SUMMARY VERSION
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USAID Rule of Law Project in Serbia
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Project implemented by: Development Professionals, Inc.

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ASSESSMENT OF THE IMPLEMENTATION OF THE NATIONAL JUDICIAL REFORM STRATEGY FOR 2013 – 2018

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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AVP</td>
<td>Automated case management system (application used in basic and higher courts in the Republic of Serbia)</td>
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<td>AP23</td>
<td>Action Plan for Chapter 23</td>
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<td>SCC</td>
<td>Supreme Court of Cassation</td>
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<td>HCC</td>
<td>High Court Council</td>
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<td>SPC</td>
<td>State Prosecutorial Council</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECHR</td>
<td>European Court of Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>ICT</td>
<td>Information and Communication Technology</td>
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<td>SEIO</td>
<td>Serbian European Integration Office</td>
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<td>MEI</td>
<td>Ministry of European Integration</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<tr>
<td>PIS</td>
<td>Justice Information System</td>
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<tr>
<td>RPP</td>
<td>Republic Public Prosecutor</td>
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<td>RS</td>
<td>Republic of Serbia</td>
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<tr>
<td>SAPO</td>
<td>Software Application for Case Management in Prosecutor’s Offices in the Republic of Serbia</td>
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<td>SAPS</td>
<td>Standardized Software Application for Judiciary</td>
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<td>SIPRES</td>
<td>Case Management System in misdemeanor courts</td>
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<td>SIPRIS</td>
<td>Case Management System in commercial courts</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>MDTF</td>
<td>World Bank Multi Donor Trust Fund for Justice Sector Support in Serbia</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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ACKNOWLEDGEMENTS

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The Assessment was prepared by a team of experts and associates for judicial reform and rule of law composed of Prof. Dr. Dobrosav Milovanović (Team Leader, Full Professor at the Faculty of Law, University of Belgrade), Snežana Andrejević (retired Judge of the Supreme Court of Cassation), Majda Kršikapa (Deputy Director of the Judicial Academy) and Dr. Milica Kolaković Bojović (Research Associate at the Institute for Criminological and Sociological Research). Technical and logistical support was provided by the staff of the USAID Rule of Law Project.

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INTRODUCTION

Strategic approach to judicial reform is a response to the need for a comprehensive improvement of the judicial system and indicates the readiness of the state to respond to the citizens’ demands for upholding the rule of law principle. The existing strategic framework for judicial reform consists of the National Judicial Reform Strategy for the period 2013-2018\(^1\) and the accompanying Action Plan for its implementation,\(^2\) Action Plan for Chapter 23 (AP23),\(^3\) Action Plan for Chapter 24 (AP24), National Anti-Corruption Strategy of the Republic of Serbia for the period 2013-2018\(^4\) and its Action Plan\(^5\).

Having in mind the need for a continuous process of strategic planning and managing the judicial system, after the National Judicial Reform Strategy for the period 2006 – 2011 and its accompanying Action Plan, a new strategic document was adopted. The Ministry of Justice drafted the text for the National Judicial Reform Strategy for the period 2013-2018, which was adopted in the National Assembly of the Republic of Serbia in June 2013 (Strategy), as well as the Action Plan which was adopted through the Conclusion of the Government of Serbia in July 2013 (Action Plan). In May 2014, the Government passed the Conclusion on the Amendments of the Conclusion which passed the Action Plan. The Government passed the Conclusion on the adoption of the revised Action Plan for the implementation of the National Judicial Reform Strategy in December 2016.

The Strategy contains key principles, strategic objectives, and guidelines for judicial reform set up in a five-year framework. The Action Plan prescribes specific measures, activities, deadlines, necessary funds and responsible bodies in charge of the implementation of activities.

The principles provide a framework for the establishment, development, and organization of judicial institutions that can fully protect the rights of all citizens, with continuous work on their improvement and specific implementation of the reform framework in each phase of the development of the judiciary.

Strategic objectives are defined for every principle, while strategic guidelines are identified to enable the implementation of the objectives and direct them for a longer period. The measures set forth in the Action Plan follow the strategic guidelines and are defined for the short, medium and long term, depending on the capacity and necessary activities. The measures are elaborated in detail through activities which determine deadlines, responsible bodies, and necessary financial resources.

The Strategy also defines the manner of monitoring results of the implementation, while the responsibility for the implementation of objectives and activities foreseen in the Strategy and Action Plan was given to the Commission for the Implementation of the Strategy.

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\(^1\) Official Gazette of the RoS, No. 57/13.
\(^2\) Official Gazette of the RoS, No. 71/13, 55/14.
\(^5\) Official Gazette of the RoS, No. 79/13 and 61/16
Reform of the judiciary in the Republic of Serbia is based on five key principles:

1) **Independence** – implies the establishment of a judicial system in which the work of judicial institutions and judicial office holders is free of any undue/prohibited interference or pressures that might obstruct the course of justice, regardless of its source;

2) **Impartiality and quality of justice** – implies the establishment of a judicial system with regulations that are clear, conceivable, precise, easily accessible and harmonized both mutually and with the European Union *Acquis* (EU) and case law of international judicial institutions and in which uniform and accessible case law exists. A judicial system ensuring equal treatment and access to justice to each individual under equal conditions, free of discrimination on any grounds, as well as equal opportunities to protect and exercise their rights and interests;

3) **Competence** – implies a judicial system providing comprehensive/organized in-service training and education, enabling judicial office holders and judicial and prosecutorial assistants and trainees to acquire and upgrade their theoretical and practical knowledge and skills. Judicial official holders and staff as well as members of other judicial professions will perform their duties professionally, competently, responsibly, bringing quality decisions within a reasonable time and establishing proactive and transparent communication channels with citizens, which will gradually lead toward raising public trust in the judiciary;

4) **Accountability** – implies a judicial system with an accountability mechanism applicable to judicial institutions and criteria of accountability of judicial official holders for quality, equity, performance and use of the allocated public funds;

5) **Efficiency** – implies a judicial system characterized by effective management and rational use of resources, the processing of cases within reasonable deadlines in proceedings compliant with the law, respecting human and minority rights and freedoms guaranteed by both national and international legislation.

**Transparency** is not defined as a separate key principle, but spreads horizontally throughout the Strategy, and is represented in all the key principles through the strategic objectives.
When drafting the AP23, due care was taken that the key activities envisaged by the Action Plan for the implementation of the Strategy were included, with the aim of enabling the highest level of harmonization of the two documents and facilitating the oversight of the implementation of the reform. The activities planned in the AP23 represent a roadmap for the reform, defined in such a manner that it provides a clear, chronological overview of the necessary changes in the legal and institutional framework, measures for strengthening administrative capacities, as well as the mechanisms for their implementation, including the responsibility of relevant bodies and authorities. Despite the fact that progress has been made in judicial reform in the previous period, Serbia still has a long way to go. Independence of the judiciary is achieved through improving the competence, efficiency and integrity, with the aim of finding a specific path in the context of Serbia for establishing these generally accepted standards. The fact that these standards are more a desirable framework that one should strive for than a specific set of clearly defined guidelines and objectives makes this task even more complicated. Having in mind that the period for which the strategic activities for judicial reform have been defined expires in 2018, as well as the fact that the Republic of Serbia (RS) is currently in the process of drafting constitutional amendments in this area, which are to be followed by changes in the legislative framework accordingly, there are still many challenges ahead of the Serbian judiciary in the long-term path of self-sustainability and reform.

The Strategy and the implementation of its principles, objectives and measures, provided the continuity of reform activities and expanded their scope to the entire judicial system in the RS. In addition to improving or properly defining the legal framework, it was also possible to strengthen the capacities of the judicial system, both institutionally and professionally, as well as to link the judicial reform process with the process of European integration.

The European Commission (EC) in the 2018 Report for the RS assessed that some progress has been made in the functioning of the judiciary, notably by reducing the backlog of old enforcement cases and putting in place measures to harmonise court practice. Also, improved rules for evaluating professional performance of judges and prosecutors have been adopted. However, the scope for political influence over the judiciary remains a concern. In this respect, in the coming year, Serbia should in particular:

- make significant progress in strengthening the independence of judiciary and the autonomy of the prosecution, through amendments to constitutional and legislative provisions related to the appointment, career management and disciplinary proceedings of judges and prosecutors;
- ensure that the High Court Council (HCC) and the State Prosecutorial Council (SPC) can fully assume their role and achieve a coherent and efficient judicial administration in line with European standards, including regarding the management of the judicial budget;
- adopt and implement a human resources strategy for the entire judiciary, including the establishment of a uniform and functioning case management system, which will in combination lead to a measurable improvement of efficiency and effectiveness of the judicial system.

In addition, it was noted that the Commission monitoring the implementation of the Strategy and the Action Plan rarely met in 2017 and that the impact of the implementation of the Strategy
was limited. Having in mind that the process of EU accession is a priority of the RS on the internal and foreign policy plan, it seems that in the previous period AP23 has become the leading reform document of the Government. The Strategy and the AP23 are largely aligned, but they should be revised, given the new targets of the RS and deadlines for the completion of the accession negotiations, as well as the available resources. The monitoring and reporting process should be improved in order to enable a more accurate assessment of the results and effects of the undertaken activities.

The document “Assessment of the implementation of the National Judicial Reform Strategy (2013-2018)” is the result of a process of consultation and research in the area of judicial reform. The aim of this Assessment is to contribute to a better understanding of the reforms that have been implemented so far, as well as to point out the possible directions of future strategic activities in the field of judicial reform.

The Ministry of Justice was included in the consultation process with the aim of selecting and tracking relevant documentation for analysis, as well as providing a systematic overview of the situation in this area. The following documents were used for the development of the Assessment: the Strategy and the accompanying Action Plan; AP23; annual reports of the EC for the Republic of Serbia; EC non-papers on the state of play regarding Chapters 23 and 24 for Serbia; activities implemented under the Action Plan for the Implementation of the National Judicial Reform Strategy; reports of the Ministry of Justice, HCC, Supreme Court of Cassation (SCC), SPC, Republic Public Prosecutor’s Office (RPPO), the Judicial Academy, the Anti-Corruption Agency, the Chamber of Public Notaries of Serbia, the Chamber of Public Enforcement Officers, the Administration for the Enforcement of Criminal Sanctions and the Faculty of Law, University of Belgrade to the Commission for implementation of the National Judicial Reform Strategy; reports of the Council for the implementation of the AP23.

Within each principle of the Strategy, the implementation of measures and activities for achieving the defined goals and guidelines of the reform is analyzed in detail, which gives decision-makers a clear insight into the status of the achieved results under individual guidelines and measures from the Action Plan. Certain parts of the Assessment contain information that have already been mentioned elsewhere, given that, due to the structure of the Strategy, they reflect the reform processes from different aspects. This can lead to the conclusion that, should a new judicial reform strategy be adopted, due care should be taken to better identify priorities which would entail a uniform modality for formulating objections and a smaller degree of detail with individual guidelines in order to provide a more achievable and realistic framework for improving the Serbian judiciary.

In order to enable all interested parties, through a text that is not burdened with repetitions, to have an insight into the most important results, as well as the most important recommendations for further planning of strategic interventions in the judiciary, this **summary version of the Assessment** was prepared. Comprehensive information on the progress achieved during the implementation of the Strategy under each individual principle is provided in the full version of the Assessment.

The beginning of extensive reform activities in the Serbian judiciary relates to the National Judicial Reform Strategy for the period 2006 – 2011, and the assessment of the implementation of this Strategy indicates that to a large extent results have been achieved with regard to the establishment of the legal and institutional framework (a set of judiciary laws, HCC, SPC, Judicial Academy). However, the re-election of judges in 2009 was conducted in a non-transparent and unconstitutional manner, the judicial network was not properly assessed, and procedural laws were only partially reformative. During this period, prosecutorial investigation didn’t come to life, the adoption of bylaws was delayed (criteria for the evaluation of the work of judges and public prosecutors, criteria for their promotion, etc.), while the legal framework that should guarantee the independence of judges and autonomy of public prosecutors didn’t enable the HCC and the SPC to work transparently enough. In addition, the availability of regulations and case law has not been achieved, as well as sufficient civil society participation in public consultations during the legislative process.

The National Judicial Reform Strategy for the period 2013 – 2018, adopted by the National Assembly on July 1, 2013, defined the objectives for improving the quality and efficiency of justice, strengthening the independence and accountability of the judiciary, in order to provide preconditions for strengthening the rule of law, democracy, legal certainty, bringing justice closer to citizens and restoring the trust in the judicial system.

The period in which the Strategy was adopted was marked by some key requirements, such as that the judges who have been dismissed (without grounds) should return to the system, that the new court network should be established, that the backlog should be reduced, and that the cases should be equally distributed. The application of systemic measures and the establishment of a new court network have partially helped achieve the requirement to reduce the number of backlog cases, and ensure equal distribution of cases. These improved efficiencies were achieved in most parts of Serbia, except in Belgrade courts, as well as the courts located in the appellate seats. Also, two judicial professions, public notaries and public enforcement officers, were successfully introduced which contributed to shifting the burden away from the courts.

On the other hand, amendments to the Constitution have not yet been implemented, and budgetary responsibilities were only partially transferred from the executive to the judiciary branch of government. Also, courts and public prosecutor’s offices still don’t have a single automatic case management system which prevents easy statistical and analytical performance monitoring and modern management of the judicial system. In connection with this, service of process, collection of court fees, and role of expert witnesses need to be significantly improved in order to allow for effective adjudication. Numerous reform activities have been dedicated to the establishment of an alternative dispute resolution system, primarily through changes in the legal framework and promotion, but in order for the system to be functional and achieve the desired effects, interventions in this regard need to be continued in the future as well.

During the implementation of the Strategy, significant results have been achieved in improving the expertise of the holders of judicial functions, representatives of new judicial professions, as
well as a large number of judicial staff. An entrance exam for trainees was introduced, new programs of continuous training were established and the capacities of the Judicial Academy were significantly improved.

Significant progress has been made in establishing greater transparency of the judicial system over the past six years, bearing in mind that the transparency of the HCC and the SPC has been significantly improved, and numerous services for citizens were established, becoming more accessible owing to the improvements in the e-Justice system. In the coming period, the reforms in this area should be completed with the establishment of a functional and sustainable system of free legal aid, and with urgent adoption and implementation of the draft Law which is now in the parliamentary procedure, in order to provide adequate access to justice for all citizens.

The Strategy and the implementation of its principles, objectives and measures, provided the continuity of reform activities and expanded their scope to the entire judicial system. In addition to improving, or more precisely defining the legal framework, institutional and professional capacity strengthening in the judiciary was enabled, as well as linking the judicial reform process with the process of European integration.

1. PRINCIPLE OF INDEPENDENCE

The principle of independence of the judiciary stems from the principle of the rule of law and the principle of separation of powers. In the opinion of the United Nations (UN) Human Rights Committee, the principles of legality and the rule of law are inherent to the International Covenant on Civil and Political Rights. There is an unbreakable bond between the principle of legality, democratic institutions and the rule of law. The separation of powers into legislative, executive and judicial means clearly divided and defined functions and roles, as well as the prohibition of interference.

The existence of independent and impartial courts constitutes the essence of a judicial system that guarantees the human rights protection in accordance with international standards. All international instruments for human rights protection provide for the right to a fair trial by an independent and impartial court, as an absolute right without any exceptions. Independence also pertains to a judge as an individual and to the judiciary as a whole.

International standards are accepted and form part of the Serbian judicial system. The obligation of the state and all branches of power is not just to formally and legally establish the judicial system based on these standards, but also to respect, protect and improve that system and mechanisms of protection of the independence of the judiciary, as the foundation of a democratic society.\(^6\)

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\(^6\) Key international documents directly defining the issue of judicial independence are: Basic Principles on the Independence of the Judiciary (United Nations (UN) 1985); Recommendation of the Committee of Ministers of the Council of Europe (94)12 on the independence, efficiency and responsibilities of judges, which is upgraded through the Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on independence, efficiency and responsibilities of judges, adopted in November 2010; European Charter on the statute for judges from July 1998. Also, the Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) referred to the Committee of Ministers of the Council of Europe on the standards related to the independence of judiciary and irremovability of judges should be referred to as an international document of specific importance for the issue of independence.
One of the most important aspects of judicial independence is financial independence, since the non-participation of judges in making budget decisions is one of the factors that can jeopardize judicial independence. The judicial branch in the RS is financed from the state budget, which is decided upon by the other two branches of power – legislative and executive, while the judicial branch, through the HCC, prepares the financial plan for the HCC and courts and submits the budget proposal. Therefore, the decision-makers of the state budget must take into consideration the actual needs of the judiciary when making decisions on the overall budget. Insufficient funds and poor financing leave room for corruption, limit the regular functioning of the judiciary, which ultimately affects the implementation of the principle of independence and impartiality. The preclusion or limitation of financing is the most common way of controlling the work of courts. International documents indicate the importance of adequate financing of the judiciary, thus the UN Basic Principles set out the obligation of each state to provide the judiciary with optimal resources that will enable it to perform its functions adequately.

International standards allow each state to make a decision on the most suitable manner of financing of the judiciary. The state’s obligation is to regulate this issue by law. States in transition can hardly provide sufficient resources for regular, unhindered, functioning of the judiciary due to economic constraints. However, the principle of the rule of law requires that the allocation of resources to the judiciary be given certain priority. The participation of judges in the decision-making on the judicial budget is a good safety mechanism against inadequate financing, with the aim of ensuring the independence of judiciary. The abovementioned remarks can also be applied to the preconditions for ensuring the independence of public prosecutors as well.

Also, as one of the key elements of judicial independence, international standards prescribe the selection of judges according to transparent criteria based on merits. Although they provide clear guidelines regarding the criteria, international standards do not provide an answer to the question which state authority should, as a rule, implement the selection process for judges and in what manner. Undoubtedly, the selection process must guarantee judicial independence and impartiality and that can be achieved through the application of objective criteria that cannot be of discriminatory nature.

Strengthening judicial independence is also conditioned upon the establishment of a clear system of career advancement. The state is obliged to provide for the promotion in accordance with objective criteria, similar to those for the selection of judges, based on competence, years of experience and performance. The Basic Principles of the UN prescribe that the promotion of judges should be based on objective factors, in particular ability, integrity and experience.

Finally, the state shall establish clear rules on the removal of judges, i.e. their accountability. Namely, judges can be removed due to serious irregularities in their work, a disciplinary offense or a criminal act, as well as due to their inability to perform judicial functions. The reason for removal or sanctioning of a judge cannot be a mistake made in good faith or due to a disagreement with a particular law, while the decision on removal can be made only after a legally conducted procedure. The Basic Principles of the UN prescribe that judges enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial function, which does not exclude the possibility of any disciplinary
procedure against a judge, the right of appeal to such judge’s decision or the right for compensation from the state due to such a decision of a judge.

International standards also define guidelines related to the independence of a public prosecutor’s function. Taking into consideration that the function of a public prosecutor cannot be identified with that of a judge in part related to independence, this function requires the existence of a high degree of autonomy in work, in order to establish an independent judiciary, and therefore the rule of law. Therefore, the notion of the prosecutorial autonomy is defined through the prohibition of any influence of the executive and legislative power over the work of a public prosecutor’s office and their handling of cases, using the public position, the media or any other way that could jeopardize the independence of public prosecutor’s office. Such prescribed independence can only be provided through clear, objective, pre-determined and transparent criteria for election, evaluation and promotion.

It can be noted that, during the implementation of the Strategy, the greatest progress has been made related to the transparent functioning of the HCC and the SPC, as bodies guaranteeing the independence and autonomy of courts and judges, public prosecutors and deputy public prosecutors. Namely, through the amendments and supplements to laws and adoption of bylaws, the publicity and transparency of work of the Councils has been significantly improved, making the judiciary and its work seem more accessible to the professional, as well as the general public. Also, by publishing reports on the work of the HCC, the CPS, as well as the SCC, appellate courts and the RPPO, the results of the work of these judicial bodies are made available to the public, which has a significant impact on restoring citizens’ trust and confidence in the work of these institutions.

A noticeable positive shift towards the independence as the strategic goal was also made in the process of appointment, promotion and accountability of the holders of judicial functions, bearing in mind that, through the legislative changes and new bylaws, clear, measurable and objective criteria were defined for appointment to the function and evaluation of work of judges, public prosecutors and deputy public prosecutors. Pre-defined criteria based on which the holders of judicial professions are appointed contribute to the legal security and citizens’ trust in the system. Even though the Judicial Academy has not yet been introduced as a mandatory condition for the first appointment, as was planned under the Strategy, efforts have been made to “reconcile” two existing entry points into the judiciary, through the introduction of an exam before the HCC and the SPC when candidates applying haven’t attended initial training and who are candidates from the order of judicial and prosecutorial assistants or other legal professions. In the first half of 2018, a draft Amendments to the Constitution of the Republic of Serbia which relates to the judiciary was prepared, and its adoption would establish a constitutional framework for the introduction of the Judicial Academy as a compulsory condition for the first election through different types of trainings, which would eliminate existing problems and enable acting in accordance with the targets set out in the Strategy, but also with the decision of the Constitutional Court from 2014.

Independent functioning of HCC and SPC represents a key prerequisite for establishing a judicial system that would meet all the international requirements, as well as those incurred by the Strategy, all related to the independent functioning of the judiciary. With the process of strengthening professional and analytical capacities of the HCC and the SPC, defining new job posts and titles within administrative offices, activities were undertaken to introduce and
improve strategic planning and analytics in the Councils, which is one of the Strategy objectives. However, in the upcoming period, it is necessary to fill the planned capacities in order to contribute to greater expertise in this segment of work and planning. Organization and implementation of continuous and periodic trainings for employees in administrative offices of the HCC and the SPC, in cooperation with the Judicial Academy and other institutions, will help with the move in the direction of full specialization and professionalization, which will count towards the fulfillment of one of the roles of the HCC and the SPC.

RS has made certain progress in the part related to introducing the system of performance evaluation for the holders of judicial functions, as well as judicial and prosecutorial assistants, since clear and objective criteria for evaluating their work and career advancement are a prerequisite for strengthening of their independence. Substantial changes that should include the improvement of the positions of misdemeanor judges, as well as career advancement for judicial and prosecutorial assistants and their professionalization, are yet to be implemented, primarily through further amendments and supplements to the regulations, and subsequently through full implementation in practice.

Certain progress has been made in the implementation of the activities envisaged by the Strategy related to the partial budgetary independence, but there is still some room for improvement in this area. The HCC and the SPC act in accordance with the Strategy, and they are filling in the planned and necessary capacities. Also, significant activities are undertaken regarding the introduction of information technologies with the aim of assuming budget competencies, as well as other responsibilities, at that moment when the adopted legal provisions will have been implemented. In this manner, the HCC and the SPC are continuously undertaking actions in order to respond, in full capacity, to their new responsibilities, and in accordance with the proposed constitutional amendments, as well as the accompanying legislative framework that would clearly regulate and define the division of competencies between the Ministry of Justice and the HCC, the SPC, the SCC and the RPPO.

One of the important elements of judicial independence is related to the issue of solving property, legal and infrastructure issues through the preparation of the situation assessments, as well as through investments in improving accommodation and material and technical working conditions. Significant progress has been achieved in this area during the Strategy implementation. Nevertheless, given the long-standing neglect of this segment, as well as the increasingly complex requirements of the judicial network, continuous improvements of the premises accommodating judicial institutions is necessary in the upcoming period, in order to achieve completely independent functioning of the judicial system in the RS.

2. PRINCIPLE OF IMPARTIALITY AND QUALITY OF JUSTICE

The principle of impartiality is one of the key principles that the judicial system of a democratic state embedded in the rule of law must provide for its citizens to ensure the efficient and effective realization of their rights and freedoms. This implies equal treatment of citizens in terms of access and quality of justice, clarity and availability of regulations that are in accordance with the international and European standards, uniform application of law, i.e. uniform case law in all national courts that is available to citizens, continuous improvement of the quality of judicial
institutions and transparency of their work, as well as continuous strengthening of the expertise and integrity of the holders of judicial functions, and their discipline and ethics.

Normative and institutional mechanisms for the prevention of corruption in the judiciary have been established through the adoption of integrity plans in the Ministry of Justice, the SCC, the RPPO and most courts and public prosecutor’s offices, as well as through the reports on monitoring of their implementation. The goal of introducing integrity plans is to identify and reduce the risk of corruption in the justice system in order to establish a high-quality court system and to increase the public awareness of the work of judicial institutions.

Monitoring and evaluation of the results of measures to improve integrity in the judiciary involves continuous work on their improvement and consistent application. To this end, a number of measures have been implemented in the previous period: the Anti-Corruption Agency (Agency) has introduced software for the uniform development and implementation of integrity plans; a system for submitting reports on assets and revenues of officials was established; web presentations of the Ministry of Justice and courts have been enhanced to provide more information on the prevention of corruption in judiciary. Improving the legal framework in this area should be systematically based on recommendations from the Analysis of Anti-Corruption Legislation on Compliance with the EU law and international standards.

Internal legal acts that determine the standards of professional ethics of judicial office holders represent a basis for further strengthening of the rule of law, as well as citizens’s trust into the judicial system. Therefore, ethical codes for judges, public prosecutors and deputy public prosecutors, as well as the members of the HCC and the SPC were adopted. The HCC and the SPC working bodies in charge of monitoring the implementation of the codes have been established, but they were not operational due to the lack of bylaws that would regulate their work. The Rules of Procedure of the SPC Board of Ethics were adopted in July, and the for the HCC Board of Ethics in September 2018. However, it cannot be said that ethical codes were not applied in practice even before the adoption of normative mechanism for their implementation. To be specific, judges and prosecutors, undoubtedly aware of the obligations arising from the normative ethical rules, have acted in accordance with them, and a number of trainings for the holders of judicial functions were organized on this specific topic.

Alternative dispute resolution methods, in particular mediation in dispute resolution, have been a priority of the Ministry of Justice and judicial authorities, and it can be concluded that important results have been achieved in the establishment of legal framework and its promotion. In addition to the adoption of the new Law on Mediation in Dispute Resolution and relevant by-laws, a Registry of Mediators which contains data on all mediators was established. The Ministry of Justice has undertaken numerous activities to encourage courts to use mediation, both internally within the courts themselves, and externally, by engaging external mediators. Special attention was given to the promotion of mediation through numerous activities supported by international projects.

There remains a need for the courts to continue to undertake systematic measures in the future in order to broaden the implementation of this method for alternative dispute resolution. In order for mediation to become an appropriate alternative to court proceedings, a more efficient system of transfer of court cases is needed, together with a much wider and more comprehensive promotional campaign. In order to improve statistics and reporting on mediation, it would be necessary to enable the use of information and communication technologies (ICT), the most
modern case management system and the exchange of information between courts and mediators.

In order to improve the quality of justice new legal professions have been introduced as well. Appointed notaries are carrying out their mandated duties in most municipalities in RS. However, some 15 towns in Serbia still do not have the public notary offices, with courts performing notary duties in these places. The Chamber of Public Notaries adopted its code of ethics and disciplinary rules and appointed two disciplinary prosecutors.

Improving the legal framework with the introduction of all the international and European legal standards represents an ongoing and continuous activity both during and after the implementation of the judicial reform. Having in mind that this also forms a part of the EU accession process, the importance of legislative reform is undeniable. To this end, several new laws were enacted (Law on Enforcement and Security, Law on Public Notaries, Law on Mediation in Dispute Resolution, Law on Misdemeanors, etc.) that are harmonized with the European standards, while there is still intensive work invested in the amendments and supplements to the laws that regulate the judiciary. Drafting of the Law on Free Legal Aid, which is currently in the phase of a Proposal, has been the most challenging process, while numerous measures were undertaken in the previous period regarding the establishment of mechanisms related to the application of this principle through the already existing legal framework.

Activities on the case law harmonization with the aim of equal application of law by all courts and judges, as well as the predictability of the outcome of disputes by the parties in the dispute, are carried out continuously and they are producing solid results. The legal framework, as well as the mechanisms for case law harmonization, have been improved. Court practice databases have been established to provide access to the decisions of the SCC and other national courts, as well as the European Court of Human Rights (ECHR) and the EU Court of Justice. Access to these databases is provided to the professional and general public. In addition to the above mentioned, additional work is being done to formulate the legal framework that will guarantee the privacy and security of minors, victims and witnesses.

Considering the fact that the access to justice and information are some of the prerequisites that guarantee the impartiality and the quality of work of the whole judicial system, judicial institutions and the Ministry of Justice have invested significant efforts to ensure greater transparency of work and establish a proactive relationship with citizens. Their websites have been improved, and the most relevant information for the fulfillment of the rights and interests of citizens are made available (e.g. by publishing the register of public notaries, public enforcement officers, mediators, court-sworn interpreters, etc.), information services were established within courts and public prosecutor’s offices, and the most important judicial authorities have adopted communication strategies, that enable them to direct the work of the judiciary towards greater openness to the public, as well as communication with citizens.

However, different ICT systems for case and document processing and management are still not connected, resulting in the lack of comprehensive statistical data that would facilitate performance measurements and would help improve governance and decision-making on the most important issues related to further institutional development. Automatic case distribution

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7 The Government adopted the proposal of the Law on Free Legal Aid on September 20, 2018.
system, based on objective and pre-defined criteria and with appropriate technological support, has not yet been established for all courts. The ICT Council adopted general guidelines and made a decision on strategic orientation for the development of the case management system for public prosecutor’s offices and prison administration. A plan has been developed on how to connect different systems. Although a number of individual activities have been undertaken, a better overall strategic vision and a plan for ICT solutions in judicial and prosecutorial networks are needed.

3. PRINCIPLE OF COMPETENCE

During the Strategy implementation, significant efforts have been made to improve the competence of the holders of judicial functions, as well as in training the representatives of new judicial professions, such as public enforcement officers, public notaries, mediators, but also a considerable number of judicial staff. Judicial Academy adopted numerous acts that regulate the training dynamics and contribute to its quality. All this together significantly contributed to improved performance of the Serbian judiciary in terms of competence and quality, reduction of the number of backlog cases and more efficient management of proceedings. Also, a number of legislative changes were made, such as amendments to the Law on Judges and the Law on Public Prosecutor’s Offices, and new rulebooks were adopted on the criteria and measures for evaluation of work of holders of judicial functions by the HCC and the SPC, whereby the competence and attending of trainings at the Judicial Academy have been accorded due significance.

Judicial Academy was established by the Law on Judicial Academy with the aim of contributing to the professional, independent, impartial and efficient delivery of the judicial and prosecutorial function, and competent and efficient performance of duties of the judicial and prosecutorial staff. During the eight years of its existence, as the only institution in Serbia responsible for professional development of judges and prosecutors and individuals preparing to perform judicial and prosecutorial functions, training of judicial and prosecutorial assistants and trainees, court and prosecutorial staff, as well as public enforcement officers, public notaries, assistants of public notaries and trainees, through special programs for continuous and initial training, Judicial Academy has justified the goal and purpose for its establishment with a high number of implemented trainings and programs. Despite the efforts invested, it is necessary to continue with the professional development of the holders of judicial functions according to the needs, plan and program that is jointly identified by the Judicial Academy, the HCC and the SPC, in order to achieve the highest standards of competence, integrity, professionalism and accountability in their work.

Significant progress has been made in relation to the introduction of the system of selection and training of trainees, in particular due to the fact that the Judicial Academy has passed the Rulebook on the entrance examination and organization of entrance exams at the national level. Clear and measurable criteria for assessing the work of judicial assistants on the basis of which the assessment is being conducted have been established, and it is expected that similar criteria will be identified for prosecutorial assistants. However, although the training for judicial and prosecutorial assistants has commenced in accordance with the annual training programs at the Judicial Academy, it would be necessary to establish a comprehensive and sustainable
approach, and adopt a uniform program for continuous training solely dedicated to judicial and prosecutorial assistants, trainees and volunteers.

In order to improve the professionalism of administrative staff in the courts and public prosecutor’s offices, numerous trainings have been held, and information technologies have significantly contributed to increasing the efficiency of their work. In order to better organize the work processes, new positions have been introduced in courts, such as courts managers. Since training of judicial staff is a continuous process, it would be necessary to continue to work on and improve some of the programs.

Progress has also been made in terms of organization of trainings for other judicial professions, such as public notaries, public enforcement officers, mediators, expert witnesses, etc. A number of by-laws were adopted: the Rulebook on initial training of candidates for public enforcement officers, Rulebook on mandatory professional development for public enforcement officers and deputy public enforcement officers, Rulebook on initial training program for mediators, Plan of implementation for the Training program for public notaries for 2018 and the Program of initial training of candidates for public notaries. Also, cooperation has been established between the Judicial Academy and the Chamber of Public Notaries, the Chamber of Public Enforcement Officers, as well as other institutions, law schools and the Ministry of Justice.

Significant progress has been made with respect to the introduction of information technologies into the work of the Judicial Academy. The implementation of the e-Academy program has introduced numerous applications that contribute to the transparency and efficiency of work of this institution, which also represent important tools in the work of other bodies, such as the HCC, SPC, etc. In the coming period, it would be necessary to support further improvement of similar programs, especially the “distance learning” application that is currently under development. This is a modern learning method that can enable a large number of trainees in the initial training, as well as the holders of judicial function and other employees, to acquire additional knowledge and skills through an interactive program. It would be important to continue with the introduction of an electronic records system for all participants in the training, which has been done so far only for the holders of judicial functions.

Taking into consideration the significance and role of the Judicial Academy in the process of improving the competence of judicial office holders, as well as all other judicial professions, extensive efforts have been made to strengthen the capacity of the Judicial Academy. From the aspect of infrastructure, a positive step forward is the building that the Government allocated to the Academy, which will be adapted in accordance with the needs of this institution during this year and 2019 with the EU funds. Nevertheless, one of the significant challenges that still remains is the limited allocation of budget resources for the work of the Judicial Academy. Most of the funds are allocated to the initial training program at the Judicial Academy, primarily for salaries or a large number of attendees of initial training with a passed final exam, who, due to the lack of appointments to judicial functions, significantly burden the budget of the Judicial Academy. The reason for this situation is that the Judicial Academy finances initial training attendees until their election to a function. Bearing in mind the above-mentioned, an urgent solution for this issue should be sought in the coming period. If this would be resolved, budgetary funds could be redirected towards improving the quality of training and Judicial Academy could provide a significantly higher volume of training with the existing budget, without depending on donor assistance.
After the opinion of the Venice Commission on the constitutional amendments which pointed out that the “role of the Academy as the only point of entry into the judiciary seems well placed with aspirations and commitment to strengthen the capacity and professionalism of judicial and prosecutorial training, but it would be advisable to protect the Academy from possible undue influence, by providing it a strong status in the Constitution”, the constitutional amendments that define the status and the role of the Judicial Academy were amended. Regarding the position of the Judicial Academy, in the upcoming period, its material, technical and human capacities, will be strengthened in accordance with the new competencies and obligations. To this end, the RS Government allocated a 3000 m2 building for the Judicial Academy, while the EU has provided funds for its reconstruction.

In the part of the Strategy that refers to the competence of judicial office holders and judicial professions, the anticipated reform of the bar exam represents a challenge that requires special attention in the coming period, since the amendments to the Law on the Bar Exam have not been passed yet. The bar exam is still being implemented based on the existing acts, as a general examination for all judicial professions, in addition to the significant changes in the legislation and the functioning of the judicial system, as well as the introduction of numerous professional exams for the new judicial professions. Bearing in mind all of the above, there is still work to be done on the definition of an optimal solution regarding the harmonization of various professional exams.

Taking into account the guidelines from the Strategy and measures from the Action Plan, in the following period, a new Law on Expert Witnesses should be adopted, as well as the Law on Court-Sworn Interpreters, which hasn’t been done in the previous period.

4. PRINCIPLE OF ACCOUNTABILITY

Establishing an effective judicial system implies establishing a guarantee of independence for the judiciary and judges, as well as the mechanisms for their accountability, which must be implemented while respecting their independence at the same time. The guarantee of independence of the judiciary is there to protect the rights of individuals. Accountable judiciary means a fair and impartial trial before a court and the protection of an individual from the abuse of power. Accordingly, the holders of judicial functions have the duty to adjudicate fairly and impartially on the basis of the Constitution and laws.

During the implementation of the Strategy, significant progress was made towards the introduction of objective system of responsibilities, with the adoption and beginning of implementation of the complete legal framework for the assessment and evaluation of work of judges, court presidents, public prosecutors and deputy public prosecutors. The progress has also been made in terms of transparency, most notably through the availability of information relevant for the performance evaluation process and results on the web presentations of the HCC and the SPC. The legal framework and the transparency of its implementation have been improved with regard to the work of disciplinary bodies, and significant progress has been made by adopting ethical codes and establishing ethics boards within both bodies. Numerous trainings and availability of relevant materials on the websites of the HCC and the SPC improve the awareness of the rules of ethics and the mechanisms of disciplinary responsibility are improved. Also, the legislative identification of the limits of civil liability and disciplinary responsibility
of the holders of judicial functions for incompetent work was carried out immediately after the adoption of the Strategy.

However, the implementation of the Strategy has not yet yielded the expected results in the part related to the establishment of a single system of registering and processing of complaints and petitions pertaining to the work of courts, while a significant challenge regarding the amendments of the Constitution will also be the amendments of the Law on the High Court Council and the Law on the State Prosecutorial Council with the aim of strengthening the mechanisms of accountability in these two bodies.

When it comes to the introduction of a system that enables monitoring efficiency in the whole judicial system and the results of the work of the holders of judicial functions, the Ministry of Justice has invested great efforts and achieved significant results in introducing modern ICT into the Serbian judicial system. Central and advanced statistical reporting of the courts of general jurisdiction has been successfully completed in the segment of reporting on the work of the court, and the implementation of activities related to central – advanced statistical reporting is in progress for all the reports that the courts of general jurisdiction are obliged to submit. In the upcoming period, the greatest challenge will be to extend this initiative to the courts of special jurisdiction, as well as to the public prosecutor’s offices, in order to completely replace the reporting in written form with the reporting through the centralized statistics system.

Significant progress during the implementation period of the Strategy has been achieved in connection with the establishment of a functional and transparent accountability mechanism for the representatives of judicial professions. Supervision over the work of public enforcement officers has been improved and a transparent accountability mechanism has been introduced and it will be continuously improved, in accordance with the ongoing legislative changes. Also, the transparency of the accountability mechanisms has been improved, bearing in mind that the decisions of the Disciplinary Commission are published on the website of the Ministry of Justice.

Based on the relevant bylaws, the mechanism that the Chamber of Public Notaries applies to monitor the work of public notaries and ensure their accountability was improved. On the other hand, although the Ministry of Justice acts in accordance with its mandate regarding the supervision function over the work of public notaries, it would be necessary to adopt a bylaw that would regulate in more detail the issue of supervision over the work of this profession in the upcoming period.

A transparent mechanism for the accountability of mediators has been established through the adoption and implementation of a new legal framework that adequately regulates the obligations and responsibilities of mediators, as well as through the harmonization with the EU Acquis and the best international and comparative practices.

Progress has also been made when it comes to the access to information on judicial profession service providers, so that citizens can now quickly and easily find data in registers, or records kept by the Ministry of Justice, in accordance with the needs of their specific case. In order to establish a completely transparent mechanism of accountability for the representatives of judicial professions, it would be necessary to use the website of the Ministry of Justice and publish information for citizens about the possibility of lodging a complaint on their work, as well as decisions on revoking licenses.
Finally, it is to be noticed that the Strategy implementation has yet to yield significant results in the establishment or improvement of the mechanism of accountability of expert witnesses and court-sworn interpreters, and a significant challenge in the coming period will be to legally regulate this issue.

5. PRINCIPLE OF EFFICIENCY

For the principle of efficiency, the Strategy defines strategic objectives that, among other things, refer to the establishment of an effective and efficient network of courts and prosecutor’s offices, improvement of e-justice, disposition of cases within a reasonable time with a specific emphasis on the reduction of backlog cases, establishment of a public notaries’ system and the system of enforcement of court decisions and work on further improvement of international cooperation in judiciary.

Regarding the solving of priority problems related to the implementation of the principle of efficiency, in the period of implementation of the Strategy, in the process of enforcement of decisions of the Constitutional Court, during 2012 and 2013, the HCC brought back a total of 593 judges into the judiciary: 415 judges in basic courts, 98 judges in higher courts, 40 judges in commercial courts, 7 judges in the Commercial Appellate Court and 12 judges in the SCC. Of that number, 512 judges took up the position of a judge. On the session held in September 2012, and on the basis of the decision of the Constitutional Court, the SPC passed a decision on the appointment of 118 deputy public prosecutors who were not previously appointed.

However, the Serbian judicial system hasn’t recovered from the reduced number of holders of judicial functions and the changes in the judicial network and it has been constantly lagging behind every year when it comes to the necessary number of holders of judicial functions, i.e. the number of filled judges’ and prosecutors’ positions compared to the number defined in the decisions of the HCC and the SPC. Therefore, a comprehensive analysis of the required number of judges and public prosecutors would be needed in the future, having in mind their individual workloads, the number and type of cases and their jurisdiction, working conditions, the number of staff and the number of judicial and prosecutorial assistants.

Regarding the number of judges in the courts of the Republic of Serbia, in 2012, a total of 2,380 judges effectively worked, while in 2013, with the reinstated, previously non-elected judges, the total number was 2,652. However, during 2014 and 2015, the number of judges decreased, so in 2015 the total number of judges effectively working was 2,522. According to the HCC data, on June 30, 2016, out of the required number of judges in the Serbian courts (2,976), 2,801 judges were appointed, and 2,604 judges were effectively working in the first six months. This downward trend continued. If the last year and the first six months of this year are taken into consideration, the number of vacancies for judges’ positions is extremely high, which is the consequence of the ban on the appointment of new judges in accordance with the latest decisions of the Constitutional Court and the need to harmonize the rules on the selection of judges and public prosecutors.\(^8\)

\(^8\) See: Table 1 Annex 3 – Comparative overview of the number of judges for the period January 1 – December 31, 2017 and January 1 – June 30, 2018
The number of vacant judges’ positions on June 30, 2018 is 412, which is an extremely large number and it significantly affects the efficiency of courts. The largest number of vacancies is in the Belgrade courts which also have the largest workload.

As stated in the Annual Report on the work of the SPC for 2017, on January 1, 2018 there was a total of 618 deputy public prosecutors, which is a slight decrease (1.35%) compared to January 1, 2017, when the total of 628 deputy public prosecutors were working in the system. A decrease in the number of deputy public prosecutors was also affected by the fact that, on the session held in December 2017, the SPC passed the Decision on the nomination of candidates for the first appointment for 52 deputy public prosecutors, but the National Assembly failed to appoint the proposed candidates for deputy public prosecutors. If that had happened, the number of deputy public prosecutors in 2018 would have been increased by 5.66%. The number of 618 deputy public prosecutors corresponds with the number of 8.80 deputies per 100,000 inhabitants.

Since January 2010, the total number of courts is 129, instead of the previous number of 199 courts, which represents a reduction from 2.7 courts per 100,000 inhabitants to 1.8. Please note that the misdemeanor courts were included in the system at that point for the first time. The total number of judges was reduced from 3,212 (44.1 judges per 100,000 inhabitants) to 2,455 (33.7 per 100,000 inhabitants). The number of public prosecutors and their deputies also decreased by 5.8% to 611, or to 8.4 per 100,000 inhabitants.

The judicial network that was introduced in January 2010, was amended through the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices10 so that from January 2014 there has been an increase in the number of basic courts in the Serbian judiciary, from 34 to 66, and the number of public prosecutor’s offices from 34 to 58. The new network was created with the aim of removing the gaps of the existing one as it proved to be ineffective and made it difficult for citizens to access justice. In comparison to the judicial network that was introduced in January 2014, there were a total of 162 courts or 2.25 courts per 100,000 inhabitants11, while the number of prosecutor’s offices was 1.22 per 100,000 inhabitants.

The new judicial network that started functioning in 2014 includes 159 courts of general and special jurisdiction (66 basic, 25 higher, 16 commercial, 44 misdemeanor, four appellate courts, the Administrative Court, the Commercial Appellate Court, the Misdemeanor Appellate Court and the SCC). When it comes to public prosecutor’s offices, the judicial network includes 88 public prosecutor’s offices (58 basic, 25 higher, four appellate) and the RPPO. In addition, it includes the Prosecutor’s Office for War Crimes, Prosecutor’s Office for Organized Crime, as well as the Special Prosecutor’s Office for High Tech Crime, Criminal Investigation and Prosecution of Cyber Crimes within the Higher Public Prosecutor’s Office in Belgrade. The adoption of a special law for the courts and public prosecutor’s offices in the territory of the Autonomous Province of Kosovo and Metohija was envisaged.

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9 National Judicial Reform Strategy for 2013-2018, II Modern Court Network, page 24
11 Number of inhabitants of the Republic of Serbia was taken from 2010, according to the data of the Republic Statistical Office and it is 7,291,436: http://publikacije.stat.gov.rs/g2011/pdf/g20112004.pdf. The same source was used for 2014, and the estimated number was 7,149,180: http://www.stat.gov.rs/oblasti/stanovnistvo/proocene-stanovnistva/.
With regard to the reduction of backlog, old cases, shorter duration of court proceedings and the reduction of budget expenditures, it can be said that, according to the previously reduced court network, the objectives have not been achieved. In 2012, the courts had the total of 3.34 million of pending cases, and the judges had an uneven workload. Courts of general and special jurisdiction in Belgrade had the highest workload. Some of these deficiencies were corrected through the changes in the judicial network that started operating in January 2014, but the most significant, visible results, when it comes to efficiency were achieved in 2016. This claim is supported by the following figure, taken from the Annual Report of the SCC on the Work of all courts for 2017, since the division and electronic migration of cases between the First Basic Court, the Second Basic Court and the Third Basic Court in Belgrade was not carried out timely for all cases (for enforcement cases this was done only in the first quarter of 2018):

![Figure 1: Overview of the number of disposed cases in courts in the RoS, Annual Report of the SCC for 2017](image)

A large number of pending cases in Serbian courts, and in particular a large number of old backlog cases, required comprehensive and long-term measures at the national level in order to increase the level of efficiency, reduce the number of old backlog cases, reduce the duration of court proceedings and increase the trust of the public in the judiciary. A significant step in dealing with the problem of large number of backlog cases was the adoption of the Unified Backlog Reduction Program in the Republic of Serbia in December 2013 and the Special Program of Measures for Reduction of Old Enforcement Cases in the Courts in the Republic of Serbia for the period from 2015-2018 in November 2014. After that, in August 2016, the President of the SCC passed the Amended Single Backlog Reduction Program in the Republic of Serbia for the period 2016-2020.

The fact that this is a recognized and acknowledged measure is reflected in the AP23, since the Unified Backlog Reduction Program is considered a dynamic document, which is why it needs to be “amended and improved in accordance with the initial results of its application and based on the conclusions from the regular sessions of the Working Group for the implementation of the Unified Backlog Reduction Program”. In the following period, in cooperation with the Judicial Academy, a training program for judges’ skills should be further developed – case management and drafting of an individual judge’s plan for reduction of backlog cases.

The most notable progress in the digitalization of the judiciary and the creation of various electronic and automated tools for the management of work and other processes in judiciary during the validity period of the Strategy represents the completion of the process of introducing
a system for automated case management in all courts and a number of public prosecutor’s offices. ICT interventions are planned and structured, and the Sectoral ICT Council decides on them, as a multi-institutional body that brings together the most relevant representatives of the sector. Various ICT trainings were conducted for judicial staff, from basic computer literacy courses to specialized trainings. The Justice Information System (PIS) has enabled electronic communication between, above all, courts and bodies whose data are requested in various types of court proceedings (e.g. registry books, the Republic Pension and Disability Insurance Fund, Ministry of Interior, Central Registry of Compulsory Social Insurance).

However, the fact that all courts in Serbia do not use a single case management application, nor do they have the possibility of interconnecting, represents a significant challenge in producing reliable statistical reports and data analysis, which should be the input that the decision-makers in the justice sector rely on when making plans. The first instance courts of general jurisdiction, basic and higher, use the AVP (Automatic case management system), an application initially developed for the needs of the commercial courts and Belgrade courts in 2004/2005, and introduced into all higher and basic courts in 2010. Misdemeanor courts use SIPRES (Misdemeanor Courts Case Management System), an application introduced at the end of 2015, which does not produce all statistical reports needed for planning, so a large number of misdemeanor courts, including the Misdemeanor Appellate Court, are still keeping double records, manual, in paper form, and electronic. The Appellate Courts, the Administrative Court and the SCC use SAPS (Standardized Software Application for Judiciary), which has good analytical performance and enables the exchange of data and documents, but only between these six courts. Finally, commercial courts have since recently a completely new application – SIPRIS (Commercial Courts Case Management System), in use since 2017. Centralized statistics include only data from courts of general jurisdiction, which is not sufficient for some types of cases (e.g. cases of protection of the right to a trial within reasonable time, which are filed with all courts), and significantly complicates the collection and processing of data for domestic needs, reporting requirements towards the EU and other organizations towards which such obligation exists.

Results achieved through inter-institutional cooperation of several bodies in the previous period should also be pointed out. Namely, the Ministry of Justice, the SCC and the HCC signed certain acts that significantly contributed to the achievement of visible and sustainable results. Pursuant to the Law on Enforcement and Security, the Instructions for Implementation of the Law on Enforcement and Security have been signed, while similar instructions have also been signed with regard to the Law on Mediation in Dispute Resolution with the aim of improving and promoting alternative dispute resolution methods. In addition, in July 2018, the President of the SCC and the HCC, the State Attorney, the Minister of Justice, and the Director of the Judicial Academy signed the Instructions for the promotion of procedure for conclusion and execution of the out-of-court settlement in the proceedings for the protection of the right to a trial within reasonable time. We believe that this way, as demonstrated in practice, strategic goals and guidelines are achieved in a more effective manner.

One of the ways of increasing the efficiency of courts in the previous period was the transfer of the so-called “trial matter” from the court to public enforcement officers and public notaries, as the new judicial professions, which should be further pursued. Cooperation between the Judicial Academy and the chambers of individual judicial professions is of paramount importance for strengthening the expertise and accountability of the judicial system as a whole.
### Overview of the most important areas of progress made during the implementation of the Strategy

- **Principle of Independence** -

**Areas where progress has been made:**
- improved transparency of the functioning of the HCC and the SPC
- enhanced procedures for appointment, promotion, and accountability of judicial office holders
- strengthening the professional and analytical capacities of the HCC and the SPC with the aim of introducing and improving strategic planning and analytics
- improved property, legal and infrastructural capacities of the judiciary

**Areas that require additional efforts:**
- strengthening the budgetary independence of the HCC and the SPC
- establishing a system for career advancement
- achieving a more equal distribution of workload among judges

- **Principle of Impartiality and Quality of Justice** -

**Areas where progress has been made:**
- case law harmonization and creating a platform for a case law database
- improvement of the legal framework as a permanent continuous activity
- improved transparency of the work of judicial authorities
- better implementation of integrity plans in the judiciary
- drafting and implementation of codes of ethic
- improved normative framework for representing property interests of the Republic of Serbia before the European Court of Human Rights
- establishing assistance and support services for victims and witnesses

**Areas that require additional efforts:**
- standardized system of free legal aid through the introduction of a normative framework and establishment of institutional support
- full implementation of alternative dispute resolution methods

- **Principle of Competence** -

**Areas where progress has been made:**
- improvement of competences of judicial office holders through numerous trainings held in the previous period
- improvement of competences of the representatives of new judicial professions (public enforcement officers, public notaries, mediators) through numerous trainings held in the previous period
- strengthening the role and the position of the Judicial Academy
- introduction of a system of appointment and training of judicial and prosecutorial assistants

**Areas that require additional efforts:**
- setting up a sustainable continuous training program for judicial and prosecutorial assistants and judicial and prosecutorial trainees
- adoption of the new Law on Expert Witnesses and the Law on Court Interpreters
### Principle of Accountability

**Areas where progress has been made:**
- improved appraisal and evaluation of the work of judges, court presidents, public prosecutors and deputy public prosecutors
- improved transparency through available information relevant for the process and results of performance evaluation on the websites of the HCC and the SPC
- improved work of disciplinary bodies in the judiciary
- improved awareness of judicial office holders on the rules of ethics and mechanisms of disciplinary responsibility
- introduction of modern information technologies in the judiciary
- improved monitoring over the work of public enforcement officers, public notaries and mediators

**Areas that require additional efforts:**
- further improvement of mechanisms of accountability of the judicial office holders, court and prosecutorial staff and representatives of judicial professions
- establishing a single system of collection of complaints and petitions on the work of judicial institutions

### Principle of Efficiency

**Areas where progress has been made:**
- establishment of a new network of courts and public prosecutor's offices
- achieved significant reduction of “backlog” cases
- introduction of the automatic case management system in all courts and certain number of prosecutor’s offices
- establishment of the platform for e-justice
- strengthening of inter-institutional cooperation
- transfer of court jurisdiction to the new judicial professions

**Areas that require additional efforts:**
- full implementation of the Amended Unified Backlog Reduction Program in the Republic of Serbia for the period 2016-2020
- improvement of the enforcement system with the aim of resolving old small claims where the state, public enterprise etc. are creditors
- establishment of a mechanisms for equal distribution of cases through additional improvement of the network and capacities of the judiciary and better allocation of resources, case weighting methodology
- continuous work on the digitalization of the judiciary
III MECHANISMS FOR MONITORING AND EVALUATION OF JUDICIAL REFORM IN THE REPUBLIC OF SERBIA

In the framework of international cooperation and the process of EU integration, RS adopted key strategic documents in many areas in the previous period (justice sector, anti-corruption, fundamental human and minority rights), as well as the action plans for their implementation. Their inter-sectoral character demanded the establishment of special mechanisms for monitoring and evaluation of achieved results, so that the implementation could be constantly monitored in an organized and systematic manner. This was particularly done so as to create conditions that, after the validity period of the strategies expires, it would be possible to carry out an evaluation of results, and catalogue what remains unfinished.

Monitoring and evaluation mechanisms have become an integral part of each strategic document. However, despite this, we can say that in some segments mechanisms provided limited results, and the most common reasons are as follows:

- Structure of the mechanism that is subject to the influence of frequent personnel changes;
- Lack of administrative capacity to provide continuous professional and technical support to the reporting and evaluation process;
- Lack of political will to really use the monitoring mechanisms as one of the most important factors in maintaining the dynamics and quality of reforms.

Also, the issue of effective monitoring of certain reform processes and the parallel functioning of several monitoring mechanisms, essentially monitoring the same issues, has emerged which is precisely the situation when it comes to monitoring the effects of the judicial reform, since the implementation of the Strategy for the period 2013-2018 as well as the AP23 are both being monitored. Therefore, we think that, for the purposes of this analysis, we need to make a parallel between the monitoring and evaluation mechanism under the Strategy and the mechanism for monitoring and evaluation pertaining to the implementation of the AP23, which was adopted during the Strategy implementation. It can be said that the process of monitoring and evaluation of the results of the judicial reform in Serbia in the previous period overlapped in certain segments between the two mechanisms, which will be elaborated in more detail in the text below.

6.1 Monitoring and evaluation mechanism within the National Judicial Reform Strategy for the period 2006-2011

With the aim of fostering better understanding, it is worth mentioning that the first attempts to introduce judicial reform in the RoS into a comprehensive strategic framework that would enable clearly designed reform measures and monitoring of their implementation is linked to the adoption of the National Judicial Reform Strategy 2006-2011\(^\text{12}\), which was adopted at the May 25, 2006 session of the National Assembly. The main objective of the Strategy stated the determination to establish the rule of law and legal certainty, thus restoring the citizens’ trust in

\(^{12}\) Official Gazette of the RoS No. 44/06.
the judicial system of the RS. The Strategy was based on four key principles: independence, transparency, accountability and efficiency of judiciary.

The intention of the law makers was to regulate the institutional framework for the implementation and monitoring of this strategic document. However, when the institutional framework was defined, an opportunity appears to have been missed to deleniate between the mandate for implementation and the mandate for monitoring of the implementation of the Strategy, as well as the responsibility for what happens if some of the institutions fail to meet the obligations stipulated in the Strategy.

In the section “Implementing bodies” it was envisaged that the responsibility for the implementation of strategic objectives and activities is entrusted to the ten-member Commission for the implementation of the Strategy composed of the representatives of all relevant judicial institutions. The Strategy envisaged that the Ministry of Justice, the HCC and the Committee on the Judiciary of the National Assembly monitor the reforms outlined in the Strategy. The establishment of the Secretariat was also foreseen, which was defined as providing administrative-technical support to the Commission.

Having in mind that it was established for the first time with the aim of monitoring strategic guidelines, such a mechanism enjoyed great support from the EU, thus for that purpose, a project to support the for establishment of the Administrative office of the Secretariat was approved under an urgent procedure, which was at the same time a good and a bad solution.

It was good because in the three years of the reform, which was the period of project duration, comprehensive and expert support was provided to the work of the Commission, as a single meeting point and space for dialogue on the implementation of the Strategic guidelines, timely preparation of the Action Plan and regular reporting, as well as numerous comparative analyses and continuous support to working groups for drafting new legislative solutions.

The downside side, if it can be deemed as such, was the fact that the RS has not assumed responsibility for allocating funds to build its own capacities for successful support to the institutions involved in the process of implementing reforms, nor for establishing a sustainable mechanism for monitoring and evaluation of results and impact of reforms. Insufficient efforts in identifying models and mechanisms for analyzing the impact of reform activities, as well as planning of effects and resources for them, should be emphasized in particular.

6.2 Monitoring and evaluation mechanisms within the National Judicial Reform Strategy for the period 2013-2018

**Structure and functioning of the mechanism:** With the intention to remedy the deficiencies observed in the period preceding the adoption of the new 2013-2018 Strategy, the intention was to establish a new, more efficient monitoring and evaluation mechanism, and a clear distinction was made between institutions involved in the judicial reform in the form of the entities implementing these reforms and those who monitored the implementation process. The chapter dedicated to this issue in the Strategy is titled “Structure and composition of the system for strategic planning and implementation”.

The Strategy entrusted the establishment, management and supervision of the work of the Secretariat to the Commission for the implementation of the Strategy, noting that until the establishment of the Secretariat, the Ministry (of Justice) will provide administrative, expert
and technical support to the Commission. At the same time, the responsible entities are obliged to provide data and information to the Secretariat in relation to the activities in the implementation of the Strategy. The National Judicial Reform Strategy and the accompanying Action Plan prescribe that the Commission for the Strategy implementation is composed of fifteen members (and fifteen deputies), representatives of all institutions relevant for the implementation of judicial reform, but this time it is clearly defined that the Commission for the Strategy implementation is an interim Government body for monitoring progress and directing and planning future activities.

The Strategy prescribes the deadlines for submission of quarterly and annual reports to the Government and the National Assembly. In addition, the Strategy authorizes the Commission to initiate the procedure for determining the responsibility of the entities mandated with the Strategy implementation in accordance with the relevant regulations. The functioning of the monitoring and reporting process is regulated in more detail in the Rules of Procedure of the Commission for the Implementation of the National Judicial Reform Strategy for the period 2013-2018.

The Rules of Procedure also regulate the role of the Secretariat, which is also recognized as an organizational unit in the Strategy 2013-2018. The ambiguities related to the role of the Secretariat that existed during the validity period of the previous Strategy were removed to a certain extent through a provision mandating it to provide administrative, expert and technical support to the work of the Commission, and implement the decisions and guidelines of the Commission.

From all of the above, it is obvious that the intention of the Strategy creators was to establish a system for the implementation, monitoring and evaluation of the results of the Strategy implementation. However, since the start of the Strategy implementation coincided with the establishment of a new concept of the Government’s restrictive budget policy, it soon turned out that the establishment of the Secretariat was difficult to implement, since not only was it not possible to provide funds for recruitment of new staff that would undertake the tasks in the Secretariat, but their reallocation from judicial institutions was impossible, due to the chronic lack of administrative capacities, both in the Ministry, but also in other responsible bodies, the HCC, the SPC and the Judicial Academy. The lack of adequate personnel solutions in institutions that need to lead the work and the EU integration process in the judiciary, that would be sustainable and long-term, was somewhat remedied by engaging expert support in the form of consultants working within the Multidonor Trust Fund for Justice Sector Support in Serbia, administered by the World Bank.

Results of the five-year functioning of the monitoring mechanism for the Strategy 2013-2018:

The Commission for the Strategy Implementation was established through the Government Decision passed on August 25, 2013, and its first session was held on September 11, 2013. By the end of July 2018, the total of 32 sessions of the Commission were held. The dynamics of

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the Commission sessions was more frequent in the first half of the Strategy implementation, motivated by the need to specify and define the tasks of the implementing bodies.

In the second half of the implementation of the Strategy, the Chapter 23 was opened and the accompanying Action Plan was adopted, which resulted in a parallel and inextricable process of strategic planning and implementation of reforms under Chapter 23. At that time (December 2016), there was also a detailed revision of the Action Plan for the Implementation of the Strategy for the period 2013-2018, whereby only about 20% of the activities from this strategic document remained under the monitoring authority of the Commission, while the dominant role in the process of monitoring and evaluation of judicial reform was taken over by the Council for the implementation of the AP23.

Regarding the methodology of work, the Commission met and reviewed, and later on adopted, the quarterly reports of the institutions responsible for the Strategy implementation. The substantive analysis of the achieved results was carried out on two occasions (in spring of 2014 and autumn of 2015) as part of the preparation of the revision of the Action Plan for the Strategy 2013-2018.
The technical deficiencies in the work of the Commission were reflected in the fact that since the beginning of its functioning, there was no Secretariat that would provide technical and administrative assistance in the work.

**Transparency of the work of the Commission:** Although the transparency of the work of the Commission is regulated in detail in the Rules of Procedure, and the media are allowed to be present at the sessions, while the session minutes are publicly available on the website of the Ministry, the reports on the Strategy implementation, as the key element of transparency, have not been made available. Quarterly reports of the institutions were posted on the websites of these institutions, submitted to the members and deputy members of the Commission along with the invitations for the session, but the reports on the Strategy implementation remain unavailable to the general public.

The consequences of this approach are multiple:

- Restricting public access to reports on the implementation of a central strategic document governing judicial reform practically annuls all the steps that have been taken to make the process of drafting the Strategy more transparent and inclusive;
- The reform process was removed from the general public, which was denied immediate insight into the Commission’s sessions;
- The abovementioned restrictions make it difficult for members of the academia to have access to the data necessary for a detailed and full understanding of the results that certain proposed measures delivered in practice, without which it is impossible to imagine high-quality proposals *de lege ferenda*.
- Finally, one should not forget the problem of the workload that the staff is exposed to in the institutions responsible for the implementation of the Strategy.

**Mechanisms for early warning and acceleration of the reform process:** One of the most significant defects in the monitoring mechanism within the Strategy was the absence of a clearly defined early warning mechanism or the specific procedures and authorizations in case of failure of the competent institutions to act in accordance with the provisions of the Strategy and inadequate implementation of measures and activities for the accompanying Action Plan. The Strategy itself envisaged the authority of the Commission to initiate the process of determining the responsibility of the entities responsible for the implementation of the Strategy in accordance with the relevant regulations, but the procedure itself, the order of steps and the specification of authorizations has been omitted, and therefore the application of these provisions in practice didn’t happen.

6.3 The mechanism of monitoring and evaluation of the judicial reform within Chapter 23 and its Action Plan

The adoption of the AP23 meant the introduction of a new, comprehensive mechanism for monitoring and evaluation of reform steps. Establishing the mechanism and adoption of the AP23 raised the issue of the mutual relationship between responsibilities for reform monitoring.

**Structure and functioning of the mechanism:** AP23 defines the institutional and methodological bases of the Monitoring and Evaluation Mechanism, whose introductory part
foresees that the responsibility for overseeing the implementation of the activities from the Action Plan will be delegated and shared between the Council for the Implementation of the Action Plan for Chapter 23 (hereinafter: the Council), the Head of the Negotiating Team for EU accession negotiations of the RS, the Negotiating Group for Chapter 23 headed by the President/Head of the Negotiating Group for Chapter 23, Coordination Body for the accession process (hereinafter: the Coordination Body) and the Council of the Coordination Body. Expert, administrative and technical support for the work of the Coordination Body is provided by the Serbian European Integration Office (SEIO).

The AP23 opted for a model of independent expert control and foresaw that the members of the Council shall be appointed by the Government of the RS upon proposal of the president of the negotiating group for Chapter 23 from the ranks of civil servants and consultants that were already engaged in the Ministry of Justice on the tasks related to the negotiation process. The advantage of this model is reflected, on the one hand, in the objectivity and impartiality of the process, since the evaluation is not carried out by the representatives of institutions that implement the reforms, but also in the operational aspect and expertise, since it is a process that requires specific knowledge related to the EU standards, EU integration, strategic planning and projects.

The AP23 foresaw that the Council monitors the implementation of the activities contained in the Action Plan on a daily basis, initiates the early warning mechanism in the event of delays and other problems in the implementation of the Action Plan and coordinates the reporting processes. In this regard, the AP23 foresees that the Council shall provide expert support to the Negotiating Group for Chapter 23.

Since the Council is an interim working body of the Government whose members do not receive special compensation for their work, and they do not have the necessary administrative and technical capacities, the AP23 foresees that the Ministry of Justice, as the coordinator of the Negotiating Group for Chapter 23, provides the Council with the necessary administrative and technical support.

The attempt to coordinate the functioning of what is a parallel, and beyond the field of judiciary, a multiple monitoring mechanism within the Chapter 23, was implemented through the idea that the Council shall submit monthly reports on the implementation of the Action Plan and to take care that they include the conclusions and recommendations of the relevant bodies that monitor the implementation of the national strategic documents.

In addition to the monthly reporting, the AP23 envisaged that the Council, in cooperation with the SEIO, shall submit quarterly reports, while the six-month reports shall be submitted to the European Commission, and once a year a report that is discussed and adopted by the National Assembly. Quarterly and annual reports are published on the website of the Ministry of Justice and the portal dedicated to the negotiations with the EU.

**The results of the two-year functioning of the monitoring mechanism for Chapter 23:**

There is no doubt that, by its structure and the results of functioning, the monitoring and evaluation mechanism for the implementation of judicial as well as other reforms under the Chapter 23 has made significant difference in relation to the mechanisms under both National Judicial Reform Strategies, which are reflected in several important aspects, but also accompanied by certain difficulties and problems in implementation.
Composition of the monitoring body/expert control – probably the most significant deficiency of this model is reflected in the fact that members of the Council don’t receive compensation for their work, since the idea of the AP23 was to limit their role to independent expert monitoring, and that the burden of administrative work is covered by the Ministry of Justice, as the institution responsible for coordination of the Chapter 23. However, due to insufficient administrative capacities, in practice, the entire burden was on the shoulders of the Council members, who, instead of focusing on the expert work, were forced to technically process and prepare thousands of pages of reports, organize presentations, implement trainings for focal points, organize dozens of meetings with the representatives of institutions, etc. This led to the dissipation of the membership, since apart from a few consultants and civil servants permanently employed in the Ministry of Justice, other members couldn’t perform the described amount of work on a voluntary basis. In the final outcome, at the end of 2017, this resulted in one half of the members less in the Council, the absence of monthly reporting and regular meetings, and therefore a questionable quorum for the adoption of reports, which was a wasted opportunity to distribute a certain number of civil servants that would provide administrative support to the Council, and preserve the body that has made desired and expected progress in monitoring and evaluation of reform steps during these years.

Clear monitoring and evaluation methodology – unlike the previously described work of the Strategy Commission, right after its establishing and in consultation with the EC, the Council drafted and adopted a clear monitoring and evaluation methodology, which includes the following:

- Developing reporting guidelines for entities in charge of the implementation of AP23;
- Preparation of uniform reporting forms in order to achieve uniformity and transparency of the reports of different institutions, as well as the possibility to have all data that the institution submitted during the entire implementation period available in one single document;
- Appointment of focal points for reporting in all institutions responsible for implementation of AP23 and their training for implementation of a uniform reporting methodology;
- Adoption of a uniform methodology for evaluating the results of implementation of the AP23 according to the so-called traffic light method;
- Standardized reporting format for the implementation of the AP23, which is updated quarterly;
- Bilingual reporting, which implies that the reports of all institutions, as well as the summary reports of the Council shall be produced in Serbian and in English;
- Comprehensive reports of the Council which include three segments: a detailed narrative report per activity; summarized report according to the “traffic light” methodology and a statistical report on the success of the implementation of reforms at the level of the whole Chapter 23, at the level of sub-sections, as well as per institutions.
• **Transparency of the reform process** – the good practice of publishing all relevant documents started in the drafting phase of the AP23, and it continued throughout the work of the Council, so the integral versions of all reports in both Serbian and English are available on the website of the Ministry of Justice.

Although this last segment is well planned, not only from the perspective of transparency of reforms, but also as a mechanism for influencing the institutions to work with more dedication and responsibility, it was abandoned after the first year of reporting, as it showed certain shortcomings. Actually, there was a question of assessing the contribution of the implementation of the so-called shared activities, or the activities for which the implementation was shared between two or more institutions, since it often happened that some activities were not implemented due to only one of the responsible institutions, but then this failure to implement was attributed to all the other institutions in charge of the implementation of that activity. A similar problem appeared with the so-called linked activities, i.e. the activities that make up an inseparable logical unit. This is mainly about the series of activities that begin with the adoption of a law or a strategic document, and then their application which is reflected in the most diverse measures. In situations where the authorized proponent of a law or a strategic document fails to act, all the institutions responsible for the implementation of the activities that are planned as part of the implementation of that act, practically remain blocked and the results of their work are statistically shown in the red. This caused the dissatisfaction of such institutions, because despite of their devoted work they were unable to change the negative statistical image. After this segment of the report was abandoned, only the statistics of success of the implementation of the AP23 was left at the level of the chapter and sub-sections.

Unlike the Strategy for the period 2013-2018 which, as the only indication of the early warning mechanism, contained a formulation according to which the Commission is authorized to initiate the process of determining the responsibility of entities mandated with the implementation of the Strategy in accordance with the relevant regulations, the AP23 deals with this issue in a high level of detail.

Namely, the AP23 foresees that, in the event of the delays or other problems in the implementation of the Action Plan, the Council can issue warnings, which are forwarded to the competent authorities that, in addition to the regular reports, take further measures towards the implementing body, with the aim of eliminating the problems in implementation. If after that there are still delays or problem in the implementation, the authorized persons shall inform the Coordination Body and the EU Integration Board of the National Assembly, which shall take further actions within their competencies towards the entities that are responsible for activities under the Action Plan. If, despite the above mentioned measures, the implementing entities do not act in accordance with the Action Plan, the Coordination Body and the National Assembly may initiate the procedure for determining their responsibility in accordance with the positive regulations governing their work.

Although it clearly defines the competencies and steps within the early warning mechanism, the analysis of the implementation in the period May 2016 – June 2018 concluded that they are not satisfactory. Although the Council used its monthly reports, several times, to indicated to the Head of the Negotiating Team and the President of the Negotiating Group that there are problematic points in the reporting process, and that there are institutions that don’t provide proper reports on the implementation of the AP23 or refuse to implement certain activities, this
resulted only in one single meeting of focal points and managers of those institutions, and consequently a series of consultative meetings with individual institutions. This reaction produced some results, but the mechanism was never applied “above the level” of the head of the negotiating team and the president of the negotiating group, which limited the effects of this reaction.

Having in mind that the mechanisms of cooperation with the civil society, created during the screening process and the development of the Action Plan, have produced excellent results, the Negotiating Group for Chapter 23 will continue to use them during the implementation of the Action Plan, by issuing a public call for submission of proposals and comments regarding the implementation of the activities planned under the Action Plan, and in cooperation with the Office for Cooperation with the Civil Society. Reports were always prepared outlining received comments and proposals, and they were published on the website of the Ministry of Justice, as well as on the portal dedicated to the negotiations with the EU, as well as made available as annexes to the period reports on the Action Plan implementation, submitted to the bodies responsible for implementation oversight.

In addition, the AP23 foresees that the Negotiating Group for Chapter 23 shall organize meetings, twice a year, with the National EU Convent, with the aim of reviewing current problems and ways to improve the implementation of activities from the Action Plan.

### 6.4 Coordination of parallel mechanisms for monitoring and evaluation of the judicial reform

It is obvious that the AP23 recognizes the problem of coordination of parallel monitoring mechanisms, as well as a potential overburdening of employees in institutions responsible for implementation of related national strategic documents, which can be seen in the provision of the AP23 which stipulates that the Council shall ensure the coordination of the reporting process, in an attempt to avoid overlaps or gaps due to the parallel monitoring of the same or related activities, and with the idea of the most rational use of resources. In order to achieve this goal, the AP23 foresaw that the Council shall have continuous communication with the bodies in charge of monitoring the implementation of the national strategic documents, taking into account the reporting obligations towards the EU. This consultation process should result in the adoption of the aggregated annual reporting calendar.

However, although the AP23 predicted the adoption of a single reporting calendar, this did not happen. Certain coordination was achieved by aligning the methodology and reporting calendar with the AP23 and the National Strategy for the Prosecution of War Crimes\(^\text{15}\) which substantially coincides with a significant part of the Judicial Sub-Section in the AP23, dedicated to war crimes, and the competent institutions are free of the obligation of double reporting on the same activities, since the working body that monitors this Strategy has taken over the entire methodology on reporting and evaluation of results from the Council.

**Relationship and challenges due to the overlapping of the monitoring mechanisms within the NJRS 2013-2018 and the AP 23:** Regarding the relationship between the mechanisms of the Commission for the implementation of the Strategy for the period 2013-2018 and the Council for the AP23, their role, as well as the division of competencies, is not clearly defined

\(^{15}\) Official Gazette of the RoS No. 19/2016.
or delineated to date. It seems that the root of the problem lies in the fact that the AP23 was adopted halfway through the implementation of the Strategy, which is why there was no complete coordination at the level of the content and monitoring mechanisms. After the revision of the Action Plan for Strategy 2013-2018, in order to harmonize it with the AP23 in December 2016, around 80% of this document ceased to be valid, and it became unclear how further reporting on both documents will take place.

Namely, from the moment when 80% of the activities from the Action Plan for the Strategy 2013-2018 was transferred to the AP23, the reporting process was limited to the remaining 20%, while the monitoring of the “deleted” part continued through the mechanism established in the AP23. It is important to note that this monitoring of the “deleted” part of the activities from the Strategy continued in essence through the AP23 mechanism, since the “deleted” activities do not exist verbatim in the AP23, but the problem areas that they deal with are presented linguistically and methodologically in a different way.

Although at first glance it seems that the role of the Commission for the Strategy was limited only to the monitoring of the remaining 20% of activities after this revision, this practically means that 80% of the content of the Strategy was simply transferred and differently regulated in the AP23, at the moment when the AP23 and the revised Action Plan for Strategy 2013-2018 were adopted, and the remaining 20% was kept in the revised Action Plan for the Strategy 2013-2018.

As for the monitoring mechanism, this would actually mean that the Commission for monitoring of the Strategy implementation, as the responsible body for the monitoring of the entire contents of this strategic document, as well as the implementation of the relevant action plan, would have to continue monitoring the AP23 in the part relating to the judiciary, but it remains unclear why the complete integration of the reporting system hasn’t happened, at least in methodological terms, which would allow the Strategy Commission to consider and adopt reports on all segments of the judicial reform.

Bearing in mind the fact that the year 2018, as the year in which the AP23 revision is coming, coincides with the end of the validity period of the Strategy, the decision of the Ministry of Justice and the Negotiating Group to conduct a comprehensive assessment of results of judicial reform is commendable, as well as the decision to coordinate the further processes of strategic planning. This decision could furthermore be of great importance for improving the mechanism of monitoring and evaluation of the future judicial reforms.

Although we cannot ignore the fact that the national strategies provide value added since they show the country’s determination, as well as the general vision and direction of the judicial reform, during the process of the European integration the focus is primarily placed on meeting the initial, transitional and final criteria within Chapter 23 and this should be the focus in the upcoming period as well. In order to improve the process of monitoring over the strategic planning and continuation of judicial reform, it might be a good idea to monitor the implementation of judicial reforms through the AP23, while the National Judicial Reform Strategy could represent a domestic political framework for the course of the future judicial reform in accordance with the obligations under Chapter 23.

Countries in the region faced similar challenges and pressures in the EU accession process, so at certain times of their reform process they had two documents at the same time, both the
national strategy and AP23, which were not compatible. This has caused problems in reform processes and changes in course. Finally, they all gave priority to the Chapter 23 and its Action Plan, i.e. in a way they revised and integrated national strategic documents, by taking the Chapter 23 as a starting point.

For example, this was done in Croatia at the time of the biggest momentum of European integration. Namely, the process of negotiations for Croatia’s membership in the EU was conducted in the light of numerous novelties: for the first time, the so-called benchmarks that now exist for Serbia, were introduced, i.e. those are the conditions that need to be met in order for the chapters to be opened or closed. During the negotiations, Croatia was given a ten-point set of criteria for closing the chapters. These criteria were complex, so 22 sub-criteria had to be defined, and this number finally expanded to 80. It should be noted that the working group for Chapter 23 in Croatia had 56 members and consisted of the representatives of state institutions and one representative of the University. The largest number of members was from the Ministry of Justice, the Supreme Court, the Ministry of Foreign Affairs and EU Integration and the Ministry of Interior.

Taking into account the dynamics of reforms in Montenegro so far, as well as Croatia’s experience in the accession process, it is necessary to intensify judicial reform activities, ensure openness of the process and high representation of civil society based on regular consultative meetings and involvement in the process of drafting strategic documents and their monitoring.

All of the above only shows the complexity of the negotiation process under Chapter 23 and how important it is to have one coordination body that will monitor the implementation and its effects, while both the good and bad aspects of Croatia’s experience on this path should be applied. After joining the EU, Croatia adopted a national document “Strategy of Development of Judiciary for the period 2013-2018”.

Having in mind all of the above, and taking into consideration the document as a whole, in order to facilitate what is already a considerably demanding process of monitoring and reporting on different strategic documents in the judiciary, it can be concluded that in the upcoming period one body responsible for monitoring and evaluation of judicial reform should be identified, and that body should apply a uniform methodology for reporting and evaluation across all strategic documents.

The application of this methodology would require the following assumptions:

- Provision of human and material resources and creation of conditions supportive of carrying out administrative and technical preparation of reports, which should be provided from the pool of qualified civil servants, as continuous support to the institutions that are responsible for the implementation of reform activities;

- The process of the reform evaluation should be entrusted to a smaller team of several external experts;

- The process of impact analysis, as well as the impact assessment, should be further strengthened and formalized;

- The process of adopting reports and managing an early warning mechanism should be within the competence of the body which would include the managers of institutions that are responsible for the most significant part of the activities of the AP23 and which
would, by its composition, be smaller and more operative that the Negotiating Group for Chapter 23.

From the above presented results of the application of both monitoring mechanisms, it can be concluded that the monitoring mechanism for AP23 proved to be more efficient and has a number of advantages in terms of methodology and transparency. This mechanism should receive additional administrative and technical support in order to relax the significant pressure in terms of obligations that the institutions have in the segment of double reporting. Therefore, the next cycle should avoid the problem in the functioning of monitoring mechanisms and their multiplication or the uneven methodological approach. Early warning mechanisms need to be strengthened, so they would ultimately affect the managers of institutions to resolve problems related to the delays in implementation or inadequate implementation of reforms.

In any case, whichever the path and method RS chooses, during the next cycle of strategic planning it would be important to establish a monitoring and evaluation mechanism, that will be sustainable, efficient and cost-effective and that will enable continuous and consistent monitoring of measures and activities so that it provides the basis for taking corrective measures when needed.