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## WHO WORKS MORE, AND WHO WORKS SMARTER? COMPARING JUDICIAL PERFORMANCE IN EUROPE

**Abstract:** *This paper (1) analyzes the existing theoretical framework for understanding the relationship between the judicial performance and judicial efficiency, (2) compares the judicial performances in Serbia, Croatia, Slovenia, France, Austria, and Norway for the year 2020, (3) compares the judicial performances in different instances in Serbia for the same year, and (4) examines the performance standards that are set by law for Serbian judges. The authors conclude that in 2020 Serbian judges resolved more cases in all instances (there is a higher number of resolved cases per judge only in Austria, in first instance), while at the same time falling short of the caseload standards set in Serbian law. Also, the study found excessive difference in the performance of Serbian courts, but that does not affect the evaluation of judges, since 485 evaluated judges out of 505 got the rating “exceptionally successfully performs the function of judge” for the year 2020.*

**Key words:** Efficiency of Justice, Judicial Performance, Evaluation of Judges, Judicial Organization.

### 1. INTRODUCTION

Regardless of the legal tradition and the level of economic development, every judiciary faces a fundamental dilemma: how to efficiently allocate judges across the court system to ensure maximum performance?

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Efficiency, which stands in contrast to unreasonable delays and case backlogs, is recognized as one of the five aspects of judicial administration.<sup>1</sup> In the recent literature, a wider concept of judicial governance is introduced, consisting of eight dimensions.<sup>2</sup> One of the dimensions is the administrative, which denotes the composition of a court (setting the number of judges, panels, and their composition), work schedules and case assignment, which thus directly influences judicial efficiency and performance.<sup>3</sup> Posner<sup>4</sup> and Messick<sup>5</sup> also assert that one of the factors contributing to judicial effectiveness is efficiency, defined as the ability of the courts to handle caseloads. It is widely accepted that the excessive duration of proceedings is often attributed to the high number of cases assigned to each judge. The prevailing belief suggests that the problem of inefficiency could be addressed by appointing new judges. As Stephen Reinhardt, judge of the U.S. Court of Appeals, described “You do not need long-range studies, extensive surveys, caseload measurement, or other bureaucratic techniques to learn the answer to our problem. There are simply far too few of us to do the job properly.”<sup>6</sup> But, the relationship between judicial efficiency and the number of judges is not straightforward as it may seem at first glance: in a previous paper, the authors discussed the relationship between the number of judges and efficiency in six European countries (Serbia, Croatia, Slovenia, France, Austria, and Norway). The conclusion was that there is no direct relationship and that Norway has the most efficient judicial system,

- 1 In addition to efficiency, the remaining four aspects of judicial administration are: independence (from other branches of power), accessibility, accountability (to the letter of the law), and effectiveness. See Akutsu, L., Aquino Guimarães, T. de, 2015, Governança judicial: proposta de modelo teórico-metodológico, *Revista de Administração Pública*, Vol. 49, No. 4, pp. 937–958; Staats, J., Bowler, S., Hiskey, J., 2005, Measuring Judicial Performance in Latin America, *Latin American Politics and Societies*, Vol. 47, No. 4, pp. 77–106.
- 2 The dimensions of judicial governance are: regulatory, administrative, personal, financial, educational, informational, digital, and ethical. See Šipulová, K. *et al.*, 2022, Judicial Self-Governance Index: Towards Better Understanding of the Role of Judges in Governing the Judiciary, *Regulation & Governance*, Vol. 17, No. 1, pp. 22–42.
- 3 This eight-dimensional conceptualization of judicial governance, according to the authors, allows for the exploration of the correlation between judicial self-governance (JSG) and judicial efficiency (Šipulová, K., 2022).
- 4 Posner, R., 1998, Creating a Legal Framework for Economic Development, *The World Bank Research Observer*, Vol. 13, No. 1, pp. 1–13.
- 5 Messick, R., 1999, Judicial Reform and Economic Development: A Survey of the Issues, *The World Bank Research Observer*, Vol. 14, No. 1, pp. 117–136.
- 6 Örkényi, L., 2022, A New Method for an Objective Measurement of the Judicial Workload – The Application of a Prediction Model Based on an Algorithm Formed by Multiple Linear Regression in Court Administration, *International Journal for Court Administration*, Vol. 13, No. 1, pp. 1–25.

with a much smaller number of judges in comparison to the other five countries.<sup>7</sup> These findings are in line with the results of the analyses of other countries: Slovenia,<sup>8</sup> Spain,<sup>9</sup> Izrael,<sup>10</sup> and Egypt.<sup>11</sup>

Despite the fact that the work of the European Commission for the Efficiency of Justice (CEPEJ) has significantly increased the amount of statistical data on the courts and their workload, empirical studies on judicial caseload in Serbia and comparable jurisdictions are rare, especially studies involving cross-country comparisons.<sup>12</sup> The unequal distribution of cases is mentioned in the 2014 and 2021 Serbia judicial functional reviews,<sup>13</sup> suggesting that caseload management across the Serbian judicial system has been weak for more than a decade. However, in strategic documents,<sup>14</sup> the issues of efficiency of justice are rarely connected with the problems of optimal caseload for judges and the distribution of this caseload. Owing to this data, and to the policies that have resulted from it, there are indications regarding the unequal caseload of the basic courts in Serbia “in civil matters, in some courts in Serbia, judges have an average of 60 to 100 cases, while in a number of courts there are [*sic*] about

- 7 Spaić, B., Đorđević, M., 2022, Less Is More? On the Number of Judges and Judicial Efficiency, *Pravni zapisi*, 2, pp. 421–445.
- 8 See Dimitrova-Grajzl, V., Grajzl, P., Sustersic, J., Zajc, K., 2012, Court Output, Judicial Staffing, and the Demand for Court Services: Evidence from Slovenian Courts of First Instance, *International Review of Law and Economics*, Vol. 32, No. 1, pp. 19–29.
- 9 See Rosales-López, V., 2008, Economics of Court Performance: An Empirical Analysis, *European Journal of Law and Economics*, 25, pp. 231–251.
- 10 See Beenstock, M., Haitovsky, Y., 2004, Does the Appointment of Judges Increase the Output of the Judiciary, *International Review of Law and Economics*, Vol. 24, No. 3, pp. 351–369.
- 11 See Elbially, N., Garcia-Rubio, M. A., 2011, Assessing Judicial Efficiency of Egyptian First Instance Courts: A DEA Analysis, *MAGKS Joint Discussion Paper Series in Economics*, 19–2011, pp. 1–28.
- 12 The main sources for high quality information about the judiciary in Serbia are the data obtained by the Supreme Court and the data provided to CEPEJ. However, the use of this data has been limited, as well as the public knowledge about the implications of the data. In spite of the fact that the data is gathered every year, the last significant public presentation of the data was in 2019 (<https://www.pravniportal.com/vrhovni-kasacioni-sud-predstavio-je-godisnji-izvestaj-o-radu-svih-sudova-u-republici-srbiji/>, 27. 1. 2024).
- 13 World Bank, 2014, *Funkcionalna analiza pravosuđa u Srbiji*, Multidonatorski poverenički fond za podršku pravosuđa u Srbiji – Svetska banka; World Bank, 2022, 2021 – Funkcionalna analiza pravosuđa u Srbiji, Multidonatorski poverenički fond za podršku pravosuđa u Srbiji – Svetska banka.
- 14 Strategy for Development of the Judiciary for 2020–2025, *Official Gazette of the RS*, No. 101/2020, 17. July 2020, and *Official Gazette of the RS*, No. 18/2022, 11. February 2022.

500, and in some even 1,300 cases,<sup>15</sup> but without a detailed empirical analysis of this issue.

This paper (1) analyzes the existing theoretical framework for understanding the relationship between the judicial performance and judicial efficiency, (2) compares the judicial performance in different instances in Serbia, (3) compares the performance of Serbian judges with the performance of judges in Croatia, Slovenia, France, Austria, and Norway, (4) and analyzes the workload standards that are set by law for Serbian judges.

## 2. THEORETICAL FRAMEWORK: MEASURING JUDICIAL PERFORMANCE AND JUDICIAL EFFICIENCY

The court organizations are the product of tradition, and constitutional and legal experimentation, so one can discuss the optimal organization of a court system only conditionally, since there is no standard or clear model to estimate judicial efficiency, and their changes and the reforms of a given judicial system should also depend on the needs of the state and the society.<sup>16</sup> Every evaluation of judicial performance and efficiency faces numerous obstacles, including the complexity of the judicial organization, lack of data, prejudices that the efficiency of justice cannot be measured (because of the exclusion of the quality of sentences, for example), and because it is also affected by external factors that cannot be grasped by measurement models.<sup>17</sup>

### 2.1. MEASUREMENT OF JUDICIAL PERFORMANCE

The theoretical work on the topic of judicial performance has given rise to two competing approaches in predicting judicial behavior, based on the increase or decrease in judicial caseload. In the 1990s, Richard Posner formulated the rational model of judicial behavior, in which actions are analyzed in terms of utility theory. According to this model, judges are primarily motivated by their preferences for leisure.<sup>18</sup>

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15 Beta, 2021, Društvo sudija: Preopterećeni sudovi, neke sudije imaju i do 1300 predmeta, *N1 online*, translated by author, (<https://tinyurl.com/27hetqm5>, 27. 1. 2024).

16 Spaić, B., 2022, *Komparativna analiza uređenja sudova*, Belgrade, Centar za pravosudna istraživanja (CEPRIS).

17 Rosales-López, V., 2008, p. 234.

18 In economic science, judges are perceived as agents, while the people, the state, and the government are their principals. A vast literature in economics starts from the assumption that a principal-agent relationship creates a problem. When the principal cannot control the agent's payoff on the agent's actions and behavior, the agent acts in such a manner that it maximizes its own payoff, irrespective of the detriment for the

Posner<sup>19</sup> and Cooter<sup>20</sup> assumed that judges (1) are rational “homo-economicus” who maximize their expected utility, and (2) derive utility from leisure, thereby minimizing the effort required for case adjudication. However, they also (3) experience disutility or negative utility from increasing backlogs, as it may diminish their prestige, prospects for promotion, and incentives. Thus, the primary mechanism involves a trade-off between “exerting more effort and thereby improving their performance, and taking it easier, thereby risking the wrath of the court president.”<sup>21</sup>

The hypothesis set by Posner, and reaffirmed by Beenstock and Haitovsky, was confirmed: increased caseload does increase productivity and an increase in the number of judges doesn't lead directly to the decrease in backlog.<sup>22</sup> Research inspired by these findings has led to studies about the relationship between caseload and output. The output of the courts in Slovenia is primarily driven by demand or by the increase in caseload.<sup>23</sup> Economic studies point to the conclusion of a positive effect of increased input on the output of the courts.<sup>24</sup>

More recent research has emphasized the objective constraints on judges regarding their caseload and insists that increased caseload will lead to increase of effectiveness, but it must be carried out along with procedural modifications and increased staffing (the “hockey-stick” production function model).<sup>25</sup> Also, a study conducted in Brazil, in addition to proving the relationship between caseload and productivity, confirms that this relationship is much more complex and is influenced by court administrative assistants, the judge's experience, and their work outside the court.<sup>26</sup> Örkényi also states that the relationship is more complex, that

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principal. This means that the rules that protect judicial independence, at the same time almost completely protect judges from intervention. See Laffont, J., Tirole, J., 1993, *A Theory of Incentives in Procurement and Regulation*, Cambridge, MIT Press.

19 Posner, R., 1993, What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does), *Supreme Court Economic Review*, 3, pp. 1–41; Posner, R., 2010, *How Judges Think*, Cambridge, Harvard University Press.

20 Cooter, R. D., 1983, The Objectives of Private and Public Judges, *Public Choice*, 41, pp. 107–137.

21 Beenstock, M., Haitovsky, Y., 2004.

22 *Ibid.*, p. 367.

23 Dimitrova-Grajzl, V. *et al.*, 2012.

24 Gomes, A., Guimarães, T., Akutsu, L., 2017, Court Caseload Management: The Role of Judges and Administrative Assistants, *Revista de Administração Contemporânea*, 21, pp. 648–665.

25 Jonski, K., Mankowski, D., 2014, Is Sky the Limit? Revisiting ‘Exogenous Productivity of Judges’ Argument, *International Journal of Court Administration*, Vol. 6, No. 2, p. 70, pp. 53–72.

26 Gomes, A., Guimarães, T., Akutsu, L., 2017.

measuring the number of cases is not enough, and that it is also necessary to differentiate between cases and weigh them.<sup>27</sup>

Others, relying on empirical evidence based on a semi-experimental setting in Israel, claim that judges are primarily motivated to clear their caseload and that extra time will be used for working on remaining cases (judicial approach and motivated judges theories).<sup>28</sup> According to these postulations, when faced with smaller caseload, judges invested their remaining (extra) time in their work and “are significantly more likely to decide cases on the merits, less likely to use swifter case resolution like summary judgment or settlement, more likely to hear witnesses, more likely to provide a written rather than merely an oral ruling, and they write more pages.”<sup>29</sup> Therefore, the conclusion is that an increase in judicial resources will be reflected in substantive decisions and that time devoted to resolving a case is associated with a difference in legal outcomes, benefitting plaintiffs.<sup>30</sup> In this paper, judicial performance will be expressed as the number of resolved cases per judge, in a given court.

## 2.2. JUDICIAL PERFORMANCE AND JUDICIAL EFFICIENCY

Efficiency prevails when a given output is realized with minimum input, or a maximum output is produced with a given number of inputs.<sup>31</sup> A distinction is commonly made between technical and allocative efficiency. Technical efficiency refers to the optimal use of the given resources, while allocative efficiency pertains to the allocation of resources where they yield the highest societal value.<sup>32</sup> Due to the absence of a market value of court decisions, technical efficiency is typically measured, although there is no consensus on the definitions of inputs and outputs. Ippoliti and Tria<sup>33</sup> compiled a list of inputs, outputs, and analytical methods used to assess judicial efficiency in various research papers. The number of resolved cases is identified as the most common output, but greater heterogeneity can be observed among inputs: judges and staff, pending and/or incoming cases, suggesting that the demand for justice might affect court

27 Örkényi, L., 2022.

28 Engel, C., Weinshall, K., 2020, Manna from Heaven for Judges: Judges’ Reaction to a Quasi-Random Reduction in Caseload, *Journal of Empirical Legal Studies*, Vol. 17, No. 4, pp. 722–751.

29 *Ibid.*, p. 744.

30 *Ibid.*

31 Voigt, S., 2016, Determinants of Judicial Efficiency: A Survey, *European Journal of Law and Economics*, Vol. 42, No. 2, pp. 183–208.

32 *Ibid.*

33 Ippoliti, R., Tria, G., 2020, Efficiency of Judicial Systems: Model Definition and Output Estimation, *Journal of Applied Economics*, Vol. 23, No. 1, pp. 339–360.

productivity.<sup>34</sup> This article focuses solely on the output side of judicial efficiency, specifically by comparing the number of resolved cases in different instances within Serbia and in other countries. Judicial performance will be evaluated based on the caseload per judge in these instances.

### 3. THE COMPARATIVE FRAMEWORK

The main goal of this paper is to compare the number of resolved cases per judge in six European countries – Serbia, Croatia, Slovenia, France, Austria, and Norway – and three instances – first, second, and highest. The court organization traditions are very diverse in Europe.<sup>35</sup> As in the previous paper<sup>36</sup>, for the current analysis we have chosen countries from different legal families: Serbia, Croatia, and Slovenia (post-Yugoslav and Socialist legal family), Austria (German legal family), France (French legal family), and Norway (Scandinavian legal family).<sup>37</sup> In addition to comparing the numbers of resolved cases, the study examined the monthly norm for Serbian judges and the relationship between the monthly norm to the actual judicial results. The findings rely on statistical data collected in the CEPEJ 2022 Evaluation Cycle (2020 data)<sup>38</sup> and data collected by the Supreme Court of the Republic of Serbia for 2020.<sup>39</sup>

Table 1. Number of judges and resolved cases in 2020.

	Croatia	Serbia	Slovenia	France	Austria	Norway
<b>Total judges</b>	1,643	2,649	875	7,522	2,589	594
<b>Total number of cases</b>	1,203,396	3,136,358	636,561	2,470,639	3,224,527	74,845
<b>Number per judge</b>	732.44	1,183.98	727.49	328.45	1,245.47	126.00

34 *Ibid.*

35 CEPEJ, 2022, European judicial systems CEPEJ Evaluation Report 2022 Evaluation cycle (2020 data) (<https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>, 27. 1. 2024).

36 Spaić, B., Đorđević, M., 2022.

37 For division among European legal families see Djankov, S. *et al.*, 2003, Courts: The Lex Mundi Project, *Quarterly Journal of Economics*, 118, pp. 453–517.

38 The European Commission for the Efficiency of Justice (CEPEJ), which was established by the Council of Europe, has published five waves of data reflecting the situation in up to 47 countries, between 2004 and 2012, regarding the judiciary (<https://www.coe.int/en/web/cepej>, 27. 3. 2024).

39 Annual Report on the Work of all Courts in the Republic of Serbia in 2020, (<https://www.vrh.sud.rs/sr/2020-3>, 27. 1. 2024).



In European countries, courts are commonly divided into courts of general jurisdiction (ordinary courts), courts of special jurisdiction (specialized courts), and constitutional courts. Courts of general jurisdiction act in criminal and civil disputes, while specialized courts often deal with issues from a specific branch of law. Constitutional courts ensure respect for the constitution, and they examine the compliance of general acts with the constitution. Based on statistics provided by the CEPEJ, European states exhibit considerable disparities in the influx of legal cases, not only judicial organization. The observed variations appear to be highly individualistic, with no explicit categorization of states and entities according to geographical, economic, political, or legal tradition criteria. For instance, North Macedonian courts recorded 1.7 cases per 100 inhabitants in the year 2020, while neighboring Serbia, sharing a comparable legal tradition, documented 5.6.<sup>40</sup> These distinctions are likely due to divergences in court jurisdictions and the handling of cases within the legal frameworks across European jurisdictions.<sup>41</sup>

**Serbia.** The organization of the judicial system in Serbia is governed by the Constitution of the Republic of Serbia, the Statute on the Organization of Courts,<sup>42</sup> and the Statute on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.<sup>43</sup> Serbia comprises a total of 159 courts, categorized into general jurisdiction courts, which include basic courts (66), higher courts (25), appellate courts (4), and the Supreme Court. Additionally, the specialized courts consist of commercial courts (16), the Commercial Appellate Court, the misdemeanor courts (44), the Misdemeanor Appellate Court, and the Administrative Court. The Supreme Court holds the highest authority in the Republic of Serbia. The primary courts have jurisdiction over the territory of a city and one or more municipalities, while higher courts are established to oversee the area of one or more basic courts, while also having first-instance jurisdiction in certain types of cases, as prescribed by law. The commercial courts operate with a local jurisdiction over the territory of one or more cities or municipalities. The courts of appeal are established to cover the jurisdiction of several higher courts in a region.

Over the past decade, several strategies and action plans have been implemented in Serbia with the aim of enhancing the efficiency of the judiciary.

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40 The data refer to civil and commercial litigious cases only, therefore excluding criminal and administrative cases and civil non-litigious cases.

41 CEPEJ, 2022, p. 131.

42 Statute on the Organization of Courts, *Official Gazette of the RS*, No. 10/2023.

43 Statute on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices, *Official Gazette of the RS*, No. 101/2013.



However, the judiciary and court network reform carried out in 2010 was given negative evaluations.<sup>44</sup> From an organizational and efficiency standpoint, this reform resulted in the reduction in the number of judges without thorough consideration of the court workload data. Additionally, all misdemeanor authorities were transformed into misdemeanor courts, leading to the replacement of many experienced judges.<sup>45</sup> Subsequent to the 2010 reform, Serbia underwent another reorganization of its judiciary in 2014, culminating in the establishment of the current judicial organization on 1 January 2014. Despite doubling the number of basic courts from 33 to 66, the number of judges remained the same. This reform also involved altering the jurisdictions of numerous courts, with judges being deployed in accordance with the revised organizational structure. The Strategy for Developing the Judiciary for 2020–2025 emphasizes that the newly-established court network did not achieve the expected results.<sup>46</sup> Consequently, one of the key priorities outlined in the Strategy and Action Plan is to improve the efficiency of the judicial system.<sup>47</sup>

Despite the positive evaluation of the improvement in efficiency outlined in the Strategy,<sup>48</sup> the Serbian judiciary continues to face challenges in terms of speed, with judges and prosecutors frequently expressing concerns about being overloaded.<sup>49</sup> While there is a widespread perception of an insufficient number of judges, comparative data reveals that Serbia possesses one of the highest numbers of judges per capita.<sup>50</sup> In the context of the burden on judges in Serbia, discussions within the professional community often emphasize the overload experienced of the three basic courts in Belgrade and the High Court in Belgrade.<sup>51</sup> Moreover, the greater

44 Pavešković, R., 2021, *Analiza uticaja infrastrukturnih i ljudskih resursa na efektivnost rada sudova*, Društvo sudija Srbije, (<https://tinyurl.com/25d5fdx5>, 27. 3. 2024).

45 Supreme Court of Cassation, 2021, *The Unique Program for Resolving Old Cases in the Republic of Serbia for 2021–2025 (Measures, Recommendations, Implementation and Monitoring)*, p. 2.

46 Strategy for Developing the Judiciary for 2020–2025, p. 15.

47 *Ibid.*, pp. 5, 7–8; Action Plan for the Implementation of the Strategy for Developing the Judiciary for 2020–2025, *Official Gazette of the RS*, No. 45/2022, 7 April 2022, pp. 73–74.

48 Strategy for Developing the Judiciary for 2020–2025, p. 5.

49 World Bank, 2014, p. 9.

50 Spaić, B., Đorđević, M., 2022.

51 Judges Association of Serbia, 2021, *Jednak pristup građana pravdi, efikasnost sudstva i izmene Zakona o parničnom postupku – ZPP* (<https://www.sudije.rs/Item/Details/938>, 27. 1. 2024); Đorđević, N., 2021, *O delegaciji predmeta*, Judges Association of Serbia (<https://www.sudije.rs/Item/Details/940>, 27. 1. 2024); Judges Association of Serbia, 2021a, *Jednak pristup građana pravdi zavisi od opterećenosti sudova* (<https://www.sudije.rs/Item/Details/934>, 27. 1. 2024).

workload in civil departments, compared to criminal ones, has been recognized.<sup>52</sup> Similar findings regarding the workload of the Belgrade courts can be identified in the Strategy.<sup>53</sup> A World Bank analysis corroborates these observations, noting that “the number of cases is unevenly distributed among the courts, without any clear schedule.”<sup>54</sup> The analysis further points out that “some smaller courts are very busy, while larger ones are not. High courts and appellate courts, on average, receive a comparatively smaller number of cases.”<sup>55</sup>

**Croatia.** Like Serbia, Croatia features a highly intricate judicial organization. The Croatian court network is highlighted in the Guidelines for creating a network of courts, prepared by the CEPEJ in 2013, as an unfavorable example characterized by an “excessive number of courts” and an “irrational allocation of resources.”<sup>56</sup> Judicial power in Croatia is exercised by regular and specialized courts, as well as by the Supreme Court of the Republic of Croatia.<sup>57</sup> The regular courts are municipal courts and county courts and there are five types of special courts: commercial courts, administrative courts, the High Commercial Court of the Republic of Croatia, the High Administrative Court of the Republic of Croatia, the High Misdemeanor Court of the Republic of Croatia, and the High Criminal Court of the Republic of Croatia.<sup>58</sup>

**Slovenia.** Among all the former Yugoslav countries, Slovenia boasts the highest ranking for judicial efficiency, according to the World Justice Project. The judicial system in Slovenia is organized into courts of general jurisdiction and specialized courts, particularly those established for social and administrative law. The regular courts include 44 local courts, 11 district courts, and four higher courts, with the Supreme Court of the Republic of Slovenia serving as the apex judicial authority.<sup>59</sup>

**France.** The judicial system in France comprises two primary types of jurisdictions: the ordinary judiciary, which adjudicates trials involving

52 World Bank, 2014, pp. 67–68; Judges Association of Serbia, 2021a; Đorđević, N., 2021.

53 Strategy for Developing the Judiciary for 2020–2025, p. 23.

54 World Bank, 2014, pp. 3, 8, translated by author.

55 World Bank, 2014, p. 8, translated by author.

56 CEPEJ, 2013, Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, ([https://rm.coe.int/1680748151#\\_Toc356475576](https://rm.coe.int/1680748151#_Toc356475576), 27. 1. 2024). See section 2.2.

57 Justice System in the Republic of Croatia, (<https://tinyurl.com/24jn79us>, 27. 1. 2024).

58 Judicial Power in Croatia (<https://www.vsrh.hr/en/about-judicial-power.aspx>, 1. 3. 2024)

59 The Justice System of the Republic of Slovenia, (<https://tinyurl.com/28fo6z89>, 27. 1. 2024).

private individuals and addresses violations of penal law, and administrative tribunals, which handle disputes between public entities. Within the ordinary judiciary, civil cases are overseen by higher courts (*grande instance*) and lower courts (*tribunaux d'instance*). Criminal cases, on the other hand, are adjudicated by courts of correction (*tribunaux correctionnels*) and “police courts” (*tribunaux de police*), which specifically handle minor offenses.<sup>60</sup>

**Austria.** The Austrian judiciary is categorized into general courts (*ordentliche Gerichte*) and public law courts (*Gerichte öffentlichen Rechts*). The hierarchy of general courts encompasses four levels: district, regional, higher regional, and supreme court. Additionally, the Austrian judicial system includes *Rechtspflegers*, which issue court orders and handle certain non-litigious matters. On the other hand, public law courts play a supervisory role over the two other branches of government: the administrative court system assesses the legality of administrative acts, while the Constitutional Court adjudicates complaints concerning the constitutionality of statutes.<sup>61</sup>

**Norway.** Norway consistently ranks among the top countries globally for its commitment to the rule of law and consistently among the top ten countries in the World Bank’s Ease of Doing Business rankings, particularly notable for ranking third in the ease of enforcing contracts. The ordinary courts in Norway possess general jurisdiction, handling both civil and criminal cases. The judicial system comprises 23 district courts, six courts of appeal, and four special courts and court-like bodies.<sup>62</sup>

#### 4. DATA COMPARISON

In accordance with the CEPEJ classification, the caseload was examined across three court instances: first, second, and highest. In Serbia, cases at the first instance are adjudicated by basic courts of general jurisdiction, high courts of general jurisdiction, misdemeanor courts, commercial courts, and the Administrative Court. Second instance courts include courts of general jurisdiction, the Misdemeanor Appellate Court, and the Commercial Appellate Court. The highest judicial instance is the Supreme Court of the Republic of Serbia. To facilitate comparison with other countries, the cases are categorized into two groups: criminal matters

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60 Judicial organization in France, (<https://www.britannica.com/place/France/Justice>, 27. 1. 2024).

61 Judicial organization in Austria, (<https://tinyurl.com/27ptsh77>, 27. 1. 2024).

62 Judicial Organization in Norway, (<https://tinyurl.com/2xq93wa8>, 27. 1. 2024).

(encompassing misdemeanor cases) and non-criminal matters (including litigation, non-litigation and administrative cases).

#### 4.1. FIRST INSTANCE

In 2020, the first instance judicial workload per judge varied across countries, as evidenced by the number of resolved cases. Austria reported the highest figure of resolved cases, with 1,477.37 cases per judge, followed by Serbia with 1,279.46, Slovenia with 966.08, and Croatia with 946.16 resolved cases per judge. France and Norway reported comparatively lower numbers, with 414.72 and 176.51 cases per judge, respectively (Table 1). A notable discrepancy emerges when analyzing criminal cases, where Serbia experienced a substantial volume, exceeding Croatia by a factor of 10 and surpassing France by twice the number of cases, the latter being the second-highest figure after Serbia. According to the CEPEJ, the elevated number of criminal cases in Serbia can be attributed to the inclusion of “other criminal cases”, which are misdemeanor cases not accounted for in other countries’ judicial statistics.<sup>63</sup>

Table 1. Number of resolved first-instance cases per judge

	Croatia	Serbia	Slovenia	France	Austria	Norway
<b>Number of judges</b>	1,158	2,289	638	5,288	2,153	389
<b>Criminal cases</b>	173,197	1,776,015	70,425	882,087	65,549	23,320
<b>Other cases</b>	922,454	1,152,668	545,936	1,310,960	3,115,226	45,342
<b>Total number</b>	1,095,651	2,928,683	616,361	2,193,047	3,180,775	68,662
<b>Number per judge</b>	946.16	1,279.46	966.08	414.72	1477.37	176.51

In Serbia, judicial cases can be categorized into cases of predominantly judicial matters and other cases. The predominantly judicial matters encompass four types: litigation cases (P), labor law cases (P1), family law cases (P2), and criminal cases (K). Judges predominantly allocate their time to these cases during working days, while the remaining cases predominantly involve procedural matters, decided based on formal and procedural considerations.

In terms of workload standards for judges in Serbia, specific expectations are outlined for resolving a designated number of cases in

63 CEPEJ, 2022, p. 149.

each category: 20 cases from the litigation group, 20 from the labor law group, 25 cases from the family law group, and 14 criminal cases.<sup>64</sup> The tabulated data (Table 2) have grey fields to indicate cases exceeding the monthly norm. Notably, an uneven distribution of cases is apparent for 2020, particularly in litigation cases. In two basic courts in Belgrade, judges resolved nearly double the norm for litigation cases (36.03 in the First Basic Court in Belgrade and 36.18 in the Third Basic Court in Belgrade, with the threshold set at 20). Conversely, 59 out of 66 courts did not meet the minimal number of resolved cases. Similar situations are observed for other case types: only two courts exceeded the monthly norm for labor law cases (First and Second Basic Courts in Belgrade), and for family law only 6 courts, while for criminal cases 9 courts surpassed the specified norms.

Table 2. Number of resolved cases per judge per month in basic courts in Serbia

	Litigation	Labor Law	Family Law	Criminal Law
Monthly norm	20	20	25	14
Belgrade I	36.03	15.62	27.07	6.95
Belgrade II	15.96	5.36	29.65	12.57
Belgrade III	36.18	6.02	24.56	8.03
Lazarevac	8.19	6.59	3.87	11.15
Mladenovac	9.38	0.76	6.00	6.61
Obrenovac	10.44	0.94	8.83	7.84
Valjevo	10.00	1.74	1.82	5.99
Mionica	5.61	0.14	1.81	4.65
Ub	17.28	1.81	4.70	12.69
Vršac	6.29	4.16	4.33	8.48
Pančevo	10.77	6.53	15.39	10.08
Velika Plana	34.44	11.17	8.61	13.19

64 According to Art. 17. of Rulebook for Criteria, Measures, Procedure and Bodies for Evaluating the Work of Judges and Presidents of Courts, *Official Gazette of the RS*, Nos. 81/2014–54, 142/2014–240, 41/2015–185, 7/2016–23 (hereinafter: Rulebook). The Rulebook is used for formal performance assessment of judges and is not used for managing caseload. The monthly norm refers to cases resolved on the merits, and three cases resolved in another way are counted as one resolved on the merits.

	Litigation	Labor Law	Family Law	Criminal Law
Monthly norm	20	20	25	14
Smederevo	18.15	3.48	6.78	21.03
Despotovac	8.97	4.42	3.40	8.15
Jagodina	12.62	12.42	11.72	7.11
Paraćin	5.75	15.36	3.46	4.42
Kragujevac	26.46	18.96	9.71	15.92
Kraljevo	13.28	12.35	21.94	22.00
Raška	16.43	7.90	6.22	4.18
Brus	16.05	1.39	2.50	4.35
Kruševac	17.62	10.92	3.10	8.59
Trstenik	11.51	9.22	11.31	7.90
Novi Pazar	9.76	3.59	5.83	11.21
Sjenica	8.25	6.35	3.15	6.82
Požega	13.85	7.31	2.86	5.47
Priboj	9.03	3.78	1.89	/
Prijepolje	8.83	2.96	4.10	7.99
Užice	12.45	7.29	7.13	14.91
Gornji Milanovac	10.67	3.27	3.63	15.75
Ivanjica	15.07	1.62	2.83	7.40
Čačak	18.24	14.78	16.76	8.10
Veliko Gradište	18.39	/	3.89	6.99
Petrovac na Mlavi	16.61	/	2.24	6.75
Požarevac	9.67	11.19	8.83	12.16
Bor	17.88	7.78	19.33	8.14
Zaječar	13.28	18.23	10.12	6.03
Knjaževac	12.11	2.47	2.66	3.58
Bujanovac	8.57	3.15	4.88	5.92
Vranje	13.13	13.21	4.82	7.18

	Litigation	Labor Law	Family Law	Criminal Law
Monthly norm	20	20	25	14
Surdulica	6.25	2.09	1.77	11.75
Lebane	12.06	1.31	6.44	7.17
Leskovac	22.10	22.17	17.52	16.06
Aleksinac	11.28	7.39	7.58	9.17
Niš	21.81	16.43	23.14	11.52
Dimitrovgrad	5.93	12.25	1.60	3.32
Pirot	10.73	3.08	2.73	6.50
Kuršumlija	13.88	2.68	3.12	8.49
Prokuplje	8.86	1.84	2.89	6.78
Majdanpek	4.65	0.38	3.97	2.17
Negotin	7.10	1.03	2.40	6.60
Bečej	7.59	1.81	6.21	11.61
Zrenjanin	14.23	26.33	21.72	12.93
Kikinda	6.46	13.03	7.02	11.13
Bačka Palanka	8.49	5.91	21.61	6.61
Novi Sad	27.47	17.08	19.53	9.39
Vrbas	12.34	5.30	5.44	12.30
Sombor	15.70	22.13	4.30	12.18
Ruma	7.69	6.68	3.60	8.77
Sremska Mitrovica	13.81	1.75	6.02	14.12
Stara Pazova	9.01	1.48	2.97	14.09
Šid	4.87	2.71	2.34	4.48
Senta	6.94	3.45	10.03	14.89
Subotica	8.48	24.35	8.96	13.81
Loznica	9.44	0.74	15.28	17.43
Šabac	9.72	4.56	5.42	10.51
Arandjelovac	8.72	1.76	3.77	6.06



According to the CEPEJ classification, the higher courts in Serbia are categorized within the first instance, despite handling both first and second-instance cases (see Table 3). The grey fields are indicating exceeding the monthly norm and dark grey fields are denoting achieving double the norm. In the realm of first-instance civil cases, encompassing litigation, labor law and family law, only the Higher Court in Belgrade surpassed the established norm of 12 resolved cases, with 12.92 cases per judge. Conversely, during the same year, the Higher Court in Požarevac did not handle any cases of that type. Regarding second-instance litigation cases, nine out of the 25 courts (Belgrade, Smederevo, Kragujevac, Kraljevo, Kruševac, Užice, Vranje, Prokuplje, and Sombor) surpassed the established norm. Notably, the Higher Court in Kragujevac recorded 137.72 cases per judge, a number four times higher than the norm of 32. Norms were not met in all higher courts for other second-instance civil cases (Gž1, Gž2), first-instance criminal cases (K), and second-instance criminal cases (Kž1). In the context of criminal cases involving minors (Kim, Km), judges of the Higher Court in Belgrade resolved nearly three times more cases than the monthly norm (27.61 per judge, with the norm being 10). Outside of the city of Belgrade, five courts exceeded the norm for criminal cases involving minors (Pančevo, Kragujevac, Užice, Niš, and Novi Sad). Similar to basic courts, there is notable variation in the number of resolved cases per judge across different higher courts, for all types of the cases.

Table 3. Number of resolved cases per judge in higher courts in Serbia

	Litigation, labor law, and family law – first instance (P, P1, P2)	Litigation – second instance (Gž)	Labor law and family law – second instance (Gž1, Gž2)	Criminal cases – first instance (K)	Criminal cases – second instance (Kž1)	Criminal cases involving minors (Kim, Km)
Monthly norm	12	32	37	6	30	10
Belgrade	12.92	49.10	3.24	3.76	7.98	27.61
Valjevo	1.76	29.37	1.36	0.94	5.56	3.36
Pančevo	1.58	19.88	1.62	1.65	7.15	12.67
Smederevo	5.13	35.69	2.04	0.81	3.88	1.68
Jagodina	2.16	25.59	2.21	1.07	11.04	9.38
Kragujevac	7.85	137.72	/	2.58	16.90	13.08
Kraljevo	4.44	66.97	18.61	5.58	10.44	/
Kruševac	1.81	32.69	2.63	0.51	5.94	7.31

	Litigation, labor law, and family law – first instance (P, P1, P2)	Litigation – second instance (Gž)	Labor law and family law – second instance (Gž1, Gž2)	Criminal cases – first instance (K)	Criminal cases – second instance (Kž1)	Criminal cases involving minors (Kim, Km)
Monthly norm	12	32	37	6	30	10
Novi Pazar	2.53	28.64	1.51	1.05	3.67	3.47
Užice	4.72	44.18	5.96	1.57	5.01	11.25
Čačak	1.10	26.00	2.26	1.26	7.24	7.47
Požarevac	/	11.04	/	/	7.50	4.99
Zaječar	0.74	12.63	1.51	0.80	7.03	3.83
Vranje	1.53	38.42	2.42	1.96	4.13	3.93
Leskovac	2.66	28.68	2.04	1.09	14.89	1.72
Niš	11.51	26.20	4.35	2.01	9.41	11.92
Pirot	0.56	15.98	1.63	0.89	1.84	4.01
Prokuplje	0.67	34.78	1.65	0.51	7.18	5.00
Negotin	1.03	9.38	1.49	0.39	0.90	3.08
Zrenjanin	2.84	22.58	4.68	3.56	13.89	/
Novi Sad	8.23	29.38	3.00	3.11	6.99	13.85
Sombor	1.36	36.42	3.67	0.94	10.58	9.22
Sremska Mitrovica	2.81	25.61	1.81	1.29	6.12	6.25
Subotica	2.52	27.11	4.22	1.34	3.15	5.43
Šabac	1.51	20.71	1.61	1.78	10.02	4.17

The third category of first-instance courts are misdemeanor courts, of which there are 46 in Serbia. These courts handle two types of cases: misdemeanor cases (PR) and misdemeanor cases involving minors (PRM) (refer to Table 4). For PRM cases, none of the courts exceeded the monthly norm for resolved cases: the norm is 50 resolved cases per judge per month, and the court with highest number of resolved cases is in Senta, with only 2.78 resolved cases per judge (10 times less than the norm set by the Rulebook).<sup>65</sup> However, in PR cases, where the norm is 60, only

65 In order to process cases involving minors, judges need to have special certificates. In practice, not all judges in any given court have such a certificate, and consequently,

two courts (Piot and Sremska Mitrovica) exceeded the norm in terms of resolved cases per judge, while all other misdemeanor courts had a lower number of resolved cases.

Table 4. Number of resolved cases per judge at the misdemeanor courts of first instance

	Misdemeanor cases (PR)	Misdemeanor cases involving minors (PRM)		Misdemeanor cases (PR)	Misdemeanor cases involving minors (PRM)
Monthly norm	60	50	Monthly norm	60	50
Arandelovac	39.01	0.65	Obrenovac	21.98	0.75
Bačka Palanka	29.65	1.06	Pančevo	40.18	2.13
Belgrade	43.89	1.00	Paraćin	23.51	1.94
Bečej	42.07	1.96	Piot	60.71	1.12
Valjevo	39.85	5.19	Požarevac	37.87	0.65
Vranje	51.44	1.67	Požega	29.60	0.48
Vršac	38.79	5.78	Preševo	26.97	1.31
Gornji Milanovac	19.81	0.21	Prijepolje	31.95	0.39
Zaječar	25.36	0.75	Prokuplje	37.41	0.51
Zrenjanin	36.33	2.42	Raška	36.18	1.17
Jagodina	41.58	2.34	Ruma	35.90	0.55
Kikinda	34.55	2.04	Senta	50.19	2.78
Kragujevac	35.72	0.34	Sjenica	21.28	0.85
Kraljevo	41.42	0.56	Smederevo	55.75	0.73
Kruševac	37.18	0.54	Sombor	49.47	1.47
Lazarevac	32.78	0.67	Sremska Mitrovica	65.78	1.73
Leskovac	36.13	1.05	Subotica	53.28	0.75
Loznica	45.94	0.53	Trstenik	28.87	0.39
Mladenovac	25.44	0.98	Užice	48.17	0.85
Negotin	45.73	0.64	Čačak	27.89	0.46
Niš	35.52	0.63	Šabac	27.94	2.38
Novi Pazar	24.00	1.25	Novi Sad	41.86	2.40

the average number of resolved cases per judge in such matters does not lend itself well to comparison with the prescribed norm.

The fourth group of first-instance courts are commercial courts, numbering 16 in Serbia (Table 5). Commercial courts decide three types of cases: commercial misdemeanor, bankruptcy, and commercial litigation cases.<sup>66</sup> The grey fields are indicating exceeding the monthly norm and dark grey field is denoting achieving double the norm. As for commercial misdemeanor cases, only the Belgrade court meets the monthly norm of 25 resolved cases. The number of resolved cases varies significantly: in Belgrade, judges resolve 40.52 cases per month, almost twice the norm, while at the court in Kraljevo, they resolve 7.73 cases of this type. For bankruptcy cases only judges in Belgrade, Novi Sad and Subotica exceeded the monthly norm and notably, for commercial litigation cases, none of the courts fulfill the monthly norm of 20 cases: the court with highest number of cases was Belgrade, with 13.76 resolved cases, while the court with the lowest number was Zaječar, where judges resolved 2.29 cases per month.

Table 5. Number of resolved cases per judge at the commercial courts of first instance

	Commercial misdemeanors	Bankruptcy cases	Commercial litigation cases
Monthly norm	25	2	20
Belgrade	40.52	2.23	13.76
Valjevo	13.60	0.39	5.06
Zaječar	16.69	0.31	2.29
Zrenjanin	18.75	0.36	2.82
Kragujevac	24.75	0.79	10.31
Kraljevo	7.73	0.36	6.08
Leskovac	14.69	0.16	7.19
Niš	9.66	0.26	5.72
Novi Sad	29.54	4.42	7.46
Pančevo	14.77	0.47	5.51
Požarevac	18.29	0.20	6.31

66 In the recent years, commercial courts have been resolving an overwhelming number of cases related to the protection of the right to trial within a reasonable time, which escalated two years ago when the bank accounts of almost all commercial courts were blocked due to payment of damages in these cases. See Deo pravosuđa u bankrotu zbog naknada za predugo trajanje suđenja – Ispražnjene kase 15 od ukupno 16 privrednih sudova, *Politika* (<https://tinyurl.com/2aofpd3u>, 15. 3. 2024).

	Commercial misdemeanors	Bankruptcy cases	Commercial litigation cases
Monthly norm	25	2	20
Sombor	15.50	0.58	4.02
Sremska Mitrovica	9.10	1.38	4.19
Subotica	16.15	2.58	3.32
Užice	17.83	0.23	3.17
Čačak	13.32	1.39	3.26

The final category of first-instance courts is the Administrative Court, the sole court for administrative law, handling only one type of case (Table 6). The judges of that court resolve 33.37 cases monthly, surpassing the norm of 25.

Table 6. Number of resolved cases per judge at the Administrative Court

	U, Ui, Up, Ur, Uo, Uv
Norm	25
Administrative Court	33.37

## 4.2. SECOND INSTANCE

Regarding the number of second-instance cases, significant differences exist between Serbia and the other countries under examination. In 2020, Serbian judges resolved 613.80 cases per judge in the second instance. In contrast, the corresponding figures for other countries are considerably lower: 218.78 resolved cases per judge in Croatia, 131.04 in France, 110.29 in Austria, 83.08 in Slovenia, and 33.02 in Norway (Table 7).

Table 7. Number of resolved second-instance cases per judge

	Croatia	Serbia	Slovenia	France	Austria	Norway
Judges	449	318	208	1,880	305	184
Criminal cases	30,858	55,891	4,852	38,730	10,170	2,656
Other cases	67,378	139,298	12,428	207,617	23,469	3,420
Total number of second instance cases	98,236	195,189	17,280	246,347	33,639	6,076
Number per judge	218.78	613.80	83.08	131.04	110.29	33.02

According to the CEPEJ classification, the second-instance courts in Serbia are four appellate courts, in Belgrade, Kragujevac, Niš, and Novi Sad. Despite surpassing all other European countries in the number of resolved cases in the second instance, when comparing the figures with the thresholds set by Serbian Rulebook for each case type, all four appellate courts in Serbia have fewer resolved cases across all five types of cases (refer to Table 8).

Table 8. Number of resolved cases per judge in appellate courts in Serbia

	Kž1	Kžm1, Kžm2	Kž2	Gž	Gž1, Gž2
<b>Monthly Norm</b>	12	15	20	20	23
<b>Belgrade</b>	3.92	11.87	10.38	17.92	11.12
<b>Kragujevac</b>	6.77	11.03	6.29	13.86	16.75
<b>Niš</b>	6.29	5.83	4.59	17.67	25.29
<b>Novi Sad</b>	7.62	16.87	16.03	12.20	29.39

As with the appellate courts of general jurisdiction, in Misdemeanor Appellate Court and Commercial Appellate Court the numbers of resolved cases per judge are lower than the monthly norm (Tables 9 and 10).

Table 9. Number of resolved cases per judge at the Misdemeanor Appellate Court

	PRŽ	PRŽM
<b>Monthly Norm</b>	40	40
<b>Misdemeanor Appellate Court</b>	35.72	0.39

Table 10. Number of resolved cases per judge at the Commercial Appellate Court

	PŽ, PVŽ	PKŽ
<b>Monthly norm</b>	25	25
<b>Commercial Appellate Court</b>	17.11	23.34

### 4.3. HIGHEST INSTANCE

Concerning the highest instance, judges in Serbia again resolved more cases than their counterparts in any of the other examined countries. In 2020, judges in the Supreme Court of Serbia resolved 297.29 cases during the entire year (refer to Table 11). In Croatia, this figure stands at 264.14

resolved cases per judge, while in all other countries, the judges in the highest instance resolved an even fewer cases: in Slovenia this figure was 100.72 cases per year, in France 88.26, in Austria 77.20, and in Norway only 5.10.

Table 11. Number of resolved highest instance cases per judge

	Croatia	Serbia	Slovenia	France	Austria	Norway
Number of judges	36	42	29	354	131	21
Criminal cases	2,120	1,837	688	7,503	1,428	43
Other cases	7,389	10,649	2,233	23,742	8,685	64
Total number of highest instance cases	9,509	12,486	2,921	31,245	10,113	107
Number per judge	264.14	297.29	100.72	88.26	77.20	5.10

Unfortunately, the Rulebook does not prescribe a monthly norm (the expected number of cases to be resolved by each individual judge) for judges in Supreme Court of Serbia, so it was not possible to compare the number of resolved cases to the norm stipulated by the law.

Table 12. Number of resolved cases per judge at the Supreme Court of Serbia

	Resolved cases per judge
Civil Department	16.92
Administrative Department	10.81
Criminal Department	15.31
Reasonable Time Department	1.90

## 5. CONCLUSIONS

Serbian judges outperform their European counterparts while falling short of the caseload standards set in Serbian legislation. At the same time, the failure to clear enough cases to meet the legal standards does not entail a negative evaluation of judges.

**Comparative analysis.** The analysis indicates that in 2020, Serbia recorded a higher number of cases resolved per judge than any other countries under consideration. In the first instance, Austrian judges handled



more cases than their Serbian counterparts (1,477.37 cases per judge in Austria compared to 1,279.46 in Serbia). This figure is considerably lower in other countries: 966.08 resolved cases per judge in Slovenia, 946.16 in Croatia, 414.72 in France, and the lowest number of resolved cases was in Norway, with only 176.51 cases per judge in 2020.

In the second and highest instance, Serbian judges resolved more cases than judges in all the other countries that year. In the second instance, Serbian judges resolved 613.80 cases on average, while in all other countries, this number was at least two times lower: 218.78 in Croatia, 131.04 in France, 110.29 in Austria, 83.08 in Slovenia, and 33.02 in Norway. In the highest instance, in the Supreme Court of Serbia, there were 297.29 resolved cases per judge, and the only country with a similarly high number of resolved cases was Croatia (264.14 cases). In all other countries, judges of the highest instance resolved fewer cases, as cases appealed to the highest instance are generally more complex. In Slovenia, judges in the highest instance resolved 100.72 cases, 88.26 cases in France, 77.20 cases in Austria, and only 5.10 cases in Norway.

One significant caveat in the comparative analysis of judiciaries in Europe is the potential inconsistency in the reporting by national jurisdictions to the CEPEJ. Consequently, what is classified as a court or a prosecution case in one system may not fall into the same category in another country. Moreover, legal systems may have different court competences, which may lead to a higher number of reported cases.<sup>67</sup> From a historical standpoint, tracking changes in the data is challenging, primarily due to the adoption of various reporting methodologies over time, and these changes are not retroactively reflected in previous data.<sup>68</sup> Another reason is the inconsistent categorization of cases. For example, misdemeanor cases might be classified as criminal cases in one reporting period and administrative cases in another.<sup>69</sup> Finally, there might be significant inconsistencies in terms of the status of a case. Different legal systems might have different criteria for classifying a case as “incoming”, “pending”, or “resolved”.<sup>70</sup> This all points to the conclusion that any significant change in the reported numbers should be cause for an explanation of the change, which would otherwise get lost in the aggregate data presented to the public.<sup>71</sup>

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67 CEPEJ, 2022, p. 125.

68 Ontanu, A., Velicogna, M., 2021, The Challenge of Comparing EU Member States Judicial Data, *Oñati Socio-Legal Series*, Vol. 11, No. 2, pp. 466–469.

69 *Ibid.*, pp. 469–472.

70 *Ibid.*, p. 472.

71 The authors of the study emphasize the fact that the data that might sometimes be flawed is increasingly used both in EU negotiations and academic discussions and that both the academia and the policymakers would do better with a cautious approach (Ontanu, A., Velicogna, M., 2021, p. 472).

Comparing Serbian data to data from other European countries is no exception. Notably, misdemeanor cases are classified as criminal cases in reporting to the CEPEJ. Additionally, a single case in Serbian courts can be categorized differently at various stages of the legal process, thereby inflating the statistics.<sup>72</sup> For instance, in Serbian judicial statistics, the appeal process is considered a new case. If the case returns to the first-instance court for a decision review after the second-instance proceedings, it is again classified as a new case, receiving a third identification number. This results in the same case appearing three times in the statistics, as three separate cases.

**Comparison with the caseload norms in Serbia.** In the context of Serbia, in addition to a higher number of resolved cases per judge compared to other countries included in the study, the data underscores the uneven caseload across different courts, instances and types of courts in Serbia. Contrary to the prevailing opinion in Serbia, the existing data does not conclusively indicate a significantly higher number of resolved cases in Belgrade compared to those in other parts of the judicial system.<sup>73</sup> Notably, for certain case types, such as litigation and labor cases in the first instance, judges in the First and Third Basic Courts in Belgrade resolve almost twice the monthly norm. In contrast, a majority of judges in the rest of Serbia fail to meet the norm for these case types. However, for other case types and instances, such a difference is not observed. However, when comparing the number of resolved cases to the monthly norms used for evaluating Serbian judges based on the Rulebook, it becomes evident that in various instances almost all monthly norms for different types of cases are not met. Serbian judges, on average, resolve fewer cases per month than the number stipulated by law. Despite this, the evaluation process for Serbian judges indicates that, even without meeting the monthly norms, the majority of judges receive positive evaluations. In 2020, out of 505 evaluated judges, 485 received the grade “exceptionally successfully performs the function of judge” and five judges received the grade “successfully performs the function of judge.” Additionally, the work of 12 court presidents was evaluated with the grade “exceptionally successfully performs the function of the president of the court” (eight of whom were also evaluated as judges). Three judges remained unrated due to maternity or sick leave.<sup>74</sup>

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72 World Bank, 2014, pp. 58–59.

73 The authors are emphasizing that the subject of this paper was only the caseload of Serbian judges, meaning that only the number of resolved cases was researched. On the other hand, the influx of new cases and the total number of cases being processed by a judge on average were not considered and will be the topic of further research.

74 The High Court Council, 2021, The Report on the Evaluation of the Work of Judges and Presidents of Courts in 2020, (<https://tinyurl.com/275xzkoe>, 27. 1. 2024).

This discrepancy between not meeting the monthly norm and being evaluated as “exceptionally successfully” can be partly explained by Articles 17 and 21 of the Rulebook. Article 17 para. 8 stipulates that “if the judge adjudicated cases of different types, the quantity of work is determined by the sum of the achieved percentage for each type of case in relation to the monthly norm in those matters.”<sup>75</sup> In Serbia, judges do not adjudicate only one type of cases, therefore while one judge may not meet the prescribed norm for one type of case, the same judge will cumulatively meet the norm. The same paragraph stipulates that the Commission will also consider all types of cases resolved, even the ones that are not covered by the Rulebook but are envisaged in the Court Rules of Procedure and other laws. Furthermore, Art. 21 of the Rulebook stipulates “if the judge does not have a sufficient number of cases on his docket (e.g., due to an insufficient influx of cases in the court), the proportion between the number of resolved cases and the total number of cases on his docket is taken for evaluating the quantity (performance) of the judge’s work.”<sup>76</sup> Therefore, according to monthly norm formulated in this manner, it would be possible for a judge to resolve only one case per month and to be evaluated as exceptionally successful (if the judge received only one case per month, by resolving it their success rate would be 100%).

Therefore, the monthly norm, as currently prescribed by the Rulebook, favors judges who have similar, simple, so-called typical cases (Serbian *tipski predmeti*), and whose influx is low, while it fails to recognize that the majority of judges adjudicate different types of the cases and/or cases that are not mentioned in the Rulebook, some of which can be very complex, time-consuming, and from different areas or branches of law. There is no reduction of the monthly norm for the judges working with different types of the cases, even though resolving such cases requires extra time and effort. Also, it is unclear why there is distinction in the calculation of meritorious decisions and decisions decided in other ways. We propose that greater emphasis be placed on other measuring systems for judicial performance and efficiency, for example the clearance rate (CR), the departure time (DT), or other more complex measures.<sup>77</sup>

**Policy recommendations.** In the current evaluation process, there is a notable discrepancy in the number of resolved cases per judge, particularly in the litigation of first-instance cases in basic courts and in the realm of commercial misdemeanor cases in first-instance commercial courts, but determining which judges are the most productive has proven challenging

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75 Translated by author.

76 Translated by author.

77 See Ippoliti, R., Tria, G., 2020.

without a uniform statistic. Additionally, due to the diverse types of cases that judges handle in courts of general and special jurisdiction, making a meaningful comparisons of judges' workloads within and across these courts is nearly impossible. The cases are allocated within the court based on the annual workplan for each court, where the court president assigns which types of cases any given judge will adjudicate during that year. It is true, however, that the criteria for this assignment remain elusive, except where special certificates are required for adjudicating special type of cases (e.g., minors, domestic violence). A step in right direction was taken in the newly promulgated Law on Judges which introduced a more rigorous procedure for complaints against the annual workplan in the court and second-instance procedure.<sup>78</sup> Future research in this area should aim to compare the work of individual judges, providing conclusions regarding courts with higher caseloads per judge, more efficient case resolution, and more productive judges.

In addition to the uneven distribution of cases in Serbia, the issue of a high caseload persists, especially in the courts of second and final instance. The authors' previous paper<sup>79</sup> argues that the number of judges per capita in Serbia is already among the highest in Europe. It emphasizes that increasing the number of judges is not an optimal strategy for resolving this issue, and the current dominant strategies for optimizing the judiciary appear to be (more or less) misplaced. Greater emphasis should be placed on the horizontal and vertical organization of courts, the internal organization of courts, court staff, and, especially, on procedural laws. In the past decade, changes in procedural laws in Serbia have resulted in the transfer of certain judicial powers to other institutions. This includes the introduction of public bailiffs, public notaries, bankruptcy trustees, land registers, and the shift of criminal investigations from investigating judges to prosecutors.<sup>80</sup> This course of changing the procedural laws should be followed. The Ministry of Justice justified the proposed amendments to the Law on Civil Procedure with the overloading of the courts in Belgrade in 2021.<sup>81</sup> On the same occasion, other measures were proposed, such as procurement of software that will automatically assign cases to courts that are less burdened.<sup>82</sup>

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78 Arts. 24–26. of Law on Judges, *Official Gazette of the RS*, No. 10/2023.

79 Spaić, B., Đorđević, M., 2022.

80 World Bank, 2014, p. 60.

81 Popović: Cilj zakona ravnomerna opterećenost sudova po Srbiji, *Politika*, 2021, (<https://tinyurl.com/24jmuydv>, 27. 1. 2024).

82 Vukašinović, S., 2020, Analize pokazale veliku opterećenost Višeg suda u Beogradu, evo šta Srbija treba da uradi da bi SUDSTVO BILO EFIKASNIJE, *Blic*, (<https://tinyurl.com/2bo355qe>, 27. 1. 2024).

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## KO RADI VIŠE, A KO PAMETNIJE? POREĐENJE SUDIJSKE PRODUKTIVNOSTI U EVROPSKIM ZEMLJAMA

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### APSTRAKT

U ovom radu (1) analiziramo postojeći teorijski okvir za razumevanje relacije između sudijske produktivnosti i sudske efikasnosti, (2) upoređujemo sudijsku produktivnost u različitim instancama u Srbiji tokom 2020. godine, (3) upoređujemo sudijsku produktivnost u Srbiji sa produktivnošću sudija u Hrvatskoj, Sloveniji, Francuskoj, Austriji i Norveškoj za istu godinu, (4) ispitujemo sudijsku normu koja je predviđena zakonom za srpske sudije. Autori zaključuju da su srpske sudije rešile više predmeta u svim instancama u 2020. godini (samo Austrija u prvom stepenu ima veći broj rešenih predmeta po sudiji), dok istovremeno ne ispunjavaju sudijsku normu koja je postavljena zakonom. Takođe, autori konstatuju veliku razliku u broju rešenih predmeta po sudiji u sudovima u Srbiji, ali se to ne odražava na ocenjivanje sudija u Srbiji, jer je 485 ocenjenih sudija od ukupno 505 sudija dobilo ocenu „izuzetno uspešno obavljaju funkciju sudije” za 2020. godinu.

**Ključne reči:** efikasnost pravosuđa, sudijska produktivnost, ocenjivanje sudija, organizacija pravosuđa.

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