNICATION FROM THE COMMISSION Annual Growth Survey 2014, (13.11.2013): Web. http://ec.europa.eu/europe2020/pdf/2014/ags2014_en.pdf

members and administration. In Montenegro, the interviews involved judges and administration at the Administrative court, as well as members and administration at the Judicial Council. All interviews were conducted in the second half of 2014. The analysis of the data collected during the interviews enabled proper identification of shortcomings in monitoring and evaluating judicial performance in the candidate countries, the needed legal and institutional adjustments, as well as the deficiencies in human, budgetary and ICT resources to enhance monitoring and evaluation of judicial performance and apply the Scoreboard approach in this field. Based on the data received from judicial institutions and in uniformity with part of the indicators from the Scoreboard, the paper presents a comparative overview of the performance and efficiency of judicial institutions in the candidate countries and Member States.

A limitation related to this paper is that some aspects of the analysis encompass the entire judicial system, while others only look at the administrative courts. Partially, this results from the nature of the EU Justice Scoreboard, where the dimensions of judicial quality and independence are general, while the aspect of efficiency refers only to litigious civil and commercial cases, as well as administrative cases. The research and analysis further narrowed down the efficiency aspect only to administrative cases, in order to accommodate time and resource constraints. In addition, the benchmarking of judicial systems mostly utilized 2012 data from the 2014 published CEPEJ Evaluation of European Judicial Systems, while still presenting 2011 and 2012 data from Macedonia and Montenegro sources. This was done in order to depict trends in the judicial performance of the two countries. Though care was taken to adjust these two sets of data in order to ensure consistency, the approach still carries minor risk that the CEPEJ data would have slight operational differences with adjusted data from national judicial statistics. Finally, the comparison of values of quantitative indicators from different judiciaries risks overlooking national specifics and disregarding a number of contextual issues which may positively or adversely affect certain performance aspect of the national judicial systems.

This document is structured in five parts. After this introduction, the *second part* highlights the existing systems for monitoring and evaluation of judicial performance in Macedonia and Montenegro, and outlines their deficiencies. This is followed, in *the third part* of this paper, by a description of the EU Justice Scoreboard relevant not only for EU Member States, but also for candidate countries. The *fourth part* of the document presents key findings on judicial efficiency, quality and independence in Macedonia and Montenegro, and compares the performance of these candidate countries with EU Member States. On the basis of the presented analysis, the *final part* draws conclusions and puts forward recommendations on how to enhance the two scrutinized national systems for monitoring and evaluation of judicial performance, and subsequently improve the effectiveness of the judicial systems in Macedonia and Montenegro.

2. Current systems for monitoring and evaluation of judicial performance in Macedonia and Montenegro: setup and shortcomings

2.1. Legal and institutional framework

Macedonia

In July 2011, Macedonia's Ministry of Justice introduced the Judicial Statistics Methodology as a methodological instrument for collection, processing and analysis of statistical data. The Methodology was developed based on the Guidelines on Judicial Statistics (GOJUST),[5] adopted by the European Commission for the Efficiency of Justice (CEPEJ), within the Council of Europe. This should have resulted in obtaining consistent and comparable statistical data and indicators in order to continuously track and evaluate the performance of courts in Macedonia.

The Methodology defines 11 indicators for analysis and monitoring of court performance, which the courts are obliged to collect and process. They are presented below.

Rate of resolved cases (clearance rate). This indicator shows the ratio of incoming cases to the resolved cases in the relevant period, presented in per cents.

Time for resolving cases. This indicator compares the number of resolved cases during the corresponding period and the number of unresolved cases at the end of the period. It is calculated by dividing 365 with the ratio of the number of resolved cases to the number of unresolved cases at the end of the period. The result denotes the average number of days for resolving on the cases. This indicator measures the promptness of the courts' decision-making and the average period they require to resolve a certain type of cases.

Resolved cases per day. This indicator demonstrates how many cases are resolved per day during a certain period. It is calculated by dividing the number of resolved cases in the period with the number of days.

Efficiency rate. This indicator shows the ratio of the number of employees in a court to the performance of the court (number of resolved cases), presented as a coefficient of efficiency.

Total backlog of cases. This indicator shows the total number of pending cases at the end of a certain period. It is calculated by subtracting the number of resolved cases during a certain period from the total number of pending cases.

[5] CEPEJ(2008)11.

Resolving the backlog of cases. This indicator is the ratio of the backlog of cases to the time needed to resolve them, whereas the results shows the time needed to resolve the total backlog of court cases.

Average number of days required for resolving incoming cases. This indicator shows the number of days required for resolving incoming cases. It is calculated by subtracting the number of resolved cases from the number of incoming cases; the result is multiplied by the number of days in the relevant period. The result is divided by the number of resolved cases.

Percentage of pending incoming cases. This indicator shows the percentage of pending incoming cases that are not resolved during a certain period. It is calculated by subtracting the number of resolved cases from the number of incoming cases, multiplying the result by 100, and dividing it with the number of incoming cases.

Number of cases per judge. This indicator serves to measure the work efficiency of each judge. It is particularly useful for application in specialised court sections where judges decide only on certain type of cases, as it enables data comparison. The indicator reveals the number of cases per judge for certain period.

Realized monthly number of cases that should be resolved per judge. This indicator is a ratio of the number of decided cases during the month to the indicative monthly number of cases that should be resolved by each category of judge. The result is presented as percentage.

Standard deviation. This indicator shows the deviation from the legally defined time limits for decision-making on certain type of cases and is presented in days and per cents. The indicator for standard deviation in days is calculated by subtracting the legal time-limit for length of the procedure on the concrete type of cases from the average length of the procedure for certain type of cases. Presented in per cents, the indicator for standard deviation is calculated by subtracting the legal time-limit for length of procedure of the concrete type of cases from the average length of the procedure for certain type of cases, multiplying by 100, then divided this result with the legal time-limit for length of the procedure in the concrete type of cases. This indicator is particularly suitable for calculating the deviation from the maximum time for resolving cases, in instances where the length of procedure is stipulated in a law.

However, the research revealed that the courts and the ACCMIS collect and process mostly "raw" statistical data in several categories:

- general statistics on court cases, such as backlog at the beginning of the year (or other period), incoming cases, total caseload, resolved cases during the year (or other period), and pending cases at the end of the year (or other period);
- statistics on court cases by type and legal bases.

These data also feature in the annual reports of the courts, the annual report of the Judicial Council on the work of the courts, and the annual report of the Supreme Court with assessment and conclusions on the work of the courts.

In addition, the justice system institutions periodically collect and generate statistics on 'old' court cases,[6] as well as on the duration of court proceedings by types, legal bases and stages in the procedure. These statistics are partly generated manually, or semi-manually. They are utilised for internal assessments and for the purposes of presenting performance data to the European Commission. Transparency wise, these categories of judicial data are not published in the periodic reports of the judicial institutions, nor do they feature in the annual report of the Judicial Council to Parliament.

Once the statistical data are collected and processed on the level of court, they are used exclusively for evaluating the work of a particular judge or the overall performance of the court. This data further feeds into the annual plan for management of court cases, prevention of creating and reducing case backlogs.

But the Methodology failed to address a crucial pitfall – it remains unclear under which institutional competences the managing, developing and accessing the ACCMIS and related software applications are allocated. While all judicial institutions have varying access to the system, the key hardware component is placed with the IT Centre of the Supreme Court. The Judicial Council seems to be the main user of its statistical capabilities, but as the text below will show this competence is partly overlapping with that of the Supreme Court. Another key user of the ACCMIS statistical capabilities, the Ministry of Justice, does not even have direct access to the system. From the standpoint of managing the EU accession process, this institutional setup could lead to serious delays and tardiness on the side of Macedonian negotiators in delivering consistent and verifiable judicial data. Consequently, certain institutional arrangements related to streamlining the existing process of collecting, analysing and delivering judicial statistical data are necessary to minimize the risk for untimely provision of data in the process of future accession negotiations. One of the reasons for such a loose institutional arrangement is that the ICT system and associated software applications were developed and are currently still being maintained using donor funding.[7]

In accordance with the Courts Act and the Judicial Council Act, the Judicial Council has the leading role in a number of areas pertaining to the judiciary, including selection, appointment, promotion and evaluation of judges, as well as responsibility to the public. In addition, the Council is also responsible for determining the number of judges per each court and the indicative monthly number of cases that should be resolved by each category of judge, reviewing and evaluating court reports on their work, and providing general

[6] Those having been in the court system for more than three years.
[7] With funds allocated by the United States Agency for International Development.

assessments of the quality and efficiency of the work of judges.[8] Thus, the Council can rightly be called the main user of the statistical capabilities of the ACCMIS, and it publishes an annual report with key statistical parameters on the case backlog, the number of incoming cases, and the number of resolved cases by each court.

To some extent, this overlaps with the function of the Supreme Court to review the work of the courts from the viewpoint of their efficiency and quality of work. Based on a general meeting on these matters, the Supreme Court prepares and publishes an annual report with assessment and conclusions on the work of the courts, containing the same statistical parameters as the annual report of the Judicial Council. Such duality – where the courts are assessed on the same issues by two institutions, which inform the public separately of the results – is both uneconomical and impractical. Given the competences of the Judicial Council outlined above, it should have the ultimate role in analysing court and judge performance statistics, formulating operational plans and policy recommendations based on such analyses, and publishing court performance information. Nonetheless, the primary responsibility for managing the electronic judicial database that is the key source for all court statistics is placed under the competence of the Supreme Court. In accordance with the Court Rulebook,[9] the inter-institutional working body responsible for managing and enhancing the ACCMIS[10] is created by the Supreme Court President, and is chaired by a Supreme Court judge, while the Judicial Council has only one representative in its composition.

Concerning the accessibility of data, the Judicial Statistics Methodology states that statistical data will be provided to the courts, the Judicial Council, the Ministry of Justice, the State Statistical Office and "other institutions that would utilize the data to perform their competences". The statistical data and analysis were to be published on the web-sites of the justice institutions at least once a year, and the research and scientific institutions would be provided access to them. Nonetheless, currently, only judicial institutions are able to directly access the data based on the ACCMIS, only part of the "raw" statistical data are published, and none of the analytical indicators. While this may accentuate the independence of the judiciary, it disregards the importance of utilizing court statistics for purposes of academic research and analysis, policy evaluation and development, and legislative improvement. Academic and research institutions, the State Statistical Office, policy makers and decision makers from other branches of power – including the Ministry of Justice and the Parliament – are among the entities that have legitimate reasons to be able to directly access the ACCMIS-related applications for generating statistical reports on the

[8] Articles 31 and 135 of the Judicial Council Act ("Official Gazette of the Republic of Macedonia" No. 60/2006, 150/2010 and 100/2011) and Article 37 of the Courts Act ("Official Gazette of the Republic of Macedonia" No. 58/2006, 35/2008 and 150/2010; Constitutional Court Decisions No. 256/2007, 74/2008 and 12/2011).

[9] Articles 8 and 9 of the Court Rulebook ("Official Gazette of the Republic of Macedonia" No. 66/2013, 114/2014).

[10] Working body on standardization of court procedures.

work and the performance of courts. To illustrate the impracticality of this arrangement, when the Ministry of Justice responds to inquiries from the European Commission on the performance of courts, it first has to communicate the Judicial Council and ask for the relevant data to be provided. This slows down the communication with the Commission and – as the Croatian negotiation process has proved – difficulties in communicating data between the judicial and executive branch of power may create critical inefficiencies in the negotiation process. Introducing obligatory sharing of information and data, primarily for the purpose of the EU integration, should be envisaged in relevant rules and regulations. Furthermore, access of the wider public to such statistical data is of great relevance as other stakeholder groups could also contribute to improvements in the overall performance of the judiciary and hence promote inclusive judicial governance.

Montenegro

According to the Regulation on Internal Organization and Systematization of the Judicial Council's Secretariat,[11] there is a specialized unit within the Judicial Council which is responsible for running the Judicial Information System (JIS)[12] - Department for Information and Communication Technologies and Multimedia. Some of the tasks of this Department include design and application of information and communication technologies and audio-visual equipment in courts; design and implementation of the information system (JIS) in courts; planning and implementation of projects aimed at modernization and improvement of JIS; maintaining equipment and databases in the JIC; improving and updating web portal of the courts and the Judicial Council; and managing electronic communication between the courts and the citizens. These tasks that are being also regulated by the Rulebook of the Judicial Council[13] and include registration, record-keeping and managing court cases data as well.

Court statistics are being summarized in semi-annual and annual reports of the Judicial Council as well as in the annual report of each of the courts. Unlike the practice in recent years, the Supreme Court of Montenegro and the Administrative Courts are not publishing

[11] In accordance with Article 75 of the Law on the Judicial Council, the Secretariat of the Judicial Council (hereinafter referred to as the Secretariat) was formed in order to professionally perform all financial, administrative, IT, analytical and other tasks of the Judicial Council, as well as activities of mutual interest to all courts. The referenced regulation is available at: http://sudovi.me/podaci/sscg/dokumenta/1309.pdf

[12] (Pravosudni informacioni sistem – PRIS. mne). udicial Information System is a unique electronic information system for managing court data and is consisted of standard applications, computer and communications equipment and infrastructure and database in which data are entered, stored and transmitted from the register in the courts. From 2013, JIC is being applied in all judicial institutions, including courts, public prosecution offices, prisons, misdemeanour bodies and the Ministry of Justice.

[13] Available at: http://sudovi.me/podaci/sscg/dokumenta/1387.pdf

their own reports now. All data relating to the work of all courts are now contained in the Annual Report of the Judicial Council.[14]

The organizational setup as well as the procedure for data collection and analysis of statistics related to the efficiency[15] of the courts is regulated by the Courts Rulebook.[16] Statistics and records of the courts are conducted by fulfilling electronic statistical forms (which are an integral part of the courts reporting methodology and of JIS as well) developed in accordance with instructions of the President of the Supreme Court and State Statistics Agency – MONSTAT. All data are collected in a single JIS database, so that the Secretariat of the Judicial Council are able to compile all statistical reports based on previously entered data. All tasks related to the court statistics are conducted under the supervision of the President of the Court, the Head of the Court Registry or by the employee designated to conduct court statistics (exists in courts with larger workload and with specialized departments).

In addition, courts collect, arrange and submit statistical data on their work in prescribed forms (statistical sheets, reports, etc.) within their regular reports on their work. Statistical reports are filled in by data based on individual court registers. Filled statistical forms are being submitted to the competent authorities (the employee designated for managing court statistics, the President of the court, President of the Higher Court and Judicial Council) in written or electronic form. Court statistics are being compiled periodically, at least on a quarterly base. In order to ensure timely submission of statistical data, all courts have a list of reporting deadlines which serves as a reminder. The statistics contained in these reports must reflect the overall work of each court department (and of each judge) for a given reporting period as well as the number of pending, received, solved and unsolved cases.

2.2. Information and communications technology and human resources

Macedonia

The Automated Court Case Management Information System (ACCMIS) was introduced with the 2009 amendments to the Court Rulebook.[17] The operationalization of the Judicial Statistics Methodology is foreseen through this system. The interviews with the representatives from the Judicial Council, the Administrative and the Higher Administrative Court have shown that through the ACCMIS system only so-called "raw" statistical data are

[14] Available at: http://sudovi.me/podaci/vrhs/dokumenta/1320.pdf

[15] The efficiency of the court work is calculated by dividing the total number of cases by the average number of resolved cases per judge.

[16] Articles 46–53.

[17] "Official Gazette of the Republic of Macedonia" No. 71/2007, 157/2009.

gathered, while the abovementioned judicial institutions do not calculate the 11 indicators for analysis and monitoring of courts performance defined in the Methodology. In addition, the ACCMIS and related software applications do not seem to generate tables, charts and reports based on the indicators. In contrast to interviewees from the administrative courts, which raised concerns on lack of sufficient ICT equipment and adequate software which meets the needs for collecting and analysing statistical data, the interviews conducted in the Judicial Council revealed that the existing equipment and software are suitable for full functioning of the ACCMIS system. The Administrative court has asked for upgrading the system with the inclusion of options specific to the needs of handling administrative law cases, however, have not yet received a response from the Judicial Council or the inter-institutional working body responsible for managing and enhancing the ACCMIS. In addition, the ICT equipment which is in use in this court is not considered fully adequate and does not correspond to the ACCMIS technical requirements. In relation to this, the interviewees from the Higher Administrative Court revealed that requests are made for purchasing additional server for restoring court back-up files as well as encryption software. Other difficulties, which they encounter while using the ACCMIS, is the lack of flexibility while generating reports. In the same vein, the Higher Administrative Court does not even have the necessary software for performing statistical operations, and are currently waiting for instalment of software with which they can log-in and extract information and data from the ICT system. To illustrate this, the interviewees from the Higher Administrative Court stated that the ACCMIS does not have a functional option to track longstanding cases, so a corresponding designation is entered in the system manually.

Another deficiency in collecting consistent and verifiable judicial data is the lack of guidelines for generating reports using the ACCMIS system. As a consequence, the administrative courts calculate the courts' statistics in a manual manner, as there are sometimes mistakes in the ACCMIS data due to improper input. This is mainly due to the disparities in the terminology used by the ACCMIS and the one used by the administrative courts. Because of this, they double check the data, including with their manually kept logs, before submitting the monthly statistical reports to the Judicial Council and the Court President. Revisions of reports occur even after reports have been submitted. At least one judge from the administrative court noticed on several occasions a discrepancy between his records and the ones generated through the ICT system.

Challenges also exist in the communication and collaboration between the individual courts, the working group in the Supreme Court responsible for the ACCMIS system and the private company[18], which is responsible for maintaining and upgrading the ICT system. The court clerks stated that most often they are only notified that an improvement in the system has been made without having some more detailed follow-up information – in which segments and how those changes would affect their functioning and collection of data.

[18] EduSoft

According to article 99 of the Courts Act, the courts are obliged to publish the adopted decisions on their web-site within two days from their preparation and signing. This is not the case for the statistical data, which are processed for the purpose of the courts. The "raw" data such as caseload at the beginning of the year, newly received cases, total caseload, decided cases during the year and other caseload towards the close of the year are made available to the public as they are being published by the Administrative and Higher Administrative court in their annual reports. However, the interviewees from the administrative court stated that due to the speed and reliability of the Internet connection and the limited hosting capacity for their websites they sometimes encounter difficulties in publishing the adopted decisions and annual reports. According to them, often the system crashes when they are publishing decisions. This is due to the high number of published decisions per month, which sometimes exceeds 1500 decisions. In addition, there is no effective option to search the database of published decisions. According to interviewees from the administrative courts, situations arise, where the court administrators have been compelled to delete some older decisions in order to publish new ones – although they are obliged by Law[19] to keep them published for five years. The speed and reliability of the internet connection is of great importance because the parties often rely on e-mail when communicating with the court. In the case of the Administrative court this is only the case with the complaints and questions received using electronic means.

One of the biggest challenges in regard to the ICT system, which is the foundation for collecting and analysing judicial statistical data, is to determine the best possible institutional arrangement to transfer the system from the donor which paid for it and the private company which is currently maintaining the system. The information provided by the Judicial Budgetary Council is that they do not foresee any financial difficulties on the part of assuming the ownership and funding of the ICT system, once donor funding ends. Even if this is the case, sufficient allocation of adequate budgetary resources is needed to continuously develop and adequately maintain the system. Such funds are not projected in the short term. In order to have problem-free transfer of the ownership and funding of the ACCMIS system, the judicial institutions should first make an assessment of the viability of the current solution where the management of the ACCMIS system and the related software application is under an inter-institutional body established and chaired by the Supreme Court. The assessment should be conducted on the basis of several parameters, including: primary institutional usage of the ICT system and the information and data that it produces, the financial capacity to continuously develop the ACCMIS system and the related software applications and finally, the ability to provide adequate human capacities which will maintain the ICT system and will constantly develop and upgrade the system related documents, such as manuals and guideline for its proper functioning, as well as analysing the data collected through the system.

[19] Act on Case Flow Management in the Courts,"Official Gazette of the Republic of Macedonia" No. 171/2010.

In essence, maintaining and further developing a robust ICT system, which needs to collect judicial data from all the courts in the country, comes at a cost. Its continuous expansion and extension in terms of ICT tools needs sufficient budget, however, above all, sufficient and skilled human resources. Capacity building measures related to the ACCMIS system are necessary to improve the efficiency, reliability and transparency of judicial operations and services, although, in the end it comes down to the commitment by the professional staff which would work on the ICT system. In this regard, both administrative courts pointed out that they have insufficient number of judicial clerks and typists, and judicial professionals who enter data in the ACCMIS. The High Administrative Court has only one judicial clerk which, at the same time, acts in the capacity of public relations officer. The interviews in the Judicial Council revealed that there is no appointed staff member for analysing the ACCMIS-based parameters and indicators. At the moment, there is only one person working as IT technician in the Council. The envisaged specialised units for statistics and analysis and for strategic planning and policies are not staffed and exist only on paper. In order to perform its function of collecting and analysing judicial statistical data from the courts, the Council needs a number of new employments to fill-in the envisaged posts for IT technicians, analysts and statisticians. On the other hand, both administrative courts have established a working body for managing the distribution of court cases and they consider themselves sufficiently staffed to perform its function. For instance, this particular body in the Administrative court is consisted of 4 judges, judicial clerks and 1 IT technician, and is headed by the Court Administrator.

Montenegro

In Montenegro, Judicial Information System (JIS) is an unique electronic information system for managing court data and is consisted of standard applications, computer and communications equipment and infrastructure as well as electronic database in which court-related data are entered, stored and transmitted from the written registers of the courts. Although JIS started to be implemented in 2010, from 2013, precisely from the development of the two JIS applications – automatic forms and electronic allocation of cases, JIS is being properly applied in all judicial institutions, including courts, public prosecution offices and the Ministry of Justice (with the exception of misdemeanour bodies which are yet to be recognized as courts by the new Courts Act that is expected to be adopted soon). The JIS processes data for monitoring of the rate of resolved cases and the number of cases per judge.

The Administrative Court of Montenegro is sufficiently staffed with professional staff who can collect statistical data. Currently, the Administrative Court is missing professional staff who can perform assessment and analysis of statistical court data. The Judicial Council as well does not possess enough staff to perform its function of collecting and analysing court statistics. For the execution of the above described tasks, 28 work posts are envisaged in the Department for Information and Communication Technologies and Multimedia, out of the

58 employees in the Secretariat.[20] These work posts include: Head of the Department (1), Senior Advisor I (8), Senior Advisor II (7), Senior Advisor III (3), Advisor I (10), Advisor II (1), Advisor III (1), Senior Clerk (5). Despite relatively high number of positions, most of which imply good knowledge of JIC and audio-visual techniques, only 14 persons are working in this Department at the moment – 2 Senior Advisors I; 2 Senior Advisors II; 1 Senior Advisor III; 4 Advisors I; 1 Advisor II and 4 Senior referents.[21] They do not possess adequate education and experience to perform their job duties.

This deficiency has been recognized by the new Strategy for Judicial Reform 2014–2018. "Major shortcomings that stand in the way of proper functioning of JIS include: insufficient human resources; insufficient amount of funds allocated for maintenance and upgrade of the system which features insufficient data transfer speeds and out-dated equipment; equipment is not protected against power shortages and there are slow internet connections in many courts."[22]

Since the middle of 2013, all courts have ICT equipment and adequate software installed to utilize the JIS. New applicative solutions, so-called automatic forms for random allocation of cases have also been introduced in 2013. According to the Courts Rulebook,[23] data concerning court cases and related materials are being incorporated electronically in JIS on an everyday basis, or at latest on the first next day. However, as mentioned previously, part of the equipment is out-dated, especially in smaller courts, and operates with slow internet connections. In addition, Business Intelligence Tool (spreadsheets, digital dashboards, OLAP - online analytical processing, data warehousing, etc.) for the analysis of courts statistics is missing. Funds for improvement of this equipment are evidently lacking.[24]

3. The EU Justice Scoreboard as an evaluation and benchmarking tool: Relevance for Member States and candidate countries

The less than flattering Bulgaria and Romania progress reports under the Cooperation and Verification Mechanism,[25] coupled with Eurosceptic media coverage of excesses in a number of recent and of southern Member States, created a perception of negative

[20] Regulation on Internal Organization and Work Post Systematization of the Judicial Council's Secretariat.
[21] List of employees of the Secretariat of the Judicial Council, available at: http://sudovi.me/podaci/sscg/dokumenta/1297.pdf
[22] Page 12, available at: file:///D:/PODACI/Downloads/Strategy%20for%20the%20reform%20of%20the%20%20judiciary.pdf
[23] Available at: http://sudovi.me/podaci/vrhs/dokumenta/903.pdf
[24] Interview with the Chief of the Head of the Judicial Council Secretary, 24 November 2014
[25] European Commission, Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism, COM(2013) 47 final, 2013; European Commission, Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Cooperation and Verification Mechanism, COM(2012) 411 final, 2012.

developments in respect of rule of law in some Member States, and of backsliding in justice policies in the EU in general. In 2013, the foreign ministers of four Member States – Denmark, Germany, the Netherlands and Finland – wrote a letter to the then European Commission President, José Manuel Barroso, asking the Commission, as a guardian of the Treaties, to take the responsibility of ensuring the respect of the common values and protect the general interest of the Union. The document requested a Union response to sustain the credibility of the European project and prevent further "erosion of confidence", which "extends far beyond financial and economic policy".[26] The foreign affairs Ministers called upon the Commission to establish an effective mechanism which will defend the core fundamental values in the Member States.

It was not only the Member States that requested a response from the Commission. Acting upon the purportedly worsened political situation in Hungary, the European Parliament outlined recommendations to the EU institutions on setting up a new mechanism to enforce Article 2 of the TEU effectively; and firmly requested that Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirements of democracy and the rule of law.[27]

The institutional response from the Commission followed. In a Communication to the European Parliament and the Council, the Commission set out a new EU framework to strengthen the rule of law in Member States.[28] The Framework would enable the Commission, in cooperation with the concerned Member State, to ascertain a solution to prevent the emerging of a systemic threat to the rule of law. Based on the principle of equality, the Framework would be applied in the same way to all Member States and will operate on the basis of the same benchmarks in defining a systemic rule of law threat.

The institutionalization modus indicates the context in which the Justice Scoreboard is established, maintained and further developed. Its inclusion in the EU economic policy coordination, more specifically – the Commission's Annual Growth Survey (AGS) – reveals that the quality, independence and efficiency of judicial systems are also seen as means of reducing costs for businesses and increasing the attractiveness of countries for foreign investment.[29] The 2014 AGS signals that improving the quality, independence and efficiency of judicial systems, including by ensuring that claims are settled within a reasonable period

[26] Westerwelle, Guido, Dr., Frans Timmermans, Villy Søvndal, and Erkki Tuomioja. Letter to José Manuel Barroso. 6 Mar. 2013. Government of the Netherlands. Web. 2014 Nov. 2014.

[27] Committee on Civil Liberties, Justice and Home Affairs, Report on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)(2012/2130(INI)), 2013, Rapporteur: Rui Tavares.
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0//EN

[28] European Commission, COM(2014) 158 final/2, 2013. http://ec.europa.eu/justice/effective-justice /files /com_2014_158_en.pdf

[29] Westerwelle, Guido, Dr., Frans Timmermans, Villy Søvndal, and Erkki Tuomioja. Letter to José Manuel Barroso. 6 Mar. 2013. Government of the Netherlands. Web. 2014 Nov. 2014.

of time would considerably improve investment climate for firms. The 2013 country-specific recommendations were aimed at ten Member States,[30] which represent a significant increase taking in consideration that in 2012 there were recommendations for only six countries, and none in 2011.[31]

In order to monitor the independence, efficiency and quality of their judicial authorities, and at the same time benchmark the performance of Member States, the Commission has developed a number of commonly accepted baseline indicators at EU level. Although different models of judicial systems exist in EU, there are fundamental elements which determine the extent of their effectiveness. In this regard, the EU Justice Scoreboard 2014 monitors judicial effectiveness through three major indicators.

A. The efficiency of justice systems:
    1. *Length of proceedings and disposition time*. Length of the proceedings expresses the time (in days) needed to resolve a case in court, that is the time for the court to reach a decision at first instance; whereas the 'disposition time' indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year multiplied by 365 days.
    2. *Clearance rate.* The clearance rate is the ratio of the number of resolved cases over the number of incoming cases. When the clearance rate is low and the length of proceedings is high, backlog develops in the system.
    3. The *number of pending cases* expresses the number of cases per 100 inhabitants that remains to be dealt with (1st instance) at the end of a period (e.g. a year). The number of pending cases influences the disposition time. To improve the length of proceedings therefore requires measures to reduce the number of pending cases.

The Scoreboard further examines indicators on factors that can help to increase the quality of justice: the monitoring and evaluation of court activities, the Information and Communication Technology (ICT) systems for courts, the alternative dispute resolution methods and the training of judges. Although several other important factors also have an impact on quality, particularly the specificities and complexities of the procedures, the above indicators provide useful information reflecting the awareness of Member States on the importance of these issues and relevant measures taken.

B. The quality of justice systems:
    1. *Training of judges:* the training of judges, initial training and continuous training throughout their career, is an important element for the quality and effectiveness of judicial decisions. Training can focus on specialisation, but also

[30] Bulgaria, Spain, Hungary, Italy, Latvia, Malta, Poland, Romania, Slovenia, Slovakia.
[31] Bulgaria, Italy, Latvia, Slovenia, Slovakia.

on improving skills. This indicator provides information on compulsory training of judges. A sub-indicator examines continuous training in EU law or in law of another Member State.

2. *Financial and human resources:* the annual approved budget for courts, actual government expenditures on law courts, and the number of judges and lawyers per 100.000 inhabitants provide information on the resources used in the justice systems.
3. *ICT systems for courts*: the use of information and communication technologies has become indispensable for the effective administration of justice. The indicators reflect the availability of ICT systems for registration and management of cases, and for communication and information exchange between the courts and their environment (e.g. electronic web forms, court website, follow-up of cases on-line, electronic registers, electronic processing of small claims and undisputed debt recovery, electronic submission of claims and videoconferencing).
4. *The monitoring and evaluation of courts' activities*: in order to improve the quality and efficiency of judicial proceedings, the court activities should be monitored through a comprehensive and publicly available system of collection of information, and evaluated regularly. The indicators reflect the availability of regular monitoring systems of court activities and evaluation systems. The monitoring systems include the publication of an annual activity report and the measurement of the number of incoming cases, of decisions delivered, of postponed cases and of the length of proceedings. The evaluation of court activities indicator is based on the availability of: the definition of performance indicators (such as incoming cases, closed cases, pending cases, backlogs, the performance of judges and court staff, enforcement, costs), regular evaluation of performance and outputs, the definition of quality standards (such as quality assurance policies, human resource policies, proceedings benchmarks, usage of resources), and specialised court staff entrusted with quality policy.

The Scoreboard also presents findings based on indicators relating to the perceived independence of the justice system. Perception of independence is important for investment decisions. The World Economic Forum (WEF) in its annual Global Competitiveness Report provides a 'perceived independence index' which is relevant in the context of the economic growth as it is based on a survey answered by a representative sample of firms in all countries and representing the main sectors of the economy (agriculture, manufacturing industry, non-manufacturing industry, and services). The World Justice Project in the context of its 2012–2013 Rule of Law Index Report developed an indicator on the 'perceived independence of the civil justice' based on replies from a general population poll and qualified respondents. It should also be noted that the Court of Justice of the EU and the European Court of Human Rights in examining the independence of the judiciary

have underlined the importance of the appearance of judicial independence. According to the case law of these courts, the independence of the judiciary requires detailed rules in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it. [32]

C. Independence of the judiciary
    1. *The existence of safeguards regarding the transfer of judges without their consent.* This indicator determines whether the existing safeguards allow or prevent such transfers, the authorities that decide upon these transfers, the reasons for which such a transfer is allowed, whether an appeal against the decision is possible and which judicial institutions considers the appeal.
    2. *The dismissal of 1st and 2nd instance judges.* This indicator looks at the organizational institution/unit which reaches the decision for dismissal and the ones which are authorised to put forward a proposal for dismissal.
    3. *The allocation of incoming cases within a court*. Sub-indicators in this sphere determine the level on which the criteria for distributing cases within a court are defined, how court cases are allocated within a court and which authority (judicial or executive) supervises the allocation of cases.
    4. *The withdrawal and recusal of judges from adjudicating a case in which their impartiality is in question or is compromised or where there is a reasonable perception of bias.* This indicators determines whether there are safeguards in place in a situation when a judge who does not withdraw can be subject to a sanction (e.g. disciplinary), which authority decides on a recusal request by a party aimed at challenging a judge and finally, is there a possibility to appeal against a decision on recusal to a higher judicial authority.
    5. *The procedures in case of threat against the independence of a judge.* The indicator examines the existence or lack of such a procedure, which authorities can act in specific procedures for protecting judicial independence, and the measures these authorities can adopt.

The collection of data based on the above-mentioned indicators is performed, in major part, by the EU Member States. The Council of Europe Commission for the Efficiency of Justice (CEPEJ) plays a particular role in this regard by actually collecting and analysing the data received. The CEPEJ does this exclusively upon a request by the European Commission. Additionally, data from other sources are used, such as Eurostat, the World Bank, the World Economic Forum, and the European judicial networks, in particular the European Network of Councils for the Judiciary.

[32] European Commission: The EU Justice Scoreboard, A Tool to Promote Effective Justice and Growth, European Union 2013.

Finally, the Justice Scoreboard serves as a platform for the Commission to continue to engage in an open dialogue with Member States, the European Parliament and other actors with the aim to sustain and further increase the effectiveness of national justice systems in the Union. By doing so, the Commission would further expand the indicators and the areas covered in the Scoreboard, as it was the case in 2014. This evolving nature of the Scoreboard is promoted and grasped by the European Parliament which seeks to further expand its scope in order to cover criminal justice matters and fundamental rights by incorporating the Scoreboard into the new Copenhagen mechanism and the European policy cycle on the application of Article 2 of the TEU.[33]

While the Scoreboard was devised with EU Member States in mind, it may still be relevant for candidate countries. The accession pace of each individual candidate country is determined on the basis of progress made in preparing for membership, in accordance with the Copenhagen criteria. For the purposes of this research, of particular importance are the ones related to the political criteria: stability of institutions guaranteeing democracy, the rule of law, as well as the ability of the candidate country to take on the obligations of membership, including adherence to the aims of political union. The last item implies that candidate countries must adopt the policies and rules of the acquis communautaire and ensure their effective implementation and enforcement through appropriate administrative structures. From this standpoint, increasing the efficiency of Macedonia's and Montenegro's justice systems is of utmost importance both for the Union and the candidate countries.

The analysis below aims to determine the necessary legal and institutional reforms, ICT upgrades, as well as budgetary and human resources interventions to introduce the EU Justice Scoreboard in the specific sphere of administrative law in the two candidate countries. The reasoning behind this kind of research comes from the experience of the most recent EU Member State, namely Croatia, where reporting based on these indicators was mandatory even before the actual membership, i.e. during the ratification period of the accession treaty. Therefore, harmonizing the national mechanisms and determining indicators for monitoring and evaluating judicial performance is of utmost importance for the EU candidate countries. It would contribute to increasing the efficiency and transparency of judicial institutions on one hand, and would standardize the monitoring and evaluation indicators with those of EU, on the other. Finally, the application of these mechanisms would enable national judicial authorities comparability and benchmarking with EU Member States on judicial performance and efficiency of administrative courts.

[33] European Parliament. "Fundamental Rights in the European Union (2012)". European Parliament Resolution of 27 February 2014 on the Situation of Fundamental Rights in the European Union (2012), Web. http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0173&language=EN

4. Judicial efficiency, quality and independence in Macedonia and Montenegro with a focus on administrative law: Benchmarking in the context of the EU Justice Scoreboard

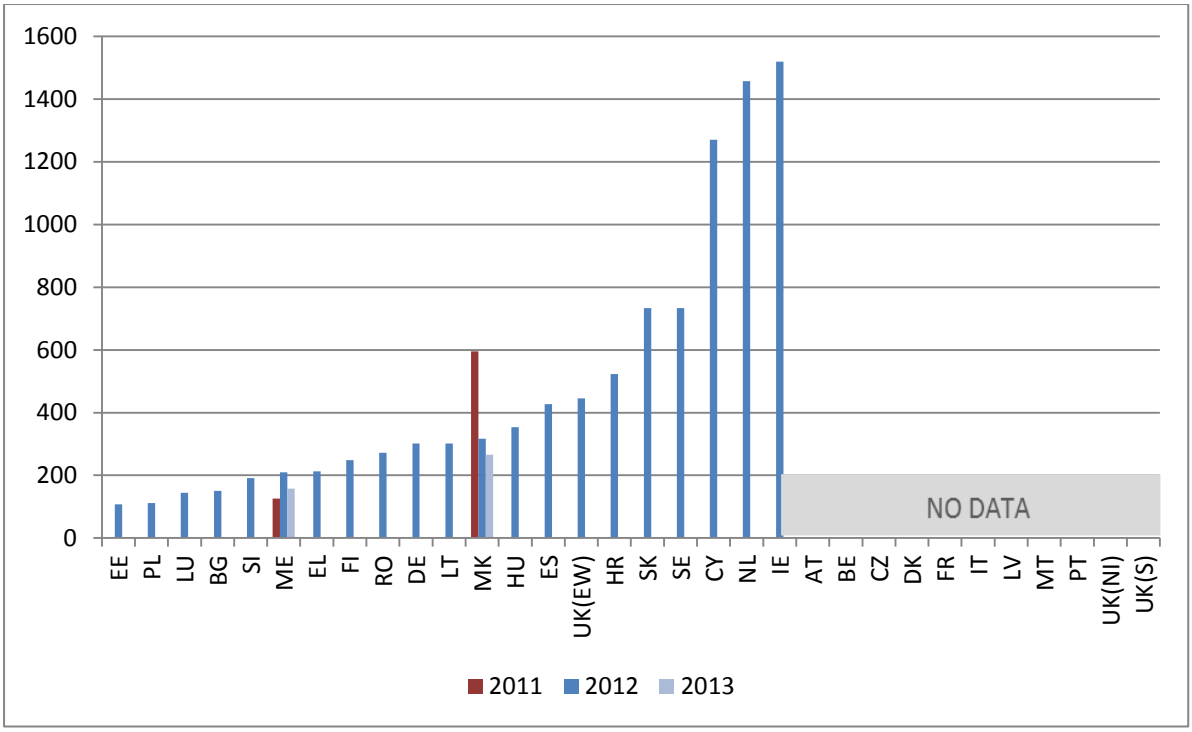
4.1. The efficiency of justice systems

Regarding the measurement or assessment of the administrative judiciary system, the results of the questioner tell us that the Administrative Court and High Administrative Court hold the necessary records to adequately assess all needed indicators, however they don't do any analytics themselves. They only provide raw data. Given the aforementioned drawbacks of the IT systems we can only comment on the manually calculated data provided by this research. There is at present no (systemic) productivity indicator for the productivity of judges.

A. *Length of proceedings and disposition time*.

The first indicator of efficiency in the EU Justice Scoreboard is the length of proceedings, which is the time, expressed in days, taken by the court to reach a decision at first instance. The 'disposition time' indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year multiplied by 365 days. Concerning Macedonia, the data presented in Figure 1, shows that there is a steady decrease in the disposition time to resolve administrative cases from 596 days in 2011 to 266 days in 2013. Although there is a certain increase in the time needed to resolve administrative cases in 1st instance from 126 in 2011 to 158 in 2013, Montenegro compares quite favourably even with the best performers in the EU.

Figure 1: Time needed to resolve administrative cases (1st instance/in days)



Source: CEPEJ study 2014; Annual report on the work of the Judicial Council of Macedonia 2011, 2013.

Year over year for the measured period, the Higher Administrative Court both received an increase in caseload and took longer on average to decide on a single case.

At that rate, using the standardized methodology for Decided Cases per Day Indicator (DCD), the Higher Administrative Court decided 4.6 cases on a daily bases in 2012, and 7.2 cases daily in 2013. We can deduce that even though the Higher Administrative Court suffered increased workloads year over year, and an increase in average time to decide a single case, it had however increased efficiency on a daily basis for 63.8%.

Thus the length of proceedings for the AC for 2012 per case averaged to 317 days (DTI) and 312 days in 2013 (DTI) which indicates that the AC did increase average performance per case, however noting that it has smaller caseloads year over year those improvements can be considered marginal if even noteworthy.

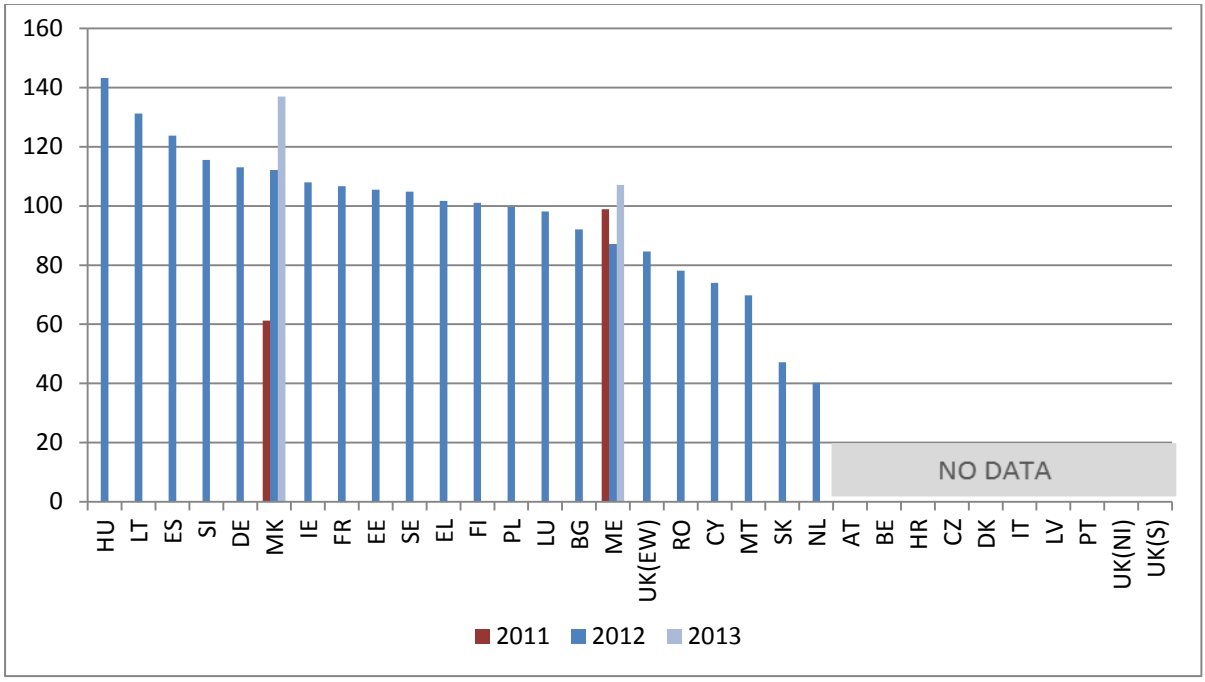
Measuring the daily performance of the Administrative Court, in 2012 it averaged to 44.8 cases per day, and 39.8 cases daily in 2013. Corresponding to the DTI, the DCD indicator shows a decrease in the Administrative Court efficiency year over year, because even with lower annual caseloads it averaged deciding 4 cases less on a daily bases.

B. *Clearance rate.*

Another indicator of efficiency in the EU Justice Scoreboard is the rate of resolving cases i.e. the clearance rate. That is the ratio of the number of resolved cases over the number of incoming cases. When the clearance rate is 100% or higher it means the judicial system is

able to resolve at least as many cases as the incoming cases during a certain period. When the clearance rate is below 100%, it means that the courts are resolving fewer cases than the number of incoming cases, and as a result, at the end of the year, the number of unresolved cases adds up to the backlog of pending cases. For two consecutive years, Macedonia had a clearance rate higher than 100%, meaning that it resolved more administrative cases than the incoming cases for these particular years (112% in 2012 and 137% in 2013). This places the country on equal footing with the best performers among the EU Member States, as presented in Figure 2. In the case of Montenegro, the clearance rate shows mixed results in the last three years. However, the 2013 performance of the Administrative court in Montenegro is on a satisfactory level, exceeding by 7% the incoming cases during the year.

Figure 3: Rate of resolving administrative cases in % (1st instance/in days)



Source: CEPEJ study 2014; Annual report on the work of the Judicial Council of Macedonia 2011, 2013.

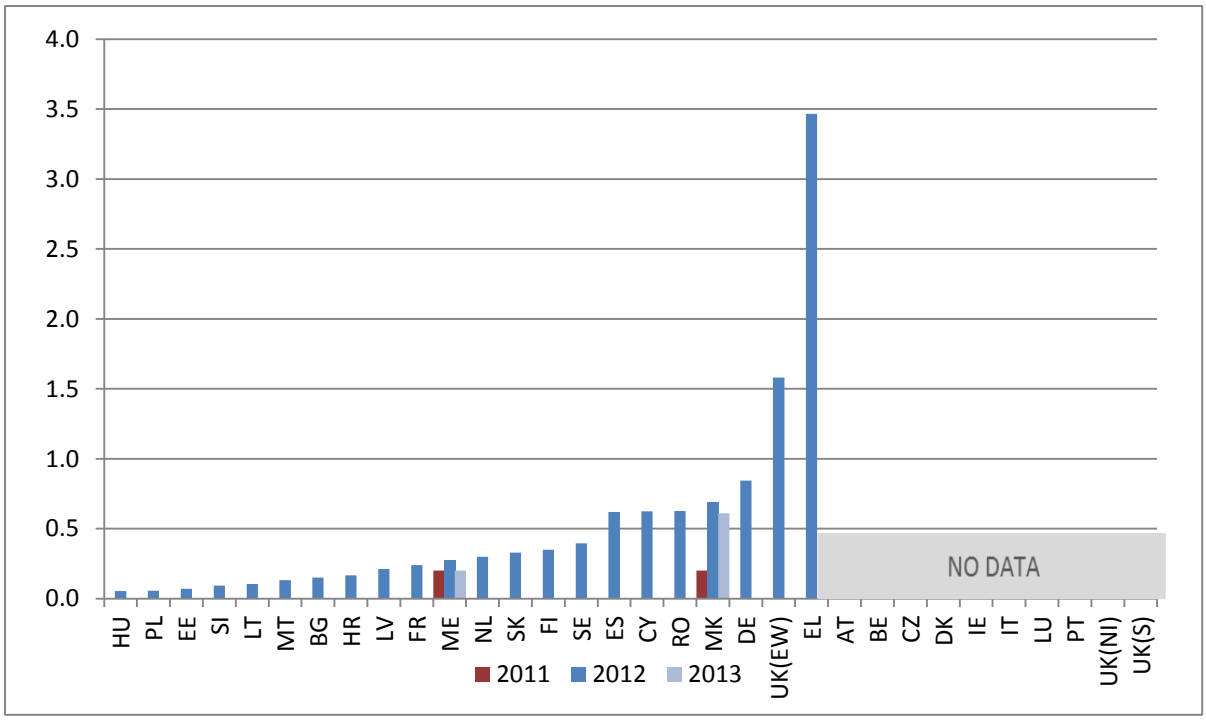
The Higher Administrative Court had a 78% clearance rate in 2012 and 98% in 2013; while the Administrative Court had a clearance rate of 112% in 2012 and 114% in 2013. Both courts show high clearance rates and an increase in clearance rates year over year.

When correlated to the length of proceedings per case, the relatively high clearance rates and short proceedings contribute to low backlogs (negligible to non-existent) in the Higher Administrative Court. The Administrative Court managed fairly high clearance rates in the measured periods, putting it on par with the administrative judiciary in Spain, Slovenia and Lithuania (top 5 out of 32 countries covered by the analysis). However, comparatively high DTI year over year contributes to the formation of backlog, which indicates further improvements in performance are needed.

C. *Number of pending cases*

The last indicator of efficiency in the EU Justice Scoreboard is the number of pending cases. It shows the number of cases that remains to be dealt with at the end of a period. In the case of Macedonia, Figure 3 depicts a significant increase in the number of pending administrative cases per 100 inhabitants in 2012 (0.69) and 2013 (0.61) compared to 2011 when this indicator was 0.2.[34] According to the Ministry of Justice, this is due to the more efficient work of the misdemeanour commission. Namely, based on decisions of this administrative commission, parties have the right to initiate administrative disputes at the Administrative court. The situation related to pending cases in Montenegro demonstrates a steady performance tendency of maintaining the level of approximately 0.2 cases per 100 inhabitants in the last three years.

Figure 4: Number of pending administrative cases per 100 inhabitants



Source: CEPEJ study 2014; Annual report on the work of the Judicial Council of Macedonia 2011, 2013.

The number of pending cases indicator depicts a more worrying picture for the efficiency of administrative judiciary in the Republic of Macedonia. Annually, the Higher Administrative Court showed a fairly small number of 0.0002 pending cases per 100 inhabitants for 2011, 0.002 pending cases per 100 inhabitants for 2012, and 0.004 cases per 100 inhabitants in 2013. Though nominally low, these statistics point to a "dramatic" increase in pending cases annually. Most of the early low stats are contributed to the Higher Administrative Court

[34] Both in the Administrative and the Higher Administrative Court.

being established in 2011,[35] and as more cases are being initiated before the Higher Administrative Court its true capacities become apparent.

The Administrative Court had a rate of 0.77 pending cases per 100 inhabitants for 2011, 0.69 for 2012 and 0.6 for 2013.

As the number of undecided cases per 100 inhabitants directly influences the DTI we can only conclude that the slight improvements in DTI for the Administrative Court year over year aren't due to increased internal efficiency, but are rather a result of reduced workloads. Therefore, unless capacities are increased in the Higher Administrative Court as workloads increase, the DTI will also show higher values, and hence the overall performance of the Higher Administrative Court will fall year over year.

Regarding measures to prevent the formation and reduce the backlog of cases and stalled the movement of cases in court, the Higher Administrative Court holds meeting where the results of the judges are reviewed one by one. The backlog is small, but there are problems when they do not receive all the documents (dispatch slip indicating when the decision has been received, the proofs, and the power of attorney documents). Each month they are sending requests to the Administrative Court to provide the needed documents. But sometimes they have to "administratively return" the cases when all the documents are not provided.

Based on the current workload, the existing human capacities available both for the Administrative and the Higher Administrative Court are insufficient and do not reflect the actual needs of the judicial system in Macedonia. According to the systematization of work posts, out of 132 envisaged posts in the Administrative court, only 55 are filled in. Out of 18 envisaged posts for typists, only 6 are filled-in, i.e., on average one typist provides services to almost 5 judges. 28 judges are appointed out of envisaged 33 posts (excluding the court president). The interviewed judges deemed that the current number of judges would be sufficient if there is a higher number of employed judicial clerks and typists that support the judges in their work. The situation is similar in the Higher Administrative Court. According to their systematization of working places, out of 52 envisaged posts, only 22 are filled in. Out of them, 9 judges are appointed out of the envisaged 15 posts.[36]

4.2. The quality of justice systems

The EU Justice Scoreboard indicators pertaining to the quality of judicial decisions refer to all the courts, and not only administrative courts. In this analysis, while the broader picture for the overall judiciary is presented, still some points are raised which are specifically

[35] By Law in 2010.

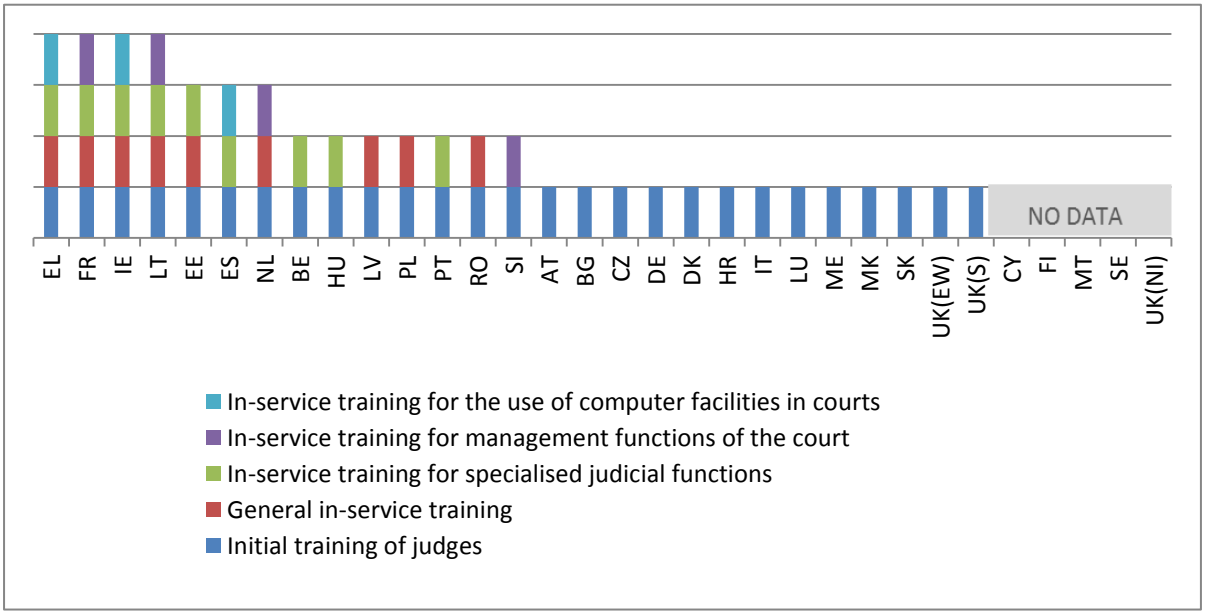
[36] The 2013 report states 10 judges, but during the interview we were told 9. One of these judges is not performing his/her function as he/she has been elected as a member of the Judicial Council.

directed to the administrative courts in the two candidate countries. Effective justice requires quality of judicial decisions to be maintained throughout the whole justice system. In terms of the EU justice scoreboard, the quality of the judiciary could be established, maintained and continuously improved through adequate training of judges; providing sufficient financial, human and ICT resources; monitoring and evaluation of court activities, and conducting satisfaction surveys.

A. *Training of judges*

The Scoreboard is a novel and evolving tool, so the 2014 version was enhanced with the introduction of an additional indicator for measuring the quality of judicial decisions – compulsory training of judges. Figure 4 shows which of the particular five types of training are compulsory in the EU Member States and in the two candidate countries. Macedonian and Montenegrin judges receive only initial training, representing the bare minimum on EU level. This is one factor affecting the quality of judicial decisions which needs to be further addressed by both candidate countries.

Figure 5: Compulsory training of judges in 2012



Source: CEPEJ study 2014.

Regarding trainings on the Code of Ethics for Judges, Macedonia's Higher Administrative Court informed that there were some trainings, but that so far judges from the Higher Administrative Court haven't attended any. Even though the Higher Administrative Court interviewed officer stated that provisions from the Code of Ethics are precise and clear he could not provide information whether the judges' work is aligned according to the Code.

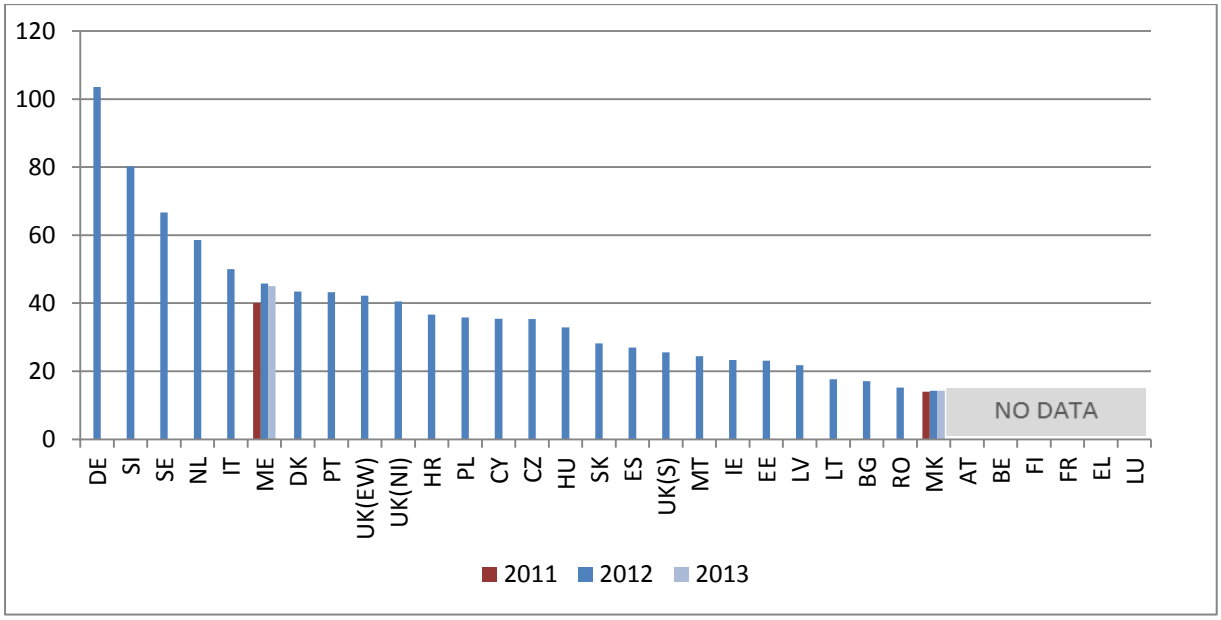
The judges from Macedonia's Administrative Court stated they are self-aware of their responsibilities arising from the Code of Ethics for Judges. However they expressed the need

for creating minimal working conditions in which they can feel respected and can maintain their self-respect.

B. Financial and human resources

Another important determinant of quality presented in the EU Justice Scoreboard is the level of funding of courts. According to the CEPEJ methodology, one way to measure the level of funding is through the annual approved budget allocated to the functioning of all courts, whatever the source and level of this budget (national or regional) per inhabitant.[37] In the case of Macedonia and Montenegro, this indicator in Figure 5 presents the approved annual budget[38] for all courts, with the exception of the constitutional courts. Based on these data, each inhabitant in Macedonia contributed to the projected annual budget allocated for the courts in Macedonia with 14 Euros in 2011. This was the lowest out of 32 evaluated countries. The general government expenditure on law courts was used to cover the entire court expenditures (marked 4 on a scale from 1-4). An insignificant increase has been observed for 2012 and 2013 (14.3 Euros per inhabitant). The results in Montenegro reveal huge projected per capita annual budget for the courts – among the highest even when compared to EU Member States. Each citizen of Montenegro was to allocate 40 Euros for the courts in 2011, rising to 45 Euros in 2012 and 2013.

Figure 6: Annual budget approved for courts per inhabitant



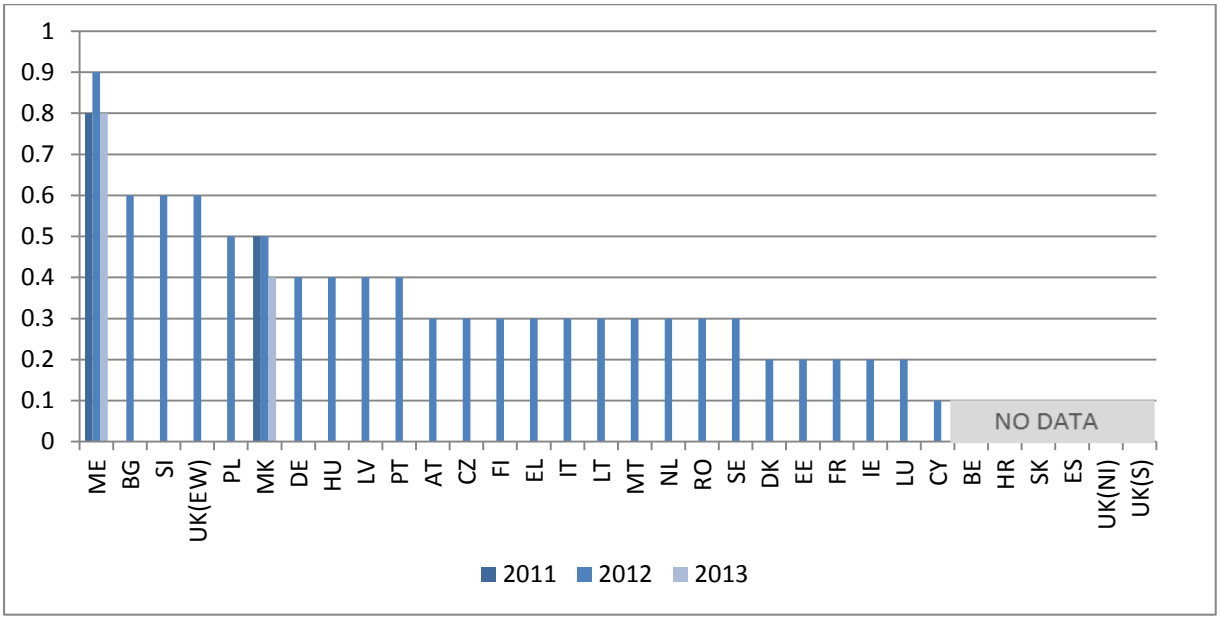
Source: CEPEJ study 2014; Eurostat Population statistics 2011, 2012, 2013; Annual budget account of Macedonia 2011, 2013; National Bank of the Republic of Macedonia exchange rate history 2011, 2012, and 2013; Annual budget account of Montenegro 2011, 2012, and 2013.

[37] It does not take into account Prosecution Services (except in BE, DE, EL, ES for 2010, FR, LU and AT) or legal aid (except in BE, ES for 2010, and AT).

[38] According to national annual account data.

The EU Justice Scoreboard uses an additional indicator for measuring the level of funding of courts, and through it the financial means allocated to ensure proper quality in judicial decisions. It focuses on general government expenditures on law courts as percentage of GDP, not in terms of planned expenditures, but in terms of what was actually allocated and spent or invested during the year. Whereas Figure 5 includes all national courts with the exception of constitutional courts, Figure 6 also includes probation systems and legal aid. According to the data, both candidate counties have high actual expenditure on courts relative to the size of their economies. Even more, in comparison with other EU Member States, Montenegro has by far the highest expenditure on law courts as percentage of GDP ranging from 0.8% in 2011 and 2013, and 0.9% in 2012.

Figure 7: Government expenditure on law courts as % of GDP

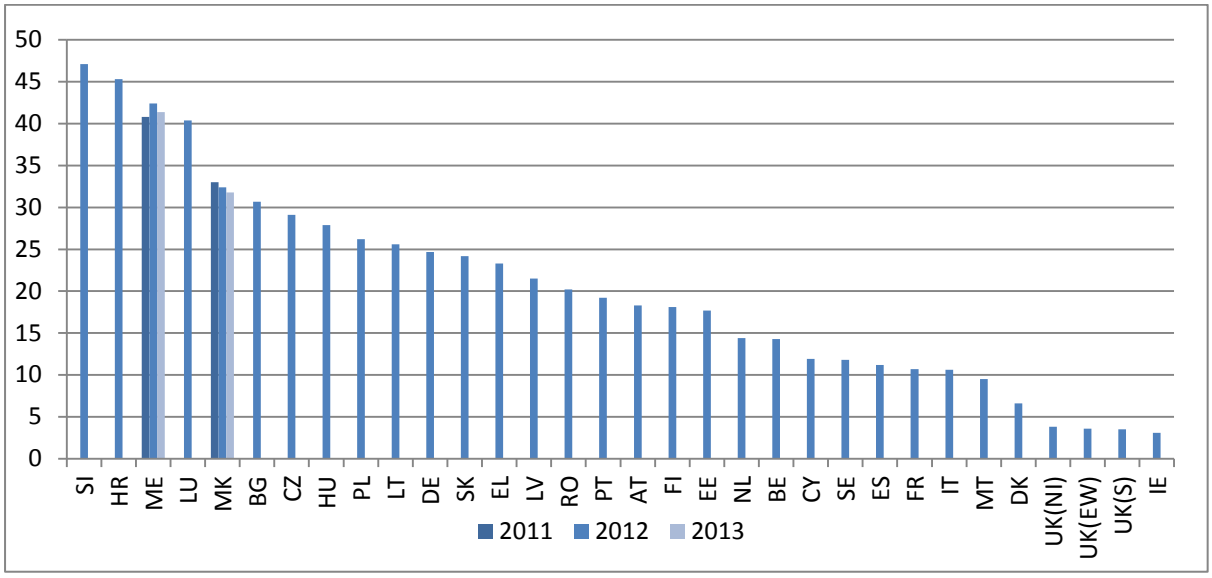


Source: Eurostat expenditure on law courts as % of GDP; Eurostat Population statistics 2011, 2012, and 2013; Annual budget account of Macedonia 2011, 2013; National Bank of the Republic of Macedonia exchange rate history 2011, 2012, 2013; State Statistical Office GDP News Release No. 3.1.14.06. Montenegro Chamber of Commerce GDP statistics; Annual budget account of Montenegro 2011, 2012 and 2013.

Aside from the financial resources, the EU Justice Scoreboard asserts that the quality of judicial decisions depends also on the human resources allocated to courts. This indicator was revised in the 2014 version of the Scoreboard to exclude the court clerks and focus exclusively on full-time judges, thus achieving alignment with the CEPEJ methodology. Figure 7 may indicate one of the reasons for the relatively large expenditures for courts in Macedonia and Montenegro. Both countries have very high number of judges per 100 000 inhabitants. Namely, Macedonia had 33 judges per 100 000 inhabitants in 2011 with a gradual, but steady decrease in the two following years – 32.4 in 2012 and 31.8 in 2013. This places Macedonia' judiciary (in this respect) in the top 5 out of 32 evaluated countries and territories. Montenegrin numbers are even higher. They reveal that there were 40.8 judges per 100 000 inhabitants in 2011, and there is a tendency for further increase of this number

to 42.4 in 2012 and 41.4 in 2013. Interestingly enough, on the EU level, the countries with the highest numbers of judges are Slovenia, Croatia and Bulgaria.

Figure 8: Number of judges *(per 100 000 inhabitants)*



Source: CEPEJ study 2014; Annual report on the work of the Judicial Council of Macedonia 2011, 2013; Decision on the number of judges in Montenegro 2011 and 2013.

According to the systematization of working places of Macedonia's Higher Administrative Court, 52 posts are envisaged, but there are only 22 employees. 10 judges are appointed out of envisaged 15 posts.[39] However as the caseload before the Higher Administrative Court is still "relatively" low and it is keeping high clearance rates and low backlogs, it is difficult to recommend more appointed judges.

Regarding human capacities of Macedonia's Administrative Court, according to the systematization of work posts, 132 are envisaged, but there are only 55 employees. Out of 18 envisaged posts for typists, only 6 are filled-in, i.e., on average one typist provides services to almost 5 judges. 28 judges are appointed out of envisaged 33 posts (excluding the court president). The interviewed judges deem that the current number of judges would be sufficient if there are more employed judicial clerks and typists that support the judges in their work. They also stress that each specialized court section should have both judicial clerks with longer and with shorter work experience, so that they can perform both simple and more complex tasks. Often there is no personnel to handle simpler tasks so the valuable time of scarce employees with longer work experience has to be sacrificed on performing simple chores. At the end of 2013, 8 judicial clerks were employed by means of transfer from another public sector entity, and starting from 2014 two judicial clerks were employed through a public advert procedure. The provided data, comparatively indicates that courts

[39] The 2013 report states 10, but during the interview we were told 9. 1 of these judges is not performing her function as she has been elected to be a Judicial Council member;

are (fairly) adequately staffed with judges however logistical and supporting staff as well as better funding is needed.

C. *Availability of Information and Communication Systems*

The EU Justice Scoreboard considers the availability of Information and Communication Technology (ICT) systems as another factor which influences the quality of judicial decisions. According to the CEPEJ methodology, the computerization of courts is measured through eleven indicators. Each of these indicators is worth maximum 4 points in case it is available in 100% of the courts in the specific county. The country receives 3 points if the indicator is available in +50% of the courts, and 2 points if it is available in less than 50% of the courts in the country. Finally, the country receives 1 point if the tool is available in 10% of the courts. Figure 8 depicts the scores for the EU Member States, for Macedonia (23 points), and for Montenegro (36 points). Based on 2012 data, the courts in Macedonia were lacking IT systems for electronic web forms, for follow-up of cases online, for electronic processing of small claims, and for electronic processing of undisputed debt recovery in addition to poor availability of video conferencing and IT system for the electronic submission of claims. In contrast, Montenegro compares favourably to the best performers in the EU, showing poor availability in only two categories, namely video conferencing availability and IT system for the electronic submission of claims.

In Montenegro, the Judicial Information System (JIS) is an IT platform containing all court decisions of all courts. The relevant decisions are published on the web portal of the Administrative Court. In previous years, a practice was established to publish decisions on the date of their dispatch to the parties of the proceedings.

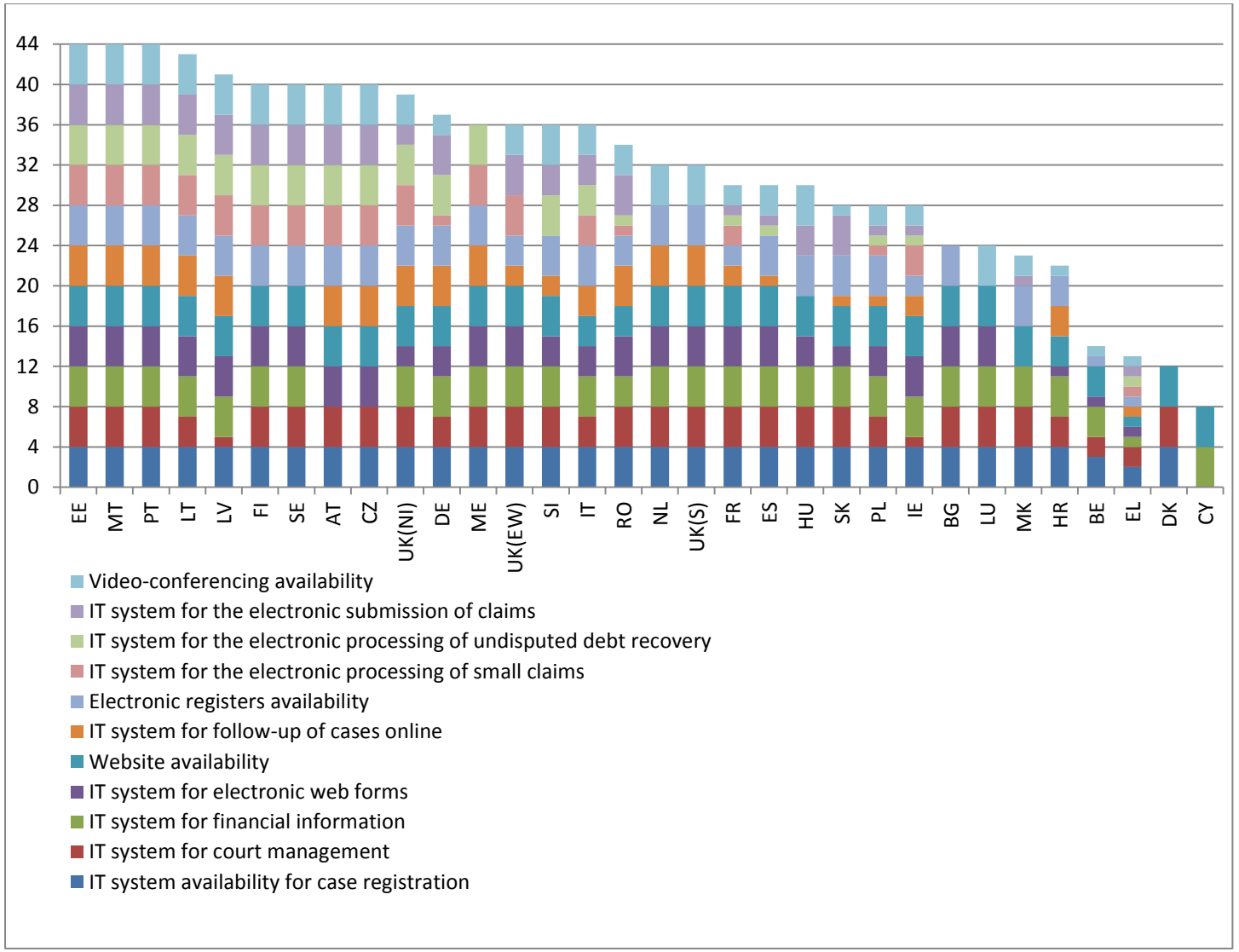


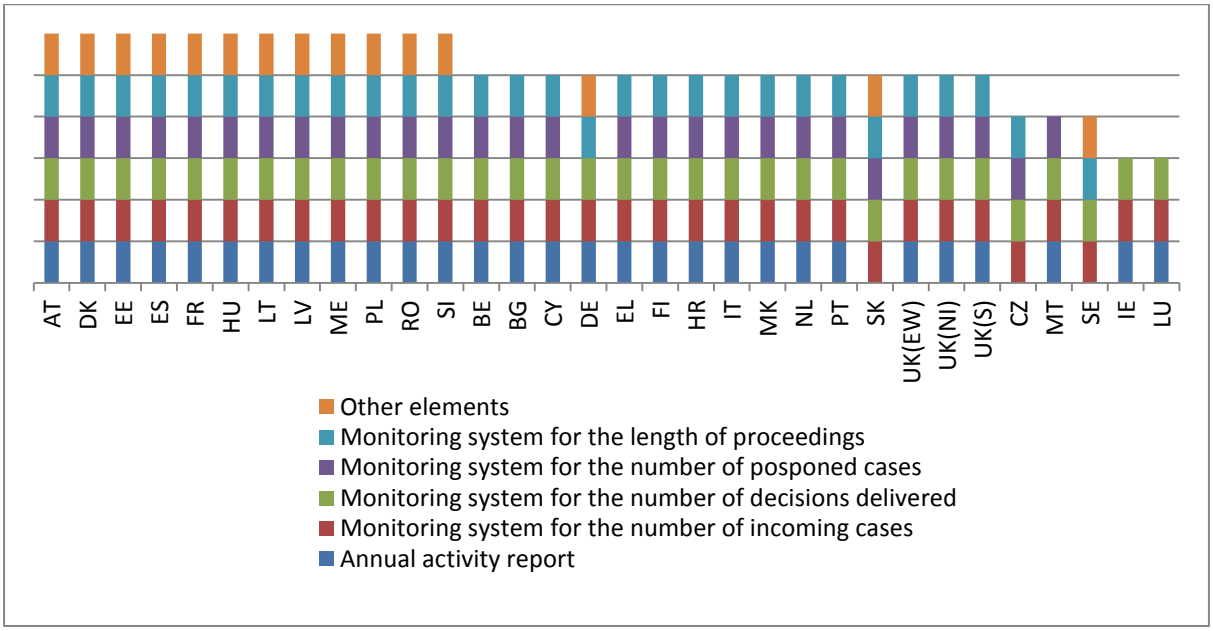
Figure 9: Computerization of courts in 2012

Source: CEPEJ study 2014.

D. *Monitoring and evaluation of courts' activities*

The tools for monitoring of court activities scrutinize court performance, and the public availability of such data may be seen as an additional incentive for courts to improve the quality of their work. This descriptive indicator reveals the availability of monitoring tools of courts' activities, categorized in six groups, such as: monitoring systems for the length of proceedings, number of postponed cases, decisions delivered and incoming cases as well as publication of an annual activity report. The category "other elements" involves country-specific monitoring systems not included in the previous five categories. Courts in Macedonia and Montenegro have declared that they have a monitoring system for all of the former four categories in addition to their responsibility to prepare and publish annual activity reports.

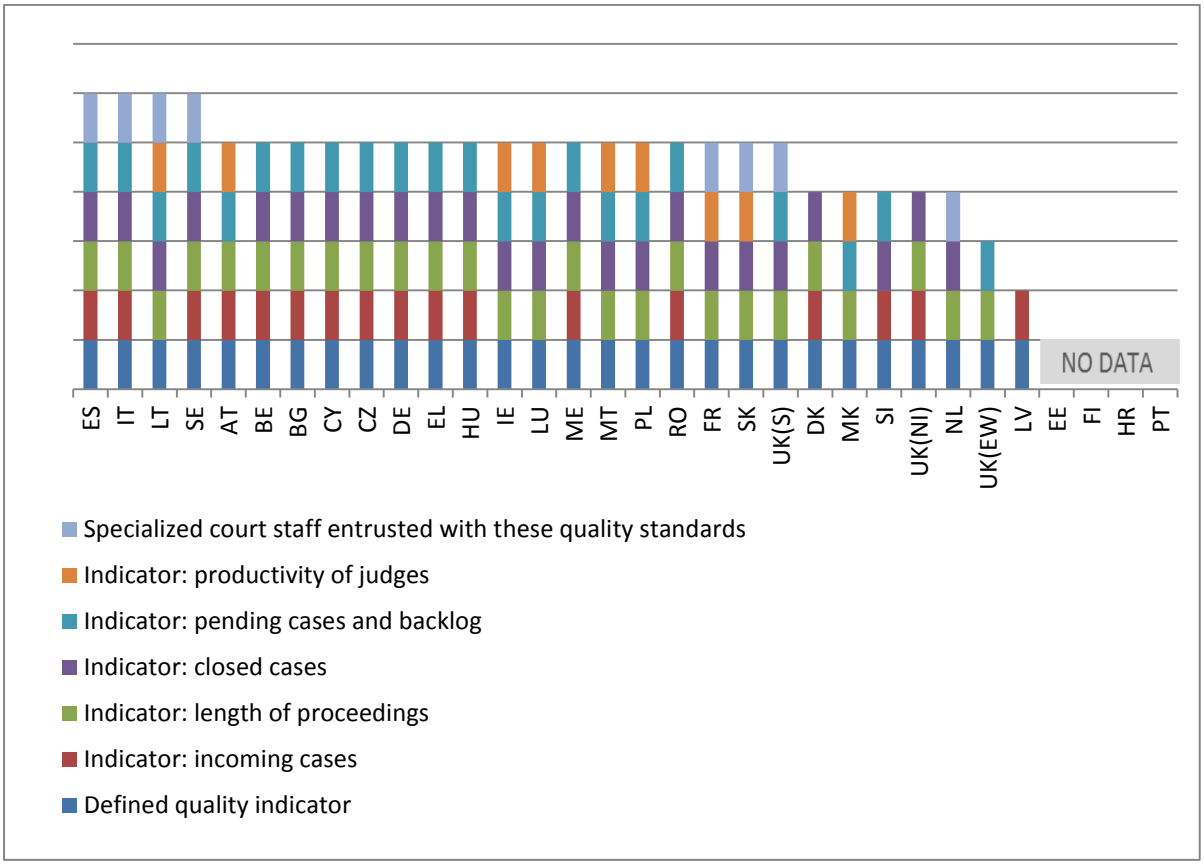
Figure 10: Availability of monitoring of courts' activities in 2012



Source: CEPEJ study 2014.

Figure 10 indicates the availability of evaluation tools in court activities. It shows whether there are defined performance and quality indicators, (such as productivity of judges, pending cases and backlog, closed cases, length of proceedings and incoming cases), quality standards, and the existence of specialized court staff entrusted with establishing and evaluating quality criteria. As in the case with the availability of monitoring tools, both candidate countries have established quality indicators and standards for evaluation of court activities. However, Macedonia and Montenegro are lacking specialized staff entrusted with evaluation activities.

Figure 11: Availability of evaluation of courts' activities in 2012

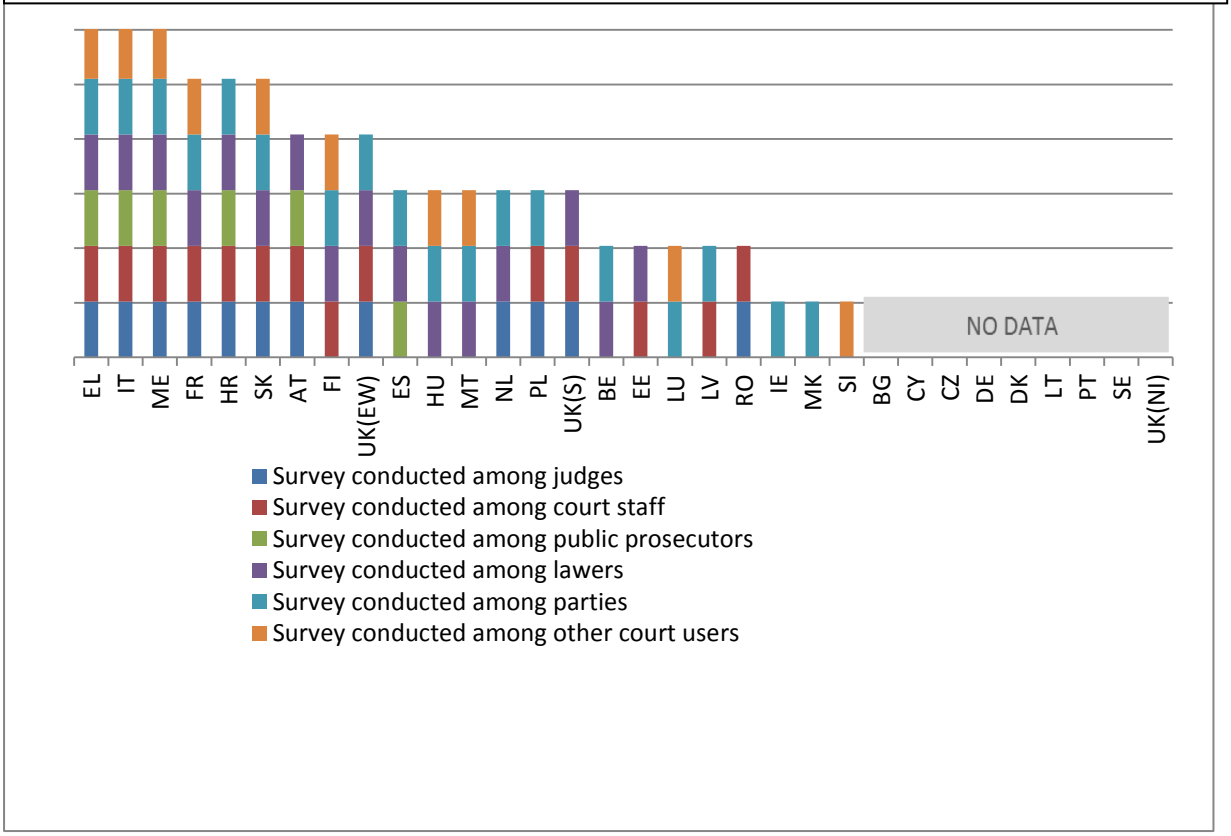


Source: CEPEJ study 2014.

One of the indicators, which could provide valuable information regarding the quality of the justice system, or more specifically for the level of satisfaction of professionals who work in the courts and/or users of the courts, is presented in the figure below.[40] Figure 11 provides information on the types of surveys conducted by EU Member States and the two candidate countries. Concerning the latter ones, the provided data shows big discrepancy whereas Montenegro conducts satisfaction surveys with all six target groups, Macedonia conducts only one type of satisfaction survey, namely among parties only.

[40] The category "other court users" referes to witnesses, experts, interpreters.

Figure 12: Surveys conducted among court users or legal professionals in 2012



Source: CEPEJ study 2014.

Macedonia

Regarding the monitoring and evaluation of courts' activities, Macedonia's Higher Administrative Court publishes (some) statistical data on their website, though the interviewed public relations officer stated the website is slow, making queries for decisions and/or annual reports cumbersome and difficult. The Higher Administrative Court performs workload analysis on a monthly basis on the level of court councils. The Higher Administrative Court has one person for public relations (which is also responsible for public procurement, handling complaints and suggestions) but it has not been contacted so far. The parties usually contact them by e-mail to request info on the status of the case. They have also a person for freedom of information requests – (which has so far received only 1 request). There are no received complaints so far. Macedonia's Administrative court has reports issued on a quarterly and annual basis, which include detailed statistics. The web-site has a section "Statistics" but it is empty as nobody has instructed the IT technicians to fill it with data. There is one person for public relations (information sharing with media, personally or by e-mail), which is also responsible for public procurement, handling complaints and suggestions and responding to freedom of information requests. The complaints from citizens are usually reported in person, sometimes by e-mail, and usually pertain to information on the status of a case, or expressing dissatisfaction with the processing of the case (e.g. an appeal that has not been resolved – due to the fact that has

not been dispatched). The media usually contact the PR on electoral and lustration cases. This person is contacted mainly through the phone number of the Court. Regarding communication with the public the Court has an internal act for media relations.

Regarding the evaluation of judges, the interviewees at the Higher Administrative Court opined that quantitative criteria for evaluation of judges though, should not be based on simple comparison of the number of incoming and the number of resolved cases, but it should also take into account whether the deadlines for processing the cases have passed. To illustrate this on December 20th the Higher Administrative Court can receive a large batch of cases from the Administrative Court, which can worsen the judges' performance during the annual evaluation. A detailed statistics for each judge is kept, in respect of resolved cases, fulfilling the norm, backlogs, cancelled or modified items. Judges are evaluated also on whether they respect the procedural deadlines, or the deadlines for reaching a decision, its preparation and publication. If a case becomes obsolete due to poor handling by the judge, s/he loses points in the annual evaluation for each such case. The problem is that sometimes the course of the appeal procedure is such that the cases become obsolete for reasons that are outside of the control of the judge (e.g. the state institutions do not submit the needed documents). The interviewed judges in the Administrative Court stated the focus on quantity in judges' evaluation is often at the expense on quality. The indicative monthly and annual number of cases that judges should handle is determined based on the previous experience with the number of cases handled by a certain category of judges, the trend in the number of incoming cases, the size of the backlog in that law category etc. Regarding the balance between the numbers of confirmed, abolished or converted decisions relative to the total number of resolved cases, judges at the Administrative Court believe that out-dated cases (and the reasons for that) should be excluded in the assessment of the judges. However, the judges don't even receive the decisions of the Higher Administrative Court which abolish or reverse their decisions. The court receives one official copy, but that is not distributed in an organized manner to the judges, so that they are informed of the opinions of the Higher Administrative Court, and can take them in consideration in future decisions.

Macedonia's Administrative Court is being monitored only by the Higher Administrative Court and the Supreme Court, and is not subject to monitoring by other organizations (civil society etc.). Regarding prevention of creating and reducing case back logs of pending cases and congestion of movement of court cases the Administrative Court produces annual plans, which usually point to the need to employ more clerks. The court also organizes "work campaigns" that involve overtime for the clerks (e.g. working on Saturdays), and involvement of clerks that do not usually deal with cases. They have also temporarily received support from 4 HAC judges that were reassigned to the Administrative Court for 4 months. However, they feel they lack even the basic working conditions, as there is lack of space for the archive, lack of archiving cabinets, lack of court support staff that deals with

archiving. As a result it is difficult and time-consuming to locate the cases, and the judicial servants have to spend unreasonably long time doing so.

Addressing uniformity in judicial practices the Higher Administrative Court publishes on its web site news bulletins for specific matters, and three times in the year they issue publications (sequences) on the judicial practice which is being used by the Administrative Court and even by the other state institutions. According to the Court Rules of Procedure when there are controversial issues in a court section, the president of that section can decide to resolve those issues on a meeting of the council of judges. They have periodic discussions organized by the Academy, where also the Administrative Court is involved, on various administrative law matters. However, overall, they do not have enough time for performing this function. The Higher Administrative Court's opinion on conducting self-evaluations for its judges is that they would only be an additional burden on the court and currently there is only partial regulation on the quality of work for judges (not contained in the Administrative Disputes Act). Although the Higher Administrative Court does publish Annual reports (and respectively newsletters and sequences) containing information on the number of appealed cases against Administrative Court decisions, they don't inform on the grounds for which appeals were validated or annulled. In terms of measures for uniformity of judicial practices, the Administrative Court holds weekly meetings by councils, where the judges exchange their opinions, thoughts and ideas. Currently "reconciliation" of opinions on controversial matters is performed rather informally in communication between the judges. Optionally, if there are different opinions on a certain matter between 2 court councils, or between the Administrative Court and Higher Administrative Court, the opinions may be unified on a meeting of the Administrative Court judges (possibility provided in the Rules of Procedure of the court). A written procedure for establishing unified positions may encourage a more structured and more consistent approach (e.g. introducing an obligation each month or each six-months for the meeting of judges to discuss controversial issues and to establish unified positions on them). The Higher Administrative Court should issue publications (sequences) intended to assist the Administrative Court judges when making decisions. The Administrative Court established a working body for managing the distribution of court cases consisted of 4 judges, judicial clerks and 1 IT technician, and is headed by the Court Administrator.

In words of Administrative court judges, the key reason for long duration of cases is the lack of responsiveness from the state institutions, their failure to follow the instructions of the Administrative Court. They often do not submit the needed documents, or it takes them too long to do so, or they submit only copies, or they direct, often misleadingly, the Administrative Court that it should request the documents from other state institutions. When the Administrative Court does not receive the needed documents from the institutions it hampers its ability to process the cases, especially since it does not have funds to hire expert investigators. There is a need to amend the Administrative Disputes Act in order to introduce an obligation for the documents to be provided by the institutions

against which a procedure is launched. The Administrative Court can only urge for enforcement of the court's decision.

Montenegro

The work of judges is being directly monitored by the President of the court (while the work of that president is monitored by the president of a higher court instance) as well as by the Judicial Council through disciplinary proceedings. Through JIS data the president of the court may use to monitor the work of the judges: data on duration of the trial procedure, deadlines for making the court decision (up to 60 days), working results, i.e. number of solved/unsolved cases and cases reversed on appeal in the first instance.

Separate statistics are gathered by each judge. These statistical data are being presented to the president of the court at the sessions of judges that are being held each three months. In addition, a judge may be required to present data on his/her work during the monitoring visit of representatives of the Supreme Court of Montenegro. However, this type of statistics is not available to the public and is not presented (per judge) in annual reports on the work of court (the Annual Report of the Judicial Council contains only summary data per courts, but not per judges). However, one court in Montenegro (Basic Court in Ulcinj) has developed a practice of publicly presenting data per judge at its website.[41] The Administrative Court does not have such a practice.

These data are being contained in the annual reports of the courts so as to reflect their overall work, but also to point to certain deficiencies and shortcomings. However, having in mind that the permanent evaluation of the work of judges does not exist in Montenegro (it is yet to be introduced on a three-year basis by the new Law on Judicial Council and rights and obligations of judges), the data on the so-called working results (number of annulled and confirmed decisions in the first appealing instance) are used only when a judge applies for a position in a higher court instance or upon the initiative for disciplinary proceeding, on the ground of improper and negligent performance of the judicial function.

According to the Judicial Council Act and the Rulebook of the Judicial Council, the work of the Council is public, including though regular updates of the internet page of the Council, publishing of Council's decisions and other related materials, such as laws, agendas of Council's sessions. Apart from seeking to attend sessions of the Judicial Council (which are, however, still closed for interested public), monitoring of these institutions can be conducted without any special permission of neither the Judicial Council nor the Administrative Court, because there are no regulations on the way of conducting such monitoring by actors outside of judiciary. There are currently only two organizations – NGOs taking lead in monitoring the judicial reform and, notably, the work of the Judicial Council /Administrative Court: Human Rights Action and Centre for Monitoring and Research.

[41] Review of the work per judges, sheet no. 15, available at: http://sudovi.me/osul/o-sudu/izvjestaj-za-2013-god/

However, there is a prevailing perception that the work of NGOs and professional organizations can influence greater public confidence in transparent and objective work of judicial institutions, as long as that work is objective, professional and evidence-based.

The work of the judges are not assessed on the basis of clearly defined indicators, which would provide objective and balanced treatment of the Council in the selection and determination of liability of judges. The status of the judiciary is still characterized by the absence of a unified system of election of judicial officials at the state level, underdeveloped system of initial and continuing education in the judiciary, as well as by the non-precise framework for determining the responsibility of judges. In relation with the qualitative criteria, the relationship between the number of confirmed, abolished or converted decisions regarding the total number of decided cases should be one of the main qualitative criterion. Still, it needs to be supplemented by the criteria for quantitative and qualitative evaluations of judges in accordance with international standards, primarily with the guidelines of the CEPEJ (on the time limits and average duration of the proceedings) and the jurisprudence of the European Court on Human Rights (concerning, for example, criteria and sub-criteria for the complexity of cases). In addition, the ultimate outcome of the proceeding (not only at the first-instance level what is currently the case, but also in a procedure on all legal remedies, including constitutional appeal and a procedure to execute the judgment of the European Court) should be taken into account.

The evaluation of the quality of the judges are still in practice predominantly based on the outcome of the appeal, which is one-sided statistic that as such does not reflect the actual performance of the judges. The quantity of work measured by the number of pending cases is also questionable, bearing in mind that items that are returned for retrial may create the illusion that the judge acted in greater number of cases, while in fact we talk about the same cases. Indicators for the assessment of the time needed to solve the case, and which CEPEJ considers one of the main indicators for evaluating the performance of judges, are also missing. There is no act which specifies the way in which does not assess the performance of the judges, nor is the work of judges evaluated regularly. There is no plan for continuous professional training of judges, which would guarantee each judge a certain number of working days per year for professional development. Objective assessment of the quality and quantity of judges candidates for higher judicial instances requires urgent solutions that would allow assessment and scoring of the work of judges, including quality of work, the length of the proceeding and its ultimate outcome (not only at the first-instance level what is currently the case, but also in a procedure on ordinary and extraordinary legal remedies, as well as on constitutional appeal and in a procedure conducted to execute the judgment of the European Court of Human Rights.

Montenegro's Administrative court is regularly undertaking activities regarding the equalization of the judicial practice. Legal opinions and standpoints are adopted by the Court Council and published on the web page of the Court.

When efficient implementation of Code of Ethics is in question, the Conference of judges, held on 22.03.2014, has adopted an amended Code of Judicial Ethics that emphasizes the principles and determines, in details, the guidelines for ethical work of judges. However, this amended Code does not regulate in details what kind of behaviour of the presidents of the courts in relation to their colleagues represents a breach of the Code, what gives more power to the presidents to act non-ethically. The Commission for the Code of Ethics is tasked with monitoring of the Code's implementation. However, so far only three initiatives for violation of the Code have been submitted, that the Commission for monitoring its implementation has determined violation in one case, while other two decisions of the Commission remained insufficiently reasoned, additionally indicates a necessity to regulate the Commission's liability to provide better argumentation of its decisions, in order to create a practice for valid interpretation of the Code's provisions. Also, the number of implemented trainings on compliance with the Code of Judicial Ethics is not on satisfactory level, considering the fact that only one training on judicial ethics was implemented in 2013. However, Action Plan for Chapter 23 provides that the Association of Judges of Montenegro, together with the Centre for Judicial and Prosecutorial Training organizes more training on the ethical rules contained in the new Code of Ethics, so certain changes are expected in this direction.

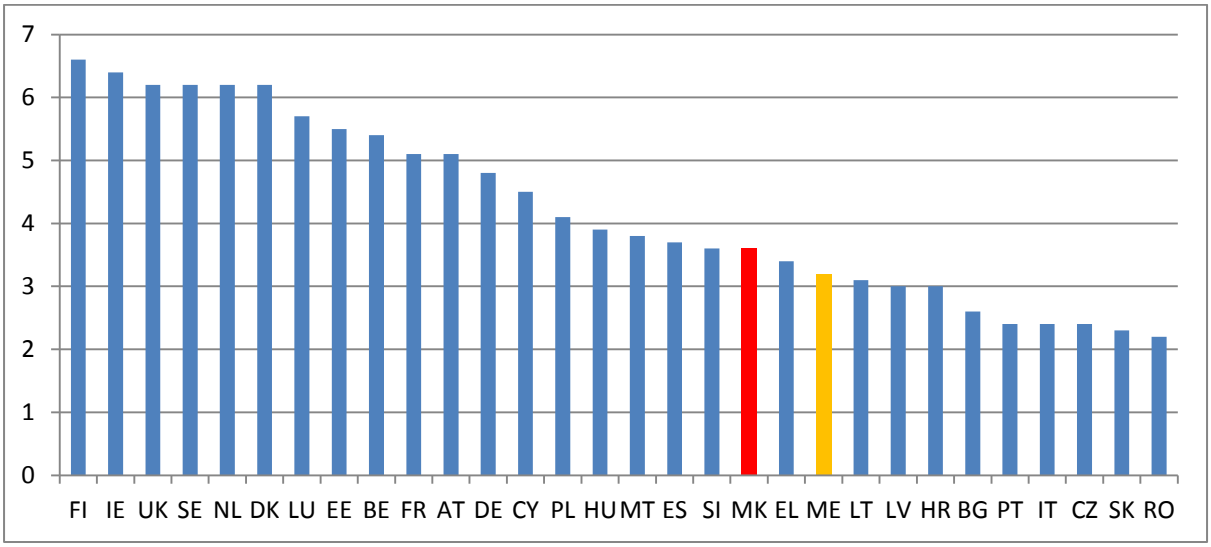
According to the answers of respondents, certain provisions of the Code are contained in the substantive and procedural laws (Courts Act, Judicial Council Act, Criminal Procedure Code and Civil Procedure Code), so it should not be changed. However, it should be here stated that the neither the valid Law on Judicial Council, not the recent amendments to it, does not prescribe which violations of the Code of Ethics represent a disciplinary misdemeanour and may serve. Consequently, there is lack of legal and logical connection between the disciplinary rules in the Judicial Council Act and the Code of Ethics. In addition, although the new Code of Ethics for Judges from March 2014 establishes principles and detailed guidelines for ethical judges; it still does not stipulate a clear obligation of the Commission for the Code of Ethics to justify their decisions and that is very important because so far these decisions contained very poor justifications and did not provide an impetus for more quality interpretation and implementation of the Code. Having this in mind, the new Judicial Council Act should explicitly prescribe which violations of the Code of Ethics as a ground for disciplinary liability of judges and that the Commission of Code should be obliged to reason its decision.

4.3. Independence of the judiciary

Regarding the independence of the judiciary in EU Member States, the EU Justice Scoreboard uses an indicator on the perception of independence, as presented in The Global Competitiveness Report of the World Economic Forum. The results are based on an

annual survey of business leaders across the world, where the respondents can assess the independence of the country's judiciary by assigning a score between 1 and 7. A score of 1 would indicate that the judiciary is heavily influenced by members of government, citizens or firms, while a score of 7 would indicate that it is entirely independent. According to the data depicted in Figure 12, both candidate countries feature in the lower value part in this chart, but are still ahead of one third of the EU Member States. Macedonia scores 3.6 on this scale and Montenegro 3.2, while the world mean score is 3.9.

Figure 12: Perceived judicial independence (higher value means better perception) 2012–2013 data



Source: World Economic Forum – The Global Competitiveness Report 2013–2014

The latest Scoreboard, in an evolution from the 2013 edition, attempts to further develop the monitoring of judicial independence by presenting information on how judicial independence is legally guaranteed and upheld. Three indicators on such safeguards are presented below along with relevant research results.[42]

A. Dismissal of 1st and 2nd instance judges.

European standards require that national judicial systems provide for safeguards regarding the dismissal of judges.[43]

A dismissal procedure in Macedonia can be initiated exclusively by the judiciary and the Judicial Council, which limits the potential for influence in this matter from the other branches of power. The proposal for dismissal may come from a Judicial Council Member,

[42] The withdrawal and recusal of judges from adjudicating a case in which their impartiality is in question or is compromised or where there is a reasonable perception of bias has not been explicitly covered by this research.

[43] Paragraphs 46 and 47 of the Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities. Council of Europe.

the court president, the higher court president, or a general meeting of the Supreme Court. The procedure and the decision on dismissal are within the realm of the Judicial Council. Interviewed judges from Macedonia's Administrative Court and Higher Administrative Court welcomed the proposed 2014 constitutional amendment[44] which intends to scrap the two ex officio members of the Judicial Council[45], and increase to two thirds the number of members elected from the ranks of judges. The judges and interviewed Judicial Council members expressed a common viewpoint that this reform will further contribute to judicial independence.

Presently Macedonia has two procedures which can lead to dismissal of judges: procedure for grave disciplinary violations, and procedure for "unprofessional and negligent performance of the judicial function". Draft amendments to the Judicial Council Act which were prepared at the time of publication of this analysis envisage the creation of a single procedure for dismissal of judges. Currently one of the grounds for grave disciplinary violations dismissal is failure to achieve, for more than eight months, the indicative number of cases that should be resolved. The 2014 EU Progress Report contests this legal solution: "Poor performance by judges should be addressed through remedial measures such as organisational improvements and training, rather than resulting in dismissal."

Commenting the existing legal provisions on selection, promotion and dismissal of judges, interviewed Macedonia's Administrative Court judges considered them either too harsh or too narrowly applied. Interviewees from the High Administrative Court stated that dismissal should be used only as last recourse, preceded by the use of milder disciplinary penalties. They supported the need to develop a disciplinary body which will be independent from the Judicial Council.

Judges and Judicial Council members supported the proposed amendment[46] to Macedonia's Constitution that gives authority to the Constitutional Court to decide as a second instance in appeals by judges to Judicial Council decisions on dismissal or disciplinary sanction and in complaints from candidates who are not selected as judges or are not promoted. The interviewees believed the proposal will provide additional protection to the judges.

In Montenegro, the existing criteria and sub-criteria for the selection and promotion of judges are incomplete because the relevant bylaws still do not set standards on how to measure their fulfilment, or to benchmark between candidates. Such standards exist only for one sub-criterion – having a law degree – that weighs mere 5% of the assessment of candidates in the first selection as a judge. Similarly, there is no legal document that specifies how to assess the quality of the work of judges, or a system of regular evaluation of their work ensuring objectivity when decisions are made on promotion or when the

[44] Poposed amendment XXXVIII.
[45] The Minister of Justice and the President of the Supreme Court.
[46] Poposed amendment XXXIX.

actions of a judge are scrutinized. As a result, the performance evaluation of judges basically boils down to subjective evaluation by the Judicial Council. According to the Action Plan of the Judicial Council for the period 2009–2013, these standards for the evaluation of criteria and sub-criteria should have been developed until October 2010, at latest. Unfortunately, the Judicial Council failed to do so and this measure is being repeated in the Judicial Reform Strategy (2014–2018). The EC Progress reports for 2013 and 2014 also contained recommendations on introducing a unified system of election of judges, an objective system of merit-based-promotion, as well as on strengthening guarantees for the integrity and responsibility of the judicial system.

The reasons for dismissal as well as the actors who decide on dismissal are stipulated in the Constitution of Montenegro. Article 121 stipulates that the judge will be dismissed if s/he is convicted of an offense that makes him/her unworthy of performing judicial functions, as well as if s/he improperly and negligently performs judicial function or faces a permanent loss of the ability to perform judicial function. Provisions of the Courts Act[47] stipulate what is meant by the unprofessional and negligent performance of the functions of judges and of the President of the court.[48] Judicial Council decides on the dismissal and removal of judges and presidents of courts. The very procedure of dismissal and removal of judges and the President of the court is prescribed in the Judicial Council Act.[49] Despite the constitutional reforms of July 2013, there are still insufficient guarantees of independence of the Judicial Council as a depoliticized and impartial body, because they are not provided guarantees that half of the Council members who are not judges, are not politically active. Namely, the Constitution does not exclude the possibility that the members of the Judicial Council that are prominent lawyers outside the ranks of judges or judge of the Constitutional Court are politically engaged or related, i.e. have an actual or potential conflict of interest that could endanger the independency and impartiality of the bodies whose members they are. In addition, during the work of the Judicial Council, the Minister of Justice is prevented to vote in the disciplinary procedures against the judges, but not in the procedures of dismissal of judges. This is illogical, as the decision on dismissal of the judge results in a much heavier consequence for the judge, than the decision on disciplinary action.

Necessary guarantees have not been ensured by the amended court legislation either. Namely, the Judicial Council Act that has been amended to align with constitutional amendments does not provide additional guarantees for the independence of members of the Judicial Council, in the form of provisions on the membership criteria in relation to

[47] Articles 33d–33e.

[48] If he/she is not achieving the expected results in terms of quality and quantity of work in the last two years compared to the average number of cases of the same type and complexity at the level of the court; significantly exceeds the legally established deadline for making decisions in a number of cases; produces unjustifiable delays in proceedings causing statutory limitations of criminal or civic sanctions; undertakes activities that are incompatible with the exercise of the judicial function.

[49] Articles 61–68 and 71a.

prevent conflict of interest. In the previous statutory amendments,[50] the provision on prevention of the conflict of interest, which would disable political or other engagement or connection of the members of the Council that could endanger the independence and impartiality of this body, has been omitted. The election of four members of the Judicial Council, proposed by the competent working body of the Parliament, outside the ranks of judges, undoubtedly enables previous selection of the candidates by simple majority in the parliamentary board and endangers the goal of the predicted two-thirds election in plenum – the opposition's significant participation in the election. This is of great importance, having in mind the provision according to which the one of the four prominent lawyers members of the Judicial Council will also be a president of the Judicial Council, who will have a casting vote in the case of equal number of votes. Therefore, it should be prescribed by this Act that a member of the Judicial Council cannot be a judge whose spouse or lineal official of a political party or who were actively involved party, elected in elections or perform the function of a member Government in the last 10 years so as to prevent conflict of interest and possible political affiliation of members of the Judicial Council.

The number of disciplinary proceedings is still small. The current legal framework on disciplinary responsibility of judges is imprecise and leaves room for selective scrutinizing the actions of judges, particularly through arbitrary assessment of so-called "legitimate reasons". When a judge does not follow some of the substantial or procedural provisions on the grounds of these legitimate reasons, the Judicial Council has a discretionary power to determine whether or not these reasons were legitimate, when deciding about the work of the judge. Furthermore, there is a dual role of the Disciplinary Commission (appointed by the Judicial Council for a period of two years), which simultaneously conducts investigations and decides in disciplinary proceedings. In addition, although the Rulebook of the Judicial Council51 regulates the composition and the work of the Disciplinary Commission, it still does not prescribe a procedure for the election of the sole Commission member who is appointed from outside of the Judicial Council52, nor does it define the jurisdiction of the Commission. Grounds for disciplinary liability are not sufficiently objectified, what provides an opportunity for discretion in disciplinary proceedings. Namely, the Judicial Council Act does not distinguish minor from serious disciplinary acts neither it closely describes the grounds for disciplinary responsibility. Consequently, there are no differences between the sanctions that may be imposed for those acts in disciplinary proceedings. Finally, the circle of authorized initiators of disciplinary procedure against judges is still limited to the president of the court, the president of the higher court, the President of the Supreme Court, the Minister of Justice and the Commission on the Code of Ethics of judges. The members of the Judicial Council do not have a right to initiate such a procedure against a judge.

[50] Official Gazette of Montenegro, 51/13, dated 01.11.2013.

[51] Articles 55–69.

[52] The other two members are simultaneously also members of the Judicial Council.

B. Safeguards regarding the transfer of judges against their consent

In Macedonia, the judge, according to article 39 of the Courts Act, cannot be transferred against his/her will. As an exception, the judge may be transferred, on temporary basis, and in predefined situation. In this case, the judge may file a complaint against the decision for transfer.

The provision of Article 121, paragraph 4 of the Constitution of Montenegro stipulates that a judge may not be referred to another court against his/her will, except by the decision of the Judicial Council in case of reorganization of the courts. The provision of Article 44 of the Judicial Council Act stipulates that in case that reorganization of the courts reduces or abolishes the number of judicial positions, the Judicial Council may refer a judge to another court without his consent.[53] All costs of such a referral, except of the salary of the judge, are being covered by the court from which the judge has been referred to another court.

C. Allocation of incoming cases within a court.

European standards require that the systems for the distribution of cases within a court follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge.[54]

Macedonia has an automated system of allocation of cases among judges, whose functioning is regulated with the Court Rulebook[55] and the additional criteria for allocation prescribed by the Working body on standardization of court procedures. After the cases are received and registered, they are recorded in the ACCMIS, and are physically filed. All the cases registered during a day are then automatically assigned to judges in the adequate sections. The system allocates the cases among the judges in the adequate sections by predefined objective criteria, taking care to balance the number of cases assigned to individual judges. The system is automatic and in theory there is no possibility to interfere in the process, not even by the court administrator. In practice, scenarios were shared where cases can be re-allocated. For example, at the beginning of each the judges are assigned to specialized judicial sections; a new judge may be assigned to a specialized judicial section, and the court president may reassign to her/him cases from the other judges in the section. However, whenever a case is reallocated, the grounds for such action are registered in the ACCMIS, and are available for later scrutiny.

[53] According to the valid Law on Judicial Council, it was possible to transfer a judge from a lower court instance to a higher court. However, bearing in mind that such a provision is problematic from the standpoint of the „right to a natural judge“, the new Law on Judicial Council and rights and obligations of the judges envisages only tranfers of judges to the court of the same level or to a lower court instance.

[54] Paragraph 24 of the Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities. Council of Europe.

[55] "Official Gazette of the Republic of Macedonia" No. 66/2013 and 114/2014

The random allocation of court cases in Montenegro is regulated with the Courts Act and the Courts Rulebook.[56] The provisions on random allocation have been legally introduced in the Montenegrin system in 2002, but have entered into force fully in April 2013 with the introduction of the Judicial Information System (JIS) in all judicial institutions. However, deficiencies in establishing an effective system of random allocation have been questioned by the European Commission: Rules for random allocation are not sufficiently clear and do not guarantee truly random allocation of cases, especially in small courts.[57]

The allocation of court cases in Montenegro is also being done electronically, by using a mathematical algorithm operated by the JIS administrator. This algorithm is based on the Annual Work Schedule within the court which is adopted by the President of the court, taking into account the number and the type of cases per year as well as the case backlog. The JIS administrator enters data from the Annual Schedule in the algorithm for the assignment of cases no later than December 31 of the current year for the next year. All case-related data are being entered into the JIS at the latest within three days from the date of their receipt. Cases are then allocated automatically through an algorithm for random allocation of cases, which is an integral part of the JIS. Upon random allocation of the case, the party obtains the name of the judge only the next day, since the JIS is configured to choose the judge in a certain time period overnight.

Nominally, electronic random allocation of cases cannot be influenced by a human factor. However, it can be derogated in practice, including through re-entering of data for several times and other misuse by employees who are authorized to enter data into the JIS, frequent changes of the judge handling the case, allocation of cases by the presidents of courts in violation of the rules on random allocation. For example, in cases when the judge handling the case stops performing a judicial function his cases will be awarded to a newly elected judge or another judge without random allocation, upon the decision of the president of the court. Only if, for some reason, a case cannot be awarded in that manner, a method of random allocation of cases will be used. Also, in urgent cases when the judge to whom the case was assigned is absent due to unforeseen reasons and the main hearing has been already scheduled, the president of the court will decide which judge will be assigned to that urgent case.

D. *The procedures in case of threat against the independence of a judge.*

European standards require that when judges consider that their independence is threatened, they should be able to have recourse to effective means of remedy.[58]

[56] Articles 68–71.

[57] Montenegro Progress Report for 2011, p. 65; Progress Report for 2012, p. 10; Progress Report for 2013, p. 36; Progress Report for 2014, p. 37.

[58] Paragraphs 8, 13 and 14 of the Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities. Council of Europe.

The interviewed judges in Macedonia's Administrative and the Higher Administrative courts stated that external pressures and influences in the decision-making process are not present at the moment, and placed the responsibility for resisting such pressures on the judges themselves.

In Montenegro, judicial independence and impartiality are protected through legal provisions and institutionally – by the Judicial Council. Apart from the standard civil suits (defamation, insult, etc.), the law does not provide for a special procedure in case of pressures upon members of the Judicial Council or judges. There are no specific protection measures that would allow a judge/member of the Judicial Council to defend from any type of unlawful pressure. Concerning specifically Montenegro's Administrative court, the interviews revealed that there are individual cases of external pressures in the decision-making process. In a well-known case "Dzhomich", which has attracted the interest of the public in September 2014, judges of the Administrative Court requested from the Judicial Council to protect their rights. In the only such request so far addressed to the Council, the judges claimed that one of the institutions of the executive branch of power, the Ministry of Interior, was pressuring them in the decision-making process.

5. Conclusion and recommendations

A general recommendation in order to fully adapt the effectiveness evaluation of the administrative judiciary in the Republic of Macedonia to the EU Justice Scoreboard is an increase in internal analytical capacities of the Administrative Court and High Administrative Court. Regarding already noted drawbacks of the national system for judicial supervision (in previous chapters), often duplicated competencies between the Judicial Council and the Supreme Court, technical drawbacks of the ACCMIS system implemented in Macedonia and imprecise communication relations between the Ministry of Justice and the Judicial Council and Supreme Court when it comes to ready access to judicial performance statistics, lead latency in the system and difficulty in analysing it's overall efficiency. Though both courts make efforts for high levels of transparency, issues mostly of technical character plague their web-sites and IT capacities.

Regarding analytical capacities of the court, a single supervisory instance (be it the Judicial Council or a Committee within the Supreme Court) should ultimately be established to avoid overlapping competencies, confusion in communication and achieve greater specialization for the appointed authority.

A. Efficiency

The research showed that both courts more or less adapt to increasing workloads in a similar fashion, when total caseloads per year increase to do the length of proceedings and clearance rates, meaning that if there are more cases in total, it takes longer to decide on

average per case, yet at the same time the overall clearance rate of the court increases. Consequently when caseloads drop, the length of proceedings is shortened, and clearance rates drop. This indicates that both courts, do not improve in efficiency but rather adapt to new circumstances in a rather "mechanical" fashion. Even though the Administrative Court would score fairly well on the EU Justice Scoreboard there is objective room for more funding and an increase in administrative staff to offload routine tasks from judges. Staffing wise, the Administrative Court is fairly well staffed with judges.

B. Quality

Though both the Administrative Court and High Administrative Court publish annual reports regarding their work, they only provide raw statistical data such as: caseloads at the beginning of the year, newly received cases, total caseload per year, decided cases during a year, caseloads at the end of the year and difference between pending cases at the beginning and at the end of the year. With sufficient training of administrative staff this data would provide enough information, for the courts to publish analytical information according to the 11 indicators for analysis and monitoring of the performance of the courts: rate of resolved cases (clearance rate), time for resolving cases, decided cases per day, efficiency rate, total backlog of cases, resolving the backlog of cases, average days required for deciding on newly received cases, percentage of pending incoming cases, number of cases per judge, realized monthly number of cases that should be resolved per judge and the standard deviation. Support in this area can be obtained through closer and more open collaboration with civil society organizations, which should not be regarded as "supervisory" but rather as a "partnering" relationship. Civil society organizations may provide much needed logistical and analytical aid in analysing raw data, analysing all relevant indicators and preparation of annual reports statistics to fully meet EU Justice Scoreboard criteria. Some civil society organizations may also provide funding for more technical projects such as publishing, IT and equipment procurement and maintenance. Increasing internal analytical capacities rather than just relaying raw statistics to the Judicial Council and Supreme Court for analysis would give the Administrative Court and the Higher Administrative Court insight in their own strength and weaknesses rendering them with the opportunity to better address issues early.

A gradual introduction of qualitative criteria which focus on the contents and complexity of cases which judges decide on would allow them to focus more on the Higher Administrative Court's opinions and establish unified positions among judges on certain issues, while relieving them from the "stress" of not fulfilling nominal quantitative quotas. If implemented properly, a slight increase in administrative staff and introduction of qualitative criteria for the evaluation of judges, these measures may improve the quality of decision making in the Administrative Court without (significantly) impacting efficiency.

A major obstacle in the Administrative Court's ability to process cases are situations when institutions do not deliver needed documents, especially since it does not have funds to hire expert investigators. This could be addressed by amending the Administrative Disputes Act in order to introduce an obligation for the documents to be provided by the institutions against which a procedure is launched.

Written procedures for establishing unified positions need to be adopted, in order to provide more structured and more consistent approaches in decision making in the Administrative Court. An example is introducing an obligation each month or each six-months for the meeting of judges to discuss controversial issues and to establish unified positions on them.

Though trainings for judges of the Administrative Court and the Higher Administrative Court are compulsory by law, more attention should be put enforcing this legal right and obligation (possibly needing additional financing for this purpose).

C. Independence

Regarding the dismissal of 1st and 2nd instance judges, most of the attention is given to the competencies of the Judicial Council, and a general attitude towards existing legal provision which regulate the selection/promotion/dismissal of judges are considered too harsh, and too narrowly applied. Recommendations are that problems (grounds for dismissal or disciplinary sanctions against judges) be graded, and a new disciplinary body be established/developed by the Judicial council. This body should also be provided a high degree of independence from the Council.

A lot of hope is placed in the proposed constitutional amendment that gives authority to the Constitutional Court to decide as a second instance in appeals from judges in cases when the Judicial Council has already approved the dismissal or other disciplinary sanctions, and in complaints from candidates who are not selected or promoted during the selection procedure/promotion of judge. However, these amendments are yet to be enacted and implemented in practice.

Regarding the process of allocating incoming cases within a court, the Administrative Court and Higher Administrative Court judges place utmost confidence in the current ACCMIS, firmly believing in the systems automated processing. Also there is a high degree of confidence that there is no possibility to interfere in the process (not even by the system administrator).

Regarding external pressures and influences over the judges in the Administrative Court and the Higher Administrative Court in decision-making there are no reported cases. A general attitude by the Higher Administrative Court is that the existing legal framework provides adequate protection of judges from external pressures and influences, treating the

possibility of such pressures as individual situations depending on the integrity of judges as individuals.

- Resolve the overlapping assessments of court efficiency and quality of work, conducted by the Judicial Council and the Supreme Court, by placing this function with only one institution. Arguably, the Judicial Council, not facing the burden of performing court functions, is in a position to allocate more time and other resources to performing this task.
- Assess the viability of the current solution where the management and development of the ACCMIS and related software applications is placed under an inter-institutional body established and chaired by the Supreme Court, and determine the best institutional arrangement to assume the ownership and funding of the system, once the donor funding ends. Allocate adequate human and budgetary resources to continuously develop and feed the system with information.
- Align the terminology used in the ACCMIS system and related software solutions and the one used by the Administrative and High Administrative court in order to avoid keeping double records and inputting improper data in the system.
- Increase the number of ACMISS related support personnel such as typists, judicial clerks and IT technicians in accordance with the workload of the Administrative courts and policy analysts which will analyse the gathered data and present long-term sustainable solutions for judicial reforms in the administrative law area.
- Amend the current Judicial Statistics Methodology to incorporate, to the extent possible, the indicators from the EU Justice Scoreboard.
- Upgrade the ACCMIS in order to collect and process data, calculate indicators and generate tables, charts and reports based on the parameters and indicators in the Judicial Statistics Methodology.
- Publish statistical data, including on the analytical indicators from the Judicial Statistics Methodology indicators, and related analysis on the web-sites of justice institutions.
- Create legal basis for providing direct access to ACCMIS-related applications for generating statistical reports on the work and the performance of courts for academic and research institutions, relevant civil society, the State Statistical Office, policy makers and decision makers from other branches of power – including the Ministry of Justice and the Parliament.
- Enhance the transparency in the functioning of the Administrative and High Administrative Court by organizing public debates regarding the publication of the annual report, by conducting satisfaction surveys in cooperation with professional organizations and/or civil society organizations and equip the public relation officer with knowledge to elaborate the court ruling to the clients.
- The Association for Judges should organize workshop on which they will promote and discuss the provisions and implementation of the 2014 Code of Ethics.

- Work on enabling a fully functional database of judicial decisions as means to promote equalization of judicial practice in the rulings of the Administrative and the Higher Administrative Court and to provide unique standpoint in implementing specific laws, drafting draft decision in concrete court cases.

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