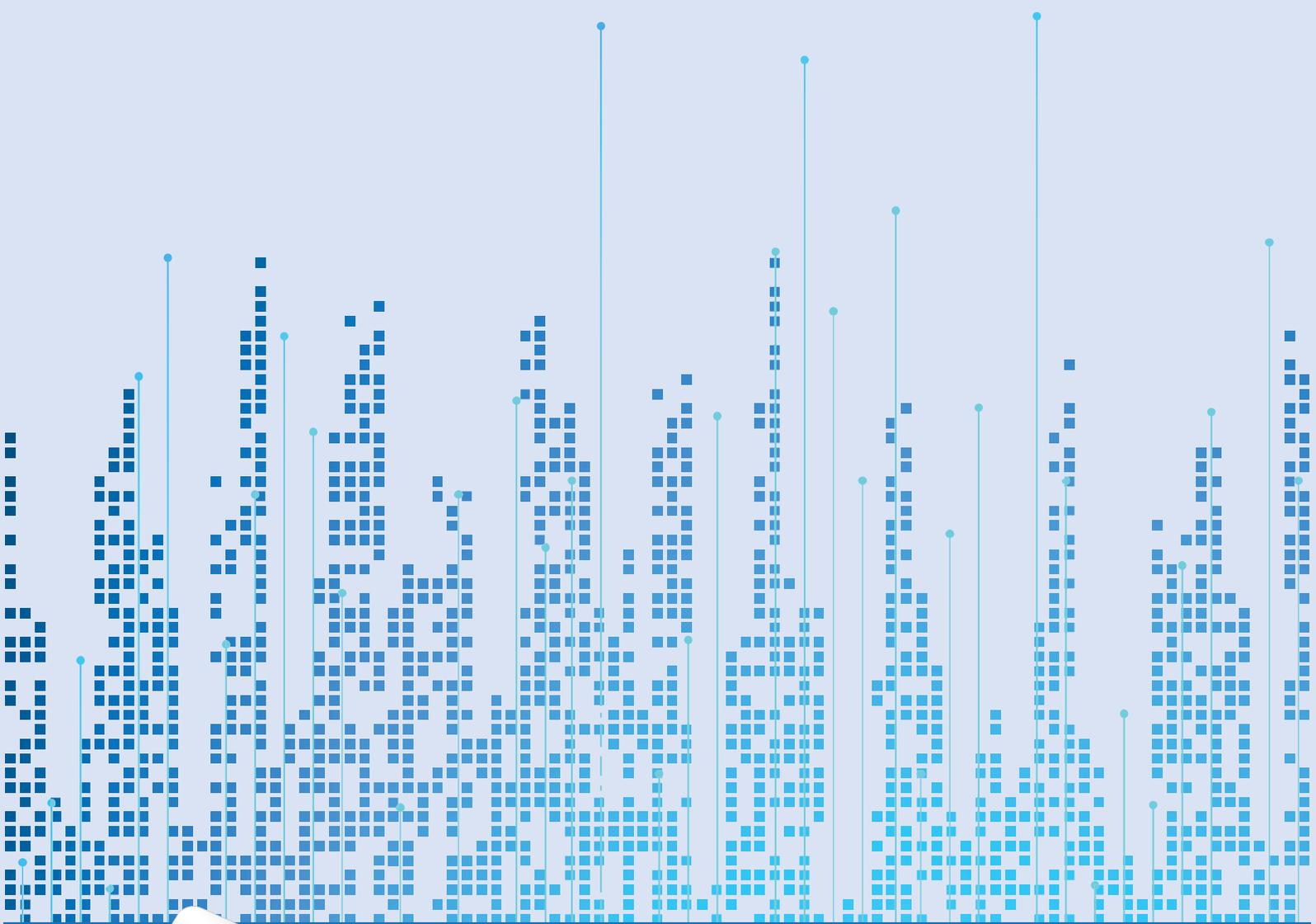


National Development Strategy Croatia 2030 Policy Note:

Justice Sector

July 2019



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Note

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Acronyms

ADR	Alternative Dispute Resolution
AI	Artificial Intelligence
CEPEJ	Commission for the Efficiency of Justice
CMS	Case Management System
COE	Council of Europe
COVL	Centralni oddelek za verodostojno listnino - Ljubljana
CTS	Case Tracking System
DT	Disposition Time
EC	European Commission
ECHR	European Court of Human Rights
ERP	Enterprise Resource Planning
EU	European Union
FINA	Financial Agency
GDP	Gross Domestic Product
GOC	Government of Croatia
HRM	Human Resource Management
ICMS	Integrated Case Management System
ICT	Information and Communication Technology
IT	Information Technology
JIS	Real Property Registration and Cadastre Joint Information System
LAN	Local Area Network
MOF	Ministry of Finance
MOJ	Ministry of Justice
PN	Policy Note
RIA	Regulatory Impact Assessment
SAO	State Attorney’s Offices
WAN	Wide Area Network
ZPP	Civil Procedure Act

1 Introductory Overview - Purpose of the Document

This Policy Note (PN) seeks to guide the authorities in realizing the vision toward a citizen-centric justice system in Croatia by 2030. It is part of a series of PNs intended to assist the Government of Croatia (GOC) in formulating its national development strategy and to achieve its strategic objectives. Its primary intended audience is thus the GOC, and its Ministry of Justice (MOJ), which is responsible for formulating, in coordination with the courts and other stakeholders, judicial reform strategies and plans for justice sector development.

An effective justice sector is a sine qua non for transforming and efficient functioning of the economy and promoting national competitiveness. Efficient justice sector performance can positively contribute to Croatia's economic growth by creating an enabling environment for businesses and stimulating job creation. The courts indeed play an essential role in enforcing public policies aimed at strengthening the economy, ensuring the timely enforcement of court decisions, reducing transaction costs for businesses, checking economic losses to corruption and organized crime, and increasing certainty with respect to the protection of property rights and citizens' access to justice.

Citizens and businesses generally perceive the overall justice system as slow, cumbersome, and inconsistent. Confidence in the system is relatively low, and the perception of corruption is high. Justice officials view frequent legislative changes, dilapidated court facilities, and deficient use of technologies and other organizational gaps as causes of weak institutional performance.

The Government of Croatia aspires to address the institutional deficiencies in the justice sector, especially of the courts, to achieve higher standards of service delivery to citizens and businesses. It is also expected to elevate Croatia's judiciary to the top 15 performing justice systems in the European Union (EU), in accordance with the Commission for the Efficiency of Justice (CEPEJ) indicators (see Box 1). This vision of efficient justice by 2030 will require the active participation of, and coordination with, all justice sector stakeholders and the deployment of adequate financial, knowledge, and investment resources.

Box 1: An overview of vision and objectives for justice system in 2030 along with current challenges

Vision

The vision for 2030 is to build a citizen-centric justice system. To achieve this vision, Croatia has set various goals that include better judicial performance for better and quality justice service delivery. Better judicial performance will push Croatia within the top 15 judiciaries in the EU, in accordance with the CEPEJ performance indicators.

Public perception

2019: Currently, Croatia suffers from negative public perception regarding the efficiency of its courts for civil and commercial cases. Among the main observations, the public considers the courts slow while the administrative burden arising from the judicial process and the interaction with the judicial staff are too cumbersome. In addition, citizens have highlighted the high unpredictability of court processes and case outcomes, which in turn has created a perception of important levels of corruption or other improper influences.

2030: Croatia adopts a citizen-centric approach to justice to enhance the predictability of judicial processes. This will enable citizens to have reasonable expectations about the resolution of their cases, specifically the timeliness, quality, fairness predictability, and affordability of the judicial process. Concurrently, efforts will be made to further increase citizens' awareness about the legal and judicial system with enhanced dissemination mechanisms and citizen engagement.

Commercial justice

2019: Barriers to investment and a not fully conducive business environment have been cited as specific challenges not only for local businesses but also to attract foreign investments and private capital flux. Additionally, challenges that affect businesses' perception of the judicial process have been highlighted, in particular the inconsistency and length of the judicial process, as well as the overall perception of corruption and undue interferences.

2030: Croatia's vision aims to strengthen the predictability and quality of commercial justice processes to create a propitious business environment. Indeed, quality and efficient commercial court processes will allow for the swift and predictable resolution of commercial disputes and will contribute to an enabling and attractive business and investment environment. Technological innovations and increased digitization of court processes together with the convergence of infrastructure and architectural norms with international standards are necessary to enhance the delivery of justice services within a reasonable time and in a business-friendly and affordable way as well as communication with businesses and investors. For instance, encouraging one-stop shops, that is, the centralization of justice services under one roof, strengthening the professionalism of judicial staff, and keeping justice services at a reasonable cost are cornerstones in future activities. .

Criminal justice

2019: Perceptions of unequal treatment based on economic and social status and political affiliation are common. For instance, court users as well as the public have often described sentences as 'too mild' due to a lack of fairness, firmness, and consistency of the judicial process.

2030: To achieve the vision of increased consistency and perception of fairness among court users and citizens in general, the criminal justice system must be adequately capacitated and equipped with tools, skills, and resources to effectively address the increasingly complex modern-day crime. This will result in the criminal justice system adequately performing its social functions of not only effectively penalizing but also preventing criminal behaviors.

Economic crime

2019: Similar to the perception of general commercial justice highlighted above, criminal justice relative to commercial matters is also rather negatively perceived. Naturally, this affects the attractiveness of the business and investment environment of Croatia because the risks associated with corruption and white-collar crime in public entities are higher and result in suboptimal investment decisions.

2030: Croatia aims to strengthen the detection and prosecution of corrupt practice and white-collar crime (for example, fraud and abuse of trust) along with effective enforcement mechanisms. Croatia thus aims to reduce the risks associated with reporting criminal behavior and participating in criminal proceedings.

a. Institutional Context

Croatia's justice system¹ comprises several institutions that work together, according to their roles and responsibilities, to deliver justice services. These include (in random order): (a) the **courts** (or the judiciary in the narrow sense, '*sudovi*' or '*sudbena vlast*' in Croatian); (b) **the bar** (attorneys at law, '*odvjetnici*' or '*odvjetništvo*' in Croatian); (c) the **State Attorney's Office (SAO)** (prosecuting on behalf of *res publica* in criminal proceedings, defending/promoting the interests of the state and units of local government and self-government in civil matters, '*državno odvjetništvo*' in Croatian); (d) **citizens and legal entities** (as parties to proceedings and as the public members of the society); (e) the **MOJ** (responsible for organization, coordination, and administration of the entire justice system, including the prison system); and (f) **the legislature** (responsible for creating the legal and regulatory framework on behalf of *res publica*, by defining and enacting the rules binding on all the abovementioned institutions).

The justice system employs to about 10,000 employees (2018) (less the MOJ and prison service), about 1,750 of whom are judges, about 640 prosecutors, and about 6,800 administrative and other employees. It has an overall budget (2018) of EUR 337.0 million, of which EUR 166.0 million is for the courts (mostly for salaries and so on). The court network comprises the Supreme Court; the High Commercial Court; the High Administrative Court; the High Misdemeanor Court; Administrative Courts; Commercial Courts; County Courts; and Municipal Courts (see Table 1 and Table 2 with caseload and clearance rates in 2018).

Table 1: Case flow 2014–2018, including land registry and business registry cases

Data on court performance	2014	2015	2016	2017	2018
Pending at the beginning	735,873	616,686	559,072	508,931	464,124
Incoming	1,341,919	1,252,451	1,297,410	1,242,300	1,166,130
Total workload	2,077,792	1,869,137	1,856,482	1,751,231	1,630,254
Resolved	1,432,912	1,290,442	1,340,157	1,278,017	1,216,561
Pending at the end	616,686	559,072	508,931	464,124	407,062

Table 2: Performance indicators 2014–2018

Performance indicators	2014	2015	2016	2017	2018
Clearance rate (%)	106.78	103.03	103.29	102.88	104.32
Disposition time (DT) in days	157	158	139	133	122
Number of judges, court advisers	2,507	2,460	2,433	2,400	2,352
Incoming cases per judge/adviser	535	509	533	518	496

¹ The term 'justice system' (or '*pravosudje*' in Croatian) encompasses several distinct and very different systems/entities, each driven by different (sometimes opposite) interests, regulated by different legal and regulative frameworks. They have different roles, functions and expectations.

Performance indicators	2014	2015	2016	2017	2018
Resolved cases per judge/adviser	572	525	551	533	517
Pending cases per judge/adviser	246	227	209	193	173

Source: MOJ of the Republic of Croatia, draft Statistical Review for 2018.

Justice reform is a long-term process. Croatia began this journey before its accession to the EU in 2013. To meet EU accession requirements, in particular Chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom, and security), several reforms were introduced. During this period, the justice and other governmental sectors were under close and constant international and local scrutiny. As a result, Croatia gained significant experience in managing reforms with the justice sector.

Multiple reforms over the last 15 years have significantly improved justice sector performance across several dimensions such as independence, judicial training, access, transparency, quality, enforcement, and many other aspects. These included reforms to its structure, procedures, institutional roles, and responsibilities. In addition, capacity for tracking performance was developed, and automated case tracking systems for courts and the SAOs were introduced. Other important steps were the introduction of judicial and SAO councils to manage appointments and career trajectories and the creation of a Judicial Academy to train judges and prosecutors and a series of readjustments of the judicial ‘network’ (called ‘map’ elsewhere) to better match resource distribution with demand. All this time, Croatia’s reforms and progress have been guided by its 2006, 2011, and 2013 Judicial Reform Strategies, accompanying Action Plans (2006, revised in 2008, 2010, 2013) and Strategic Plans (2013–2015, 2014–2016, 2015–2017, 2016–2018, 2017–2019, 2018–2020, 2019–2021) as well as its Anti-Corruption Strategy for 2015–2020. These documents reiterated Croatia’s drive to (a) increase judicial efficiency; (b) adjust the distribution of service units to real demand; (c) strengthen the independence, impartiality, and professionalism of the judiciary; (d) combat organized crime and corruption, and (e) utilize the potential of modern technologies to improve access and communication for court users.

As a result of the pre- and post-EU accession judicial reform experience, justice policy makers have gained useful insights. They have also distilled lessons on both the positive and negative impacts of reforms and have identified efficiency as the key area of immediate focus over the medium term, which is consistent with the findings of the institutional analysis presented in this PN. Croatia (like other transition countries) faced exploding demand for court services after its independence and move to the market economy. While the demand is now somewhat stable, Croatia may no longer be able to deploy traditional procedures, practices, and organizations to meet this demand. Moreover, the Croatian authorities recognize that a past trend in all transition countries to increase the sector’s share of national budgets has apparently reached a plateau, calling for more creative solutions. The recognition is that the resource deployment formula has to change from ‘more (budget) with more (for example, judges or courts)’ to ‘more with less or with the same amount’. This overall drive for greater efficiency (productivity, timeliness, value for money, and so on) is accompanied by a recognition of users’ demands for higher-quality services and for more information on sector operations (accountability and transparency).

Another lesson is with respect to legislative (procedural) changes. Croatia has resorted to a number of legislative changes in the recent past to converge with European and international standards. While this strategy has allowed Croatia to reach a level of quality of regulation comparable with other EU countries, it has also overregulated certain areas, resulting in an unpredictable judicial and legal environment. Consequently, the courts have struggled to establish a consistent and harmonized practice in deciding upon particular aspects (procedural or substantive), and the users have had little time to

absorb and adjust to the new regulations.² This calls for improved public consultation and impact assessments before law reforms and for options where legislative changes would not be required to achieve the desired reform goals.

Croatian authorities continue their justice reform, in response to their own evaluations, user complaints, and the EU’s periodic reports with respect to the performance of the justice sector.

The sector also takes into account other publications and studies carried out by other actors in policy analysis and reform design. It is now monitoring justice reforms through the annual reports on the judiciary and through the biennial Council of Europe’s CEPEJ reports and the European Commission’s Justice Scoreboard.³ Progress is uneven across areas. Although several indicators show positive trends, there is still room to bring many scores to the level of the better-performing EU states. In addition, being a relatively young democracy, the review suggests that Croatia should continue to monitor, safeguard, and promote independence of judges as enshrined in its Constitution, as well as promote judges’ accountability as the other side of the same coin.

The most recent European Commission Country Review (2018) recognizes Croatia’s progress with justice reform but highlights four areas that need attention: further reduction of backlogs and time to resolve first-instance civil, commercial, and criminal cases; acceleration of plans to introduce information and communication technology (ICT) programs, especially giving judges access to various databases and public access to information on cases; and improvements to anti-corruption programs.

As per EU requirements, **Croatia has a legislative and institutional framework guaranteeing the independence of judicial officials.** It also has over 20 years of experience in implementing the system in practice. According to applicable legislation, decisions on appointments and promotions adopted by the State Judicial Council should be based on objective criteria. Methodology for this is regulated and developed in a relatively satisfactory manner. The work of the State Judicial Council is transparent, its web page is quite informative, and its work is always well covered by the media. However, the recent EU report notes that: “Concerns about judicial independence remain. According to a ruling by the Constitutional Court (Constitutional Court of the Republic of Croatia, 2018), the State Judicial Council did not provide sufficient reasoning in certain decisions on the career of judges, which led to legislative amendments that decreased the Council’s power in selecting judges and could interfere with its institutional role. A Eurobarometer survey shows that the perceived judicial independence in Croatia decreased further from an already very low level.”⁴ This point of view could perhaps be due to gaps in **accountability, which is the other side of independence.** A new State Judicial Council has been appointed recently, and it is expected that the council is aware of these challenges and would respond appropriately, enhance its outreach to citizens, the media, and justice stakeholders, disseminate

² According to the Court User Survey 2016, about 82 percent of judges/staff and 85 percent of professional users (attorneys/notaries) find frequent changes of the law the main cause of inefficiency in the system. “Evaluacija kvalitete usluga pravosudnog sustava u Republici Hrvatskoj 2016”, Ipsos Public Affairs, for Ministry of Justice, Justice Sector Support Project (JSSP), *n*=2053.

³ The Justice Scoreboard is an annual report on EU members, but most of its contents are based on statistics collected by CEPEJ for its biennial publication on roughly 46 European countries. Both documents compare national systems on a series of common performance indicators. The Justice Scoreboard, however, focuses largely on non-criminal cases, whereas the much longer CEPEJ reports include criminal justice as well.

⁴ European Commission: Country Report Croatia 2019, Brussels, 27.2.2019.

the workings of the State Judicial Council, and receive and offer feedback on its performance (for example, on handling disciplinary actions against judges with respect to corruption).

In 2019, policy makers are seeking to scale up the reform efforts aimed at further enhancing the efficiency and quality of justice. They foresee two sets of actions: (a) developing institutional reforms to upgrade the judiciary's efficiency toward making it more citizen and business centric, which would also enable achieving a higher CEPEJ ranking within the EU member states, and (b) furthering the implementation of four recently adopted laws⁵ and amendments to two others,⁶ all affecting the sector's organization and operations, as well as with provisions for the merger of most misdemeanor courts into the municipal courts. Specialized municipal misdemeanor courts will only be maintained in the busiest districts (Zagreb and Split).

Moving forward, there is a need to design justice reform programs based on hard data and the lessons of experience (some of which are described below). They should also take into account the prevailing external constraints to institutional performance that will limit transformation efforts. To keep the reform goals realistic and on target, it is important to cater to these factors: (a) Croatia's judicial culture is deeply rooted in the continental legal tradition (specifically Austrian/German); (b) the administrative staff (human resources) management policies are closely linked to the civil service, which is less likely to change; (c) the budget for the operation in the justice sector is expected to remain stable (same), and no significant addition is expected, except for maintenance of the new information technology (IT) systems and investment in new applications, through the EU and other development partners; (d) the demographic trends show a decreasing and aging population, in some regions faster than the others; and (e) the economic projections call for higher business and investments development for jobs and well-being.

Based on the abovementioned policy objectives, historical context and reform considerations, and different justice metrics, the PN team has carried out an institutional analysis for improving the efficiency of the courts.⁷ Attention is placed on litigious civil and commercial cases, enforcement, quality of judgments, judicial management, technology and infrastructure, human resources, training and financial management, and transparency areas. Importantly, cross-country comparative analysis has limitations. Due to statistical data quality and definitional issues across jurisdictions, judiciaries are increasingly looking at time series data (for example, Integrated Case Management System [ICMS] in Croatia) generated within their jurisdiction to design institutional reforms. The in-country analysis, coupled with sharing of knowledge on international good practices, is the approach proposed in this PN for the Croatian context, which could overcome some of the measurement and comparison deficiencies. This does not mean that efforts to improve CEPEJ data quality should not be pursued. Rather, this promotes efforts to enhance the local statistical dashboards to cater to specialized local needs as well as international requirements.

⁵ Law on the State Attorney's Council (OJ 67/18), Law on the State Attorney's Office (OJ 67/18), Law on Territorial Jurisdiction and Seats of the State Attorney's Office (OJ 67/18), and Law on the Territorial Jurisdiction and Seats of the Courts (OJ 67/18).

⁶ Amendments to the Law on the State Judicial Council OJ 67/18 and the Law on Courts (OJ 67/18).

⁷ Justice performance can be measured across many dimensions. Since many aspects have been improved significantly over the past years, the main focus of this institutional analysis (and that of the PN) is to distill measures that can help further improve the efficiency of the courts.

The main observations are as follows:

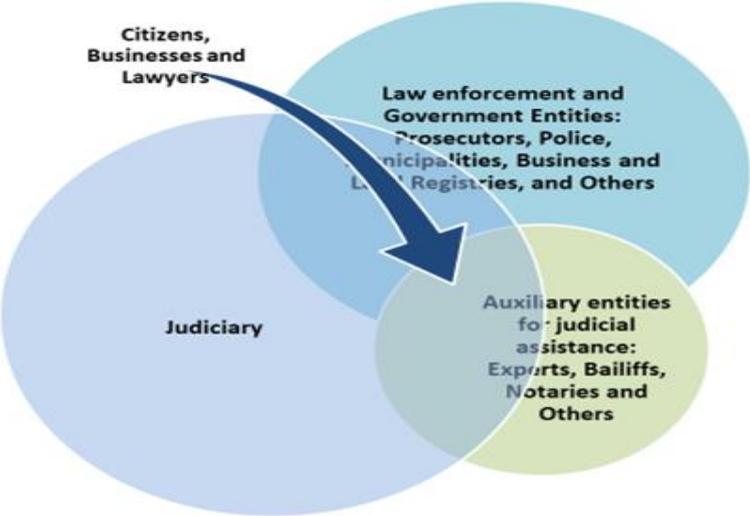
- **Croatian courts now perform at a level comparable to the average of EU member states on several efficiency indicators tracked by the Justice Scoreboard.**⁸ These include clearance rates (since 2010 always at or over 100 percent for all first-instance case types except administrative cases);⁹ time to resolve civil, commercial, administrative, and other cases in the first instance; and average length of judicial review (where times are increasing but in 2017 were exactly on the average). In other areas—disposition times for litigious cases and pending cases per 100 inhabitants—Croatia’s scores are at the higher (less positive) end among its EU comparators although this is partly a result of its higher litigation rates (number of incoming civil, commercial, administrative, and other cases and of civil and commercial litigations per 100 inhabitants).¹⁰
- **Efficiency is also a question of value for money**, because compared to all EU members, Croatia spends one of the highest percentages of its gross domestic product (GDP) on the sector (surpassed only by Bulgaria, Poland, and Slovenia). Still, the sector budget has not been emphasized by Croatia or the EU. The related question of where it is invested will, however, be addressed in sections on management (financial) and modernization (Section 2.B), and over the longer run, Croatia may want to tackle the sector’s overall costs as a value-for-money issue.
- **Despite substantial improvements over the past decade, inefficiency and particularly delays have remained a concern for the courts in Croatia, due to the interconnectedness of causal factors and inherent institutional complexities (see Figure 1).** It is recognized that this is a complex area, as the length of the judicial process depends not only on reaching a first-instance decision, but also on the pending caseload as well as any appeals and enforcement. Delays may occur in each stage of the process for various causes, such as parties’ behavior and strategies. This could also be due to other factors that are beyond the control of the courts, such as the interaction and support, or lack thereof, of other justice actors (for example, prosecutors, experts, notaries, other governmental bodies). Indeed, gaps in support infrastructure and IT are also causal factors, as described ahead in the note.

⁸ It is generally accepted that efficiency combines factors such as timely disposition, keeping up with demand (and thus clearance rates), not accumulating backlog, and resolutions/judge. The Justice Scoreboard uses the conventional indicators to measure all but the last (which for various reasons is hard to compare across different legal systems). Efficiency is thus different from quality of service or judgments, something the Justice Scoreboard does not attempt to measure directly. The additional indexes cited (for example, Doing Business, World Justice Project), although often relying on surveys rather than performance statistics, also track the usual efficiency aims as well as some efforts at measuring quality. Thus, a separate section has been added on quality of justice, to reflect improvement efforts being undertaken in current and past justice reform strategies. Overall, the cross-country comparative analysis has its limitations. It has imperfections due to statistical data quality and definitional issues. Increasingly, judiciaries are looking at time series data within their jurisdiction to overcome some of these deficiencies in developing appropriate reforms.

⁹ Although Croatian courts hear relatively few administrative cases, an important change in the jurisdiction was made in 2012, introducing two instances with the High Administrative Court (rather than the Supreme Court) now responsible for the final decision on these disputes. Still the reasons for the lower clearance rates and consequent accumulation of pending cases in the jurisdiction merit further exploration.

¹⁰ The Republic of Croatia Systematic Country Diagnostics, the World Bank Report No.: 125443-HR, May 4, 2018.

Figure 1: Justice service delivery



2 Croatian Developments, Challenges, and Opportunities

National and international stakeholders have concerns about the efficiency of the justice system and consider its reform, as a fundamental impediment for faster economic growth. As noted in Box 1 above, currently, Croatia suffers from negative public perception regarding the efficiency of its courts for civil, criminal and commercial cases. In addition, barriers to investment and a not fully conducive business environment have been cited as specific challenges not only for local businesses but also to attract foreign investments and private capital flux. Furthermore, challenges that affect businesses' perception of the judicial process have been highlighted, including the inconsistency and length of the judicial process, as well as the overall perception of corruption.

This chapter presents various elements of the efficiency of the justice system in Croatia. These include (a) backlog and delay reduction systems at first-instance and appeal levels; (b) the enforcement proceedings; (c) the quality of judgments; (d) the court management, human resources, training, judicial independence, and accountability systems; (e) the budget, financial controls, and court fee systems; (f) automation and ICT; (g) the physical infrastructure and building facilities; and (h) the anti-corruption (public sector-wide and criminal justice system) related factors.

Discussion of each area proceeds as follows: an overview of the past accomplishments and the current situation, a discussion of the challenges and opportunities, and based on the analysis proposed recommendations for the consideration of justice authorities in Croatia. Institutional analysis carried out in this report mostly uses data from the Justice Scoreboard, CEPEJ Reports, and Croatian MOJ data and reports.

In addition, rather than staying on purely descriptive and theoretical levels, the PN team has made an attempt to “put a figure” on an overall effort required for reaching the goals proposed for 2030. Based on the current state of play, the available hard data and some conservative assumptions for the future – it appears that the system could reach significantly better results if only 1 – 2 percent increase in annual efficiency could be reached and maintained over the period. Therefore all recommendations that follow strive to determine and describe specific actions and measures, within each efficiency element, that can help reaching that desired figure.

2.1 Efficiency Improvement: Observations with Respect to Institutional Dimensions

2.1.1 Backlog Reduction

Progress Made and the Current Situation

Although Croatia has made respectable strides to reduce the number of cases carried over from one year to the next (pending caseload), this issue has been a concern for both the government and EU observers for some time. The term ‘backlog’ is used with caution, because this requires a legal definition (how old a case must be before it can be considered backlog, usually 2–3 years but sometimes longer depending on the type of case). Croatia does not have a definition but instead has placed emphasis on eliminating older cases and especially those that have been in the system for over 10 years.

Overall, Croatia has made substantial advances in reducing the overall number of pending cases but more can be done. A decrease from roughly 1.6 million pending cases in 2005 to about 800,000 in 2010 and to 407,062 in 2018 represents an impressive result. The Justice Scoreboard shows the improvements from 2010 to 2014, 2015, and 2016, but as the metric is the number of pending cases per 100 inhabitants, Croatia still has the second highest (worst) score for all civil, commercial, and administrative cases (combined, exceeded only by Slovenia, for all years but 2016 and Portugal for 2010—its other years were not provided). In the case of litigious civil and commercial cases, the number of pending cases were exceeded only by Italy in both 2010 and 2016. However, given Croatia’s high number of incoming cases per 100 inhabitants, it would do better if another metric (pending/incoming or, still better, dispositions for one year) were used to provide an accurate picture of the relative significance of the numbers. While comparing pending cases per 100 inhabitants eliminates biases against larger countries (which would naturally have higher absolute numbers), it works against countries with higher litigation rates, like Croatia, which has managed to reduce pending cases to far below the normal inflow. The performance looks even better when land and business registry cases are included.

Court performance, 2016–2018

Table 3: Caseload - all courts, without land registry and business registry cases

Year	Pending at the beginning	Incoming	Resolved	Pending at the end
2016	523,981	667,057	720,483	464,765
2017	464,765	608,228	647,526	417,073
2018	417,073	534,170	584,222	358,541

Table 4: Performance (efficiency) indicators

Year	Clearance rate (%)	Disposition time (DT) (in days)	Received per judge/advisor	Resolved per judge/advisor
2016	108.01	235	290	313
2017	106.46	234	264	281
2018	109.37	224	232	254

Table 5: Cases older than 10 years

Year	Pending at the beginning	Incoming	Resolved	Pending at the end	Share of ‘old’ cases in the total number of unsolved cases (%)
2016	16,934	20,199	21,760	15,373	3.31
2017	15,373	18,794	22,194	11,971	2.87
2018	11,971	17,474	20,314	9,131	2.55

During the period 2016 through 2018, courts have continuously kept the clearance rate above 100 percent, reduced the DT, reduced the overall backlog, and decreased the number and share of the oldest cases in the system. However, figures also show that this was achieved in a situation characterized by a steady drop in inflow of new cases (reduced demand), less cases solved per judge/advisor (productivity), and nominally less judges/advisors (supply).

Table 6: Number and actual presence of judges and advisors

Year	Judges	Court advisors	Judges/advisors - total	Judges/advisors - actually present
2016	1,830	603	2,433	2,302
2017	1,788	612	2,400	2,305
2018	1,752	600	2,352	2,301

Source: MOJ of the Republic of Croatia, <https://pravosudje.gov.hr/>, as on March 15, 2019.

Challenges and Opportunities

Keeping in mind the goals proposed for the justice system by 2030 (as outlined in Box 1), the existing caseload situation presents itself as an opportunity and the project model indicates that the improvements are achievable. However, the underlying question is where does this reduced demand (that is, fewer incoming cases) stem from? Is it the result of the fact that the worst surge of new cases arising from transition and post-transition situations has deflated? Or of the fact that Croatia's population is decreasing? Removal of certain types of cases from court jurisdiction (such as enforcement based on trustworthy documents) certainly influenced the total number of cases pending, but this was rather a one-time event preceding this period and does not explain the trend depicted in Tables 3–6. A deeper socioeconomic analysis of this phenomena would be needed to detect and explain the reasons underlying such a trend.

However, if the answer to the previous question is that the overall system has gradually 'balanced itself' and that all measures undertaken so far are yielding results, this would represent a favorable situation for the management of the justice system to target those specific areas, and with precisely tailored measures, that could bring it further in line with the desired goals.

Case flow projection model by 2030. To provide an analytical basis for policy analysis, a case flow projection model is developed ahead. This uses basic available data presented in statistical reports and takes account of past trends (shown in Tables 3–6) with certain assumptions: (a) the volume of incoming cases will not oscillate drastically (the current trend is actually decreasing); (b) the number of judges/advisors working on case resolution (actually present) remains the same, and (c) each judge/advisor will resolve on average two more cases per year, which is considered a modest and achievable target (average number of resolved cases in 2015 was 313 and in 2018 it is 254). Through the application of the case flow projection model the expectation over the next 10-years is shown in Table 7.

Table 7: Case flow projection model for Croatian judiciary by 2030

Year	Pending at the beginning	Incoming	Solved	Pending at the end	Judges/advisors, present	Solved per judge/advisor
2016	523,981	667,057	720,483	464,765	2,302	313
2017	464,765	608,228	647,526	417,073	2,305	281
2018	417,073	534,170	584,222	358,541	2,301	254
2019	358,541	550,000	588,800	319,741	2,300	256
2020	319,741	550,000	588,800	280,941	2,300	256
2021	280,941	550,000	588,800	242,141	2,300	256
2022	242,141	550,000	588,800	203,341	2,300	256
2023	203,341	550,000	588,800	164,541	2,300	256

2024	164,541	550,000	588,800	125,741	2,300	256
2025	125,741	550,000	588,800	86,941	2,300	256
2026	86,941	550,000	588,800	48,141	2,300	256
2027	48,141	550,000	588,800	9,341	2,300	256
2028	9,431	550,000	588,800	-29,369	2,300	256
2029	-29,369	550,000	588,800	-68,169	2,300	256
2030	-68,169	550,000	588,800	-106,969	2,300	256

Note: Projection on 2019–2030 case flow based on 2016–2018 trends, assuming 1 percent efficiency increase (that is, 2 resolved cases more per judge/advisor).

As mentioned above, this is a very simplified, purely arithmetical look into the future; however, it clearly shows that internal reserves do exist. The calculation could be further refined by, among others, calculating the attrition rate based on present age of incumbent judges/advisors and general policies on future appointments. It could also be made specifically for each court, each case type, and so on.

Another circumstance working in favor of future informed and precisely tailored interventions in the operation of judicial system—and monitoring their effect—is the fact that Croatia’s judiciary now has a fully operational, robust CMS in place (the ICMS or ‘e-Spis’ in courts and the CTS in SAOs). The ICMS is used at all regular and commercial courts, and ample data are entered into the system on each and every case. This offers the management a wealth of data and information on developments and trends within the system, both through numerous predefined regular reports as well as through a possibility to quickly perform specific ad hoc searches and analysis. All data and reports are fully verifiable and may be traced back to each and every individual case file that was accounted for in a particular report/search.

However, the development and ‘rollout’ of the ICMS system, as well as its current use as predominantly a reporting tool, were envisaged only as the first step, or building a backbone, of the comprehensive IT system in judiciary—a system that could bring profound changes to the existing paradigm of business processes within the sector. More details are provided in section 2.C.

Recommendations

Focus on cases older than 5 years in the first instance courts; conduct detailed analysis of court delays; promote active case management; and detect and address “systemic” problems to tackle the problem of inefficiency.

There should be more focus on cases older than five years in the first-instance courts (especially, civil-litigious cases in municipal and commercial courts). Croatia’s approach to reducing its pending caseload is to eliminate older cases, especially those older than 10 years. However, in light of the current trends in supply and demand depicted above, focus could be switched to litigious civil cases pending in the system (at first-instance municipal and commercial courts) for five years or more. Such cases could be easily recognized by the ICMS system and then analyzed by judges assigned with them, problems and reasons for delay discussed on the level of each court, and appropriate actions taken through more proactive case management approaches. As it can be assumed that these are the ‘more complex’ cases, concentrated effort on their resolution would gradually pay itself by providing faster justice exactly where parties need it, that is, where disputes are difficult.

Any detected ‘systemic’ problems and reasons for delays could be elaborated, escalated, and discussed on higher judicial instances, especially the Supreme Court, and appropriate policies developed

and implemented to address them. These could include particular recommendations and guidelines to judges in addressing some of the recognized common ‘bottlenecks’ (for instance, where a delay is caused by a prolonged inactivity of a party, the reason for this could be checked), specialized training on specific procedural or substantive issues, requests for prompt actions by other governmental bodies where they are found to be the reason for delay, or even recommendations for adjustment of some procedural provisions.

This would establish a practice for continuous active management of this category of cases thus avoiding perpetuating the problem of their constant accumulating and, as their disposition would progress, free the court resources to focus on other categories of pending cases, on quality of decisions, and on incoming cases.

Box 2: International experience with ‘backlog’ reduction

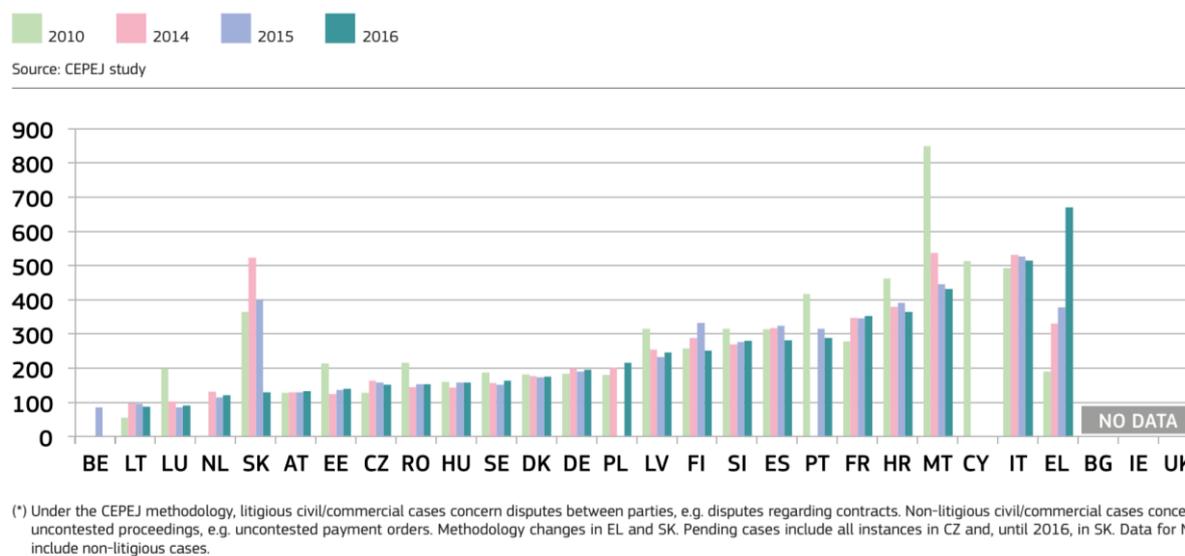
Western European countries rarely have the backlog issues experienced by transitional and developing nations. The reasons are simple; Western Europe did not experience, at least in recent times, the enormous changes in demand, typical of countries where courts have suddenly become available to more citizens to resolve new problems, which, when they occur, are typically settled in other venues in the West. Where countries in Eastern Europe and in other regions undertake backlog reduction programs, they do start with the older cases, but the most successful typically take a broader vision, analyzing the age of all active cases, classified by type and location (court and instance) to develop a longer-term plan for ensuring only slightly old cases do not become far older for lack of attention. It is also good to realize that because some older cases will remain unresolved for years if not decades, they cannot be the sole focus. Parties may have disappeared or resolved their issue without informing the court, or there may be other details that prevent their definitive resolution. Finally, removing a massive accumulation of older cases can have positive effects for judges (clearing courtrooms and creating a feeling of accomplishment), but for system users, it will matter the most as it affects delays for their own cases, whether old or newly entered.

2.1.2 Delay in Resolving Cases at the First Instance

Progress Made and the Current Situation

Reducing delay in first-instance dispositions remains a goal for Croatia and is emphasized by the EU and expected by citizens as a high-priority objective. While improving, DTs for litigious civil and commercial cases in the first instance remain well above average, exceeded only by Slovakia (except for 2010 and 2016), Malta, Cyprus (data available only for 2010), Italy, and Greece (only for 2016). However, there is one important caveat with respect to the measurement method. DTs used here represent an arithmetic, theoretic estimate calculated by applying the formula $DT = \text{unresolved cases} \div \text{resolved cases} \times 365$ which is really a measure of court congestion. As discussed below, real DTs (that is, actual average time before a party may expect its case to be resolved by a court) taken from countries’ CMSs often differ substantially (that is, are longer). For example, in 2018, actual average time for resolving a litigious civil case in municipal courts amounted to **854 days**, and in commercial courts amounted to **669 days**.

Figure 2: Time needed to resolve litigious civil and commercial cases, first instance (DT in days)



Source: 2018 EU Justice Scoreboard, based on CEPEJ data.

When viewed from the perspective of municipal courts, the case flow and staffing levels during 2014–2018 were as shown in Table 8.

Table 8: Municipal courts, case flow (including land registry) and staffing

Type of courts	Year	Number of judges/advisors	Case flow			
			Pending at the beginning	Incoming	Resolved	Pending at the end
Municipal courts	2014	1,159	363,492	809,790	821,074	332,866
	2015	1,140	332,866	757,509	778,414	299,629
	2016	1,123	299,629	804,622	813,409	289,357
	2017	1,111	289,357	796,602	796,182	282,579
	2018	1,079	282,579	739,693	769,526	249,740

Source: MOJ of the Republic of Croatia, draft Statistical Review for 2018.

Table 9 presents the actual time taken to resolve particular types of cases (without land registry cases) in 2018.

Table 9: Municipal courts, actual DTs (without land registry)

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil											
Civil-litigious	26,990	26.85	21,097	20.99	20,647	20.54	10,300	10.25	21,469	21.38	100,530
Enforcement	49,659	54.55	12,747	14.00	8,644	9.49	4,449	4.89	15,543	17.07	91,042
Probate	4,378	49.31	1,380	15.54	1,095	12.33	565	6.36	1,461	16.45	8,879

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
Mediation	64	19.94	62	19.31	79	24.61	31	9.66	85	26.48	321
Other (including criminal)											73,120
TOTAL	133,874	48.88	42,530	15.53	35,845	13.09	18,117	6.61	43,526	15.89	273,892

Note: Actual duration of cases resolved in 2018, from the date of commencement of proceedings to the date of resolution by a municipal court

Source: Data extracted from ICMS report on actual DTs in 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

The vast majority of cases resolved in 2018 were within two years of age—77.5 percent. For civil-litigious proceedings, this came to 68.38 percent, with an additional 10.25 percent solved within three years and 21.38 percent cases solved after being pending in the system longer than three years. It is also interesting that, apart from their very small number, disputes took even longer to be settled with mediation than cases solved through the civil-litigious procedure.

Table 10 presents the age of cases that remained unresolved as at the end of 2018.

Table 10: Municipal courts, actual age of pending cases as of December 31, 2018 (without land registry cases)

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil											
Civil-litigious	28,158	26.19	18,691	17.39	22,519	20.95	12,930	12.03	25,202	23.44	107,500
Enforcement	9,112	20.30%	6,263	13.95	8,140	18.13	5,049	11.25	16,326	36.37	44,890
Probate	1,812	27.33	1,151	17.36	1,166	17.59	709	10.69	1,792	27.03	6,630
Mediation	20	12.66	25	15.82	52	32.91	15	9.49	46	29.11	158
Other (including criminal)											44,126
TOTAL	53,177	26.16	33,112	16.29	40,311	19.83	24,026	11.91	52,498	25.82	203,304

Source: Data extracted from ICMS report on age of pending cases as of December 31, 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

The data presented in table 10 points to the need for the courts to pay more attention to cases pending in the system that are over three years on December 31, 2018. Some of the case management techniques discussed ahead might be applied to avoid accumulation of backlog, especially in civil-litigious (23.44 percent of total pending cases), enforcement (36.37 percent), and probate cases (27.03 percent), especially since this is the category of pending cases feeding the perception of courts being slow and inefficient, and giving rise to interpretations involving possible corrupt practices.

Average DTs is one of the indicators used by CEPEJ to analyze court efficiency across member states.¹¹ Data on DTs is typically calculated based on case management information generated in individual member states. In the case of Croatia, Table 11 provides information with respect to the average time to disposition (DT) in days for civil and land registry cases in the municipal courts using CEPEJ criteria (2018). Since quality of data from CMSs (for example, ICMS) increases the reliability of cross-country comparison, continuous improvement of information and statistical systems should be part of any future plans, as already contemplated by the Croatian authorities.

Table 11: Average DT in days, civil and land registry cases in municipal courts

Case type	Case flow in 2018			Indicators	
	Incoming	Resolved	Pending	Clearance Rate	Disposition Time (days)
Civil-litigious	90,657	100,524	107,504	110.88%	390
Enforcement	68,484	91,064	44,872	132.97%	180
Consumer bankruptcy	178	249	295	139.89%	432
Extra litigious (R1)	19,977	18,764	10,649	93.93%	207
Probate	8,511	8,710	6,649	102.34%	279
R2, assistance, and certifications	20,001	20,037	2,859	100.18%	52
Mediation	346	321	158	92.77%	180
Land registry	495,739	495,865	46,432	100.03%	34

Source: Data from the MOJ.

In the case of commercial courts (first instance), performance data are also similar (see Table 12).

Table 12: Commercial courts, case flow (including business registry) and staffing

Type of court	Year	Number of judges/advisors	Case flow			
			Pending at the beginning	Incoming	Resolved	Pending at the end
Commercial courts	2014	172	40,514	153,936	160,052	33,954
	2015	166	33,954	169,094	158,250	44,236
	2016	168	44,236	182,639	185,776	38,694
	2017	168	38,694	168,008	171,944	33,237
	2018	180	33,237	165,742	167,638	29,444

Source: MOJ of the Republic of Croatia, draft Statistical Review for 2018.

¹¹ Average DT does not necessarily equal the ‘actual time for the resolution of cases’ measured by CMSs in member states, as methodologies and criteria may vary. The Council of Europe (COE) defines the DT indicator as follows: it compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. The days in a year (365) is divided by the number of resolved cases divided by the number of unresolved cases at the end, to express it in number of days. The ratio measures how quickly the judicial system (or the court) turns over received cases, that is, how long it takes for a type of cases to be resolved. This indicator provides further insight into how a judicial system manages its flow of cases. See <https://rm.coe.int/1680747678>.

Table 13 shows what were the actual DTs in which commercial courts resolved particular types of cases during 2018 (without business registry cases).

Table 13: Commercial courts, actual DTs (without business registry)

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil-litigious	4,127	23.74	3,803	21.87	4,589	26.39	1,990	11.45	2,878	16.55	17,387
Enforcement	1,136	66.98	125	7.37	109	6.43	39	2.30	287	16.92	1,696
Bankruptcy	2,315	35.18	2,090	22.18	2,062	21.88	1,483	15.74	472	5.01	9,422
Mediation	30	57.69	13	25.00	4	7.69	4	7.69	1	1.92	52
Other											
TOTAL	10,888	34.95	6,178	19.83	6,876	22.07	3,546	11.38	3,668	11.77	31,156

Source: Data extracted from ICMS report on actual DTs in 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

The data reveal that commercial courts had a similar pattern as municipal courts when it comes to time needed to resolve certain types of cases (for example, civil cases). In that, within the overall number of civil-litigious cases resolved, those pending for over three years had slightly lower share than in municipal courts (16.55 percent compared with 21.38 percent, respectively). On the other hand, commercial courts currently have much better results in resolving bankruptcy cases, which were considered a problem a few years ago. Data show that mediation, same as in municipal courts, did not gain popularity with the business sector.

Table 14 shows pending cases at the first-instance commercial courts, as of December 31, 2018.

Table 14: Commercial courts, actual age of pending cases as of December 31, 2018 (without business registry cases)

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil-litigious	3,832	21.52	3,897	21.88	4,752	26.68	1,994	11.20	3,334	18.72	17,809
Enforcement	129	31.39	35	8.52	43	10.46	37	9.00	167	40.63	411
Bankruptcy	2,559	29.60	1,170	13.53	1,167	13.50	1,732	20.03	2,018	23.34	8,646
Mediation	7	46.67	2	13.33	5	33.33	0	0.00	1	6.67	15
Other											471
TOTAL	6,833	24.98	5,185	18.96	6,015	21.99	3,780	13.82	5,539	20.25	27,352

Source: Data extracted from ICMS report on age of pending cases as of December 31, 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

Data on cases pending in commercial courts as of December 31, 2018 show that in 2019 and onward, commercial courts might want to pay more attention to litigation cases older than three years (18.72 percent share in overall pending cases of the type), as well as to older bankruptcy cases (23.34 percent, with a relatively high number of 2,018 proceedings pending over three years). Although the share of enforcement cases older than three years seems high (40.63 percent of all pending enforcement

cases), this relates to only 167 actual cases—probably there are no sufficient assets against which a claim can be collected, or there is some other problem preventing the resolution. Efforts should be made to explore the key factors causing this delay.

Although data from international comparator reports is important, time series information and statistical data from in-country CMSs (for example, ICMS in the case of Croatia) have higher value add for targeted policy design. Although CEPEJ’s DT indicator will remain in use for calculating and reporting on any delay reduction programs, Croatia, with actual data from its ICMS, is in a better position to calculate DT based on real averages, although it might want to differentiate between resolution times for the oldest cases to avoid distortions or other measurement errors.

Challenges and Opportunities

Croatia’s approach to delay reduction has so far been limited to incorporating changes in procedural legislation, delegating cases from overburdened courts to those less burdened, and monitoring/amending productivity targets (framework criteria) for evaluating judges’ performance (although these are only indirectly connected with delay reduction). The results, as noted, are tracked through the ICMS, and the approaches can be credited with the reductions shown above, although as the European Commission (EC) notes, in recent years, this has also been a result of a declining number of incoming cases. However, broader experience suggests several additional methods could be used to further reduce delays, most of which are available to Croatia and could reduce both the real average resolution times and DTs as calculated using the CEPEJ formula more significantly.

Box 3: International experience in delay reduction

Delay is a universal complaint about judicial systems, even in countries where it seems to be under control and where, as in many, demand seems to have plateaued in recent years. As adding more judges becomes less feasible, courts are turning to two other solutions: demand and supply management.

Demand management (or moving out cases out of the courts) strategies include dejudicializing some cases (as Sweden did with public drunkenness), channeling issues to other venues (for example, ADR and public notaries), and improving initial screening so that nonjusticiable cases are eliminated early on. Court fees have also been used to discourage trial adjournments (for example, Singapore), vexatious cases, and court use as a collection agency by banks, public utilities, and other frequent clients.

Supply management actions. They aim at accelerating responses by simplifying procedures through the introduction of small claims courts and proceedings; giving judges (not parties) control over the case trajectory; delegating more tasks to law-trained associates or clerks; ensuring more efficient use of preliminary hearings to define precisely the issues under dispute; limiting the number of witnesses; and pushing parties to consider settlement or mediation. IT has facilitated case management (for example, in the United Kingdom, online systems are used in processing money claims for debt cases). Many countries have used ICT for facilitating access to the court services by parties and their lawyers. In addition to operations support to judges and staff, the principal function of ICT should be to help judges and higher-level administrators identify bottlenecks and track impacts of reform measures.

Proactive case management, defined as the judge taking the lead in structuring case development, may be the most critical measure. The northern European countries seem most advanced within the continent. In both Norway and the Commercial Court of Ireland, pretrial conferences (in Norway by phone) and hearings are used to organize matters (witnesses and dates) for the main hearing. In Ireland, early results from proactive case management and modernization efforts have reduced the average DT for commercial cases from two years to four months. Of the cases, 25 percent were concluded within 4 weeks, 50 percent within 15 weeks, 75 percent within 32 weeks, and 90 percent in less than 50 weeks.

Good practice examples show that simply enacting new laws and procedures is not enough; they should be implemented to achieve intended effects, with the help of data-enabled policy decision making. Croatia in fact has a small claims procedure and laws promoting ADR, but ADR is minimally used (as shown in Tables 9, 10, and 11) The small claims procedure is also in place, and apparently, a large majority of cases of this type are resolved within one or two hearings. However, the ICMS system currently does not track the small claims procedure as a separate type of case (as it is actually a subtype of civil litigation procedure). It might be useful to further analyze these proceedings and explore possibilities for additional simplification and acceleration of small claims procedure. In choosing and enacting reforms, good prior analysis and ex post evaluations are also critical. Croatia has good tools (for example, the ICMS) to do this but so far has used them largely to support its traditional (basic) approaches—setting productivity criteria, monitoring compliance, and rebalancing resources and case-loads.

Recommendations

Focus on increasing court productivity by 1-2 percent annually through active case management; adoption of time management standards as the “framework criteria”; analyze the use of ADR and small-claims proceedings and improve their coverage; review options of court case demand management; and target specific categories of cases to improve productivity.

The case flow projection model described above (Table 7), combined with the analysis of actual time needed for resolution and age of pending cases (Tables 7, 8, 11, and 12), shows that most of Croatia’s justice improvement goals for 2030 can be achieved, by improving the efficiency of its first-instance courts by only 1–2 percent annually, over the next five years. This goal can be

achieved by adding a few features to its existing set of traditional solutions—that is a more thorough analysis of the dimensions, causes, and locations (by case type, case stage, and court) of case delay to develop a short-, medium-, and long-term strategy for its reduction. This targeted policy development can be based on its CMS (for instance, ICMS) with the services of an expanded group of statistical analysts within the MOJ, and in collaboration with the court managers that are being appointed in courts (larger courts with 15 judges or more). Promoting higher productivity and moving cases, or judges, to rebalance workloads have their limitations for delay reduction, and thus, it may be time to consider some of the other tested remedies. Some may not work locally at this time; for example, payment of court fees is not used as an auxiliary tool for controlling the demand (or affecting the pattern) for court’s services in Croatia (that is, affecting decisions to litigate).

Deployment of active case management has a significant potential. Croatia actually has the most (if not all) prerequisites for its use in place. Yet, active case management is a notion rarely discussed within Croatian legal circles. Notably, although the Civil Procedure Act (*Zakon o parničnom postupku - ZPP*) and the Rules of Court Procedure leave ample space for its implementation, and in spite of the fact that Croatian civil procedure theory heavily accents principles of integrity, concentration, and adversarial nature (*jedinstvo, koncentracija, kontradiktornost*) of proceedings, active case management is not often mentioned. Manuals and training programs on active and effective case management (*vođenje postupka, upravljanje postupkom or postupovni aktivizam* in Croatian) should be developed. At this time, there are courses and workshops for judges on procedural legislation, especially before or after significant changes of such legal acts; however, case management is a discipline that goes beyond (or flows under) the mere procedural provisions in force. As the ZPP of 2013 introduced preliminary (preparatory) hearing, an important tool for planning and managing the proceeding, active case management could help implement these reforms. In addition, the ZPP envisages agreeing on fixed hearing dates, agreed addresses, and methods of service of process, which are some of the key tools of case management. This trend of strengthening case management in reforms of (civil) procedural legislation is common in Europe. This approach is sometimes referred to as a move to three-dimensional proceedings, where a guarantee of just and fair process, timeliness, and cost of justice is given similar (equal) attention for improving justice services to citizens. Strengthening judges’ awareness and skills in case management could, together with other measures suggested in this PN, contribute to a more efficient and faster disposition of cases.

Setting of case processing time target (based on data shown in Tables 7, 8, 11, and 12) can move the policy agenda forward and contribute to efficiency improvements. Active case management should be combined with other measures. The **Framework Criteria** (*Okvirna mjerila za rad sudaca*) should be revised to include certain time management standards, such as resolving certain percentage of cases within certain preset time frames, established for various types and subtypes of proceedings. To that end, a project aimed at producing a case weighting study that is being prepared by the MOJ could be used to analyze and recommend specific time-based criteria to be used both for equalized distribution of cases (input criteria) and for establishing some average times in which particular procedural activities are expected to be done (time management). The development of proactive management capabilities within the justice sector (policy makers) would require a more advanced use of ICMS for tracking the actual case processing times, rather than the CEPEJ-style DT measurement, the limitation of which were described above.

Furthermore, a knowledge approach should be deployed to unbundle the causes of limited impacts so far, of the use of the ADR program.¹² User preferences are offered as an explanation for

¹² The Republic of Croatia’s Systematic Country Diagnostic, the World Bank Report No.: 125443-HR, May 4, 2018.

the low incidence of ADR, but similar prejudices experienced in other countries have been overcome successfully. These measures include re-popularization of the ADR concept among citizens, youth, court litigants, lawyers, and other justice stakeholders, with the objective of listening and learning from their feedback and making adjustments to the court-annexes services. It also includes upgrade to the quality and incentive system of mediators (especially their performance oversight). Improvement in mediation has been linked to mediation room quality, client services, layout, signage, and so on, among other infrastructure factors.

Internationally, court fees are an important area for policy analysis, user accessibility, and choice. However, as noted, court fees in Croatia have (so far) not been used for directing or influencing the demand side of the system, taking into account the constitutional guarantees on access to court.¹³ As the ADR data are limited, it is not clear whether court fees could be used for rising the attractiveness of ADR mechanisms at this time (see the section on budget and court fees for more details). The proposed amendments to the ZPP are in the public consultations Phase. These contain several new solutions for raising parties' interest for ADR, including by introducing a possibility of sanctioning a party that ignores a proposal for mediation by not awarding it the litigation costs (from that moment onward) in the first-instance decision. Once approved, these amendments should be disseminated to raise ADR awareness among judges, mediators, and users.

Finally, the general perception of Croatia's courts being slow and inefficient is, apparently, due to cases that are older than three years in the court system, that is about 25 percent in municipal courts and about 20 percent in commercial courts. In actual analysis, reasons for such duration of these particular types of cases may be numerous such as the complexity of the legal issue or factual situation, the manner in which parties use (or abuse) their procedural rights, the party losing interest, the legal facts having changed, conflict of laws/regulation, and interinstitutional coordination factors. Typically, the general public, unaware of such complexities, tends to blame the court for all of those factors that cause delays. When the court system makes effort to analyze such situations and deploys active case management, and other measures that are in its control to cut delays, it helps improve citizen perception. In addition, outreach to court users and the media about the improvement effort carried out by the courts helps build a positive image over the medium term.

2.1.3 Reducing Case Delays due to Appeals

Progress Made and the Current Situation

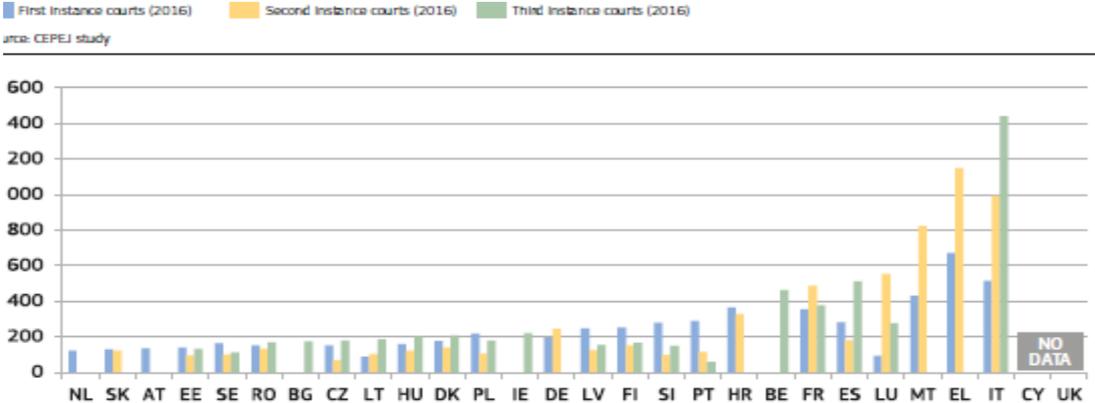
Appeal adds time to case resolution. If a case decision in first instance is appealed, the total time for final decision is longer (that is, time taken during the first instance plus the time taken for the appeal process to conclude and a decision taken). In the case of Croatia, it is adding an estimated 219 days in civil-litigious case (2018), according to statistics provided by the MOJ. This is an improvement from 2014 (284 days).

Policy analysis of appeals is a challenge in many EU countries due to lack of data and other challenges. For example, the Justice Scoreboard only tracks times for first- and second-instance

¹³ Internationally, within the constitutional protections of citizens' right to access to fair trials, many jurisdictions charge court fees for a varying degree of cost recovery for the services they provide and for demand management.

dispositions for Croatia. In Croatia, the third instance cases (that is, Supreme Court cases) show a decreasing number of pending cases and lengthy, but decreasing, delays in civil case resolutions.¹⁴ For second-instance cases (appeals), Croatia is above the EU average DTs.

Figure 3: Time needed to resolve litigious civil and commercial cases at each instance



Source: 2018 EU Justice Scoreboard (2016 data from CEPEJ).

Second- and third-instance appeals certainly add total time to case resolution, but the untracked factor here is the frequency of appeal. Currently, the MOJ does not appear to track precise appeals rates. Data on appeal rates is also limited in the Justice Scoreboard. However, in Croatia, the annual monitoring of judges’ performance has appeal process-related criteria: the number and ratio of appealed decisions to total number of decisions made by a judge and the ratio of overturned/remanded decisions to appealed decisions. In addition, in the MOJ’s Annual Statistical Review, appellate courts do provide some data on the number and manner in which appellate cases were resolved. The issue here is that, as a rule, decisions upon appeals most certainly do not relate to first-instance cases resolved during that same year (rather to first-instance decisions issued several years back). In addition, appeal is not allowed on all first-instance decisions. Regardless of this, combinations of such existing data over a longer time span (3–5 years, for instance) could be used to track these aspects of the judicial process. In addition, an upgrade of the ICMS system to track a particular case through all appellate phases could be considered. While delay is a complaint in nearly all justice systems, it appears to exacerbate by frequent use of appeals and revisions. Thus, many Western European countries, like Germany, have introduced filtering mechanisms to eliminate frivolous appeals or those involving ‘harmless error’ (issues that would not affect the final judgment).

Table 15 presents actual times in which appellate cases were resolved in County Courts during 2018. Table 16 shows the actual age of appellate cases pending in County Courts at the end of 2018.

Table 15: County Courts, actual DTs for civil cases resolved in second-instance (appeals) in 2018

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil											

¹⁴ For civil cases, at the end of 2018, the unresolved caseload amounted to 14,219, which is a 15.1 percent improvement over 2017. The DT was 553 days, also a significant improvement over the 774 days recorded for 2017. Unresolved criminal cases slightly increased compared to 2017 and at the end of 2018 amounted to 707.

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil second instance	31,392	54.37	8,926	15.46	11,122	19.26	5,063	8.77	1,239	2.15	57.742

Source: Data extracted from ICMS report on actual DTs in 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

Table 16: County Courts, actual age of pending second-instance civil cases (appeals) as of December 31, 2018

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil											
Civil second instance	13,687	39.52	10,070	29.08	8,534	24.64	1,929	5.57	414	1.20	34.634

Source: Data extracted from ICMS report on age of pending cases as of December 31, 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

In 2018, of the total number of appeals, the appellate courts resolved 70 percent within 12 months, and 89 percent within 24 months. Distribution of pending cases per selected time categories highlights the need for the County Courts to focus on cases pending between 6 months and 24 months, as their share in total pending cases is about 54 percent.¹⁵

Age of pending appellate proceedings at the High Commercial Court of the Republic of Croatia show that cases pending between 12 months and 36 months deserve a special attention, as their share in total pending cases is about 47 percent, along with 6.37 percent of cases pending over three years.

Table 17: The High Commercial Court, actual age of pending second-instance civil cases, as of December 31, 2018

Case type	0–6 months		6–12 months		12–24 months		24–36 months		Over 36 months		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	
Civil											
Civil second instance	2,311	23.92	2,168	22.44	2,691	27.85	1,877	19.42	616	6.37	9,663

Source: Data extracted from ICMS report on age of pending cases as of December 31, 2018, categorized by specific periods (6 and 12 months). Complete table is attached to this PN.

Challenges and Opportunities

Croatia has already initiated some legislative measures to address delays in case resolution in appeal matters. A proposal from the Supreme Court is to introduce a possibility of reviewing a pending case of general interest (in the sense that a larger number of similar cases exist or may be expected) and provide a definitive legal interpretation for such issues (model proceedings, or *ogledni postupak*). This measure (in effect a precedent) has been included in the newly proposed amendments to the ZPP and, if

¹⁵ The ‘age of cases’ is calculated based on the time the appeal is received at a County Court. Therefore, from the users’ perspective, the time to disposition of a case will be higher as it will include the time it took in the first instance. There is a need to conduct detailed analysis of cases pending at the second instance to determine delay reduction strategy (with overall time from filing in first instance and the time it takes in the second instance).

implemented, could bring more legal certainty and thus eliminate significant sources of delay on all instances.

Another novelty introduced by the recent changes of the Law on Courts (in force as of January 1, 2019) is the creation of a Special Criminal Appellate Court to hear appeals from criminal cases first judged in the County Courts (as of January 1, 2020). Other proposals within the draft ZPP are aimed at limiting the right to revision (by further narrowing down legal grounds for revision and by introducing previous deciding on admissibility of a revision, that is, leave to appeal). Possibility of remanding the proceedings by a higher court has already been limited to only once by previous amendments to the ZPP (2013). At the same time, a ‘universal territorial jurisdiction’ of appellate courts (County Courts) was introduced, meaning that any first-instance decision upon appeal may be reviewed by any County Court, across the country (with several courts being specialized for particular types of cases).

Box 4: International experience in controlling delays and congestion due to appeals

This is more a problem for continental than common law systems, because in the former, the right to appeal a first-instance decision is often interpreted as unconditional. This seems to be taken still more seriously among Eastern Europe judiciaries, following their own (and their Constitutional Courts’) interpretation of ECHR jurisprudence. Elsewhere in Europe a concern with excessive, often abusive, use of appeals has been apparent for over two decades, as demonstrated by the Council of Europe Committee of Ministers’ Recommendation No. R (95) 5 regarding ‘the problems caused by an increase in the number of appeals and by the length of appeal proceedings’. While recognizing the fundamental right to an appeal, the recommendation suggests a series of measures to discourage abuses and accelerate the process. The several dozen suggestions range from excluding certain categories of cases and requiring ‘leave to appeal’¹⁶ to adopting a simplified method for dismissing appeals that appear ‘manifestly ill-founded, unreasonable, or vexatious’ as well as sanctions/fines for those indulging in this practice and allowing single judges (rather than a panel) to handle minor, family, and urgent cases.

Examples of other measures. Already in effect in several European countries (France, Sweden, and the Netherlands) is the plan to eliminate a third-instance review by the highest court, limiting its role to cassation combined with the ability to select cases of general interest, and restricting second-instance appeals to a review rather than a retrial. These measure have had mixed results. In the Netherlands, for example,¹⁷ the Hoge Raad (Cassation Court) still suffers a case overload because of a prior requirement that it judge all cases submitted to it. Two procedural mechanisms introduced in 2011 allowed it to reduce, by 49 percent, the number of cases judged on the merits, with the rest dismissed through an expedited review. In short, no silver-bullet solution to delay caused by appeals has been found, and the key is to continue exploring options and testing them.

As highlighted above, Croatia recognizes appellate procedures as sources of significant extension of time in a final decision on a dispute. Changes planned in the proposed amendments to the ZPP are in line with some of the attempts made elsewhere in Europe and have been presented to public consultation. Some of the proposed changes shall represent a considerable novelty within the legal system, so far used to an ‘absolute right’ to appeal; therefore, a level of caution in such an approach is understandable and desirable.

¹⁶ Leave to appeal is a common law term and refers to the appellate courts’ early decision on whether an appeal merits their review, a process that requires the appellant’s precise explanation of the errors allegedly committed in the initial judgment.

¹⁷ Mak, E. 2015. “Case Selection in the Supreme Court of the Netherlands – Inspired by Common Law Supreme Courts?” *European Journal of Current Legal Issues* 21 (1).

Recommendation

Conduct specific analysis of appeal cases; address delays through trainings, promotion of guidelines, issuance of legal opinions; rationalizing the right to appeal; and achieving higher transparency of higher-instance courts' decisions.

The authorities could use the ICMS and whatever other data that exist to diagnose the dimensions, locations, and causes of higher appeals rates and their duration and possibly detect areas where some additional efforts (training, education, legal opinions, and legal positions by the Supreme Court) could be beneficial. For example, in the Annual Statistical Review with comments published by the MOJ, there are tables presenting the number of overturned first-instance decisions, sometimes including the reason for which they were overturned. It appears that 'material breach of procedural law' is one of the most frequent reasons due to which the first-instance decisions are overturned (which can be directly linked with frequent changes to procedural legislation, discussed in the following chapter).

Croatia is obviously moving in the direction of limiting the right to revision (the third instance); thus, it should ensure that all decisions of all appellate courts become fully accessible and public (on SupraNova system and other ICT tools), because, as parties will have less possibilities to appeal, they are expected to rely more on court practice in shaping their legal strategies. Another measure that the authorities may pursue is increased emphasis on higher degree of harmonization, uniformity, and stability of court practice—especially on the higher instances. This would help the overall performance of the system, improve quality, and cut delays in the appeal process. Overall measures should take into account the existing set of remedies available and implement these measures in phases and in a well-coordinated manner to avoid backsliding or resistance in implementation.

2.1.4 Enforcement

Progress Made and the Current Situation

The enforcement system has undergone significant changes in the last 25 years. Enforcement is a legal procedure governing the involuntary collection of creditor's claims (that is, collection of debt) or securing such claims. For almost 70 years, that is, until 2012, all enforcement systems in Croatia (and before that in the Socialist Federal Republic of Yugoslavia) were heavily leaning in favor of the debtor.¹⁸ Enforcement of debt, short of debtor's willingness to pay, was extremely cumbersome and difficult, to the extent that it was in many instances practically impossible.

Although the courts would eventually issue a 'writ of execution', the mechanisms in place for making the transfer of assets actually happen (money and property) from debtor to creditor were greatly inefficient. By late 2000s, this was recognized as a major problem and within the accession process, an attempt was made to address the issue. In 2010, a legislative framework was adopted introducing a new system of enforcement mostly based on 'public bailiffs'—in essence a heavily regulated private profession. However, due to a strong public resentment of an idea that private 'sheriffs' could storm peoples' homes and forfeit their possessions, this model was never put in force.

¹⁸ In 1991, Croatia took over the Law on Enforcement Procedure from the ex-Yugoslavia. In 1996, the Enforcement Act was enacted, followed by the one in 2010 (never came into force) and 2012 (currently in force). Since 1996, these acts were changed and amended 25 times. The new Enforcement Act is at the moment in the process of public consultation.

In 2012, a new system was designed and introduced. First, all motions for enforcement against debtor's monetary assets based on trustworthy documents—that is, documents that make the existence of debt highly plausible (such as regular utility bills, telecom operators' invoices, credit card invoices, and unpaid installments of bank loans)—were removed from jurisdiction of courts to public notaries. Second, public notaries, after establishing the existence and validity of debt, would send a decision on enforcement (a writ of execution or payment order) to FINA—a state-owned commercial entity with legal authority and direct channels of communication with all banks in Croatia—to forfeit the claimed amount with all associated costs from any and all debtor's accounts. In case of insufficient funds on the account for covering the amount, the account would stay blocked (frozen) until the entire amount of debt, costs, and accrued interests could be collected and transferred to the creditor. Enforcement based on other types of enforcement titles (other than trustworthy document) as well as enforcement against real property remained under the court jurisdiction. In addition, if a public notary would find that motion for enforcement on the basis of trustworthy document does not meet the requirements prescribed by the law, or if a debtor would contest it, it would transfer it to the competent court for adjudication in a civil litigation.

Overall the system was considered very efficient (especially in the segment of enforcement against monetary assets), and for the first time in a long period, Croatian society started to realize that debts eventually must be paid and that debtors can no longer find 'refuge' in inefficiencies of the system. However, it raised other social and political concerns in the justice sector.

Challenges and Opportunities

In light of the past experience, and the push back it received during implementation, the current enforcement system is considered deficient. First, in debtors' view, the system, especially in practice, lacked sufficient protection of debtor's rights. Due to a simplified regulation of service of process, debtors often did not receive the decision on enforcement against their monetary assets informing them on their right to appeal.¹⁹ First information on the fact that some debt, plus costs, was forfeited from their account often came ex post from their bank statements, or them checking their accounts. **Second**, costs borne by debtors at the end of the process were considered proportionally high—for example, for an unpaid electricity bill in the amount of HRK 200.00, the total amount of HRK 1,100.00 would be immediately forfeited from debtor's account (that is, original debt was increased by 400 percent). These consisted of lawyer's fee, notary's fee, FINA's fee, interest, and some minor charges. Of course, enforcement suddenly became a big business for everyone involved, thus creating a strong motivation for efficiency. For instance, in 2016 and 2017, income generated by its 'Enforcement Center' was the single largest revenue item for FINA, representing approximately 20 percent of its total income from sales. Some HRK 180.2 billion were collected. Central, state, and local governments and their utility companies were by far the most frequent creditors (37 percent), followed by banks (6–12 percent), telecoms (7 percent) and others.²⁰ **Third**, in combination with some other developments (especially the Swiss

¹⁹ After a number of unsuccessful attempts of delivery, the ruling was posted on the e-notice board and considered duly served. At the same time, this can be considered as a very efficient approach.

²⁰ FINA, Annual (Financial) Report, 2017 at: <https://www.fina.hr/godisnja-izvjesca>. (Note that data on creditors are given separately for physical persons and legal entities; therefore, respective shares per groups of creditors are calculated here as an average.)

Franks (CHF) loans), the enforcement system resulted in around 350.000 people (debtors) having their bank accounts frozen for an extended time with their debt rising, meaning that they were completely ousted (or ousted themselves) from the country's official payment system. This caused social problems and resulted in personal insolvency. In response to this challenge, the authorities introduced the personal bankruptcy law in 2017 and, more recently, changes in 2019, the results of which have yet to be fully ascertained at this time. The **fourth** and final blow came from the Court of Justice of the EU which found that enforcement decisions issued by public notaries may not be accepted as a basis for European Enforcement Order, for they cannot be considered as issued by a court in an adversary proceeding.²¹

Government and local authorities attempted to respond to the crisis by giving amnesty for some types of debt to some categories of population, or simply write off debt on utility charges to everyone with a blocked account, regardless of their social and financial status (City of Zagreb, for example). This was not well received by those who actually do pay their bills regularly. However, it was all too little and too late—the combination of these challenges to the existing system left the government with little options but to change the law.

The draft new Enforcement Act—which is under public consultation at the moment—seeks to introduce a new system of enforcement based on a trustworthy document. Enforcement would be under the courts' control—with the courts having general jurisdiction over the proceedings—while keeping the public notaries involved as officers of the court (to relieve the courts of extra burden as much as possible).

The proposed system plans to reduce the cost of proceedings through a special ordinance that is yet to be determined. The proposal aims to introduce a requirement, whereby the debtor will be informed of the proceedings according to the debtor's right. The debtor will also be given the option to pay the debt voluntarily or contest it. The proposed system (a) keeps FINA as the agency that collects and transfers monetary assets; (b) makes the electronic exchange of documents between notaries, courts, and FINA mandatory; and (c) adds additional types of income exempted from enforcement. Furthermore, the proposed system will set the minimum value of the debt that can be enforced against a debtor's real estate to HRK 40,000.

The proposed system aims to achieve a better balance between the rights of creditors and debtors and keep the proceedings efficient and expeditious by setting firm procedural timelines and requiring online processing.

However, judging by the current draft and the public comments received so far, it may be difficult to accommodate all of these goals. The interaction between the main participants—creditor, notary, debtor, court, and FINA—seems too frequent and with the counterintuitive sequencing of steps. The major challenge lies in that, according to the new law, all new enforcement cases may end up in the court system at a certain point (about 400,000 cases based on some conservative estimates). Even in the best-case scenario (for example, if a debtor pays upon notary's warning), the court will have to do extra work (for example, opening a new case in an electronic format, processing data, and communicating court decisions to the parties electronically). There is also the risk of significantly longer proceedings (as noted by the Croatian Bar Association, Public Notary Association, and creditors), which may result in higher interests accruing for the debtor. It is therefore important to carry out an impact assessment to

²¹ Pula Parking d.o.o. v. Sven Klaus Tederahn, C-551/15, March 2017; Zulfikarpašić v. Slaven Gajer, C-484/15, March 2017.

determine the likely effects of the proposed regulatory changes on the courts' workload to develop appropriate implementation plans.²²

The biggest opportunity lies in the fact that over the past few years, the culture of 'nonpayment' has been seriously shaken, if not overturned. Whatever final version of the system is adopted, it should strive not to lose this momentum. The proposed draft act represents a continuation of the Government's efforts to solve the problem of those citizens that are 'blocked' out of the financial system because of enforcement and financial related difficulties. Although this proposed act is part of the reform package enacted in 2018 and 2019 that includes the Act on Discharge of Debt to Natural Persons, the Act on Enforcement against Monetary Assets, and the Act on Changes and Amendments to the Consumer's Bankruptcy Act (which introduces simple, or fast-track, consumer bankruptcy proceedings).

Recommendation

Improve RIAs; monitor and review the proposed enforcement system to facilitate implementation and lessons learning; and develop alternative solutions.

Additional in-depth analysis might be required to determine all possible impacts and implications of the proposed system of enforcement based on trustworthy document. This analysis should be done quickly by the holding of mock proceedings, mapping out of steps, and carrying out additional consultations with stakeholders,.

Although with the recent merger of misdemeanor courts to municipal courts, the system will receive some additional human resources for absorbing part of the new incoming enforcement cases. As pointed out in other sections of this document, it could be argued that the system does have some internal reserves available. However, this alone might not be enough. To avoid overloading the courts, the new system must be flawless and seamless, with business processes smoothly and logically flowing between all system participants. Supporting ICT functionalities should then be developed (in practice, making minor adjustments to the ICMS), and the interconnectivity between creditors-courts-notaries-FINA should be secured, fee payment tools adjusted, and particular predefined forms and templates carefully drafted. Otherwise, the proposed model may have significant negative impacts on courts' performance, as well as economic and societal implications.

In view of the above consideration, once the pros and cons of the implementation needs of the proposed system are fully determined, it may be useful to assign specialized courts for enforcement matters. These courts could operate with electronic proceedings and be modeled on the Slovenian, Polish, or Estonian experience (see Box 5 for details).²³

²² Disclaimer: Comments above are based on the Draft Law on Changes and Amendments to the Enforcement Act as published for public consultations on 'e-savjetovanje' platform during January 2019 (now closed) and public comments published upon it. Apparently a new, subsequent draft was prepared, but authors were unable to find it online.

²³ *Towards Effective Enforcement of Uncontested Monetary Claims: Lessons from Eastern and Central Europe*, Delivered by the World Bank in collaboration with the Ministry of Foreign Affairs of the Kingdom of Netherlands, June 2017. (Available in Croatian).

Box 5: Enforcement of uncontested monetary claims in Estonia, Poland, and Slovenia

Examples of the E-court in **Poland**, Centralni oddelek za verodostojno listnino (COVL) in **Slovenia**, and the Orders for Payment Department in **Estonia** where such work is performed predominantly by court staff with legal education and electronically seem like a solution worth examining in the Croatian situation.

In three of the four centralized systems in comparator countries (Poland, Slovenia, and Estonia), the competent authority has been established as a division of an existing first-instance court. Thus, in Poland, the E-court is a civil division of the district court in the city of Lublin; in Slovenia, COVL was established as a department of the Local Court of Ljubljana; and in Estonia, the payment order department is at the Haapsalu courthouse of Pärnu County Court. Even though Slovakia's system is currently not centralized, preparations are underway for the introduction of a centralized system similar to the Polish model, namely the introduction of a specialized electronic court (possibly in Banská Bystrica), which would have jurisdiction throughout the country.

All centralized systems operate using a fully electronic platform for filing and processing creditors' requests; therefore, there is no need for all officials who decide on requests to be working at the same physical location. For example, the Polish E-court engages 50 court clerks who are residing in Lublin and 69 court clerks who are outside of Lublin. Similarly, in Hungary, the centralized electronic system for filing creditors' requests distributes them evenly to all notaries in the country. Thus, a notary in one part of the country may decide on a request from another part of the country. The system ensures uniform workload, and the location of the official is irrelevant.

Based on the examination of the rules on the territorial jurisdiction of competent authorities, it can be concluded that centralized systems for issuance of enforceable titles for uncontested claims generally ensure more predictable timelines, equal workload for officials, and opportunities for cost savings

2.2 Quality of Judgments - Increasing the Predictability of Legal Outcomes

Progress Made and the Current Situation

Justice quality is the cornerstone of justice service delivery. The quality of judgments depends upon several interdependent and related factors, including (a) a stable and coherent legislative framework, (b) knowledgeable and skilled judges (and legal professionals in general), (c) the harmonized/consistent interpretation and application of law, and (d) the transparency of court decisions, which all lead to (e) predictability of legal outcomes.

Today, multiple factors are affecting the predictability of legal outcomes in Croatia.

Significant legislative changes have been promoted. Being a young democracy and a young independent state, during the past 30 years, Croatia was forced to legislatively respond to many challenges that the majority of other comparable countries were spared. The war, then independence, and the social transition, transformation, and privatization of the socially owned economy (not state owned, unlike other transitional countries, which greatly complicated the process), as well as the country's EU membership, have all contributed to the need to address these issues through legislative interventions. This has led to a vast 'production' of new laws and regulations over a relatively short period.

Skilled and knowledgeable legal professionals. An unstable and sometimes incoherent legal framework affects judges and legal professionals. Skills and to some extent knowledge are gained by repetition, which allows for a practice to be developed. In a situation where even the most fundamental laws significantly change every few years, and a judge has to apply three or four versions of a particular

law within one day on otherwise similar cases or must check three or four pieces of legislation/regulation that apply to one simple situation, it is difficult to concentrate on quality and be efficient.

Harmonization has been difficult. A generally harmonized and consistent interpretation and application of law should be granted through a judicial review process, with the Supreme Court being the final instance in charge (plus the Constitutional Court on constitutional issues). However, in a situation characterized by frequent changes and high levels of inconsistency throughout the underlying legal framework, this is not easy. Another consequence of the unstable legal framework, in combination with a widely granted right to challenge court decisions, is a high pressure on the court which results in clogged dockets. It is difficult to explain to an average nonlawyer that a similar pair of situations were adjudicated upon differently, only because one happened one or two years earlier, and thus different versions of the law had to be applied.

Transparency is one aspect, even in the situation described above, the Supreme Court is significantly contributing toward, through the maintenance of the SupraNova database of court decisions (including County Courts' decisions in the second instance). This database is public, searchable according to several parameters, and well populated with decisions.

Challenges and Opportunities

The issue of legal predictability is recognized by all justice sector stakeholders and user groups. Croatia's justice system has in place several mechanisms by which it could efficiently address the problem if the legislative framework would remain stable for some minimal time. First, Croatia has provisions that require conferences among appellate and High Court judges to discuss problematic, common legal issues. Such meetings are held at least every six months, both at the Supreme Court and High and County Court levels. Second, the Supreme Court maintains the IT database publishing court practice and comprises integral texts of court decisions that are anonymized and searchable. Therefore, a wealth of knowledge on how courts interpret and apply legislation is available. These tools are intended and developed precisely for the purposes described above.

However, since joining the EU, Croatia has continued to revise laws, court organization, and the roles and responsibilities of judicial officials, in some cases involving reversals of prior actions (the Enforcement Act is just one example). Whether or not necessary, such frequent reversals without sufficient analysis of their broader impacts certainly complicate any attempts to harmonize the interpretation and application of law and develop consistent and predictable court practice. In the Court Users' Survey conducted in 2016,²⁴ where judges and court personnel were also respondents, 82 percent of them pointed to frequent changes, lack of clarity, and vagueness of legislation as the main reasons for delays and the lower quality of their work.

Recommendation

Encourage ongoing efforts to stabilize the regulatory framework; improve the RIA processes; and promote a streamlined approach to law amendments, especially critical laws.

How much more legislative reform is needed is an open question. It will be key to achieve coordinated action and conduct popular consultations and impact assessments before the enactment and implementation of laws. It is important to stress that Croatia's RIA should be promoted, as it has the

²⁴ <https://www.jutarnji.hr/vijesti/hrvatska/veliko-istrazivanje-o-pravosudnom-sustavu-vise-od-polovice-gradana-ne-vjeruje-u-posteno-sudenje-petina-zaposlenih-u-pravosudu-iskusila-korupciju/5715703/>.

requisite procedures, strategies, and action plans in place. According to the EC's recommendations, as well as driven by local requests, several attempts to review, harmonize, and improve the consistency of existing legislation and regulations (by individual sectors and in general) have taken place; however, the public has little information on the exact results of these efforts.

It would be useful for the justice system authorities to consider a call to the executive and legislative policy makers to strive toward a stable and consistent legal environment. Executive and legislative policy makers should be encouraged to not respond to justice (and political/social) reform needs through legislative means and instead focus more on changes that can be achieved within the current legal framework. This approach may be considered for the next three years as an interim policy measure.

The authorities may also consider forward-looking innovative strategic measures. This could include a pause on amending and changing the fundamental laws (such as the Civil Procedure Act, Criminal Procedure Act, Enforcement Act, and similar) absent a 'grave' need for such a change, such as harmonization needed to keep pace with developments in the EU laws. For this purpose, a clear plan could be agreed upon by all stakeholders (including the MOJ, the Courts' academia, the SAOs, the Bar Association, Public Notaries Association, and others) This scheduled plan may include future reform interventions: for instance, in 2023, minor adjustments to laws (if needed); and in 2026, a thorough review and amendments to laws (if needed). This phased approach may allow the system to adjust to the (new) legislation that is currently in force and provide sufficient time to detect, analyze, and address implementation problems. It would also provide the necessary time to prepare the next amendments and carry out impact assessments. In this phased and evidence-based law-making process, the existing public (professional) forums for consultation should be kept open. In addition, a body for the monitoring and analysis of law implementation could be supported, with adequate knowledge sharing on international good practices.²⁵ This entity could be a dedicated research team or a think tank under the auspices of the MOJ that could monitor, collect data, and analyze impact of laws and notify competent authorities to inform their policy decision making toward the achievement of goals set for justice in 2030.²⁶

2.3 Physical Infrastructure (Court Facilities and Buildings) for Optimal and Dignified Operations

Progress Made and the Current Situation

Court performance is negatively affected by suboptimal and significantly deficient physical facilities in Croatia. A major plan for rehabilitation and construction is needed to address the infrastructure gap. For example, in some courts, three or four judges share offices. Space for archives for courts and land and business registries is deficient in some courts. There is a shortage of courtrooms to hold open trials and conduct other court proceedings, which negatively affects users' perception. Some courts do not have adequate ICT cabling, whereby LANs and WANs are not properly functioning.

²⁵ The Office for Legislation of the Croatian Parliament publishes the Annual Plan of Legislative Activities. According to the data published by the office, during 2015–2019, around 750 legislative acts were adopted (including changes and amendments). <https://zakonodavstvo.gov.hr/godisnji-plan-normativnih-aktivnosti/229>.

²⁶ For example, full-time impact monitoring of laws such as the Enforcement Act, Fast-track Personal Bankruptcy, and Rationalization of the Court Network could generate real-time data for justice policy decision making and help authorities achieve long-term goals.

Insufficient capital investment is taking a heavy toll on cities with the largest caseload (for example, Zagreb). Here, some courts operate in buildings that are totally run down and do not meet international standards. Several courts operate in leased facilities waiting for funds for their relocation. Facilities management is complex, including planning for new construction and rehabilitation.

Challenges and Opportunities

Speaking of challenges, one interesting limitation (at least on an informal basis) the MOJ has in approaching the infrastructure investment issue is the fact that many of Croatia's court buildings were built during the Austro-Hungarian era and Venetian times. These buildings, built specifically for that purpose at the time, represent cultural heritage and are protected as such. Even the prevailing public sentiment is in favor of these and similar buildings staying under the protection and care of the state; therefore, the MOJ has certain public responsibility for their maintenance and use. Whether these buildings are fit for the same purpose today is a question open for discussion; however, it is certain that their maintenance and refurbishment are considerably more complex and expensive than modern constructions, as well as that some of these buildings do in fact limit efficiency of institutions housed in them (County Court in Zagreb, for instance).

It is encouraging to note that the MOJ has a long-term plan for Zagreb, whereby all (or most) justice system bodies will relocate to one location—the 'Justice Square' to promote economies of scale. However, due to funding constraints, this plan is moving rather slowly. Since 2007, when the plan was first introduced, only the Municipal Criminal Court, the Juvenile Court, and the Municipal SAO offices have moved to the Justice Square, in rehabilitated and well-equipped buildings. According to the information provided by the MOJ, the development of the remaining part of the plot (owned by the MOJ) for the Justice Square will entail a significant investment (generally estimated at EUR 150–200 million), which is not currently available. In the meantime, authorities are making interim arrangements for court rehabilitation in Zagreb. This includes refurbishment of the existing building of the Municipal Civil Court and upgrade of the attic of the County Court for additional space).

There are no clear plans for the Commercial Court in Zagreb, which should be priority, as it is a key entry point for the business community that contributes about 35 percent to the national GDP. The court has about 52 judges, 34 court advisors, and 300 administrative staff, and handles about 38 percent of commercial cases in Croatia (about 70 percent or more of certain sectors, such as banking). The court generates about EUR 2.7 million in court fee revenues annually. However, the court building is run down and has no parking space, and the LAN/WAN IT connectivity is deficient. Modernization of this court should be a priority given its impact on the performance of commercial justice in Croatia. Its overall space need is about 5,000 square meter. Measures could be taken to design and build an interim courthouse (potentially using fast-track construction methods) in the plot of the Justice Square, or some other location, till such time the overall Justice Square masterplan materializes.

Recommendation

Develop a robust asset management plan; promote and prioritize evidence-based investments; and decide on the "Justice Square Zagreb" plan based on robust cost-benefit analysis.

A quick solution should be explored for increasing the efficiency of the Commercial Court in Zagreb by bringing its physical infrastructure in line with its needs and the role this court has for both the sector and Croatia's economy, according to international standards. It seems that this court is presently a 'hostage' of the plan to develop a state-of-the-art 'Justice Square', and therefore, any major investment in it may seem as irrational. The MOJ might consider taking a hard and honest look

at the overall feasibility of having the ‘Justice Square’ location ready for operation within the next five years. If such analysis would show that this is not the case, other options for improving the efficiency of the court should be explored. These might include

- a) Refurbishing the existing building and bringing it up to the standard of the majority of other commercial courts in Croatia. By this, however, some of the requirements of a modern court serving the business community could not be met (parking, access, and so on), plus the court would probably have to be relocated during the works;
- b) Investing in some other location in Zagreb or leasing an appropriate building for the court. Since the building of the commercial court is connected with the building of the County Court, vacated space could be used to solve the lack of space in the County Court (where presently four judges share small rooms as their chambers); and
- c) Building a ‘temporary’ building at the ‘Justice Square’ or some other location, using some of the fast and less-expensive modern construction methods (which are in no way inferior to traditional methods).

Whichever approach is selected, the possible efficiency gains would make it worthwhile, especially since, nominally, all the costs of such investments could be easily funded from the court fees the court generates itself.

Another issue that has to be kept in mind is that, once the ‘paperless’ work in courts starts becoming a reality, the manner in which court buildings are used shall change. For example, the intake office and dispatch office—which in larger courts are serious users of space (and staff)—will in practice no longer be needed. To some extent, the same goes for archives. At the same time, registry offices (*pisarnica, kancel*) and registrars will become even more important. Together with typists, this group of personnel currently makes for some 70 percent of the total number of personnel in the sector. Therefore, these changes should be timely detected, resulting challenges and opportunities across the sector analyzed, and appropriate strategies adopted.

Facility Management. Functional specifications for a future ERP system (see the next section) should be carefully developed to enable the MOJ to faster and better manage more than 300 buildings and the vast inventory currently used. **Court Managers** (more in the section on Management) should also greatly contribute to organized and planned management of all facilities and assets used by/in judicial bodies.

2.4 ICT for Automation, Digitalization, and e-Services

Progress Made and the Current Situation

As noted, ICT is a game changer for the justice sector efficiency improvement. ICT is an area where major breakthrough has been achieved in Croatia over the past decade or so. Now that these systems are fully developed and tested in practice, the sector is moving ahead with plans to further integrate them, expand them, and provide interoperability as appropriate among all stakeholders, including public institutions and attorneys. A review carried out by the Estonian expert²⁷ indicates that there is a need to carry

²⁷ Somer, Evar. 2018. *Report on the State of Play of ICT Systems Implemented in Croatia*.

out necessary arrangements with agencies to be connected and to prepare an overall (national) IT interoperability plan. He suggests that the MOJ should conduct training of public officials and citizens in the use of new functionalities and provide adequate time and resources for ICT development. After piloting, during 2018, on a limited number of courts, Croatia has moved to entirely electronic communication between lawyers and commercial courts, currently on a voluntary basis, which it proposes to roll out to other courts over time. So far, the results are slim, with only about 770 briefs submitted electronically; therefore, additional efforts in analyzing the reasons and popularizing the system are called for.

Box 6: e-Justice in Estonia²⁸

Croatia, as a later adopter, may not need the time taken by Estonia (or Austria, another of its models), but the route to full e-justice is long and not quickly realized. The decision to introduce Estonia's integrated E-FILE system was taken in 2004, but the system was only launched in 2009 with three objectives: (a) providing a detailed overview of different phases of case procedures; (b) enabling various procedural processes and providing procedural decisions to all parties to each case; and (c) allowing the exchange of information simultaneously among them. Paper and e-mail transactions, as well as multiple data entries, were to be eliminated. Additional functions added over time include (a) access through ID-card or Mobile-ID (www.id.ee), (b) access to cases in which a person is a participant or representative, (c) the submission of new claims and new documents for existing cases, (d) e-mail notification to parties on the availability of documents in the system and automatic notification of successful delivery, and (e) access to procedural deadlines and to the criminal registry.

Some practical measures adopted later include (a) lawyers, notaries, bailiffs, trustees in bankruptcy, and state or local government agencies can only communicate electronically with the court; (b) since April 2015, all documents to lawyers are marked as deliverable through the PUBLIC E-FILE portal rather than e-mail or ordinary mail, but are locked if not opened within 30 days; (c) between 2009 and 2013, when it was found unconstitutional, the fee for initiating new civil cases through the portal was reduced by half; and (d) extensive training and awareness raising were conducted.

Use of E-FILE has increased over time but is still not universal. Although 10,000 unique users log in every month and the number of documents submitted increased tenfold between 2012 and 2015, only 10–15 percent of civil cases are submitted through the portal. E-FILE has improved the distribution of cases among judges based on workload, specialization, and a weighting system for case types. The system also provides more precise court statistics for judges, courts, the MOJ, the MOF, and the public.

The tools supporting the CMS (KIS) allow the generation of documents; standard court orders, summonses, and so on; links to most useful information systems (business registry, civil registry, and so on); less time-consuming publication of judgments and data on court hearings; better overview of cases and proceedings; single information system for the entire judiciary; and Digital FILE.

Lessons learned from the implementation process are (a) implementation takes time; (b) incentives offered for using the system must be proportional; (c) for attorneys and other professional representatives or participants to the proceedings, use can be mandatory after implementation difficulties are overcome; and (d) it is difficult to keep the provision of e-services ongoing during extensive development or replacement of systems. It may be better to temporarily stop the provision of services.

Both the Estonian example and Croatian experiences show that graduation to a wholly electronic system is slow, as is the progress for encouraging use within and outside the courts. The current state of ICT technologies in the Croatian justice system could be called as 'matured Phase 1', that is, systems are stable, used by all users and for all purposes they were developed for, and interconnected within the sector.

²⁸ Provided by Evar Somer (Estonian ICT expert).

In the last years, statistics and other reporting tools have been developed and are increasingly used for various purposes, and initial ‘fears and suspicions’ of ICT in justice system were replaced by desires and ideas for faster, better, and more tools. The MOJ has already made several leaps forward into Phase 2—electronic interchange of documents (briefs and decisions) occurs between courts and lawyers, preparations for additional links or connections to other governmental IT systems are underway, and a data warehouse that will enable more complex queries and analyses is being installed.

At the same time, the MOJ is implementing projects on introducing ERP to management of its core business processes, such as finances, HRM, asset management, and others. Being an institution administering four separate systems with 116 entities, over 10,000 people, more than 300 buildings, and tens of thousands of various inventory items, vehicles, and so on, the MOJ and the whole justice system shall certainly benefit from this in years to come.

Furthermore, the MOJ maintains and is constantly upgrading two other, very important databases and online services, namely the Land Registry and the Business Registry.

In the overall context of ICT development, the MOJ now has experience and awareness of its own capacities (professional and financial) and pace in which such large new systems may be absorbed by the overall justice system, as well as of the need for constant and thoughtful change management.

Challenges and Opportunities

The main challenge facing the MOJ at this moment in the area of digitalization and automatization is its capacity to attract and recruit qualified personnel with an IT background. The current legislation applicable to public service employees does not envisage any exceptions in remuneration of IT experts, which is becoming an increasingly important problem across the public sector in Croatia. In case of the MOJ, the problem is even more accentuated, since it maintains and operates some of the most complex IT systems in the country. Unless this situation changes soon, increasing efficiency and quality of the sector’s ICT services to citizens and business will be at high risk. Of course, part of the problem may be solved through outsourcing and contracting extended support and maintenance with vendors, but the sector must have the required number of qualified IT professionals, administrators, and so on, who know and understand the justice system, IT applications, and systems used in it and who ‘own’ these systems.

Another challenge is that complex and advanced ICT systems cost money to run and maintain them. However, the system situation described above, where the largest commercial court in the country was unable to perform its functions due to network problems for a day or so, cost, in comparison, more to the economy.

Recommendation

Scale-up automation and digitalization of justice services by adopting all available measures; and analyze future options to introduce latest innovations such as AI, and paperless court.

The applied ICT technologies in Croatia’s justice sector have already made a profound change in the efficiency and the overall operation of the sector. Apart from strengthening capacities (staffing) and securing adequate funding/financing for smooth operation and maintenance of the existing level of ICT support in the justice system, as well as for further efficiency gains it may bring, the authorities could consider the following new possibilities:

Notification of the receipt of documents in lawyers’ ‘E-Box’ (E-pretinac) over the **mobile phone (SMS)**. Some of the lawyers participating in ongoing online consultations regarding amendments to the ZPP and Enforcement Act suggested that they are not checking their E-pretinac all the time. Similar

automatic SMS reminders/notifications on other activities (approaching deadlines, hearings, and so on) could also represent little ‘nice to have’ features that would make the E-Filing system more user friendly. In addition, adding such functionalities to the system does not appear overly demanding.

Expedite deployment of **more options** (for example, e-Pristojbe system) for **online payment of court/administrative fees**—with mobile phone service providers, e-banking providers, and so on. For instance, at the reception of the MOJ building, there is an instruction that an HRK 40.00 fee must be paid for a particular certificate—it would suffice if it had a QR code (or similar) printed on it which could then be used for instantaneous payment of the fee over the mobile phone. This could immediately increase the percentage of fees collected promptly, make the client’s life easier, and bring the court system closer to the citizens’ needs.

Given the present status of ICT in the justice system, a gradual move toward a **paperless court** within the next 10 years (certainly in some types and sub-types of proceedings) is not an unrealistic goal. Such experience already exists, technology is known and proven, and efficiency gains are evident. The crucial element in this effort in Croatia will be careful change management, capacities planning, well-tailored training, incentives to external users, and awareness raising. For example, Austria is currently ending the piloting phase of this (third) stage of its justice ICT development and by 2020 intends to complete the ‘Justiz 3.0’ project.²⁹ A short animated video, linked in the footnote (in English), clearly describes the situation Croatia should also aim for during the 2020–2030 period.

Artificial Intelligence. AI was recently tested (2016) even by the ECHR. Out of 584 trials tested, AI came to the same decision as judges in 79 percent cases. Although AI is not intended to replace a human judge, its use in Croatia’s legal system can already be imagined in numerous places—**assisting** the judge to immediately find the applicable laws (given the many amendments), retrieve relevant provisions, and analyze current court practice, all based on the facts of the case at hand; in ‘*Evidencija*’ departments (*Odjeli za praćenje sudske prakse*) at County Courts and other high instance courts responsible for checking the consistency of each decision with the existing court practice before releasing it; for the Supreme Court and its responsibilities in harmonizing and monitoring court practice and interpretation of law; and even for parties to predict the most likely outcome of their case (as an Early Neutral Evaluation ADR method). AI is developed to process massive amounts of various types of data (inclusive of linguistic and semantic) and, by autonomously improving its algorithms (learning), recognize complex patterns and most likely used outcomes. International experience indicates that AI in courts is at the initial stage. Legal, ethical, and operations dilemmas are expected to be identified and debated while AI becomes mainstream, perhaps in the long term.

²⁹ More details on “Justiz 3.0” on <https://www.justiz.gv.at/web2013/home/e-justice/justiz-30~2c94848b5461ff6e01562be726d72d43.de.html>.

2.5 Management of Human Resources, Training, and Judicial Independence and Accountability

2.5.1 Management and Human Resource Development

Progress Made and the Current Situation

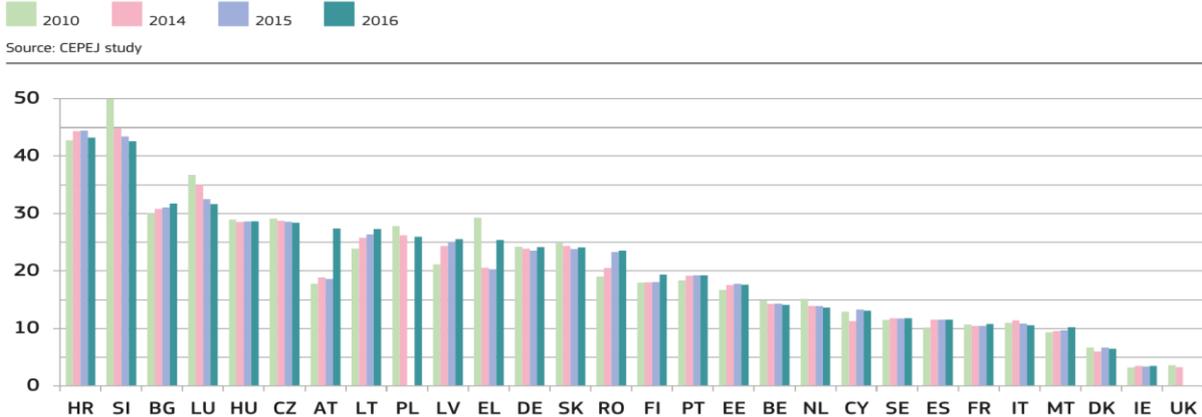
HRM in Croatia’s public service in general, as well as in judiciary, has a very narrow space for employing actual ‘HRM’ methods and techniques. That is, it is difficult to leverage management actions for court efficiency reforms where the terms and conditions of employment contracts are strictly set, salary levels and amounts are unchangeable, advancement is often based on things other than merit, mobility within the system is extremely low, termination of contracts (surplus) is almost impossible, and the means for motivating or awarding employees are scarce.

Therefore, responsible officials have very limited maneuvering space available to align human resources with the demand and equalizing workload, motivate good performance or sanction underperformance, provide training and education, and steer toward objectives, and they often must search for some other solutions.

The goal to achieve increased efficiency, that is, ‘two cases more per judge in a year’ expects all employees to work together and increase productivity. In this context, the key question is how to motivate and equip them for this and how to manage their efforts toward achieving the goals.

This is especially difficult as Croatia’s justice sector is singled out for having the highest number of judges and court staff per capita (along with Slovenia) in the EU, and citizens and businesses have a low level of confidence and trust in the system due to its inefficiency, lack of quality, and delays. Croatia’s media concentrate on reporting on anomalies within the system, while judicial officials and employees are aware of the (still) large discrepancies in workload and other systemic errors. Therefore, the setting in which any HRM methods for increasing the judicial system’s efficiency are to be applied is not an ideal one. However, managing a situation such as the one described above is exactly what HRM as a discipline does.

Figure 4: Number of judges(*) (per 100,000 inhabitants)



(*) This category consists of judges working full-time, under the CEPEJ methodology. It does not include the Rechtspfleger/court clerks that exist in some Member States. EL: the total number of professional judges includes different categories over the years shown above, which partly explains their variation. UK: weighted average of the three jurisdictions. Data for 2010 contains 2012 data for UK (NI). LU: numbers have been revised following an improved methodology.

Source: 2018 EU Justice Scoreboard, (2016 data from CEPEJ).

Table 18: Number of officials, civil servants, and other employees in the justice system, as on December 31, 2018

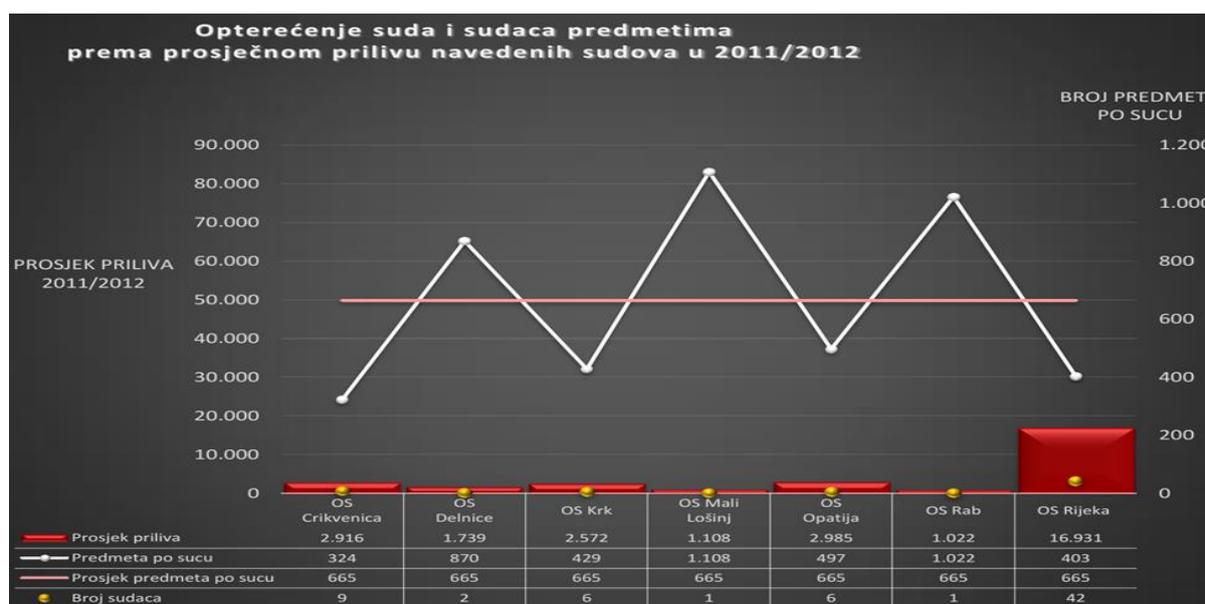
Justice System	Officials		Advisers and associates		Trainees		Civil servants		Employees		Total	
	Women	Total	Women	Total	Women	Total	Women	Total	Women	Total	Women	Total
Courts	1,239	1,752	505	649	21	29	4,705	5,205	426	685	6,896	8,320
SAOs	435	638	156	197	7	13	744	805	80	127	1,422	1,780
Total	1,674	2,390	661	846	28	42	5,449	6,010	506	812	8,318	10,100

Source: MOJ, Annual Statistical Review for 2018 (draft).

The three waves of ‘rationalization of court network’, although seemingly an infrastructural and jurisdictional reform, were to a large extent an HRM reform. As of January 1, 2019, Croatia had 34 municipal courts, compared to 108 municipal courts before 2009. Across these 34 jurisdictions, many smaller courts were functionally merged to a ‘matrix’ court, although physically in most instances these smaller courts continued existing and operating as ‘permanent services’. However, the ICMS enabled the establishment of one register (for each type of proceedings) for all of the courts belonging to a ‘matrix’ court, so cases are now distributed and assigned to all judges equally among all such courts, regardless of a particular location where a case was filed. This enabled overcoming (to a large extent) the situation where judges in a small village court did not have enough cases even to meet their standard performance criteria, while judges in a court 25 km away were overburdened with incoming cases and the backlog was piling. Yet, judges could not have been moved from one court to another without their consent, and now they can (within the area of jurisdiction of the ‘matrix’ court). The result of these efforts was a much more equal distribution of workload than before these reforms.

Figure 5 presents an example of the uneven distribution of workload in 2011/12 across the seven courts forming the MC Rijeka today.

Figure 5: Uneven distribution of cases in 2011/12



Source: MOJ

Challenges and Opportunities

Considering that the 1–2 percent increase in the sector’s efficiency, especially productivity, during the next period would be accepted as the sector’s objective, HRM can certainly help in creating a work environment capable of facilitating such results. HRM strategies would have to be developed and implemented differently for two distinctive groups of personnel: judges and administrative personnel in courts. That is, both groups are regulated by different regulations, have different roles and interests, and may contribute to the ‘cause’ in different ways.

Croatia’s justice sector has the human capital and talent capable of achieving impressive results even in suboptimal circumstances. And, according to the 2016 Users’ Survey, regardless of modest salary levels, a majority of administrative personnel recognize many advantages of working in the sector. With the deployment of professional HRM methods and techniques, employees within the system could certainly be motivated to strive for more, even within the existing circumstances.

If approached from this perspective, opportunities are ample. Notably, comparative advantages and disadvantages of working in Croatia’s justice sector are almost self-evident for all distinct groups of employees, and positive aspects by far outweigh the negative factors—a fact confirmed by 2016 Users’ Survey.

By using professional HRM methods and techniques, which have not been applied so far, advantages could easily be augmented and disadvantages (if any) discussed, analyzed, and to a large extent mitigated.

Recommendation

Promote skills training and professional management; and motivate personnel to do more and faster, with same or less resources.

A staff first policy (for all levels and competencies) should be designed and implemented. This could involve HRM professionals, to (a) present, discuss, and explain the sector’s 10-year objective; (b) analyze the HRM challenges and obstacles to achieving it; (c) develop programs for motivating each of the distinct professional groups and subgroups (judges, court advisors, registrars, and typists), explain the importance of their work and positive impact they can make, build a sense of belonging (ownership) and common goals, and thus create a motivation to work slightly more, faster, and better to achieve the objective; and (d) monitor, review, search for potentials for improvement, use possibilities for building sense of satisfaction and accomplishment, and repeat this every two years, for example.

2.5.2 Training

Progress Made and the Current Situation

Since 2004, the Judicial Academy, as a successor of the Center for Professional Education of Judicial Officials (2000) and some other initiatives before that by the Association of Croatian Judges (1998), has been training judges and state attorneys. Although accorded independent status in 2010, the Academy receives its funding through the MOJ, as part of the budget the latter presents to the MOF and legislature. The Academy’s budget for 2019 is planned to be HRK 10 million, of which HRK 3.8 million is for the administration and management of the Academy. According to its annual reports for 2017 and 2018, the Academy provides a diversified array of programs for various groups of participants and in several forms (including online training). As of 2016, the Academy started providing training

programs for civil servants in courts and SAOs, which is a welcome initiative. This effort should be expanded to achieve impacts on court performance and interinstitutional collaboration.

The Academy has a well-developed international—especially inter-European—cooperation. At the same time, it was a beneficiary and partner in many EU-funded projects aimed at strengthening its capacity. The Academy has a formalized governance structure, with representatives of the stakeholders having a majority in all governing bodies (Steering and Programmatic Council) and strong and transparent reporting.

Challenges and Opportunities

The flexibility and speed with which the Academy will respond to stakeholders’ training needs are key. Also, budget and human resource deployment will be prominent factors for the successful skills development of judicial officials and staff.

Recommendation

Carefully assess the needs and expeditiously deliver trainings; and out-source training delivery where necessary.

The need for training and education appears in almost each recommendation across this document. As Croatia’s justice sector apparently has a strong and agile training institution in place, it would only be logical to use it as much as possible in designing, organizing, and delivering necessary training programs in support of the goals set for 2030, described in Box 1 and elaborated elsewhere in this document. In cases where the Academy would be unable to respond to the needs, outsourcing in designing and delivering training services may also be considered.

2.5.3 Budget Management, Financial Controls, Cost Recovery, and Incentive Bonus

Progress Made and the Current Situation

In general, budgeting in Croatia’s justice sector is based on the ‘organizational’, rather than the ‘functional’ principle or on performance. In simplified terms, this means that when setting the budget, the total costs of the organization are estimated—such as the total amount of salaries to be paid to the personnel, infrastructure to be maintained, running costs, and projects to be financed. Approximately 80 percent of the budget is allocated for (gross) salaries. Once this is calculated, the MOJ sends its proposal to the MOF and after some negotiations, the budget for a year is set. Any factors affecting the efficiency or quality of work, expected increase in incoming or resolved cases, or similar performance parameters are seldom used in such negotiations. Nor are the results achieved in the previous year credited. For example, court fees, which can be quite directly linked to the demand side of the system (since they are paid against the new cases filed, briefs submitted, and so on), are paid by parties directly to the Treasury. Until recently the MOF claimed that it was unable to track the amount recovered through court fees. Today such payments have a sub-number identifying the individual court that charged the fee, and the MOF should be able to know these amounts. On top of that, the creation and payment of court fees is also tracked in the ICMS.

Table 19: Court fees charged and collected by municipal and commercial courts in 2018

	Total fees charged in 2018	Collected	Unpaid
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Type of Court	Number of cases	Number of fees	Total nominal amount of cost	Number of cases	Number of fees	Total nominal amount of cost	Total collected	Number of cases	Number of fees	Total nominal amount of cost
Municipal Courts	242.232	355.646	140.661.990,44	175.189	244.256	88.746.765,14	88.095.778,10	79.039	111.389	51.915.125,30
Commercial Courts	19.005	36.998	33.717.067,33	15.525	29.344	25.058.625,78	25.181397,52	4.684	7.654	8.658.441,55
TOTAL	261.237	392.644	174.379.058	190.714	273.600	113.805.391	113.277.176	83.723	119.043	60.573.567

Source: MOJ, ICMS.

Table 19 shows total court fees receivable in 2018 by municipal and commercial courts (with the number of cases and number of individual fees), court fees paid, and outstanding amount—HRK 174,4 million, HRK, 113, 8 million, HRK 60.5 million, respectively. During the same year the MOJ spent a total of HRK 2.45 billion, whereas the operation of these particular groups of courts was budgeted with HRK 630.0 million (municipal) and HRK 83.5 million (commercial).³⁰ Thus, although on the basis of these data, it is impossible to calculate the percentage of the total justice sector budget covered by court fees (as other courts charge fees as well), as in the case of municipal and commercial courts it is 22.2 percent and over 40 percent, respectively.³¹

Data reported in the CEPEJ 2018 Report (data for 2016) show that the revenue from court fees in Croatia made up 8 percent of the overall justice system budget and 10 percent of the court budget.³²

Challenges and Opportunities

The court fee system needs to be analyzed. Croatia's justice sector might consider answering the question of why it is charging court fees at all. Internationally, many types of monetary charges are imposed by courts. While fines, penalties, and so on are charges related to criminal cases, costs and fees are typically associated with civil cases. These fees are charged for a variety of services, including case filing, probating estates, marriages, transcript preparation, and recording of titles. Several arguments are used to support court fees. The most common is that filing fees are necessary to deter frivolous litigation or to channel different types of cases to appropriate courts such as small-claim tribunals, which sometimes are accessible free of charge or other nonjudicial dispute resolution forms, such as counseling and mediation. Some stress that litigants should be charged fees for the private benefits they derive from the court system, thereby arguing for service delivery fees to cover the court operating costs. Others use court fees to fund improvements in judicial services (for example, court construction in Colorado, the United States) or increase judicial compensation. However, court fees are generally a small portion of the overall cost of litigation, which includes the cost of a lawyer, the opportunity cost associated with time it takes to get a court decision and then enforce it, and other associated costs. It is therefore useful to conduct a robust impact analysis before court fee adjustments are made so that basic principles of access to justice are preserved. In summary, court fees typically serve three sets of purposes:³³

1. To finance a portion or some particular costs of the operation of court system

³⁰ MOF. <http://www.mfin.hr/hr/drzavni-proracun-2018-godina>

³¹ It must be noted that court fees against appeals are also collected by first-instance courts.

³² CEPEJ 2018 Report at: <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

³³ With respect to the rationale of court fees, see, for example, "Survey and Analysis of Court Filing Fees" by Keith Stott, Jr., and Richard N. Ross, National Center for State Courts, USA (1975). And, with respect to the methodology and approach of Impact Assessment of the court fee system, see, for example: https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/enhanced-fee-sia.pdf

2. To manage the inflow of cases or a particular type of cases (demand, access)
3. To use them as a tool in achieving some aspects of procedural discipline of parties (such as discourage claims that are frivolous in nature and or delay court proceedings on a similar matter without consequences)

So far Croatia has not used court fees for purposes 2 and 3 mentioned above. Neither are they used for any direct investments in the court system.

Recommendation

Recognize that financial resources do matter, and consult/negotiate with the MOF with consolidated data on court-fee collection and budgets outlays (cost-benefit analysis), on the option to partially use court fees for skills development in the judiciary; and review the court-fee system and benchmark with international comparators to develop policy analysis with respect to the access to justice, the court demand and the value-for-money etc..

In general, when negotiating the budget for a given year with the MOF, the sector management should be well equipped with volumes and costs associated with the sector’s operation on a desired (and politically proclaimed) level. Calculating the exact average costs associated with conducting and resolving each particular type of case and then multiplying it by the number of such cases (resolved or predicted) is a rather simple operation. It could be done as an additional feature of the case weighting study, which is under preparation at the moment.

An example. The proposed changes to the system of **enforcement**, which could result in an additional 400,000 to 700,000 court caseload per year (estimate), may be simultaneously seen as an additional budget allocation in the MOJ for 2020. And this addition of HRK 40–70 million (based only on court fees at an average of HRK 100.00 per case as envisaged by the (first) draft law should be allocated directly to the particular courts that will be affected by this change (State Budget, Chapter 28, Section 2803, Item A641000 – Proceedings conducted by Municipal Courts and Section 2807, Item K629169 – Development and Maintenance of the Justice IT system). However, the Needs Assessment and Sources of Funding for Implementation of the Proposed Law (within the RIA and public consultations procedure) state that only HRK 1,016,800,00 (IT adjustments, under K629169) is needed for implementing the new system. Or simply, the court system—struggling with efficiency and delays as it is—is expected to absorb a 90 percent overall increase in incoming cases with only some EUR 135,000 additional resources. The imbalance in such an approach is obvious, and many similar situations existed in the past.

The purpose of the suggested exercise is not to increase the budget for the operation of the courts alone, nor to put a ‘price’ on a particular group of cases. Rather, the goal is to inform the government, the MOF, and the public that there are inevitably some costs associated with the operation of the system and that this cost is not the same if 400 or 1,000 cases (on average) are expected to be solved within a year by an individual judge/adviser.

Therefore, as noted earlier, authorities may like to consider undertaking a detailed analysis of the current actual revenue generated by court fees and the actual costs that the system incurs in resolving particular types/amount of cases, and they may try to, at least, use the system for calculating and collecting court fees and adjust it to the actual needs and envisaged changes. That is, judges sometimes complain that the process of determining, calculating, and charging a court fee is cumbersome, due to a long list of fee exemptions for different types of litigants that need to be considered. Thus, estimation of court fees is viewed by some as a “little process within the process” of court proceedings and a cause of court delays. At the same time, this bottleneck points to the need for easy access of judges to all relevant government IT databases such as for finding the exact status of the litigant (for example,

whether he/she is a war veteran, a disabled person, has any income, or assets, and so on) so that time-consuming paper-based queries to government agencies could be minimized and proceedings expedited (see chapter 2.D on ICT in courts).

Here it is also interesting to highlight that the central government is also a very ‘active’ litigant and frequent user of court services. According to the SAO data, the SAO represented the central government in about 47,000 civil cases (as plaintiff or defendant).³⁴ And the government is exempted from paying court fees. An analysis of the central government’s decisions to litigate, and of its procedural behavior in such proceedings, could be very informative.

As mentioned earlier, and subject to detailed cost-benefit analysis of the court fee system and approvals of relevant authorities including the MOF, financial incentives may be considered for the court system. Based on this analysis of data and statistics, fees collected could be partially used to set a desired percentage of the operating costs for the court system, and revenues could be directly linked to courts’ efficiency (a target of about 1 percent increase in annual efficiency). This plowback of financial resources to the courts could be used as a staff skills ‘bonus’.³⁵ This amount could even be symbolic, as a recognition for good results, and serve as a motivation tool within the overall HRM approach toward an effective judiciary that is citizen centric.

2.6 Anti-corruption in the Overall Public Sector³⁶

Progress Made and the Current Situation

Preventing corruption is a societal challenge. At the national level, the MOJ is responsible for coordinating the drafting and monitoring of the implementation of national strategic documents and policies related to the prevention of corruption in all public administration sectors, including the judiciary.

Generally, corruption is defined as an act that subverts the public good for private or particularistic gain. Corruption is a social evil that no contemporary society is immune to. Corruption is also notoriously difficult to measure, detect, reveal, and prosecute. The reason for this is simple—both sides participating in any corrupt activity or behavior have a strong interest to not only do so, but to conceal and keep their actions strictly confidential.

Although Croatia has made considerable efforts to improve its anti-corruption framework in the public sector, the implementation of this agenda has yet to demonstrate sustainable results.

Presently the EC, business community and associations, foreign investors, international watchdog organizations, civil society groups, and even young people emigrating from the country complain about the widespread corruption in the public sector. They are also not satisfied with the progress that has been

³⁴ SAO 2017 Report.

³⁵ Current civil service norms do not permit financial bonus to employees for exceptional work. Hence, the plowback of financial resources to the judiciary should be used for training and skills building of staff, which would be an incentive (bonus) for efficient operation and service. Appropriate criteria should be developed to encourage professional development and excellence among officials and promote win-win solutions for staff and the relevant court.

³⁶ Given that corruption is a societal challenge, it focuses on the overall governance in the country. Since the MOJ is responsible for coordinating the drafting and monitoring of the implementation of national strategic documents and policies related to the prevention of corruption in ‘all’ public administration sectors, this part of the PN provides a broader outlook and does not directly focus on the judiciary. Therefore, it describes implementation of anti-corruption mechanisms in all relevant sectors and all horizontal policies in the area of corruption prevention, including the judiciary.

made to prevent and combat corruption. For example, starting 2009, major efforts were made in mobilizing the country toward a ‘Zero tolerance for corruption!’ policy. Anti-corruption media campaigns were launched, which called for ‘eradicating corruption with surgical precision’ and promoted criminal justice system reforms. Also, specialized anti-graft institutions were built and institutional frameworks were established.

However, 10 years later few results are visible (for example, in 2017 only 103 ‘guilty’ verdicts were handed against corruptive criminal offenses, by which 16 persons were actually imprisoned, while at the same time the rank of Croatia on the International Transparency Index has dropped down to 60), and several challenges remain. These include weaknesses in the broader public/government sector to coordinate national anti-corruption efforts and in the criminal justice system to detect, report, prosecute, and sanction corruption matters. Many citizens are of the view that the rich and those politically connected are immune from prosecution. Some of the proceedings initiated 10 years ago are still pending and the public has lost interest; in others, defendants were acquitted, or prosecution was barred due to statute of limitations or, if found guilty, sentenced to seemingly mild sentences.

In the public sector, there is also a problem of definition of corruption due to sociopolitical complexities, culture of favors, and moral practices. It also appears that societal tolerance for practices falling within ‘petty’ corruption is seemingly high. Croatia has recently codified the protection of **whistle-blowers** in the public sector, making it clear (previously it was regulated by multiple laws). This code should be promoted widely along with awareness-raising measures to educate the public on the menace of corruption in the society.

Data on results achieved in fighting corruption also indicate that the general policy in criminal sanctioning of these offenses, even when proven, is rather lenient: “Penal policy of courts in this segment of crime continues to be lenient, since out of 141 guilty verdicts courts imposed only 20 unconditional imprisonment sentences (14.2%), 34 perpetrators (24.1%) were eventually sentenced to charity work, while conditional sentence remains as the predominant sanction imposed by courts and was applied against 87 convicted persons (61.7%)”³⁷

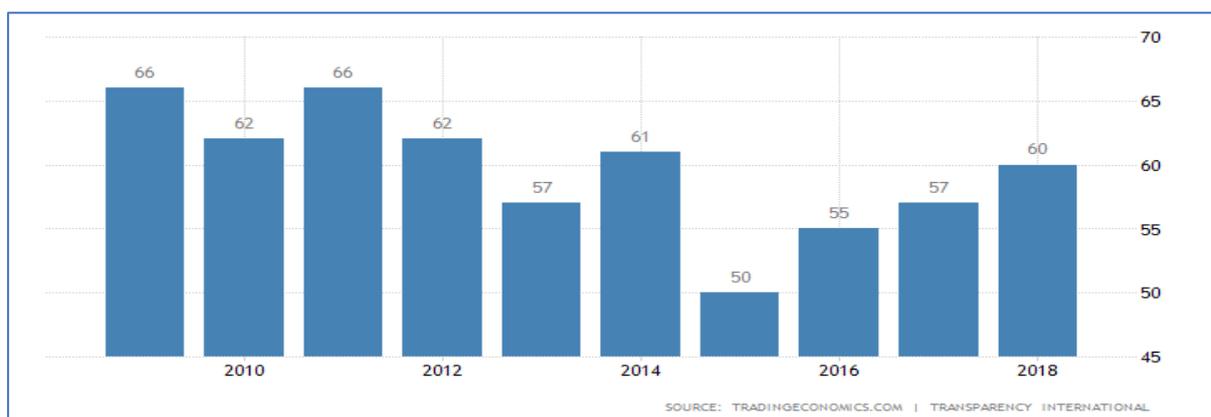
Within the justice sector, according to the Court Users’ Survey, about 59 percent of judges/staff think that the long duration of proceedings is the main cause of perception of corruption. Also, interestingly, about 63 of them see corruption as a problem affecting efficiency and integrity of the system. Enhanced **use of IT** could improve efficiency and thereby reduce corruption risks. Wider dissemination of performance data generated by the ICMS should improve transparency. Use of e-filing, automated court fee payment systems, and other measures that increase **online communications** between the courts, notaries, bailiffs, registrars, and the users and businesses should improve transparency. Furthermore, improved oversight by the State Judicial Council and its proactive handling of disciplinary proceedings upon corruption complaints against judicial officials could help improve citizen confidence in the justice system.

³⁷ SAO 2017 Report.

Challenges and Opportunities

For the public sector, Croatia has developed an elaborate system for preventing corruption. There are institutions in place, coordinations, committees, strategic frameworks, action plans, laws, and documents,³⁸ but the corruption level is high. The EC in its 2019 Country Report describes the situation as: “Corruption is perceived to be widespread. Croatia is among the worst performing member states in terms of perception and control of corruption, with no improving trend.”³⁹

Figure 6: Transparency International Index of perceived corruption, Croatia



Apparently, a deeper analysis should be made to determine the roots of the problem, and relevant policies developed and implemented.

Recommendation

Continue and strengthen the fight against corruption; relaunch a new and robust awareness campaign; provide advanced training and technologies to bodies/agencies charged with the fight and control of corruption, based on international best practice.

Despite the apparent saturation and disillusion of the public with this issue, a stronger push to fight corruption should be made. For the overall public sector, policy makers could consider launching a new, nationwide public campaign, which could start by creating a list of all possible behaviors that fall within corrupt practices and improper influences—including the petty/low-level administrative corruption—in vivid and commonly understandable terms. It will be a system where the inherent incentives for corruption would be openly discussed, admitted, and addressed, particular behavior would be directly linked to appropriate criminal offense (where such link exists), negative impacts of such behaviors illustrated and explained, people potentially affected by this negative impact identified and presented, and practical consequences of corruption for the society and the country shown and explained with lively examples.

To prevent corrupt behavior in the overall public administration sectors, the government authorities may want to review their criminal sanctions against public officials involved in corruption offenses and abuse of official power. For preventing corruption in public procurement, the use of an e-procurement

³⁸ For anti-corruption institutional framework, see: <https://pravosudje.gov.hr/istaknute-teme/antikorupcija/institucije-koje-se-bore-protiv-korupcije/6175>

³⁹ European Commission: Country Report Croatia 2019, Brussels, 27.2.2019.

mechanism should be widely promoted to reduce risks. In the case of the overall public sector, inter-institutional coordination by the MOJ should be encouraged and facilitated, along with the sharing of international good practices in preventing corruption.

With respect to the justice system, the newly appointed members of the State Judicial Council (early 2019) who are aware of the problem should be encouraged to raise awareness about judicial ethics. Patient, consistent, and professional work, in line with the standards of integrity expected from a judge (working and living in compliance with the Code of Judicial Ethics), could over a longer term bring higher credibility to the justice system.

The negative impact of public sector corruption on economic growth is well understood. It causes artificially high prices for low-quality products and services, results in resources being inefficiently allocated, fosters the uneven distribution of wealth, causes low attractiveness for investment (both local and foreign), reduces the quality of health care systems,⁴⁰ and leads to the negative selection of key personnel. All of the listed problems are easily detectable in Croatia and may be directly connected to the country's economic underperformance.

Therefore, efforts on preventing and fighting corruption in the public sector of Croatia should be reinvigorated. However, the first step should be to admit that the problem exists in all public administration areas and identify its main root causes. Short of that, future attempts to prevent public sector corruption will be futile and not have the desired impacts.

⁴⁰ <https://www.investopedia.com/articles/investing/012215/how-corruption-affects-emerging-economies.asp>

3 Flagship Projects

This PN aspires to address the institutional deficiencies in the justice sector, especially of the courts, to achieve higher standards of service delivery to citizens. Based on the analysis conducted in the PN, the three flagship projects are proposed (in random order): (see Annex 1 for summary of PN recommendations):

3.1 Flagship Project 1: Paperless Courts in Croatia - A Flowchart for Use in Citizen and Stakeholder Education and Preparation

The project would systematically and integrally ‘visualize’ all court procedures being performed in a fully ‘paperless’ mode, analyze all preconditions needed for switching to a paperless justice system in Croatia by 2030, and lay out a chart (time, money, and human resources) for achieving this goal.

- Each legal procedure would be analyzed with regard to its participants, legal processes, business processes within a court and externally, each working position within a court and externally, external links and communications needed, and so on with a goal to visualize every detail of such paperless process for each procedure separately and all of them together.
- Then a list of necessary preconditions and resources needed for paperless flow of each of these procedures should be drafted—ICT equipment, functionalities and specifications, specific legislative and regulative provisions, organization of work and work space, training, interconnectivity needed with external databases/participants, and so on.
- A plan for development and/or procurement of necessary resources would be drafted, always keeping in mind elements that already exist or are being developed/procured within other projects and activities, with a clear and realistic step-by-step time line showing each activity with all its correlations to other activities and the final goal.
- Finally, the project should also propose and elaborate any piloting programs that would represent the next (separate) step.
- Austrian project ‘Justiz3.0’ could be used as a guideline.
- **Project’s relevance to national strategic framework:** Moving toward paperless courts in Croatia is relevant to achieve at least two of the main objectives of the 2018 National Reform Program: (a) efficiency and speed of the justice system and (b) digital society.
- **Economic potential and exploitation:** As this project would estimate specific resources and efforts needed for introducing paperless proceedings before courts on one hand and potential benefits of such move on the other, it will (a) enable an informed decision on how to (even whether to) start and manage such process; and (b) provide a clear and uniform understanding to all stakeholders of what their particular efforts will entail, as well as what benefits can be expected. Once the actual project on introducing paperless processes begins, all stakeholders will be prepared and adequately informed, thus significant time and other resources can be saved.
- **Sustainability:** Initial investment in additional ICT equipment and software will certainly be considerable. However, savings in time, stationary, and postage could also be significant.

- **Duration:** 3–4 years
- **Estimated amount of funding required:** Technical assistance in analyzing legal and regulatory framework, mapping business processes, state of ICT within the justice system and outside of it, human resources, and other. The team should have legal, organizational, and ICT background.
- **Preconditions—points for consideration before the project can begin:** Three preconditions are essential to initiate this project: political will, leadership, and practical understanding of the needs and scope of this project.
- **Project leader:** MOJ.
- **Beneficiaries:** Judiciary, the Bar, business, and citizens

3.2 Flagship Project 2: Development of the Justice Square in Zagreb for Citizen-Centric Court Services

- **Description of the project:** Justice system bodies located in Zagreb represent between 30 percent and 40 percent share virtually across all parameters of the country’s overall justice system: by number of officials and staff, caseload, share of population they serve, economic and financial indicators, number and surface areas of physical facilities they use and/or need, and other. Presently a significant part of justice system bodies in the city of Zagreb operate in substandard facilities. Others are located in rented facilities generating significant annual costs for lease. Many of the existing buildings are located in the historical downtown area, represent ‘cultural heritage’, and thus are more expensive to maintain. A few have parking spaces available for clients/parties, and some have inherent limitations with regard to accommodating modern technologies and business processes.
- The MOJ owns a plot in the western part of the city center designated for future development of a ‘Justice Square’—a centralized, modern complex where all (or majority) of justice bodies would be located in one place and where services to citizens could be provided in an efficient, comfortable, easily accessible manner commensurate with citizen expectations in the 21st century.
- Concept design for development of the Justice Square exists since 2007.
- Costs of such development are estimated at EUR 150.0–200.0 million.
- Potential next steps:
- A list of judicial bodies to be moved to the Justice Square should be definitely determined (this has been changing, over the years).
- Detailed designs to be ordered (estimated cost EUR 8.0–10.0 million).
- Building permit and other appropriate documentation to be obtained.
- **Sources of financing obtained.** The project can be funded by the share Zagreb courts have in annual collection of court fees over 15–20 years alone (to be calculated exactly).
- Court buildings (to be vacated) appraised. Value of these properties should be used for funding a portion of the project. Talks with relevant bodies (the government, MOF, Ministry of State Assets, city of Zagreb, and other) should be initiated to obtain (ab) a definite support for the

project, (b) financing, and (c) agreement on the manner in which the existing property shall be used to project's benefit.

- A project team assigned with managing the 'Justice Square' project from the start to be established.
- **Project's relevance to the National Strategic Framework:** The present situation with physical infrastructure used by the justice system in Zagreb area represents significant limitations to achieving a better, faster, and more efficient justice system. Solving the infrastructural needs for some 40 percent of the country's justice system in a systematic manner, designed for more efficient services to citizens and business, based on modern technologies and business processes in courts and other relevant bodies, is in line with national goals.
- **Economic potential and exploitation:** The project has several positive economic prospects and potentials for exploitation: (a) use of existing properties in attractive locations for commercial (or other governmental) purposes; (b) annual savings in costs of lease for judicial buildings; (c) the Justice Square will have potential for commercial partnership (underground parking, lease of office space to auxiliary services—such as bank, post office, catering, and so on); and (d) savings through centralization and efficient use of many services within the justice system.
- **Sustainability:** The project may be funded by portion of annual court fees collected alone. Same for future maintenance. Increased efficiency and better quality of justice system's services should have direct, lasting positive impacts on citizens, society, and economy.
- **Duration:** 5–7 years (from designing to completion of works).
- **Estimated amount of funding required:** EUR 150.0–200.0 million.
- **Preconditions—points for consideration before the project can begin:** Three preconditions are essential to initiate this project: political will, leadership, and practical understanding of the needs and scope of this project.
- **Project leader:** MOJ..
- **Beneficiaries:** Citizens, businesses, society in general, justice system, and legal profession.

Next Phase of Development of the Zagreb Justice Square may include the Sub-Flagship Project 2A: Modernization of the Commercial Court in Zagreb

Description of the Modernization of the Commercial Court Project: The project would concentrate on reforms and improvements needed to fully synchronize the operation of the commercial court with present and future needs of business environment. The objectives of the project may include the following:

- Improving the efficiency of the Commercial Court in Zagreb through infrastructure investments (and assessment of other commercial courts, if needed)
- Analysis and recommendations on legal and regulatory framework in light of specific needs of commercial courts and business (civil-litigious proceedings, enforcement proceedings, business and land register-related proceedings at municipal courts, and other)
- Support to and coordination of the existing (or planned) activities aimed at switching to fully digitalized communication and work processes in commercial courts, law offices, and business entities
- Efficiency, backlog reduction, reducing delays in the DT—with a practical and meaningful monitoring and evaluation system for monitoring effects on the business sector (costs, user

surveys, detailed feedback from business entities on practical effects of particular decisions), to feed the continuing, specialized, interactive training program for commercial court judges and personnel on practical implementation of applicable legislation and regulation (Company Law, Civil Procedure Act, Enforcement Act, Bankruptcy Act, Business, as well as for municipal court judges and staff in land registries regulation) and forums for two-way discussions with representatives of the business sector. The goal is to increase the awareness of court officials and personnel on practical effects that efficiency, consistency, and quality of their work have on business/economy.

- **Project’s relevance to national strategic framework:** Improving the efficiency and quality of commercial courts in Croatia is relevant to achieve two of the main objectives of the 2018 National Reform Program: (a) improving the business environment/removing impediments to business and (b) achieving an efficient justice system.
- **Economic potential:** Inefficiency and slowness of courts in resolving commercial disputes and enforcing debt and registration-related proceedings (business and real estate) is often quoted among the top three to four barriers to doing business in Croatia both by local entrepreneurs and foreign investors. Swift, efficient, and predictable operation of courts in this segment would contribute to development of a business environment propitious for economic growth.
- **Sustainability:** Efficient system of commercial courts not only fosters economic activities, but it also generates considerable own revenues through court fees.
- **Duration:** 5 years.
- **Estimated amount of funding required:** Infrastructure investment where needed based on situational analysis. Technical assistance in analyzing legal and regulatory framework, recommending adjustments, and developing training. Digitalization components are to a large extent already covered by pending projects and activities of the MOJ—here a management team would be needed to coordinate various ongoing and planned activities and ensure that focus on commercial court operation is maintained and performance monitored.
- **Preconditions—points for consideration before the project can begin:** Three preconditions which are essential to initiate this project: political will, leadership, and practical understanding of the needs.
- **Project leader:** MOJ.
- **Beneficiaries:** Commercial courts, businesses, and other stakeholders.

Annex 1: Summary of Recommendations Grouped across Priority Areas

Focus	Problem	Proposed actions	Risks	Time frame
Efficiency improvement and quality of judgments				
Increase court efficiency by 1–2 percent overall.	Given the present circumstances (lower inflow of new cases and decreasing backlog, combined with lower productivity), an increased efficiency of each judge/adviser by an average 1–2 percent would over a medium term create a situation where more resources could be devoted to reducing delays and increasing the quality of decisions.	<ol style="list-style-type: none"> 1. Analyze reasons for lower inflow of new cases during the past 3 years. 2. Along with continued efforts to reduce the number of oldest cases (> 10 years), concentrate on solving slightly more of those falling within the 4–10 year category. 3. Adjust the Framework Criteria to support this effort. 4. Introduce time management and case weighting criteria into the Framework Criteria. 5. Exploit case management techniques for better management of time/efficiency within proceedings. Draft a case management manual. Develop and deliver appropriate training modules. 6. Introduce HRM techniques and methods (other than remuneration) for motivating employees. Negotiate with the MOF so that a particular part of revenue generated by court fees can be returned to the system for these purposes—even on symbolic levels. 	Unexpected surge in incoming new cases. This may be a consequence of (a) new legislation and (b) sudden changes within the society or in the market.	1–5 years Starting immediately
Appeals - quality and predictability	Apart from ensuring a venue for reviewing and remedying individual judgments, the judicial review process should be used for harmonizing the court practice and analyzing the work and legal problems of lower-instance courts. Croatia's legal system cherishes wide access to the judicial review process, but so far it has not been fully utilized for the other general purposes that are also clearly prescribed by law. Based on the data available, it seems that errors in process are the most frequent cause of overturning/remanding the lower-instance courts' decisions.	<ol style="list-style-type: none"> 1. Aided by the data from the ICMS, an effort should be made to conduct a detailed analysis of the appellate reviews in Croatia—with regard to their duration and outcomes. 2. Based on the results of such an analysis, conclusions should be drawn, and appropriate actions taken to remedy the situation based on the 'lessons learned': <ol style="list-style-type: none"> (a) A more frequent use of existing mechanisms for addressing the problem—enlarged sessions of the Supreme Court, sessions on County Courts (b) The planned 'model proceedings' to be utilized to the fullest 	Responsibility of (all) higher courts for these aspects of functioning of the legal system is already well regulated in applicable laws.	1–3 years Starting immediately

Focus	Problem	Proposed actions	Risks	Time frame
	There is also evidence that even appellate courts lack consistency in the application of law. Such a situation only feeds the desire to challenge and appeal every first-instance decision.	<ul style="list-style-type: none"> (c) Training on recognized issues for the first- and second-instance judges to be designed and delivered on an ad hoc basis (d) Informed and cautious approach to possible legislative interventions—based on empirical evidence and thorough analysis/projections of all potential outcomes (e) Ensure transparency and predictability through publishing appellate decisions on existing platforms 		
Enforcement (of uncontested claims)	Several versions of the new Enforcement Act have been drafted. Public consultations have raised high interest, and numerous comments and suggestions were received. It is highly likely that, according to the version presented for public consultations, proceedings will inevitably take longer than they have so far. As throughout this time punitive interest on the debt will be accruing, it is also questionable what will be the final effect of this on the total cost for the debtor. According to the draft, fully electronic proceedings are envisaged, based on predefined forms.	<ol style="list-style-type: none"> 1. Perform an in-depth analysis of the proposed system of enforcement based on trustworthy documents. 2. Take appropriate steps to prepare the court system for absorbing the expected inflow of new cases of this type (estimated at 400,000–700,000 per year) 3. Develop and test the required IT systems used by all participants in proceedings (court, public notary, creditor). Perform training for all participants. 4. Develop and legally verify predefined forms to be used in the proceedings. 	The potential for congestion as stakeholders will be working in a new system, and roles and responsibilities will have to evolve.	Starting immediately
Management of human resources, training, and judicial independence and accountability				
HRM	Croatia is very limited in managing human resources in public services in accordance with the basic motivational factors that drive human beings toward achieving (better) results. The principles of remuneration based on performance/results are difficult to achieve within the current human resource environment. An HRM system that recognizes and underlines the positive features of the system and motivates and allows employees to acknowledge their responsibilities and accountability, even without additional payments, is much needed and can be developed.	<ol style="list-style-type: none"> 1. Hire a professional HRM team to work with the people who constitute the 'sector'. 2. The 2016 Users' Survey, which targets respondents from within the system, clearly reveals what employees within the sector find as positive/negative aspects of their work and their employment. The survey also revealed that 25 percent of employees think of quitting the job every day. For any HRM professional, this is ample information to work with. 3. The goal is to detect and amplify those aspects of work that may be used to motivate employees to do more and better and mitigate those that are demotivating. 4. Train the 'managers' in the justice system on basic HRM and motivational skills and techniques. 	Reaction of the sector's 'management' to the incentive system. As no financial bonus is permitted, skills building and training support are considered as an incentive (bonus).	1–3 years Starting immediately
Court managers	After almost 12 years of consideration, Croatia has introduced a new staff position to the sec-	<ol style="list-style-type: none"> 1. A detailed and precise selection criterion that has been developed by the MOJ should be disseminated widely and competition encouraged to avoid political influence on selection. 	Court presidents not accepting the induc-	6 months. The new management system

Focus	Problem	Proposed actions	Risks	Time frame
	<p>tor—court managers. According to the Amendments to the Law on Courts (2019), courts with 15 judges or more shall have a court manager. Although the law envisages the court manager as a person who assists the court president in the court’s administrative operations, with the president remaining responsible for overall court administration, this role might bring additional value to the system. Between 40 and 45 court managers should be recruited based on the current number of judges in individual courts.</p>	<ol style="list-style-type: none"> 2. A comprehensive training program should be developed, aimed at explaining the specifics of the judiciary in a modern society, the special role and position of courts, judicial ethics, as well as the numerous particularities of the job (internal organization of a court/judicial system, IT in courts, court statistics, budgeting and financial management, reporting, and asset management). 3. A part of the training should be attended by court presidents as well, since their role will now change significantly. Court presidents should be made aware of the advantages this change brings to them. 	<p>tion of court managers and not delegating adequate responsibilities to them.</p>	<p>should be prepared and ready before launching the selection procedure for these manager positions. Sensitization and change management practices will be needed.</p>
Physical infrastructure (court facilities and buildings) for optimal and dignified operations				
Justice Square in Zagreb - Zagreb courts	<p>The model of the ‘Justice Square Zagreb’ is exhibited in the cabinet of the justice minister since 2007. Today, 12 years later, it is still just a model made based on a concept design that won an architectural award on the competition. The cost of the project, estimated at EUR 150–200 million, is still a factor prohibiting any move toward the project implementation. Detailed designs and the construction permit alone are estimated at EUR 8–10 million. In the meantime, courts in Zagreb, with over 30 percent share in the overall caseload in Croatia, are in an awkward situation. On the one hand, it appears irrational to invest in improving facilities in which they operate, since the development of the Justice Square is ‘just about to begin’. On the other hand, 12 years have passed and no improvements are in sight. The MOJ may take a lead and present the situation to the government/MOF and resolve this awkward situation. If the Justice Square is not going to be operational within the next 5–7 years, the project should be postponed for some ‘better times’, and existing court infrastructure should be</p>	<p>The time to hesitate has elapsed. The MOJ should decide whether the Justice Square in Zagreb is a GO or NO-GO!</p> <p>A. GO decision</p> <ol style="list-style-type: none"> 1. The completion of the complex should be planned within the next 3–5 years. 2. Funding/financing should be secured, detailed designs contracted/produced, and a construction permit obtained. 3. A definite list of the judicial bodies that will eventually move to the Justice Square should be made and closed (so far, the list has changed every 1 or 2 years). 4. The existing court buildings (in downtown Zagreb) should be offered to the Ministry of State Assets/MOF as collateral/leverage and for further disposition. 5. Costs against leases currently paid for court (and MOJ) buildings should be calculated as future savings. 6. The portion of the overall investment that will actually be covered from court fees of the courts that will move to the new location should be precisely calculated and adequate projections made and credited in favor of the decision. <p>B. NO-GO decision</p> <ol style="list-style-type: none"> 1. The appropriate decision should be made. 2. The decision should be clearly communicated to all the affected judicial bodies. 3. Alternative solutions for (at least) the most affected courts must be found, and quickly. (Commercial Court in Zagreb and County 	<p>Inability to raise funds and make the investment decision on a timely basis with the stakeholders (MOJ, MOF, judiciary, others).</p>	<p>Option A: 5–7 years Option B: 1–3 years</p>

Focus	Problem	Proposed actions	Risks	Time frame
	<p>brought closer to the 21st century standards by other means and approaches.</p> <p>Otherwise, the fact that Zagreb courts alone could fund the whole investment from the court fees they will collect in the next 10–15 years should be used as leverage to make the project happen.</p> <p>This is the single most crucial decision regarding Croatia’s court system to be made during the next year.</p>	<p>Court in Zagreb). These solutions should be materialized/completed within the next 2–3 years. Synergy is possible—by solving the issue of the Commercial Court in Zagreb on some other location, vacated space could be used to solve the problem of the County Court in Zagreb (adjoining buildings).</p> <p>4. Premises for the Land Registry Department of the MC Zagreb should be solved (refurbishment of the existing structure on the Justice Square for this purpose is already in process).</p> <p>5. A midterm solution for courts (and MOJ) that are currently in spaces rented from private companies should be developed.</p> <p>6. The ‘Justice Square’ idea should be postponed for another 10–15 years.</p>		
ICT for automation, digitalization, and e-services				
ERP	<p>Introduction of the ERP system to the MOJ’s management processes will represent a significant step forward in the overall management capacities.</p>	<p>Functionalities and specifications of particular sections of the ERP system (financial, asset management, and HRM) must be carefully designed and developed and data and information meticulously populated. Training of all personnel assigned to work with the future ERP system should be delivered on time, with activities on change management carried out in parallel.</p>	<p>Capacity to coordinate with multiple justice sector entities</p>	<p>1–3 years</p>
<p>Paperless court - a flowchart for citizen and stakeholder education (see under Flagship Projects chapter 3)</p>	<p>One effort that could significantly improve many aspects of legal and business processes within the justice system is the gradual introduction of ‘paperless’ proceedings.</p> <p>However, not all types of proceedings, nor all parts of particular types of proceedings, are equally suitable for work in the ‘paperless mode’ at this time. Nor are all participants in various types of proceedings equally prepared/equipped/willing to accept such manner of working and interacting with the courts.</p> <p>Yet, first attempts at this are already in progress or under preparation—for instance, Simplified Personal Bankruptcy proceedings,</p>	<p>1. An analysis should be made of all types of proceedings with regard to</p> <ul style="list-style-type: none"> (a) Suitable proceedings and/or procedural actions that could be carried electronically; (b) Parties (participants) involved in such proceedings and their preparedness/willingness to operate in this manner; (c) Legal ramifications/requirements; and (d) Technical requirements (SW/HW/communication) for all participants. <p>2. Each type of proceeding should be analyzed step-by-step, from the moment an active party (plaintiff) decides to file a motion to the court, through all the procedural actions, to closing and archiving the case, and the appellate process to document possibilities, requirements, risks, and problems.</p> <p>3. Based on these, a realistic time plan for gradually switching to an electronic mode of work for each type of proceeding should be</p>	<p>e-Readiness of the justice system and all participating stakeholders to be involved in such a visionary endeavor that will transform the courts.</p>	<p>2 years</p>

Focus	Problem	Proposed actions	Risks	Time frame
	<p>Enforcement of Uncontested Claims proceedings, and e-filing in some parts of communication between lawyers and courts in commercial matters.</p> <p>These could already be used for a deeper analysis, lessons learned, and planning/preparing to progress in this direction in the future.</p>	<p>developed., including incentives, mitigation of risks, and solutions to problems.</p> <p>4. Possible effects on the overall efficiency and quality of the justice system should be estimated and appropriate adjustments planned (infrastructure, workflow, staff, training, and user education).</p>		