

**CEPEJ**

**Report on  
"European judicial systems –  
Edition 2014 (2012 data): efficiency  
and quality of justice"**

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## Chapter 1. The evaluation process of the CEPEJ

This first chapter describes the evaluation process carried out by the CEPEJ to prepare the present report. It lays out the working principles and methodological choices used in this exercise, and introduces the general demographic and economic data.

### 1.1 The European Commission for the Efficiency of Justice

The European Commission for the Efficiency of Justice (CEPEJ) was set up by the Committee of Ministers of the Council of Europe in September 2002, and is entrusted primarily with proposing concrete solutions, suitable for use by Council of Europe member states for:

- promoting the effective implementation of existing Council of Europe instruments used for the organisation of justice;
- ensuring that public policies concerning the courts take account of the needs of the justice system users; and
- offering states effective solutions prior to application to the Court and preventing violations of Article 6 of the European Convention on Human Rights, thereby contributing to reduce congestion in the European Court of Human Rights.

The CEPEJ is today a unique body for all European States, made up of qualified experts from the 47 Council of Europe member states, to assess the efficiency of judicial systems and propose practical tools and measures for working towards an increasingly efficient service for the public.

According to its Statute, the CEPEJ must "*(a) examine the results achieved by the different judicial systems (...) by using, amongst other things, common statistical criteria and means of evaluation, (b) define problems and areas for possible improvements and exchange views on the functioning of the judicial systems, (c) identify concrete ways to improve the measuring and functioning of the judicial systems of the member states, having regard to their specific needs*". The CEPEJ shall fulfil these tasks, for instance, by "*(a) identifying and developing indicators, collecting and analysing quantitative and qualitative figures, and defining measures and means of evaluation, and (b) drawing up reports, statistics, best practice surveys, guidelines, action plans, opinions and general comments*".

The statute thus emphasizes the comparison of judicial systems and the exchange of knowledge on how they function. The scope of this comparison is broader than 'just' efficiency in a narrow sense: it also emphasizes the quality and the effectiveness of justice.

In order to fulfil these tasks, the CEPEJ has undertaken a regular process for evaluating the judicial systems of the Council of Europe's member states.

### 1.2 The Scheme for evaluating judicial systems

In comparison with the previous exercise (2012 Edition of the Report, based on 2010 data), the CEPEJ wished to stabilize the scheme aimed at gathering, from the member states, qualitative and quantitative information on the daily functioning of judicial systems. The main goal in maintaining such consistency was to ensure the collection of homogeneous data from one exercise to another, thus allowing for comparisons over time, on the basis of the compilation and analysis of initial statistical series (see below). Hence, the evaluation scheme used for this current cycle<sup>1</sup> remains very similar to the one used for the 2010-2012 cycle. Only a few questions were either clarified or developed. In addition, the explanatory note<sup>2</sup> was updated to minimize as far as possible the difficulties of interpretation and to facilitate a common understanding of the questions by all national correspondents, allowing to guarantee uniformity of the data collected and processed. It has been recommended to all national correspondents to carefully read the explanatory note. Before answering each question.

The Scheme for understanding a judicial system has been designed and used by the CEPEJ on the basis of the principles identified in Resolution Res(2002)12 of the Committee of Ministers which establishes the CEPEJ, and relevant Resolutions and Recommendations by the Council of Europe in the field of efficiency and fairness of justice.

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<sup>1</sup> See Appendix.

<sup>2</sup> See Appendix.

The Evaluation Scheme was reviewed by the CEPEJ at its 20th plenary meeting (December 2012). The Scheme and the explanatory note were submitted to the member states in May 2013, in order to receive new data at the end of 2013, using the electronic version of this scheme, allowing each national correspondent to access a secure website to transmit their responses to the Secretariat of the CEPEJ.

### 1.3 Data collection, validation and analysis

This report is based on figures from 2012. As the majority of the states and entities were only able to issue judicial figures for 2012 in the summer or autumn of 2013, the CEPEJ was not able to gather figures before the beginning of 2014. This left only a few months for member states to collect and consolidate their individual replies to the Evaluation Scheme and less than four effective working months for the experts to process them and prepare the report.

Methodologically, the collection of figures is based on reports by member states and entities, which were invited to appoint national correspondents entrusted with the coordination of the replies to the Scheme for their respective states or entities.

The CEPEJ instructed its Working Group, under the chairmanship of Mr Jean-Paul JEAN (France), with the preparation of the report<sup>3</sup>, coordinated by the Secretariat of the CEPEJ<sup>4</sup>.

The national correspondents were considered to be the main interlocutors of the Secretariat and the experts when collecting new figures, and the first to be held liable for the quality of the figures used in the survey. All individual replies were recorded in a database.

Extensive work has been carried out to verify the quality of the data submitted by the states. Therefore, frequent contacts have been established with national correspondents to validate or clarify the figures (see box below) and their adjustment continued until shortly before the completion of the final version of the report. The CEPEJ experts agreed that the figures would not be changed *ex officio*, unless the correspondents explicitly agreed to such changes. Thus, all data changes have been approved by the relevant national correspondents. Nevertheless, following discussions with the national correspondents, the experts have decided to exclude some data that do not appear sufficiently accurate to merit publishing.

The meeting between the CEPEJ-GT-EVAL and the network of national correspondents (Strasbourg, May 2014) was an essential step in the process, aimed at validating figures, explaining or amending, for the same questions, significant variations in data between 2004 and 2012, discussing decisions of the experts and improving the quality of the figures provided.

#### **Responding states**

By May 2014, 45 member states had participated in the process: **Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus<sup>5</sup>, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia,**

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<sup>3</sup> The Working Group of the CEPEJ on the evaluation of judicial systems (CEPEJ-GT-EVAL) was composed of:  
Mr Ramin GURBANOV, Judge at the Baku City Yasamal District court, Azerbaijan,  
Mr Adis HODZIC, Head of the Budget and Statistics Department, Secretariat of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina,  
Mr Jean-Paul JEAN, President of Chamber at the Court of Cassation, Associated Professor at the University of Poitiers, France (President of the CEPEJ-GT-EVAL),  
Ms Stéphanie MOUROU-VIKSTRÖM, Judge, First instance Court, Monaco,  
Mr John STACEY, Government Advisor for the Efficiency and Quality of Justice, United Kingdom (President of the CEPEJ),  
Mr Georg STAWA, Head of Department for Projects, Strategy and Innovation, Federal Ministry of Justice, Austria,  
Mr Frans van der DOELEN, Programme Manager of the Department of the Justice System, Ministry of Justice, The Netherlands.

and supported by the scientific experts:

Ms Munira DOSSAJI, Principal Operational Research Analyst, Strategy and Innovation Team, Human Rights and International Directorate, United Kingdom

Ms Beata Z. GRUSZCZYŃSKA, Institute of Justice, Ministry of Justice, Poland,

Ms Simone KREß, Judge, Court of Appeal of Köln, Germany,

<sup>4</sup> The French authorities have made available to the Secretariat of the CEPEJ Mr Yannick MENECEUR, judge, to work as Special Adviser.

<sup>5</sup> The data provided by Cyprus does not include data of the territory which is not under the effective control of the Government of the Republic of Cyprus.

Lithuania, Luxembourg, Malta, Republic of Moldova<sup>6</sup>, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia<sup>7</sup>, Slovakia, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia"<sup>8</sup>, Turkey, Ukraine<sup>9</sup> and United Kingdom<sup>10</sup>.

Only Liechtenstein and San Marino have not been able to provide data for this report.

For the first time, the CEPEJ has accepted to include in the evaluation cycle, at their requests, non-member states of the Council of Europe which enjoy the observer status to the CEPEJ<sup>11</sup>. Israel has participated in the evaluation cycle and appears in this report. It should be noted that the data indicated at the end of the tables (averages, medians, etc.) continue to be calculated only for the Council of Europe member states so as to provide a picture of the European situation of judicial systems. More generally, it is worth mentioning that for two years the CEPEJ, in line with the general policy agreed by the Committee of Ministers of the Council of Europe, has extended its cooperation with non-member states within the framework of specific cooperation programmes. Morocco, Tunisia and Jordan benefit from such cooperation.

It should be noted that in federal states or states with a decentralised system of judicial administration, the data collection has different characteristics compared to those of centralised states. The situation is frequently more complex in those cases. In these states, data collection at a central level is limited, while at the level of the federated entities, both the type and the quantity of figures collected may vary. In practice, several federations have sent the questionnaire to each of their entities. Some states have conceived their answers for the whole country from the figures made available from the entities, taking into account the number of inhabitants for each component. To facilitate the data collection process, a modified version of the electronic scheme has been developed, at the initiative of Switzerland.

All the figures provided by individual member states have been made available on the CEPEJ website: [www.coe.int/cepej](http://www.coe.int/cepej). National replies also contain descriptions of the legal systems and comments that contribute greatly to the understanding of the figures provided. They are therefore a useful complement to the report although not all of this information has been included in it, in the interest of conciseness and consistency. Thus, a genuine data base on the judicial systems of the Council of Europe member states is easily accessible to all citizens, policy makers, law practitioners, academicians and researchers. Studies and research can be conducted by research teams, with easy access to data in the framework of agreements with the CEPEJ, in accordance with registered scientific terms by the experts of the GT-EVAL.

#### 1.4 General methodological issues

##### ***Objectives of the CEPEJ***

This report does not claim to have exploited exhaustively all the relevant information that has been provided by member states, given the large amount of data submitted. As was the case for previous editions of this report, the CEPEJ has tried to address the analytical topics, bearing in mind above all the priorities and the fundamental principles of the Council of Europe. Beyond the figures, the interest of the CEPEJ report lies in the illustration it offers of the main trends, evolutions and common issues for European States.

This report is part of an on-going and dynamic process carried out by the CEPEJ. Throughout the elaboration of the report, experts and national correspondents were encouraged to bear in mind the long term objective of the evaluation process: defining a set of key quantitative and qualitative data to be regularly collected and similarly processed in all member states, bringing out shared indicators of the quality and efficiency of court activities in the member states of the Council of Europe and highlighting organisational reforms, practices and innovations, which enable improvement of the service provided to court users.

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<sup>6</sup> The data provided by the Republic of Moldova does not include data of the territory of Transnistria which is not under the effective control of the Government of the Republic of Moldova.

<sup>7</sup> The data provided by Serbia does not include data of the territory of Kosovo\* (all reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo).

<sup>8</sup> Mentioned as "the FYROMacedonia" in the tables and graphs below.

<sup>9</sup> In spite of the political situation in Ukraine at the time of preparing this report, the authorities of the Ukrainian Ministry of Justice have participated in the evaluation process and provided, as far as they could, data for 2012.

<sup>10</sup> The results for the United Kingdom are presented separately for England and Wales, Scotland and Northern Ireland, as the three judicial systems are organised on different base and operate independently from each other.

<sup>11</sup> Canada, Japan, Mexico, the Holy See, the United States of America (as observers to the Council of Europe), as well as Israel and Morocco (following their specific request accepted by the Committee of Ministers) enjoy observer status to the CEPEJ.

### ***The quality of the data***

The quality of the figures in this report depends very much on the type of questions asked in the data collection instrument, the definitions used by the countries, the system of registration in the countries, the efforts made by national correspondents, the national figures available to them and the manner in which the figures have been processed and analysed. In spite of the improvements resulting from previous experiences, it is reasonable to assume that some variations occurred when national correspondents interpreted the questions for their country and tried to match the questions to the information available to them. The reader should bear this in mind and always interpret the statistical figures given in the light of their attached narrative comments and the more detailed explanations given in the individual national replies.

The CEPEJ has chosen to process and present only the figures which offered a high level of quality and accountability. It decided to disregard the figures which were too disparate from one country to another, or from one evaluation exercise to another, or did not present sufficient guarantee of reliability. The information not included in this report has been collected and is available on the CEPEJ website ([www.coe.int/cepej](http://www.coe.int/cepej)).

### ***The control and the coherence of the data***

A specific effort of validation has been made to ensure the coherence and accountability of the data and allow to compose and analyse statistical series. These series are designed to measure evolutions. Such evolutions are often limited to the two last periods examined (2010-2012 and 2012-2014). Some few series have been examined for longer periods, including 2004-2012, depending on the homogeneity of the data available. As regards the accuracy of figures, statistical rules (see below) have been applied to compare the data from the various cycles, which has made it possible to identify the answers showing large or small variations which are difficult to explain. Through these comparisons, methodological problems have been identified and corrected. On the other hand, in some cases, strong variations have been explained by the evolution of economic situations, structural and organisational reforms, political decisions or the implementation of new mechanisms, procedures or measures.

### **Methodology and procedure for validating data**

Before any steps could be taken to validate data, it was necessary to re-build the intervention framework for the five evaluation cycles (2004, 2006, 2008, 2010 and 2012 data). To do so, a data base has been set up, which brings together all information available from the first to the last cycle. As the questionnaire was modified and/or adjusted slightly from one cycle to another, the scientific expert recoded several variables and used some data mapping methods on the figures provided for the five exercises.

All data (some 3 million entries, not counting comments) have been submitted to the validation procedure. The methodology chosen, which is specially adapted for this exercise is the "method of time-series mapping on three levels". This methodology brings together three validation procedures for quantitative data. First of all, significant differences (of more than 20%) between the entries for the same item and for the three exercises have been identified. In order to guarantee the validity of this procedure, data have also been examined according to the *Grubbs' test*. This has made it possible to isolate the true "outliers" (extreme values which, in addition to being different from previous entries (differences of more than 20%) were difficult to be compared with, or were not comparable at all with the entries for the year 2012 for the other states). If some values presenting differences of more than 20% from one year to another could be explained by the national correspondents, all other "outliers" have been corrected, without exception. The third validating element through the "time-series mapping on three levels" is the check of the internal validity. This procedure has mainly been applied to complex items, namely those made of several entries. Among the variables submitted to this procedure appear budgetary items and the cases addressed by the courts. For this purpose, a specific validation scheme has been set up by the scientific expert. The elements which are part of the complex variables have been horizontally verified (correspondence between the sum of the elements with the entry corresponding to the total) and sometimes also vertically verified (inclusion or exclusion of the elements within the total).

The validation has been made according to a rigorous methodology. However, it is not possible to guarantee the full reliability of all data. One must take into account the fact that the exactitude of some entries was confirmed by national correspondents without specific explanation as regards the difference which had been noted. Generally, such entries have been either excluded from the analyses, or kept with disclaimers in the text as regards the interpretation of the results of the analyses taking these elements into account.

The CEPEJ has been implementing since 2008 a peer evaluation process concerning the systems for collecting and processing judicial data in the member states. This process aims at supporting the states in the improvement of the quality of their judicial statistics and the development of their statistical system so that such statistics are in line with common indicators defined through the CEPEJ's Evaluation Scheme. It also facilitates the exchange of experiences between national systems, sharing good practices, identifying benchmarks and the transfer of knowledge. In this way it contributes to ensuring the transparency and accountability of the CEPEJ process for evaluating European judicial systems.

To date, the systems have been examined by the peers for 17 volunteer member states in order to analyse the organisation of the CEPEJ data collection and communication to the Secretariat of the Council of Europe: **Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, France, Latvia, Malta, Netherlands, Poland, Russian Federation, Switzerland** and **Turkey**. Furthermore, a visit was organised to **Norway**, bringing together as well experts from **Denmark, Finland, Iceland** and **Sweden**. During these visits, the experts appointed by the CEPEJ-GT-EVAL analysed notably the practical way of responding to selected questions of the Evaluation Scheme and the content of these answers, in particular questions related to budgetary issues, types and number of judges, litigious civil cases and methods of calculating the length of proceedings.

Moreover, the CEPEJ approved a set of guidelines on judicial statistics for the services in member states which collect and process statistics in the justice field.<sup>12</sup> These guidelines aim at ensuring the quality of the judicial statistics collected and processed by the member states, as a tool for public policy. They should also facilitate comparison of data between European countries by ensuring adequate homogeneity despite the substantial differences between countries as regards judicial organisation, economic situation, demography, etc.

### Comparing data and rules

The comparison of quantitative figures from different countries revealing varied geographical, economic and legal situations is a delicate task. It should be approached with great caution by the experts writing the report and by the readers consulting it and, above all, by those who are interpreting and analysing the information it contains.

In order to compare the various states and their systems, the particularities of the systems, which might explain differences from one country to another must be borne in mind (different judicial structures, organisation of courts and the use of statistical tools to evaluate the systems, etc.). Special efforts have been made to define words and ensure that concepts are addressed according to a common understanding. For instance, several questions have been included in the Scheme, with clear definitions in the explanatory note, to address the number of courts (both through an institutional and a geographical perspective) or the number of judges (different categories have been specified). Particular attention has been paid to the definition of the budget allocated to courts, so that the figures provided by member states correspond to similar expenditures. However, the particularities of some systems might prevent achieving shared concepts. In these cases, specific comments have been included with the figures. Therefore only an active reading of this report can allow analyses and conclusions to be drawn; figures cannot be passively taken one after the other but must be interpreted in the light of the subsequent comments.

The report aims to give an overview of the situation of the European judicial systems, not to rank the best judicial systems in Europe, which would be scientifically inaccurate and would not be a useful tool for the public policies of justice. Indeed, comparing does not mean ranking. However, this report gives the reader tools for an in-depth study which would then have to be carried out by choosing relevant clusters of countries: according to the characteristics of the judicial systems (for instance civil law and common law countries; countries with relatively new judicial systems or countries with old judicial traditions), geographical criteria (size, population) or economic criteria (for instance within or outside the Euro zone). Secondly, the CEPEJ will carry out, as for the previous cycle, its own analysis on the basis of this report.

The CEPEJ scheme was also completed by certain small states. **Andorra** and **Monaco** are territories which are not operating at a scale comparable to the other states surveyed in the report. Consequently the figures of these states must be interpreted cautiously, taking into account the specificities of the national structural indicators.

Monetary values are reported in Euros. Because of this, some problems have occurred while using exchange rates for states outside the Euro zone. Exchange rates vary from year to year. Since the report focuses mainly on 2012, the exchange rates of 1 January 2013 have been used. For states experiencing

<sup>12</sup> Document CEPEJ(2008)11.

high inflation rates, this choice may generate very high figures which must be interpreted within their specific context. The high variation of the exchange rate might have a considerable effect on the figures for the countries outside the Euro zone. For some of them, the exchange rate against euro could have been more favourable in 2013 than in 2011; this may have strengthened budgetary or monetary increases once expressed in euros. It is therefore, necessary to pay attention to this issue while comparing monetary figures of the 2012 and 2014 editions. A specific table (table 1.3) shows the variation of the exchange rate for the countries outside the Euro zone. As far as possible, this has been taken into account while commenting on the tables and figures showing budgetary variations.

### ***The evolution of judicial systems***

Since 2012, a few member states of the Council of Europe have implemented fundamental institutional and legislative reforms of their legal systems. For these states, the situation described in this report may be quite different from today's situation when reading the report. States were invited to indicate whether reforms had been implemented since 2012 or whether other reforms are under way. This makes it possible to identify main trends related to prioritised reforms in the various justice systems.

In some countries the economic situation has deteriorated since 2012 because of the crisis, which has had an impact on the functioning of justice. For such states too, the situation described in this report may have evolved.

### ***Presenting the data***

In the 2012–2014 evaluation cycle, the CEPEJ has tried to take a global approach of 47 states and entities' judicial systems - plus **Israel**. In order to highlight some particularities of European judicial systems, several indicators have been developed or calculated: ratios, rates, averages and/or medians, indexes, etc. Several tables include replies as provided by the countries. Other tables show the replies processed together or presented according to aggregated figures. Graphs show, more often than not, global answers at a European level. Some indicators are shown using maps.

In order to propose some references for reading the results of the analyses at a European level, the CEPEJ has used the following indicators of central tendency:

**Average:** represents the arithmetic average which is the outcome of dividing the sum of the observations of a distribution (data supplied) by the total number of countries which have indicated the information included into the distribution. The average is sensitive to extreme values (too high or too low).

**Median:** represents the middle point of a set of ordered observations (ranked according to an increasing or decreasing order). The median is the value that divides the data supplied by the countries concerned into two equal groups so that 50% of the countries are above this value and 50% are below it. When there is an odd number of observations, the median is the value that is just in the middle of these two groups. The median is sometimes better to use than the average, as it is less sensitive to extreme values. The effect of the extreme values is then neutralised.

In addition to the average and the median, the minimum and maximum have been included in several tables:

**Minimum:** the lowest recorded value in the given column of the table.

**Maximum:** the highest recorded value in the given column of the table.

Often in this report the indicator of *average annual variation* is presented

**Average annual variation:** represents the result of the calculation (in %) of the variation observed between several given years. This value makes it possible to establish the trend of the general evolution within the period examined. Then, a country which shows a great decrease between 2008 and 2010 and a slight increase between 2010 and 2012 will have, however, a negative indicator of the average annual variation. This indicator takes into account the values of each year and not only the values of the first and the last year, which allows a more accurate reading of the given phenomenon within several years.

On several graphs, the reader will also find the coefficient of determination ( $R^2$ ).

**Coefficient of determination:** can have values between 0 (0%) and 1 (100%). The stronger the explanation link between two variables, the closer to 1 the coefficient of determination will be. If, for instance, the  $R^2$  between two variables is equal to 0.7, this can be interpreted as follows: the variable Y explains 70% of the variability of the variable X.

The CEPEJ has also attempted to include a more complex analysis: factorial analysis followed by classifications. Such analysis, often used in social sciences, enables us to consider a greater number of data and highlight trends, similarities or differences. Therefore the models which result from such a presentation

are obviously approximations. The advantage of this method lies in its capacity to present a synthesis of the information on a unique graph or table and to avoid presenting selected raw data one by one. This allows for the creation of clusters. In this report, groups of countries have been created around main elements.

## 1.5 General economic and demographic figures

These figures, which almost every state was able to provide, give comprehensive information on the general context in which this study was conducted. In particular, they make it possible, as was the case in the previous exercise, to relativize the other figures and place them in context, particularly budgetary figures and figures relating to court activity.

The figures also enable the reader to measure the variations in the population and the size of the countries concerned, from **Monaco**, with 36.000 inhabitants, to the **Russian Federation** with more than 143 million. This demographic variable must always be borne in mind. The population concerned by this study is roughly 820 million people, which is almost the whole population of the Council of Europe's jurisdiction - since only **Liechtenstein** and **San Marino** are absent from the 2014 Edition.

The data also demonstrate the large differences regarding wealth and living standards in the various countries through per capita GDP and partially by the amount of the global public expenditure (national and regional). The average annual gross salary gives an interesting overview of the wealth and living standards as it involves economic, social (welfare system) and demographic figures. Though this indicator is not perfect, it nevertheless highlights, again, substantial disparities between the citizens of the member states.

Finally, the influence of the monetary exchange rate between the "Euro zone" countries and the "others" must be taken into account, as it strongly modifies what salaries represent vis-à-vis the quality of life for the inhabitants of each country.

Therefore comparisons must always be limited to what can be compared. The results that each member state would want to measure against other states that appear comparable to it must be balanced, taking into account the specific context. There are obviously threshold effects according to the level of population or level of living standards which are measured through ratios regarding the number of inhabitants and the per capita GDP.

The data regarding public expenditure (Q2) seem to be tied to various public accounting techniques, both as regards defined perimeters and, for instance, the presentation of deficits. The problematic effects of national and regional budgets on public competences as a whole also gives rise to further methodological problems. Therefore, these figures are only given as information in the table of general economic and demographic figures.

It was decided, mainly for budgetary comparisons with graphs, to use only two ratios usually used in such surveys for comparisons: the number of inhabitants and the per capita GDP.

The figures on population were provided by all member states. They will be used in all ratios which measure an impact per inhabitant (most of the time per 100 000 inhabitants).

Figures related to the GDP per inhabitant were provided by all the participating states. Here again, very large disparities in the per capita GDP can be noted and must always be kept in mind when considering the subsequent results. For instance, two extremes can be noted: on the one hand the countries with a per capita GDP below 2.000 € (**Republic of Moldova**), and on the other hand, **Luxembourg** with a reported per capita GDP more than 50 times higher.

The national annual gross salary has also been used several times for comparing the salaries of judges and prosecutors. This was done so as to guarantee an internal comparability with the standards of living in each country.

**Table 1.1 Economic and demographic data in 2012, in absolute value (Q1 to Q4)**

States/entities	Population	Total annual State public expenditure	GDP per capita	Average Gross Salary
Albania	2 815 749	2 706 290 000 €	3 363 €	4 323 €
Andorra	76 246	537 120 987 €	32 892 €	24 031 €
Armenia	3 026 878	1 908 920 703 €	2 560 €	2 628 €
Austria	8 451 860	157 799 650 000 €	36 430 €	29 723 €
Azerbaijan	9 235 100	17 359 528 487 €	5 885 €	4 697 €
Belgium*	11 161 642	264 462 000 000 €	34 000 €	40 980 €
Bosnia and Herzegovina	3 831 555	5 711 488 217 €	3 430 €	7 915 €
Bulgaria	7 284 552	14 228 377 332 €	5 436 €	4 486 €
Croatia	4 262 140	18 152 164 367 €	10 290 €	12 571 €
Cyprus	865 900	8 257 831 260 €	20 512 €	24 124 €
Czech Republic	10 509 286	68 087 191 726 €	14 557 €	12 463 €
Denmark	5 602 628	69 900 000 000 €	43 738 €	51 774 €
Estonia	1 286 479	6 977 616 000 €	13 495 €	10 644 €
Finland	5 426 674	52 353 408 000 €	35 571 €	38 472 €
France	65 585 857	421 200 000 000 €	31 059 €	34 100 €
Georgia	4 483 800	3 150 834 836 €	2 642 €	NA
Germany*	80 233 100	878 654 000 000 €	32 550 €	44 991 €
Greece	11 062 508	NA	17 161 €	NA
Hungary	9 908 798	51 573 528 468 €	9 800 €	9 137 €
Iceland	321 857	3 200 000 €	30 235 €	27 403 €
Ireland	4 591 087	69 812 000 000 €	35 752 €	33 358 €
Italy	59 685 227	535 003 616 032 €	25 729 €	28 619 €
Latvia	2 044 813	4 956 691 251 €	10 858 €	8 981 €
Lithuania	3 003 641	7 471 460 554 €	11 025 €	7 381 €
Luxembourg	525 000	19 082 100 000 €	83 600 €	42 500 €
Malta	421 364	3 668 677 000 €	16 417 €	15 536 €
Republic of Moldova	3 559 497	2 272 892 856 €	1 586 €	2 682 €
Monaco	36 136	896 401 177 €	59 541 €	NA
Montenegro	620 029	1 454 584 148 €	5 063 €	8 652 €
Netherlands	16 778 025	302 089 000 000 €	35 772 €	52 800 €
Norway	5 051 000	138 210 000 000 €	79 235 €	64 418 €
Poland	38 533 000	77 785 333 399 €	10 126 €	10 338 €
Portugal	10 487 289	80 869 200 000 €	15 607 €	19 800 €
Romania	21 305 097	33 329 365 079 €	6 200 €	5 556 €
Russian Federation*	143 347 000	520 028 039 753 €	10 877 €	7 943 €
Serbia	7 199 077	14 345 000 000 €	4 158 €	6 096 €
Slovakia	5 410 836	15 640 711 000 €	13 207 €	9 660 €
Slovenia	2 058 821	17 377 000 000 €	17 172 €	18 300 €
Spain	46 006 414	480 111 000 000 €	22 300 €	22 899 €
Sweden	9 555 893	209 462 351 800 €	43 867 €	41 733 €
Switzerland*	8 039 060	156 432 260 920 €	61 200 €	57 014 €
The FYROMacedonia	2 062 294	1 367 707 317 €	3 616 €	5 984 €
Turkey	75 627 384	231 786 944 783 €	8 221 €	12 103 €
Ukraine	45 461 627	40 194 880 077 €	3 008 €	3 535 €
UK-England and Wales**	56 567 800	596 083 582 900 €	30 292 €	33 157 €
UK-Northern Ireland**	1 823 634	24 322 434 200 €	19 777 €	29 313 €
UK-Scotland**	5 313 600	78 519 000 000 €	29 672 €	30 832 €
<b>Average</b>	17 458 452	124 034 682 275 €	22 329 €	21 901 €
<b>Median</b>	5 426 674	28 825 899 640 €	16 417 €	16 918 €
<b>Minimum</b>	36 136	3 200 000 €	1 586 €	2 628 €
<b>Maximum</b>	143 347 000	878 654 000 000 €	83 600 €	64 418 €
Israel	7 984 500	81 194 894 932 €	25 536 €	22 697 €

\* including federal entity levels in total annual state public expenditure / \*\* only regional entity level in total annual public expenditure

## Comments:

**Slovenia:** in previous evaluation cycles only the public expenditures at state level were indicated, as represented in the final account of the budget. To ensure comparability with other member states, the current data include expenditure of the whole public sector in accordance with the ESA 95 methodology.

**Spain:** public expenditures and the average gross annual salary are 2011 data.

**Sweden:** data on average gross annual salary excludes social expenses.

**Switzerland:** the average gross annual salary is a 2010 data.

**Turkey:** the average annual gross salary is the one of a public servant, including the social security contributions.

**UK-England and Wales:** the methodology used to calculate GDP for 2012 is different to that used in 2010. This data of GDP is not given for England and Wales but is the one of the United Kingdom.

**UK-Scotland:** data refers to 2011 figures for total public spending.

## 1.6 Analysing the findings of the report

The ultimate aim of the regular evaluation exercise is to develop recommendations and set up concrete tools to improve the quality, equity and efficiency of judicial systems. Some qualitative indications and main trends are highlighted in the report. They appear in the conclusion. However it is only during a second stage that the CEPEJ will be able to make a more in-depth analysis, on the basis of the entire data brought into perspective.

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## Keys

In order to have a complete and easy view of the complex maps and graphs, codes have been used at several occasions instead of the names of the member states. These codes correspond to the official classification (ISO 3166-1 alpha-3 codes with three letters) published by the *International Organisation of Normalisation*. As the ISO codes do not exist for the entities of the United Kingdom, the official FIFA (*Fédération Internationale de Football Association*) codes were used. These codes are ENG, WAL, NIR and SCO respectively.

ALB	Albania	CZE	Czech Republic	IRL	Ireland	NLD	Netherlands	ESP	Spain
AND	Andorra	DNK	Denmark	ITA	Italy	NOR	Norway	SWE	Sweden
ARM	Armenia	EST	Estonia	LVA	Latvia	POL	Poland	CHE	Switzerland
AUT	Austria	FIN	Finland	LIE	Liechtenstein	PRT	Portugal	MKD	"The former Yugoslav Republic of Macedonia"
AZE	Azerbaijan	FRA	France	LTU	Lithuania	ROU	Romania	TUR	Turkey
BEL	Belgium	GEO	Georgia	LUX	Luxembourg	RUS	Russian Federation	UKR	Ukraine
BIH	Bosnia and Herzegovina	DEU	Germany	MLT	Malta	SMR	San Marino	UK: ENG&WAL	UK: England and Wales
BGR	Bulgaria	GRC	Greece	MDA	Moldova	SRB	Serbia	UK: NIR	UK: Northern Ireland
HRV	Croatia	HUN	Hungary	MCO	Monaco	SVK	Slovakia	UK: SCO	UK: Scotland
CYP	Cyprus	ISL	Iceland	MNE	Montenegro	SVN	Slovenia		

In the report – especially in the tables presented – a number of abbreviations have been used: (Qx) refers to the (number of the) question in the Scheme which appears in the appendix, thanks to which the information has been collected.

If there was no (valid) information, this is shown by writing "NA" (not available).

In some cases, a question could not be answered, because it referred to a situation that does not exist in the responding country. These cases, and cases in which an answer was given but clearly did not match the question, are shown as "NAP" (not applicable).

FTE = full time equivalent; number of staff (judges, prosecutors, etc.) are given in full time equivalent so as to enable comparisons (where possible).

“NC” indicates that a value cannot be calculated because one (or more) components of the operation (ratio for example) is not available (“NA”) or not applicable (“NAP”).

In some chapters, double entry figures show two different data synthesized in one graph. Shaded blue bar charts describe 2006, 2008, 2010 data. To emphasize the 2012 data, a red point has been chosen. Orange rectangles indicate (in %) the evolution of data given on the right of the figure. Next page shows an example.

# Presentation of a double entry figure

## Example

Number of sanctions per 100 judges  
**2012 value**

Evolution 2006 – 2012  
of the number of sanctions per  
100 judges

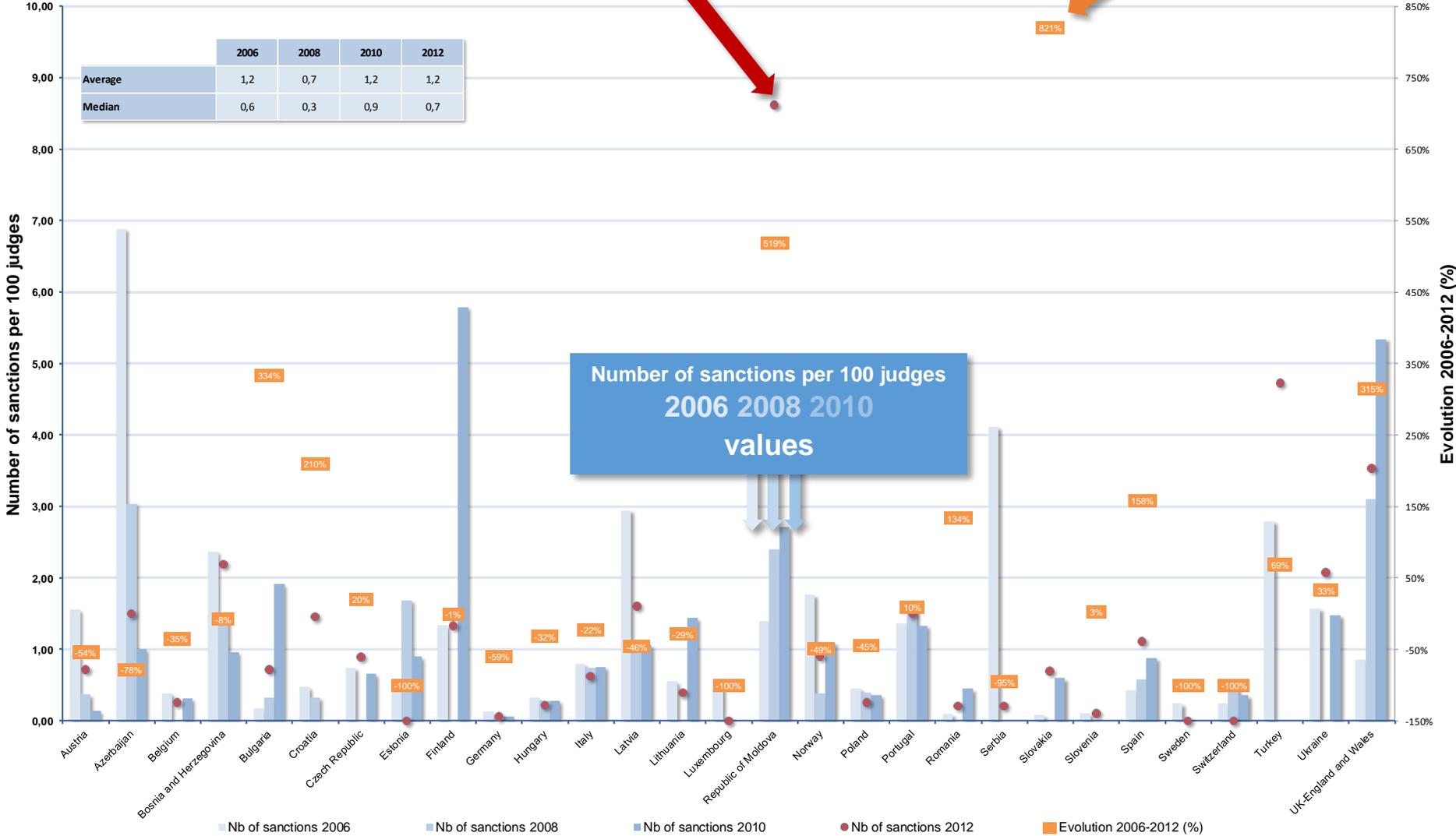
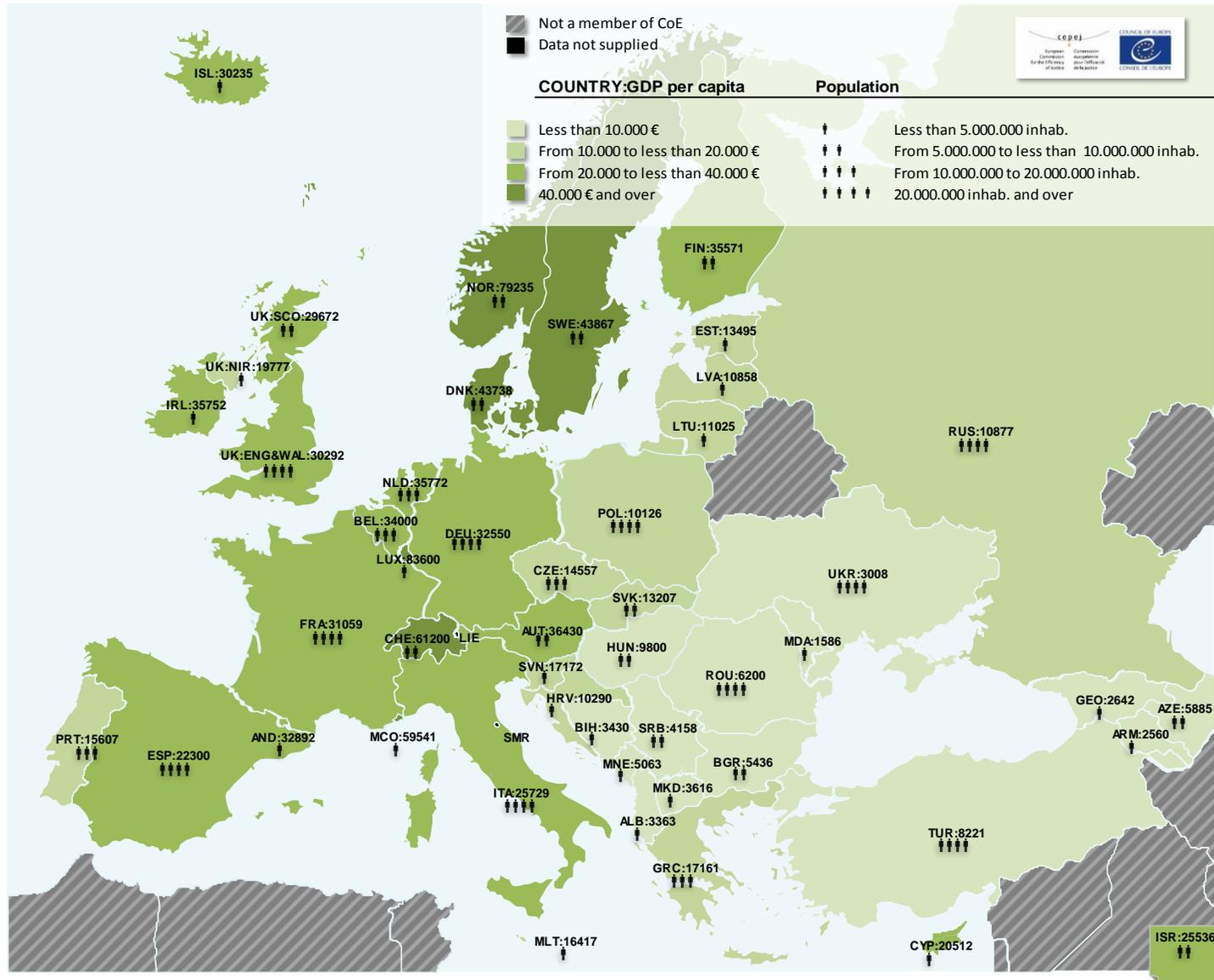


Figure 1.2 Level of population and per capita GDP (€) in Europe in 2012 (Q1, Q3)



**Note to the reader:** the maps used in this report indicate with colours the data given by the member states for the territories which are effectively concerned (except the territories of member states which are located beyond the European continent – often islands). Therefore the coloured zones do not correspond necessarily to the geographical borders of the member states.

**Table 1.3 Exchange rates vis-à-vis € on 1st January 2011 and 1st January 2013 and its evolution (Q5)  
Amount of local currency needed to obtain 1 €**

States/entities	Currency	Exchange rate from national currency to € on 1 Jan 2009	Exchange rate from national currency to € on 1 Jan 2011	Exchange rate from national currency to € on 1 Jan 2013	Biennial variation 2011-2013 with regard to the €
Albania	ALL (Lek)	124,00000	138,77000	139,04000	-0,19%
Armenia	AMD (Dram)	435,00000	481,16000	481,16000	0,00%
Azerbaijan	AZN (Manat)	1,24500	1,05600	1,01800	3,60%
Bosnia and Herzegovina	BAM (Mark)	1,95583	2,00000	1,95583	2,21%
Bulgaria	BGN (Lev)	1,95583	1,95583	1,95583	0,00%
Croatia	HRK (Kuna)	7,33177	7,38430	7,54659	-2,20%
Czech Republic	CZK (Koruna)	26,83000	25,06000	25,14000	-0,32%
Denmark	DKK (Krone)	7,43000	7,45310	7,46040	-0,10%
Georgia	GEL (Lari)	2,34750	2,37080	2,18450	7,86%
Hungary	HUF (Forint)	265,48000	278,85000	292,96000	-5,06%
Iceland	ISK (Krona)	170,00000	153,80000	169,00000	-9,88%
Latvia	*	0,70280	0,70280	0,70280	0,00%
Lithuania	LTL (Litai)	3,45280	3,45280	3,45280	0,00%
Republic of Moldova	MDL (Leu)	14,74080	16,10450	15,99670	0,67%
Norway	NOK (Krone)	9,69500	8,01000	7,31750	8,65%
Poland	PLN (Zloty)	4,21810	3,96030	4,08820	-3,23%
Romania	RON (Leu)	3,98520	4,28480	4,41530	-3,05%
Russian Federation	RUB (Ruble)	41,42750	41,48760	40,22860	3,03%
Serbia	RSD (Dinar)	89,08610	105,00000	113,12770	-7,74%
Sweden	SEK (Krona)	10,84050	8,95000	8,56880	4,26%
Switzerland	CHF (Franc suisse)	1,48500	1,25040	1,20720	3,45%
The FYROMacedonia	MKD (Denar)	61,40000	61,10000	61,50000	-0,65%
Turkey	TRY (Lira)	2,13300	2,07000	2,36000	4,01%
Ukraine	UAH (Hryvnia)	10,85500	10,57000	10,53000	0,38%
UK-England and Wales	GBP (Pound sterling)	0,96090	0,85060	0,81546	4,13%
UK-Northern Ireland	GBP (Pound sterling)	0,96090	0,85060	0,81546	4,13%
UK-Scotland	GBP (Pound sterling)	0,96090	0,85060	0,81546	4,13%
Israel	ILS (Shekel)			4,92060	NA

\* currency is € since 1 jan 2014 (formerly LVL)

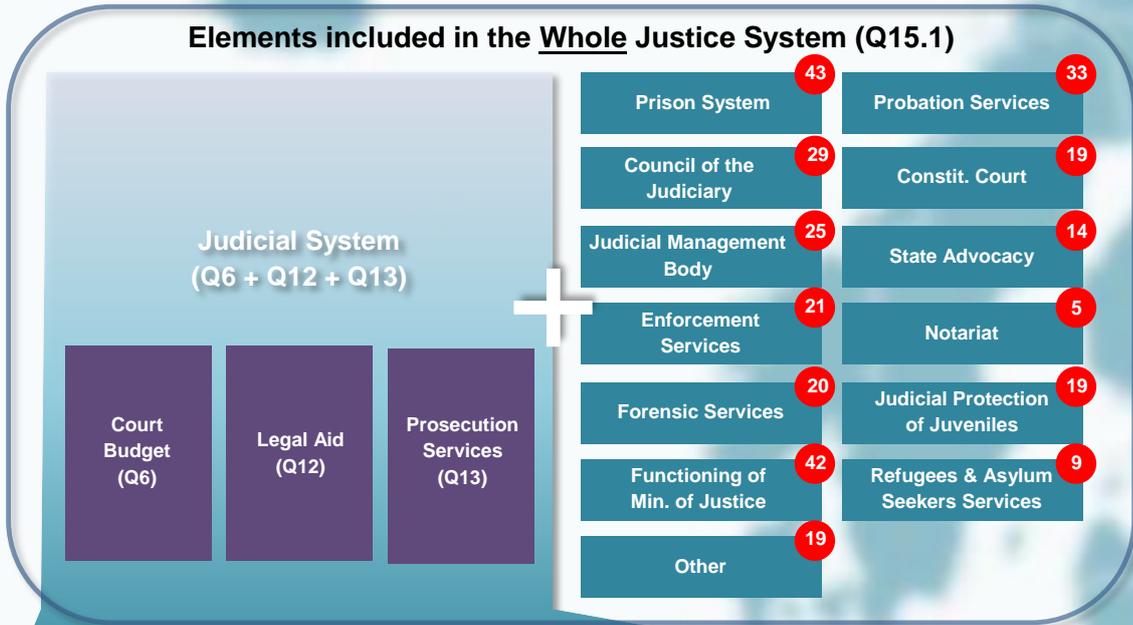
## **Chapter 2. Public expenditures allocated to justice and the functioning of courts**

The CEPEJ aims to identify, understand and analyse the operation of judicial systems and more in depth the budget allocated to the functioning of courts, before analysing their activity. Hence, the report focuses essentially on budgets for courts, prosecution services and legal aid.

It is, however, interesting to study, before any further analysis of the budgets of the judicial system, the efforts devoted by public authorities towards courts in comparison with the efforts made in respect of the operation of the whole justice system which may include, according to the states, in particular the budget of the prison system, the operation of the Ministry of Justice, or other institutions such as the Constitutional Court or the Council of Justice, the judicial protection of youth, etc.

The figure below illustrates the definitions given by the CEPEJ to the budgetary scopes concerned by each definition.

# Definition of components of annual public budget of Ministries of Justice (2012)



## CEPEJ Judicial Systems budget comparisons (Q6 + Q12 + Q13)



## Components of the Court budget (Q6)



47

Number of States/entities of CoE that include this element as part of the budget of the whole justice system

## 2.1 Public expenditure on the operation of the whole justice system

**Note for the reader:** data in the third column of table 2.1 is indicated for information purposes only. Each member state or entity was invited to include all the budgets allocated to justice, but, as it appears in the table below, the budgets indicated do not all represent the same reality, taking into account the various powers given to justice according to the states and entities. It is in particular relevant to distinguish the member states or entities (43) which have included the budget of the prison system into the overall budget of justice from those which have not. Thus **Czech Republic**, **Georgia** and **Spain** do not include the budget of the prison system in the budget allocated to the whole justice system (see column 7 in table 2.1).

Table 2.1 – part 1 Total annual approved budget allocated to the whole justice system in 2012, in € (Q15.1) and budgetary elements that are included in the whole justice system (Q15.2)

States/entities	Total annual approved budget allocated to the whole justice system in 2010 (€)	Total annual approved budget allocated to the whole justice system in 2012 (€)	Judicial system			Whole justice system (Elements 1 to 6/13)					
			Courts	Legal aid	Public prosecution services	Prison system	Probation services	Council of the judiciary	Constitutional court	Judicial management body	State advocacy
Albania	53 278 944 €	65 662 476 €									
Andorra	36 963 662 €	15 605 446 €									
Armenia	NA	17 908 393 295 537 €									
Austria	1 174 830 000 €	1 276 420 000 €									
Azerbaijan	100 914 019 €	216 805 932 €									
Belgium	1 802 642 657 €	1 855 485 000 €									
Bosnia and Herzegovina	177 456 251 €	180 532 451 €									
Bulgaria	224 069 853 €	NA									
Croatia	352 621 340 €	340 465 130 €									
Cyprus	79 536 746 €	76 527 498 €									
Czech Republic	557 183 160 €	509 966 190 €									
Denmark	2 086 000 000 €	2 387 211 425 €									
Estonia	98 519 256 €	111 404 414 €									
Finland	792 410 000 €	855 857 000 €									
France	7 517 535 561 €	8 087 936 029 €									
Georgia	NA	85 274 925 €									
Germany	13 320 680 442 €	13 392 212 369 €									
Greece	714 721 911 €	641 115 896 €									
Hungary	1 604 399 373 €	1 609 052 020 €									
Iceland	23 343 734 €	29 909 511 €									
Ireland	2 540 438 000 €	2 346 727 000 €									
Italy	7 716 811 123 €	8 038 108 740 €									
Latvia	137 747 332 €	144 823 662 €									
Lithuania	155 377 083 €	179 756 697 €									
Luxembourg	116 165 559 €	124 017 268 €									
Malta	83 998 000 €	105 152 000 €									
Republic of Moldova	40 226 452 €	43 879 511 €									
Monaco	9 039 700 €	10 350 800 €									
Montenegro	38 236 480 €	35 944 997 €									
Netherlands	6 098 900 000 €	5 972 900 000 €									
Norway	3 754 745 000 €	4 463 015 000 €									
Poland	2 821 561 570 €	2 472 780 000 €									
Portugal	1 693 952 793 €	1 744 093 667 €									
Romania	569 175 715 €	718 812 448 €									
Russian Federation	9 129 524 916 €	11 121 776 504 €									
Serbia	245 022 123 €	258 883 193 €									
Slovakia	278 261 799 €	310 844 502 €									
Slovenia	263 000 000 €	254 154 443 €									
Spain	4 632 278 011 €	4 111 000 000 €									
Sweden	4 064 159 050 €	4 519 656 078 €									
Switzerland	1 363 587 966 €	2 212 593 669 €									
The FYROMacedonia	44 880 556 €	55 226 793 €									
Turkey	2 274 389 431 €	2 667 643 220 €									
Ukraine	631 286 949 €	1 277 280 417 €									
UK-England and Wales	10 866 000 000 €	10 582 637 899 €									
UK-Northern Ireland	1 378 080 000 €	1 392 000 000 €									
UK-Scotland	1 993 680 000 €	NA									
Average	2 081 280 723 €	400 117 662 172 €	46 countries	44 countries	39 countries	43 countries	33 countries	29 countries	19 countries	25 countries	14 countries
Median	631 286 949 €	718 812 448 €									
Minimum	9 039 700 €	10 350 800 €									
Maximum	13 320 680 442 €	17 908 393 295 537 €									
Israel		694 224 282 €									

	Included
	Not included
	Non available
	Non applicable

Table 2.1 – part 2 Total annual approved budget allocated to the whole justice system in 2012, in € (Q15.1) and budgetary elements that are included in the whole justice system (Q15.2)

States/entities	Total annual approved budget allocated to the whole justice system in 2010 (€)	Total annual approved budget allocated to the whole justice system in 2012 (€)	Judicial system			Whole justice system (Elements 7 to 13/13)						
			Courts	Legal aid	Public prosecution services	Enforcement services	Notariat	Forensic services	Judicial protection of juveniles	Functioning of Ministry of Justice	Refugees and asylum seekers services	Other
Albania	53 278 944 €	65 662 476 €										
Andorra	36 963 662 €	15 605 446 €										
Armenia	NA	17 908 393 295 537 €										
Austria	1 174 830 000 €	1 276 420 000 €										
Azerbaijan	100 914 019 €	216 805 932 €										
Belgium	1 802 642 657 €	1 855 485 000 €										
Bosnia and Herzegovina	177 456 251 €	180 532 451 €										
Bulgaria	224 069 853 €	NA										
Croatia	352 621 340 €	340 465 130 €										
Cyprus	79 536 746 €	76 527 498 €										
Czech Republic	557 183 160 €	509 966 190 €										
Denmark	2 086 000 000 €	2 387 211 425 €										
Estonia	98 519 256 €	111 404 414 €										
Finland	792 410 000 €	855 857 000 €										
France	7 517 535 561 €	8 087 936 029 €										
Georgia	NA	85 274 925 €										
Germany	13 320 680 442 €	13 392 212 369 €										
Greece	714 721 911 €	641 115 896 €										
Hungary	1 604 399 373 €	1 609 052 020 €										
Iceland	23 343 734 €	29 909 511 €										
Ireland	2 540 438 000 €	2 346 727 000 €										
Italy	7 716 811 123 €	8 038 108 740 €										
Latvia	137 747 332 €	144 823 662 €										
Lithuania	155 377 083 €	179 756 697 €										
Luxembourg	116 165 559 €	124 017 268 €										
Malta	83 998 000 €	105 152 000 €										
Republic of Moldova	40 226 452 €	43 879 511 €										
Monaco	9 039 700 €	10 350 800 €										
Montenegro	38 236 480 €	35 944 997 €										
Netherlands	6 098 900 000 €	5 972 900 000 €										
Norway	3 754 745 000 €	4 463 015 000 €										
Poland	2 821 561 570 €	2 472 780 000 €										
Portugal	1 693 952 793 €	1 744 093 667 €										
Romania	569 175 715 €	718 812 448 €										
Russian Federation	9 129 524 916 €	11 121 776 504 €										
Serbia	245 022 123 €	258 883 193 €										
Slovakia	278 261 799 €	310 844 502 €										
Slovenia	263 000 000 €	254 154 443 €										
Spain	4 632 278 011 €	4 111 000 000 €										
Sweden	4 064 159 050 €	4 519 656 078 €										
Switzerland	1 363 587 966 €	2 212 593 669 €										
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UK-Northern Ireland	1 378 080 000 €	1 392 000 000 €										
UK-Scotland	1 993 680 000 €	NA										
Average	2 081 280 723 €	400 117 662 172 €	46 countries	44 countries	39 countries	21 countries	5 countries	20 countries	19 countries	42 countries	9 countries	19 countries
Median	631 286 949 €	718 812 448 €										
Minimum	9 039 700 €	10 350 800 €										
Maximum	13 320 680 442 €	17 908 393 295 537 €										
Israel		694 224 282 €										

	Included
	Not included
	Non available
	Non applicable

## Comments:

**Andorra:** the annual public budget approved and allocated to the whole justice system has decreased considerably compared to the previous exercise. Indeed, because of the economic crisis, in 2012 the account of salaries has experienced significant reductions, in particular for all salaries above 3000 €. Others have not increased.

**Bosnia and Herzegovina:** data on the budgets of the Agency for forensic services and the State advocacy were not included in the 2010 data. Reduction of the total budget since 2010 is primarily related to the budget of the prison system in the Federation of BiH, mostly due to the considerable reduction of funds allocated for the construction of prison buildings in 2010.

**Germany:** information might differ according to the Länder.

**Iceland:** the Ministry of Justice is an undefined part of the new Ministry of Interior, along with the Ministry of transportation - in 2010 it was only the Ministry of Justice.

**Lithuania:** the court system was also using funds from other sources: the project "Implementation and certification of quality management models in Lithuanian courts and NCA" was financed by the European social fund; the total amount awarded for the period 2009-2014 was about 699 715 € (85 % of which are the funds of EU and 15 % State funds). The project "Electronic Services in the Implementation of Justice " was financed by the European regional development fund; the total amount awarded for the period of 2010-2013 was about 1 903 035 € (85 % of which are the funds of EU and 15 % State funds).

**Netherlands:** the figure is not the entire budget of the ministry of security and justice. The security budget of the ministry (police, anti-terrorism) is not included in order to be able to compare the justice budget to other countries and to former years. However other ministries may also finance parts of the justice system, as well as third parties. This is not included here. The Netherlands have no constitutional court as such, but the tasks of a constitutional court are performed by the Council of State. Its budget is not included in the figure reported here.

**Russian Federation:** as regards public expenditures, 2012 data differs in a considerable way from data provided in the previous exercise as the list of indicators used in the statistics has been greatly expanded since 2010.

**Slovenia:** in previous evaluation cycles, data on public expenditure included only expenditure on state level. To ensure comparability with other member states, the current data includes expenditure of the whole public sector (in accordance with the ESA 95 methodology).

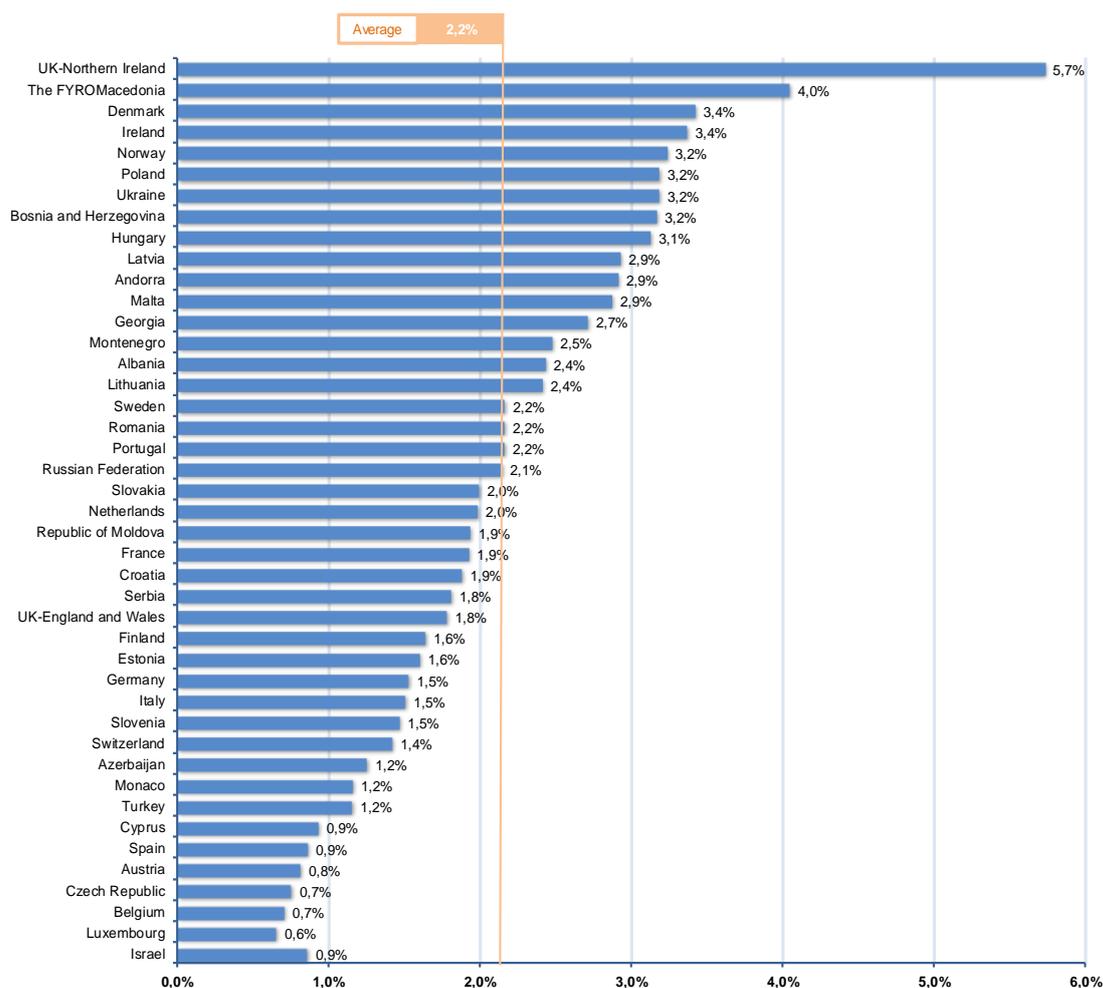
**Switzerland:** the increase in the budget for justice can be explained by the introduction of new codes of civil procedure and criminal procedure which has required an increase in the number of judicial staff in many cantons; it is also explained by the fact that the cantons are required to create, when it was not yet the case, an appeal court (and not only a court of Cassation) in all cases subject to appeal to the Swiss Federal Tribunal (Supreme Court). The responses provided here correspond to the situation in most cantons.

## Other budgetary elements

Among the « other » elements which constitute the overall budget of justice, can be mentioned *inter alia* constitutional courts (**Latvia, Republic of Moldova, Turkey**), national judicial management bodies (**Republic of Moldova**), the state advocacy (**Albania**), enforcement services (**Albania, Finland, Republic of Moldova**), community justice services (**UK-Scotland**), notariat (**Republic of Moldova**), centres for the harmonization of legislation and institutes of justice (**Republic of Moldova**), official publication bodies (**Albania**), forensic medicine and/or judicial expertise (**Albania, Republic of Moldova, Sweden, Turkey**), election expenditures or bodies (**Finland, Turkey**), insurances or social funds for judicial staff (**Latvia**) or various agencies entrusted for instance with adoption (**Albania**), data protection (**Finland**), property restitution (**Albania**), crime prevention (**Finland, Sweden**), drugs (**UK-Scotland**), victims and compensation funds (**Sweden, UK-Scotland**).

In some member states, part of the police services is also included in this overall budget (**Sweden, UK-Scotland**). Indeed, in some member states, some police services have not only the power to investigate, but also the power to supervise the investigation and sometimes to appear in court to support public action. Such specialised services are then entrusted with part of the tasks of the prosecution services in other states.

**Figure 2.2 Proportion of the annual public expenditures at state (and when appropriate at regional) levels, allocated to the whole justice system in 2012, in % (Q2, Q15.1)**



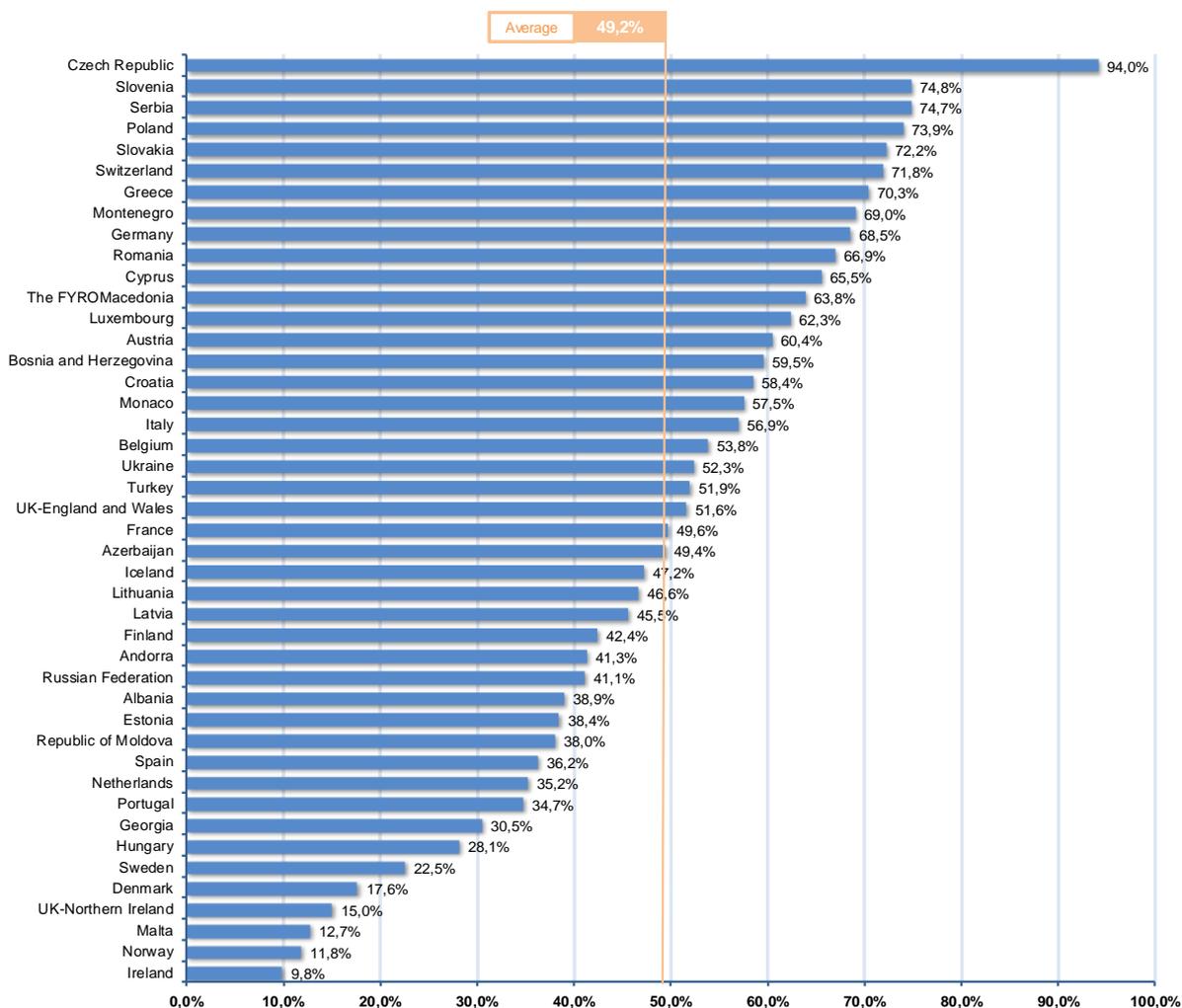
This figure shows the budgetary effort of public authorities (and thus the tax payers) in the whole justice system against the overall budgetary efforts allocated to all public policies. As far as possible, the CEPEJ has taken into account the public expenditures of those regional/federal entities which have major powers in respect of the funding of justice within the state organisation.

Strong disparities between the European states must be highlighted regarding the budgetary commitment of public authorities to the operation of justice reported to the whole of their public expenditures. However, such data, which appear here as an indication, must be examined prudently because of the strong disparities between the calculating methods, in each of the states and entities, of each of the two elements on which the ratio is based.

It is the same for the elements which are or not considered under this overall budget (see table 2.1 part 2 above).

## Budgetary commitment to courts

Figure 2.3 Proportion of the whole justice system budget allocated in 2012 to the judicial system (courts, public prosecution services and legal aid), in % (Q6, Q15.1)



The situation in Europe is very uneven when identifying budget priorities for states in matters of justice. Only 12 member states (**Czech Republic, Greece, Serbia, Slovenia, Germany, Luxembourg, Austria, Poland, Monaco, “the former Yugoslav Republic of Macedonia”, Belgium, Montenegro**) commit more budgetary resources to the operation of courts than to other areas of justice. In 3 states or entities (**Ireland, Norway, UK-Northern Ireland**), courts represent less than 10% of the public budgetary commitment to justice. This reflects in particular the differences in the organisation of the judicial system, as the core tasks of courts may differ. In some countries courts perform tasks in land and business registers (for instance **Austria, Poland**), whereas in other countries these tasks are performed by separate, specialized bodies (**Azerbaijan, Netherlands** for instance).

## 2.2 Public expenditure on the operation of judicial system

This chapter focuses on the financial means allocated to courts, public prosecution services and legal aid. Such data are the basis of the comparisons made by the CEPEJ as regards the means allocated by the states and entities to their judicial systems. At a second stage, it will be possible to report these means to the measure of the court activity.

The methodology used to present the figures remains close to the one followed in the previous editions of this evaluation report. According to the states, there are common and distinct ways of financing courts, public prosecution services and legal aid.

Then, 8 states cannot provide separate the respective data for courts and public prosecution services, since they are included in a single budget (**Andorra, Austria, Belgium, France, Greece, Luxembourg, Monaco and Turkey**).

Regarding legal aid, the budgetary data could be isolated for 43 states or entities (against 40 in the previous report, which improves the quality of the analysis). It was impossible to isolate the budget allocated to legal aid only in **Armenia, Montenegro, Serbia and Ukraine**, whereas **Andorra, Slovakia, “the former Yugoslav Republic of Macedonia” and UK-Scotland** have been able to provide such data this time.

Of the 47 states or entities concerned, only **Armenia** has not been able to give the total of the three budgets (courts + prosecution service + legal aid), as its legal aid budget was not available. This was the case for 8 states in the previous report (which constitutes also a major improvement in the CEPEJ evaluation exercise). **Andorra, Cyprus, Denmark, Norway, “the former Yugoslav Republic of Macedonia”, Ukraine and UK-Scotland** can be highlighted in particular for their supplementary efforts.

Bearing such differences in mind and regarding the complexity of these questions, the CEPEJ has chosen to continue to break down as much as possible the various elements of the budgets in order to allow a progressive approach. Therefore, three budgets were taken into account:

- the budget allocated to the courts, which will be related to the part of the report on the activities of the courts (chapter 5),
- the budget allocated to the public prosecution, which will be related to the part of the report on the activities of public prosecutors (chapter 10),
- the budget allocated to legal aid which constitutes an indicator of the efforts devoted by a state or entity to making its judicial system accessible, and which will be related to the part of the report on access to justice (chapter 3).

Table 2.4 presents the background information which enables comparisons for each of these three budgets: the courts (C) (first column), the legal aid system (LA) (second column), the public prosecution (PP) (third column).

The table also makes it possible to provide a study of the budgets on a comparative basis:

- 4<sup>th</sup> column: budget allocated to access to justice and the courts (LA + C): total budget allocated to the courts and to legal aid in 2012;
- 5<sup>th</sup> column: budget allocated to all bodies dealing with prosecution and judgment (PP + C): total budget allocated to the courts and to the public prosecution in 2012 (without legal aid);
- 6<sup>th</sup> column: budget allocated to all three budgets (C + LA + PP): total budget allocated to the courts, legal aid and the public prosecution in 2012.

As a result, any state or entity will be able to compare itself to other states or entities deemed as comparable. It will then, in the same way, be able to refer to the results on activity.

In order to contribute to a better understanding of these reasoned comparisons, all the reported and studied figures have been made available. Ratios have been highlighted, in order to allow comparisons between comparable categories, by connecting the budgetary figures to the number of inhabitants and the GDP per capita, in the form of figures.

Following the main table, figures are presented with the ratio of the budget per inhabitant and the ratio as a percentage of the GDP per capita, to compare realistically comparable categories.

**Note for the reader:** unless specifically mentioned otherwise, the budgets indicated correspond in principle to the amounts as voted and not as effectively spent. This might have an impact on the results provided by several member states, which did not execute in 2012 the budget voted at the end of 2011, due to the effects of the financial and economic crisis.

In addition, it must be stressed that the financial and economic crisis may have had a serious impact on the situation of the public budgets since the 2012 year of reference: budgets may have been reduced since then, or, on the contrary, some states may have decided to dedicate further efforts to the justice system to face the challenges of the crisis.

All the amounts are given in Euros. For the countries which are not part of the Euro zone, the CEPEJ was very attentive to variations in exchange rates between the national currency and the Euro (unless stated otherwise, the value is taken on 1 January 2013). Inflation may also explain a few significant budgetary evolutions. This fact must fully be taken into account while interpreting variations in states or entities outside the Euro zone (see table 1.3 in chapter 1).

For a more in-depth analysis of the specificities in the budgets of the various member states or entities, the reader is invited to examine the detailed answers given by each state or entity which appear on the CEPEJ's website: [www.coe.int/cepej](http://www.coe.int/cepej).

**Table 2.4 Public budgets allocated to judicial systems (courts, legal aid and public prosecution) in 2012, in € (Q6, Q12, Q13)**

States/entities	Judicial system (components)			Courts and legal aid (Q6) + (Q12)	Courts and public prosecution system (Q6) + (Q13)	Judicial system (Total)
	Total annual approved public budget allocated to all courts (Q6)	Total annual approved public budget allocated to legal aid (Q12)	Total annual approved public budget allocated to public prosecution system (Q13)			Courts, legal aid and public prosecution system (Q6) + (Q12) + (Q13)
Albania	12 513 000 €	60 253 €	13 000 734 €	12 573 253 €	25 513 734 €	25 573 987 €
Andorra	NA	387 485 €	NA	NC	6 054 897 €	6 442 382 €
Armenia	11 717 070 €	NA	5 356 768 €	NC	17 073 838 €	NC
Austria	NA	19 000 000 €	NA	NC	751 790 000 €	770 790 000 €
Azerbaijan	58 719 620 €	457 000 €	47 881 654 €	59 176 620 €	106 601 274 €	107 058 274 €
Belgium	NA	87 024 000 €	NA	NC	911 101 000 €	998 125 000 €
Bosnia and Herzegovina	79 013 297 €	7 128 234 €	21 290 084 €	86 141 531 €	100 303 381 €	107 431 615 €
Bulgaria	124 911 954 €	5 811 015 €	83 876 607 €	130 722 969 €	208 788 561 €	214 599 576 €
Croatia	156 601 458 €	166 631 €	42 040 323 €	156 768 089 €	198 641 781 €	198 808 412 €
Cyprus	30 611 480 €	1 526 738 €	17 971 759 €	32 138 218 €	48 583 239 €	50 109 977 €
Czech Republic	370 751 152 €	24 142 835 €	84 706 722 €	394 893 987 €	455 457 874 €	479 600 709 €
Denmark	243 294 736 €	83 643 048 €	94 400 000 €	326 937 784 €	337 694 736 €	421 337 784 €
Estonia	29 728 350 €	3 835 000 €	9 256 322 €	33 563 350 €	38 984 672 €	42 819 672 €
Finland	249 704 356 €	67 697 000 €	45 312 000 €	317 401 356 €	295 016 356 €	362 713 356 €
France	NA	367 180 000 €	NA	NC	3 647 125 137 €	4 014 305 137 €
Georgia	16 714 717 €	1 428 885 €	7 836 580 €	18 143 602 €	24 551 297 €	25 980 182 €
Germany	8 302 304 846 €	344 535 431 €	523 346 503 €	8 646 840 277 €	8 825 651 349 €	9 170 186 780 €
Greece	NA	8 300 000 €	NA	NC	442 670 924 €	450 970 924 €
Hungary	325 687 695 €	907 974 €	125 851 993 €	326 595 669 €	451 539 688 €	452 447 662 €
Iceland	9 602 600 €	3 555 654 €	951 085 €	13 158 254 €	10 553 685 €	14 109 339 €
Ireland	107 090 000 €	83 159 000 €	40 528 000 €	190 249 000 €	147 618 000 €	230 777 000 €
Italy	2 986 521 397 €	153 454 322 €	1 435 025 477 €	3 139 975 719 €	4 421 546 874 €	4 575 001 196 €
Latvia	44 494 921 €	962 294 €	20 495 958 €	45 457 215 €	64 990 879 €	65 953 173 €
Lithuania	53 138 612 €	4 543 826 €	26 101 135 €	57 682 438 €	79 239 747 €	83 783 573 €
Luxembourg	NA	3 500 000 €	NA	NC	73 736 940 €	77 236 940 €
Malta	11 527 427 €	49 500 €	1 828 559 €	11 576 927 €	13 355 986 €	13 405 486 €
Republic of Moldova	9 581 963 €	1 211 570 €	5 877 744 €	10 793 533 €	15 459 707 €	16 671 277 €
Monaco	NA	294 400 €	NA	NC	5 653 156 €	5 947 556 €
Montenegro	NA	NA	5 543 766 €	19 252 931 €	NC	24 796 697 €
Netherlands	983 764 000 €	483 000 000 €	636 924 000 €	1 466 764 000 €	1 620 688 000 €	2 103 688 000 €
Norway	234 000 000 €	270 501 300 €	22 266 400 €	504 501 300 €	256 266 400 €	526 767 700 €
Poland	1 379 338 000 €	24 107 000 €	424 128 567 €	1 403 445 000 €	1 803 466 567 €	1 827 573 567 €
Portugal	453 077 390 €	55 184 100 €	97 551 326 €	508 261 490 €	550 628 716 €	605 812 816 €
Romania	324 611 610 €	7 958 050 €	148 321 292 €	332 569 660 €	472 932 902 €	480 890 952 €
Russian Federation	3 336 134 801 €	69 401 711 €	1 161 610 701 €	3 405 536 512 €	4 497 745 502 €	4 567 147 213 €
Serbia	NA	NA	15 498 237 €	177 981 291 €	NC	193 479 528 €
Slovakia	152 715 786 €	1 771 287 €	69 947 692 €	154 487 073 €	222 663 478 €	224 434 765 €
Slovenia	165 060 055 €	6 741 620 €	18 198 295 €	171 801 675 €	183 258 350 €	189 999 970 €
Spain	1 241 560 960 €	36 890 711 €	211 352 960 €	1 278 451 671 €	1 452 913 920 €	1 489 804 631 €
Sweden	637 246 965 €	236 399 146 €	144 485 809 €	873 646 111 €	781 732 774 €	1 018 131 920 €
Switzerland	981 206 021 €	108 609 657 €	499 544 104 €	1 089 815 678 €	1 480 750 125 €	1 589 359 782 €
The FYROMacedonia	29 782 751 €	304 741 €	5 153 300 €	30 087 492 €	34 936 051 €	35 240 792 €
Turkey	NA	89 840 624 €	NA	NC	1 295 361 065 €	1 385 201 689 €
Ukraine	NA	NA	257 763 148 €	410 373 391 €	NC	668 136 539 €
UK-England and Wales	2 384 439 794 €	2 350 470 057 €	722 425 593 €	4 734 909 851 €	3 106 865 387 €	5 457 335 444 €
UK-Northern Ireland	73 932 000 €	92 250 000 €	42 860 000 €	166 182 000 €	116 792 000 €	209 042 000 €
UK-Scotland	135 811 499 €	179 000 000 €	132 549 350 €	314 811 499 €	268 360 849 €	447 360 849 €
Average	715 192 008 €	122 939 351 €	186 386 168 €	817 201 800 €	906 151 382 €	1 000 573 735 €
Median	154 658 622 €	8 300 000 €	45 312 000 €	184 115 146 €	239 464 939 €	296 745 178 €
Minimum	9 581 963 €	49 500 €	951 085 €	10 793 533 €	5 653 156 €	5 947 556 €
Maximum	8 302 304 846 €	2 350 470 057 €	1 435 025 477 €	8 646 840 277 €	8 825 651 349 €	9 170 186 780 €
Israel	289 565 906 €	39 771 572 €	NA	329 337 478 €	NC	NC

**Comments:**

**Austria:** the amount indicated for legal aid includes only the lump sum paid to the bar for representation of the parties 'pro bono'. It does not include court fees or fees for translation or experts, which are also covered by legal aid, but cannot be isolated within the budget.

**Belgium:** the final commitment appropriations for the courts and the prosecution services were 940.602.000 €.

**Cyprus:** the budget indicated for the prosecution services is only the budget for the Law Office of the Republic and the Attorney General's office.

**Denmark:** the budget allocated to the public prosecution services was included in the overall budget to the police in the previous exercises. It is available for the first time.

**Estonia:** as regards the budget allocated to legal aid in 2012, total approved budget (3 835 000 €) include also administrative and IT costs. According to the executed budget, 2 857 850 € were paid to lawyers who provided legal aid in 2012. The public budget allocated to legal aid in 2012 has increased compared to the public budget allocated to legal

aid in 2010 due to the increase in the number of cases for which legal aid has been granted and due to the IT development projects.

**Germany:** data of the budget allocated to all courts includes for some Länder the budget of the prosecution services. The budget of the prosecution services includes estimations for some Länder.

**Italy:** as the Ministry of Justice has one single budget which does not distinguish between the budget allocated to the courts, the budget allocated to the public prosecution services and the one allocated to the administration, the budget of the prosecution services has been estimated, taking into account several criteria (e.g the number of staff allocated to the prosecution services).

**Malta:** the Public Prosecution Services is carried out by the Attorney General's office who not only acts as a Public Prosecution but also acts as the Principal Legal Advisor of all the Government Departments: the amount budgeted cannot be considered as being funds allocated solely for public prosecution purposes. The amount indicated for legal aid represents the full amount allocated by the Government to the appointment of Legal Aid lawyers for persons requiring their services. All judicial fees incurred by such persons are also borne by the Government; however it is not possible to quantify such expenses as these vary from case to case.

**Netherlands:** the budget of the prosecution services includes justice expenses in criminal cases.

**Serbia:** the budget of the prosecution services does not include salaries for prosecutorial staff and equipment and investment because this is in the jurisdiction of the Ministry of Justice and Public Administration.

**Switzerland:** the budget of the prosecution services is extrapolated from the responses provided by 25 cantons and the Confederation.

**“the former Yugoslav Republic of Macedonia”:** legal aid includes 301 525 € from the court budget (not counted under the court budget) and 3 216 € from the budget of the Ministry of Justice.

**Turkey:** the budget allocated to all courts does not include here the Constitutional Court, the Court of Cassation and the Council of State, the Court of Jurisdictional Disputes and the High Election Board. Since the military courts are included in our judicial system as a separate branch of the judiciary, they are not mentioned here.

**UK-England and Wales:** figures provided for 2010 were for the Court Service and excluded the budget for Tribunals. However, these two merged in 2011/12. The budget quoted here is for both courts and tribunals. Therefore unfortunately figures are not on a comparable basis to prior submissions and are not available separately.

The budget indicated for the prosecution services represents total voted resource expenditure but does not include capital (land, buildings, plant and machinery). Other Government Departments and local authorities may undertake public prosecutions in certain specific cases, usually regulatory offences, but the above figure represents the vast majority of approved public budget allocated for public prosecutions.

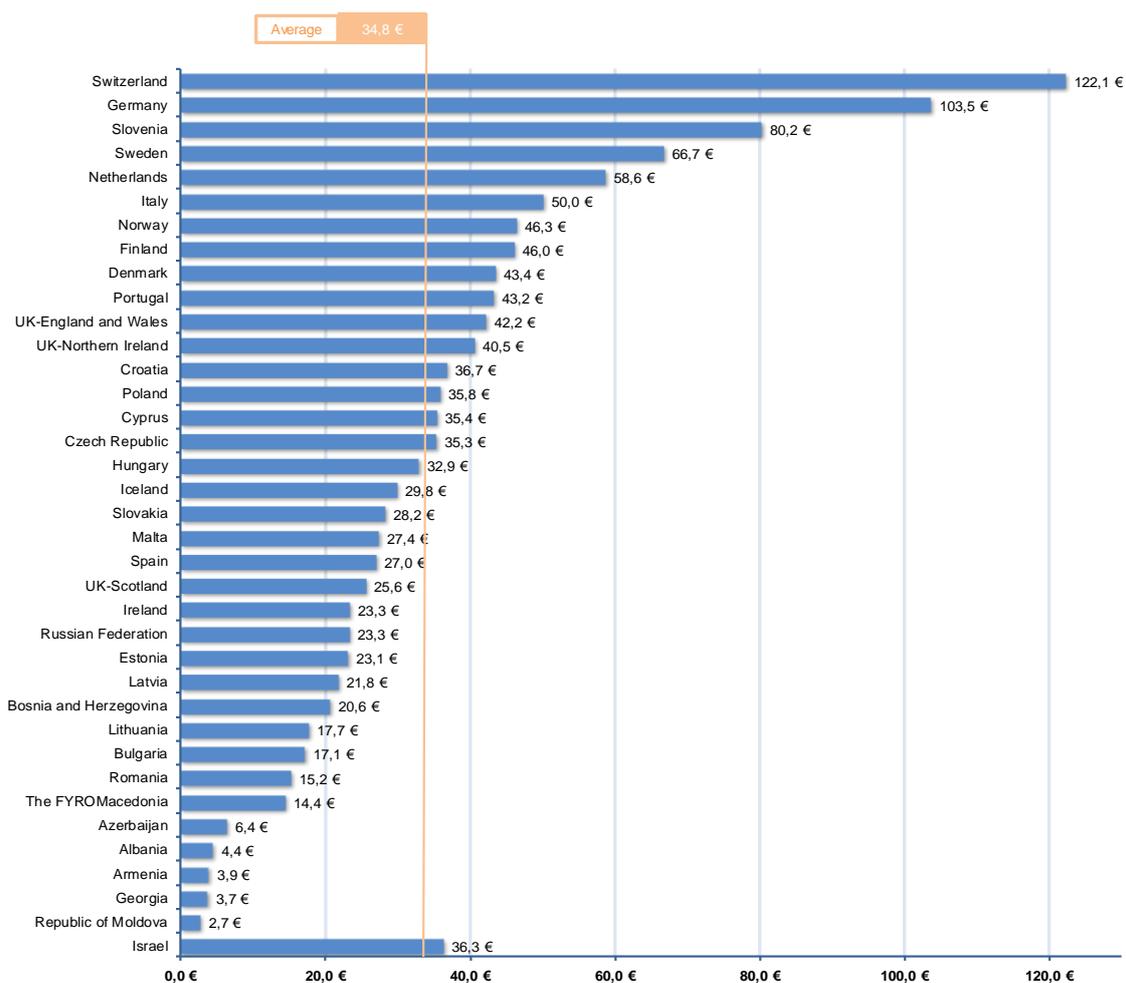
### **2.2.1 Public budget allocated to all courts**

This section measures the efforts that each state or entity makes only for the proper functioning of its courts.

Among 47 states or entities, 36 were included in this analysis. The figures take into consideration only those states providing distinct budgets allocated on the one hand to courts and on the other hand, to the public prosecution service. This does not include the budget allocated to legal aid.

Data is considered per inhabitant and in relation to the GDP per inhabitant (in %), so as to take into account, respectively, within the analysis, the size of states or entities and the levels of wealth of countries.

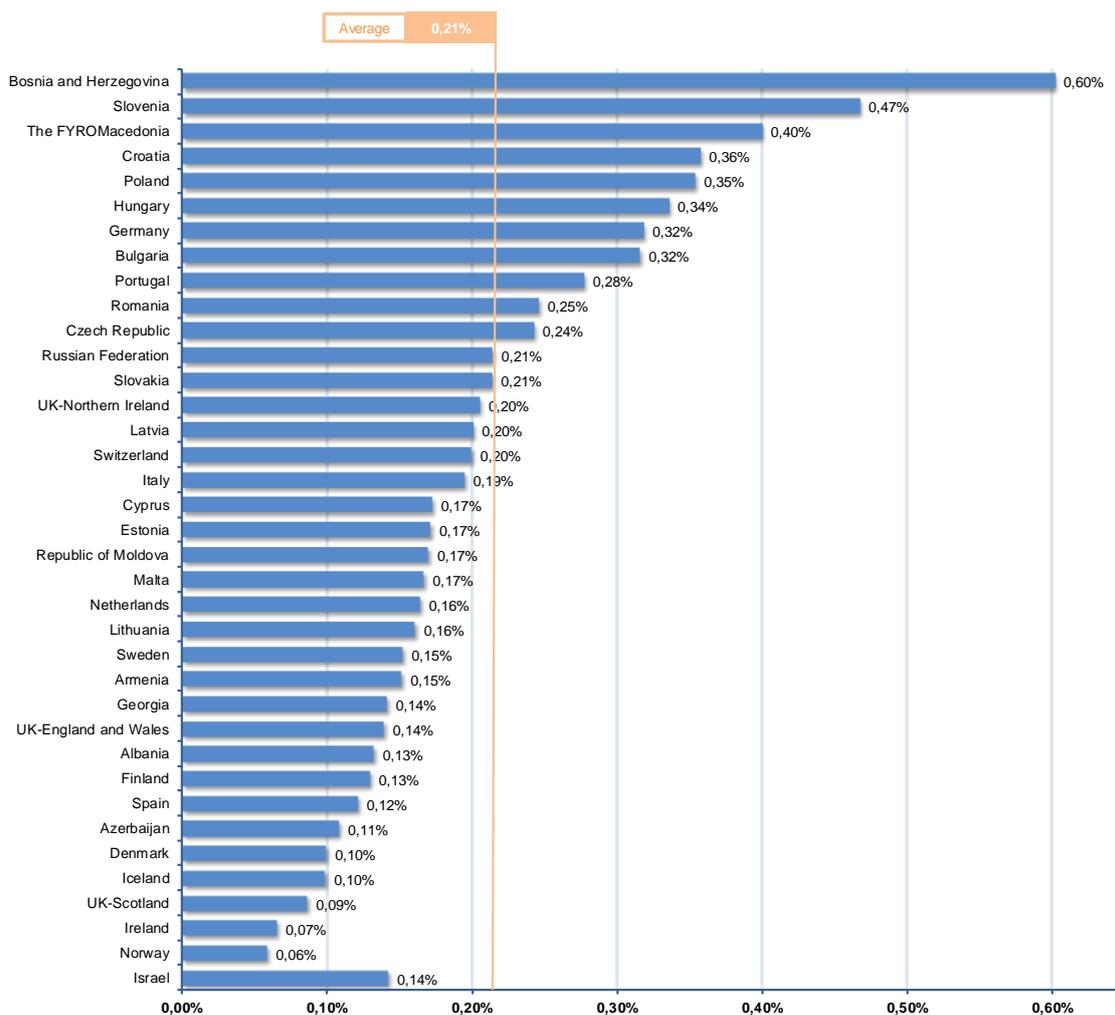
**Figure 2.5 Annual public budget allocated to all courts (excluding legal aid and public prosecution) per inhabitant in 2012, in € (Q1, Q6)**



On average, European states allocate annually 35 € per inhabitant to the functioning of their courts. However the budgetary efforts differ significantly among the member states, from small amounts of less than 10 € per inhabitant in some Eastern European states where the economic situation remains fragile (**Republic of Moldova, Georgia, Armenia, Albania**) to amounts exceeding 100 € per inhabitant in states with a high GDP such as **Switzerland** or **Germany**. The economic situation in the member states is not the only explanation: some member states give a high priority to the functioning of the courts, whereas other have more balanced priorities between the various components of their justice system (see chapter 2.1 above).

A different perspective can be seen when analysing the budget allocated to the courts by comparing it to the states' level of wealth in terms of the GDP per capita.

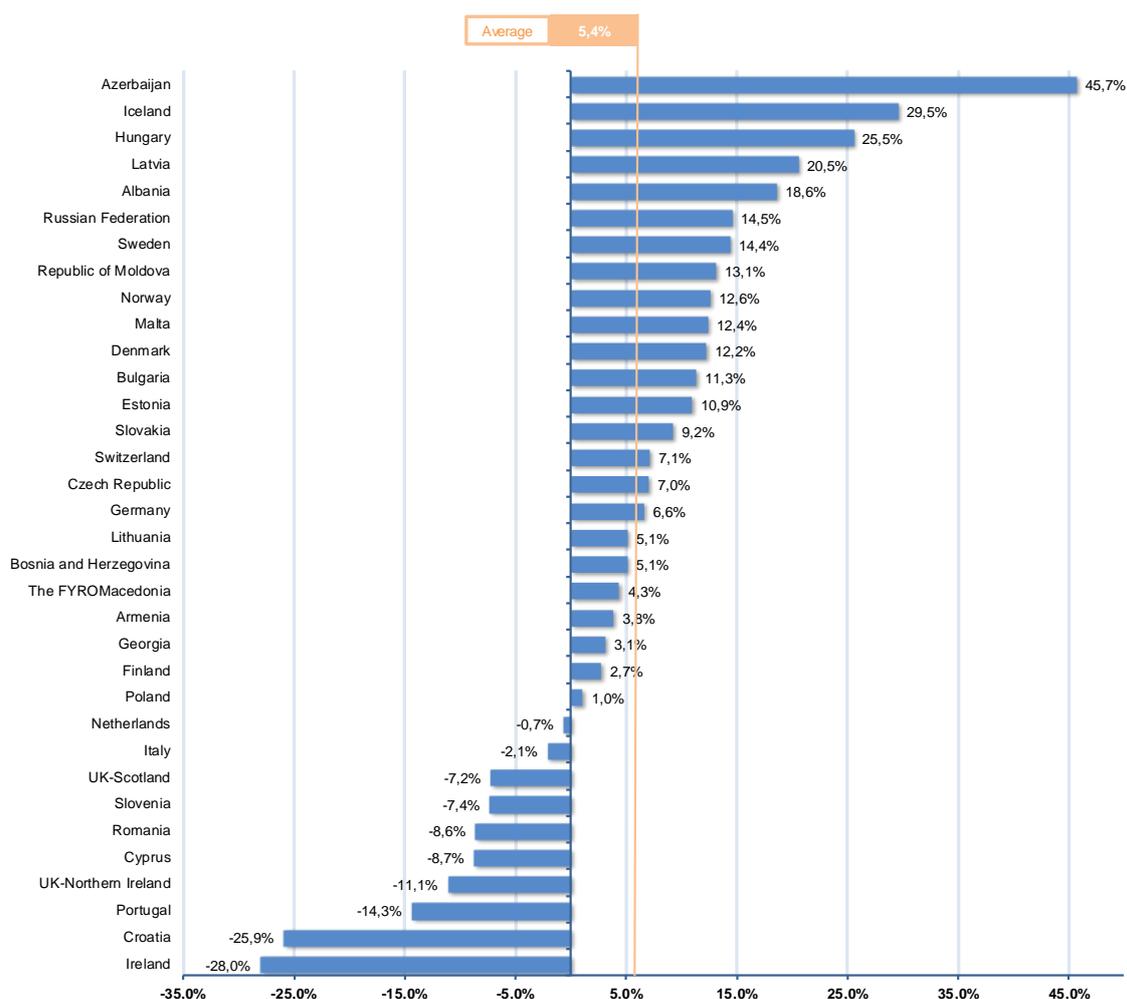
**Figure 2.6 Annual public budget allocated to all courts (excluding legal aid and public prosecution) as % of GDP per capita in 2012 (Q1, Q3 and Q6)**



It must be stressed that States that benefit from large scale assistance to strengthen the rule of law, in particular from the European Union or other international organisations, automatically allocate relatively high proportions of their budget to their court system. This is the case in particular for **Bosnia and Herzegovina**, **"the former Yugoslav Republic of Macedonia"**, **Croatia**, **Poland**, **Hungary** or **Bulgaria**.

Consequently, Western European states or entities, which have higher national levels of wealth such as **Sweden**, the **Netherlands**, **Norway**, **Finland**, **Denmark** or **UK-England and Wales**, seem to spend a smaller amount (GDP per capita) to finance courts. This distorting effect must be taken into consideration when making possible comparisons, in order not to draw the erroneous conclusion that a wealthy state or entity would not allocate a significant budget to the functioning of its courts.

**Figure 2.7 Variation of the absolute figures of annual public budget allocated to all courts (excluding legal aid and public prosecution) between 2010 and 2012, in % (Q6)**



**Comments:**

**Ireland:** in view of the economic climate and in line with the Government commitment to ongoing strong expenditure control, budget allocations across the public sector have generally decreased since the 2012 Report. Measures needed to be put in place to ensure that Ireland was in a position to stabilise the economy, meet its international commitments and ensure a timely exit from the bail out programme which was achieved at the end of 2013. In 2012, decreases in both the current expenditure allocation for the courts as well as the capital investment allocation were necessitated by the fiscal demands of the period - it should be noted that since 1999 there had been significant capital investment in the courts.

**Spain:** data is not shown in this figure, as in 2012, data is only related to the Ministry of Justice, excluding the global data related the General Council of the Judiciary and Autonomous Regions (included in 2010), and only budgetary data related to courts is included, excluding Public Prosecutors - in 2012 there are separate budgets, contrary to 2010. Finally, in 2010 all the justice policy programmes related to the Ministry of Justice were taken into account, while in 2012, as there are separate budgets, only data related to court programmes have been considered here.

**UK-England and Wales:** figures provided for 2010 were for the Court Service and excluded the budget for Tribunals. However, these two merged in 2011/12. The budget quoted here is for both courts and tribunals. Therefore unfortunately figures are not on a comparable basis to prior submissions and are not available separately.

The variation of the budget allocated to courts between 2010 and 2012 can be measured in 33 of the 47 states or entities and **Israel**. On average in Europe, the budget has increased by more than 5 %, in spite of the economic and financial crisis – this must be weighted by the corresponding inflation rate. However the situation (given in euros) is not homogenous among the member states: 23 of the responding states have increased the budget allocated to the functioning of courts (**Georgia** cannot be counted here because the trend is biased by the exchange rate), while 10 states have decreased this part.

Reverse trends compared to the previous period evaluated (2008-2010) can be noticed. **Latvia, Estonia, Lithuania, Bulgaria, Hungary, Bosnia and Herzegovina, Denmark, Finland, Slovakia, Albania** have

increased their budgets allocated to courts in the period considered by this report whereas such budgets were decreasing in the previous period. On the contrary, **Slovenia, UK-Northern Ireland, Netherlands, Ireland, Portugal, Italy** have in particular reduced their budgets allocated to court in the recent years whereas such budgets were still increasing during the period before.

Part of the explanation might be that the economic and financial crisis has not had an impact on the budgets allocated to the courts at the same time as regards budgetary public policies. Those states or entities which had to decide on decreases in their judicial budgets between 2008 and 2010 have been able to increase them again in the most recent period, whereas other states or entities had to decide more recently on such decreases.

Part of these results must be tempered because of the variation of the exchange rate between national currencies and the euro. The increase is thus less significant for **Iceland, Norway, Russian Federation, Sweden, Bosnia and Herzegovina** or **Switzerland** when considering the positive variation of their national currencies against the euro in the same period. **Georgia** appears in the figure above with a positive variation in its budget (+3,08%) although the budget has in fact decreased when considering the variation of the exchange rate (+7,86%). For the same reason, the decrease in the budget indicated for **Romania** (-8,62%) should be tempered when considering the variation of the exchange rate (-3,05%). The increasing budgetary means allocated to courts by **Hungary** or **Poland** are even more significant than what appears in the figure above when considering the negative variation of the exchange rate in the same period, whereas the decrease in such efforts should appear as even more pronounced in **UK-Northern Ireland, UK-Scotland** when considering that their national currency has been raised against the euro in the same period.

A positive trend continues to be noticed within a long period for **Sweden, Azerbaijan, Norway, Czech Republic, Russian Federation, Switzerland, Malta, “the former Yugoslav Republic of Macedonia”, Georgia, Iceland**. A negative trend continues to be noticed in **UK-Scotland** and **Romania** within the two last periods evaluated.

#### ***Composition of the budget allocated to courts***

In order to analyse more precisely the budgets allocated to courts, the CEPEJ studies the different components of these budgets, by singling out various parts: gross salaries of staff, Information Technologies - IT - (computers, software, investments and maintenance), court fees (such as the remuneration of interpreters or experts), costs for hiring and ensuring the operation of buildings, investments in buildings, training.

32 of the 47 states or entities concerned have been able to indicate figures regarding such details, and 10 others come very close to that objective, which is a major qualitative improvement in the data processed compared to the previous evaluation cycle. Member states must be commended for this. This positive evolution towards a more precise knowledge of court budgets is encouraging and makes it possible to create a meaningful break-down of the main components of court budgets.

**Note:** for **Andorra, Austria, Belgium, France, Greece, Luxembourg, Monaco** and **Turkey**, the amounts indicated below include both the courts and the prosecution system, as it has not been possible for these states to specify both budgets. This makes it possible to include them in the comparison of the break-down in percentage of the main components of the budget (table 2.8).

**Table 2.8 Break-down by component of court budgets in 2012 (Q6)**

States/entities	Total annual approved public budget allocated to all courts* (Q6)	Annual public budget allocated to (gross) salaries	Annual public budget allocated to computerisation**	Annual public budget allocated to justice expenses	Annual public budget allocated to court buildings***	Annual public budget allocated to investments in new buildings	Annual public budget allocated to training & education	Other
Albania	12 513 000 €	8 822 000 €	231 000 €	2 631 000 €	165 000 €	638 000 €	26 000 €	NA
Andorra****	NA	5 901 937 €	NA	113 000 €	9 960 €	NAP	30 000 €	NAP
Armenia	11 717 070 €	9 084 375 €	NA	30 015 €	13 555 €	NA	306 176 €	2 282 949 €
Austria	NA	416 840 000 €	35 800 000 €	103 750 000 €	59 700 000 €	0 €	2 200 000 €	133 500 000 €
Azerbaijan	58 719 620 €	23 431 620 €	7 046 730 €	NA	3 121 780 €	20 029 770 €	2 950 650 €	2 139 070 €
Belgium****	NA	697 424 000 €	37 697 000 €	87 080 000 €	65 782 000 €	7 924 000 €	5 220 000 €	96 998 000 €
Bosnia and Herzegovina	79 013 297 €	58 658 703 €	1 183 964 €	341 359 €	7 115 591 €	NAP	722 194 €	10 991 486 €
Bulgaria	124 911 954 €	80 210 055 €	375 878 €	NA	NA	NAP	25 427 €	32 726 448 €
Croatia	156 601 458 €	149 182 668 €	6 134 132 €	NA	809 410 €	NA	475 248 €	NA
Cyprus	30 611 480 €	22 793 540 €	124 970 €	117 374 €	2 474 850 €	3 000 060 €	92 480 €	2 008 206 €
Czech Republic	370 751 152 €	274 251 486 €	6 332 315 €	15 406 078 €	9 648 595 €	NAP	455 033 €	64 657 645 €
Denmark	243 294 736 €	157 585 434 €	16 162 826 €	10 076 344 €	43 388 631 €	NA	2 106 506 €	13 974 995 €
Estonia	29 728 350 €	22 560 006 €	812 487 €	326 259 €	4 970 552 €	0 €	177 645 €	881 401 €
Finland	249 704 356 €	188 215 108 €	12 726 529 €	7 850 083 €	34 483 581 €	NA	897 000 €	5 532 055 €
France****	NA	2 298 785 554 €	50 457 182 €	478 570 000 €	252 782 592 €	140 770 000 €	84 275 231 €	341 484 578 €
Georgia	16 714 717 €	9 449 530 €	266 018 €	2 259 422 €	1 193 376 €	2 151 800 €	453 189 €	941 379 €
Germany	8 302 304 846 €	5 038 944 353 €	173 261 525 €	1 777 215 875 €	287 130 254 €	65 579 695 €	69 721 400 €	890 451 744 €
Greece****	NA	382 542 800 €	5 947 969 €	3 316 045 €	34 564 099 €	6 903 321 €	9 396 689 €	NAP
Hungary	325 687 695 €	235 373 000 €	1 195 000 €	14 426 154 €	27 507 000 €	7 692 308 €	318 785 €	39 175 448 €
Iceland	9 602 600 €	NA	44 295 €	NA	NA	NA	NA	NA
Ireland	107 090 000 €	49 544 000 €	5 581 000 €	4 797 000 €	13 572 000 €	25 043 000 €	550 000 €	8 003 000 €
Italy	2 986 521 397 €	2 319 976 073 €	64 830 009 €	324 337 299 €	182 503 436 €	NA	229 971 €	94 644 609 €
Latvia	44 494 921 €	32 592 664 €	1 049 170 €	2 602 683 €	7 264 546 €	NA	249 939 €	735 919 €
Lithuania	53 138 612 €	46 314 146 €	397 069 €	329 306 €	1 644 012 €	1 013 670 €	311 973 €	3 128 436 €
Luxembourg****	NA	58 857 450 €	1 000 000 €	3 920 000 €	791 000 €	NAP	100 000 €	9 068 490 €
Malta	11 527 427 €	8 425 403 €	1 342 265 €	1 476 078 €	200 000 €	82 681 €	1 000 €	NAP
Republic of Moldova	9 581 963 €	6 095 225 €	162 576 €	NA	1 820 442 €	0 €	25 625 €	1 478 095 €
Monaco	NA	4 219 800 €	57 400 €	1 092 100 €	NA	NA	70 000 €	213 856 €
Montenegro*****	NA	14 469 947 €	180 000 €	2 615 000 €	50 000 €	NAP	28 454 €	NAP
Netherlands	983 764 000 €	724 526 000 €	65 557 000 €	4 089 000 €	117 266 000 €	NA	18 753 000 €	53 573 000 €
Norway	234 000 000 €	160 100 000 €	9 400 000 €	NA	62 300 000 €	0 €	3 900 000 €	NAP
Poland	1 379 338 000 €	897 425 000 €	56 686 000 €	158 928 000 €	92 443 000 €	38 237 000 €	2 822 000 €	132 797 000 €
Portugal	453 077 390 €	396 291 048 €	7 965 991 €	10 310 000 €	31 220 522 €	NA	7 289 829 €	NA
Romania	324 611 610 €	186 052 154 €	682 766 €	115 873 €	34 669 478 €	11 567 120 €	3 554 195 €	87 970 023 €
Russian Federation	3 336 134 801 €	1 922 361 631 €	150 894 210 €	72 992 964 €	197 056 629 €	183 689 997 €	16 252 538 €	792 886 832 €
Serbia*****	NA	137 208 931 €	NA	NA	15 538 160 €	NA	NAP	25 234 200 €
Slovakia	152 715 786 €	86 354 081 €	3 555 096 €	8 423 500 €	13 362 799 €	0 €	1 414 040 €	39 606 270 €
Slovenia	165 060 055 €	123 329 428 €	3 454 684 €	30 732 240 €	7 037 588 €	NA	506 115 €	NA
Spain	1 241 560 960 €	1 006 059 080 €	45 277 000 €	NA	45 058 050 €	18 275 620 €	2 743 370 €	124 147 840 €
Sweden	637 246 965 €	446 449 629 €	15 379 625 €	NA	90 513 800 €	NA	7 706 415 €	77 197 596 €
Switzerland	981 206 021 €	720 798 618 €	39 275 907 €	48 852 663 €	61 241 108 €	39 455 894 €	3 759 005 €	67 822 825 €
The FYROMacedonia	29 782 751 €	24 583 740 €	126 830 €	1 405 795 €	1 918 699 €	48 780 €	567 970 €	1 130 937 €
Turkey****	NA	1 077 127 934 €	25 127 767 €	81 455 770 €	11 591 377 €	95 392 385 €	4 665 832 €	NA
Ukraine*****	NA	246 203 829 €	87 608 760 €	NA	NA	NA	NA	76 560 802 €
UK-England and Wales	2 384 439 794 €	1 218 027 367 €	50 929 495 €	96 745 831 €	423 043 749 €	0 €	1 326 282 €	594 367 070 €
UK-Northern Ireland	73 932 000 €	47 307 000 €	6 718 000 €	5 116 000 €	22 100 000 €	0 €	152 000 €	NAP
UK-Scotland	135 811 499 €	48 801 835 €	4 292 050 €	8 287 335 €	32 303 195 €	11 535 804 €	662 202 €	29 929 078 €
Average	715 192 008 €	480 207 784 €	22 802 966 €	91 138 742 €				110 235 465 €
Median	154 658 622 €	143 195 800 €	6 041 051 €	5 116 000 €				32 726 448 €
Minimum	9 581 963 €	4 219 800 €	44 295 €	30 015 €				213 856 €
Maximum	8 302 304 846 €	5 038 944 353 €	173 261 525 €	1 777 215 875 €				890 451 744 €
Israel	289 565 906 €	196 052 311 €	18 290 452 €	9 211 885 €	30 891 558 €	20 987 278 €	1 329 309 €	12 803 113 €

\* with neither prosecution nor legal aid

\*\* equipment, investments and maintenance

\*\*\* maintenance and operating costs

\*\*\*\* Budget allocated to the public prosecution system cannot be separated from the budget allocated to all courts

\*\*\*\*\* Budget allocated to legal aid can not be separated with budget allocated to all courts

## Comments:

**Andorra:** if the amounts for the public budget allocated to salaries do not reflect the reduction of salaries indicated above, it is because some first instance judges have had access to positions as full-time judges, while such positions used to be occupied only by Spanish or French judges. In addition, the data provided concern the "approved budget" for the salaries before limitations were imposed on the salaries higher than 3000 €. The annual public budget allocated to court fees, and the annual public budget allocated to court buildings have increased compared to 2010 data. With the requirement to have a lawyer from the first moment of detention, the expenditure item spent on court fees has been increased. Regarding the budget for the maintenance of courts, pending the construction of a new courthouse, courts are located in rented premises.

**Azerbaijan:** an increasing budget is allocated to ICT for modernizing the court system, increasing the efficiency and productivity of courts. A significant amount is spent on the construction of modern court buildings and regional court complexes for easing the access of people to justice. Training and education of judges and court staff is a priority in the budget as well.

**Bosnia and Herzegovina:** the breakdown of the various components of the budget allocated to the functioning of courts is an estimation calculated by using various criteria.

**Estonia:** the budget allocated to computerization has increased significantly compared to the last period due to the IT development projects. The budget allocated to justice expenses has decreased compared to the last period because the expenses of expertise were previously included in the budget allocated to courts but now it forms part of the Forensic Science Institute's budget.

**Germany:** since individual Länder were unable to provide data with regard to all questions, information remains incomplete in this regard.

**Greece:** the decrease in all categories is the result of the budgetary adjustment carried out during the last years. The annual budget allocated to training and education is mostly the budget of the National School of Judges.

**Republic of Moldova:** unlike the 2010 data, these data do not include the amount of the approved annual budget for the operation of the National Institute of Justice.

**Netherlands:** the expenditures of the High Judicial Council and the "Raad van State" are excluded. The amount given for justice expenses excludes justice costs for criminal cases, which fall under the budget of the public prosecutor.

**Poland:** Resources dedicated to education and training are significantly higher than it would appear from the approved public budget. The Ministry of Justice and the National School of Judiciary and Public Prosecution run EU funded projects in which the training and education are important components. It is not possible to divide the specified sums because of the rules for qualifying cost in the projects as well as the fact that those project are not dedicated exclusively to training and education.

**"the former Yugoslav Republic of Macedonia":** the law provides that at least 2,5% of the budget of the judicial system must be spent on vocational training of judges, law clerks, court police and other employees of courts.

**Turkey:** revenues of the Department of Prison Workshops Institution consist partly of court fees and partly of the profits of income generating enterprises operating in the courthouses. A significant portion of the Institution's budget is used in judicial services. The given figures also cover the amounts allocated from the Institution's budget for judicial services.

Since the military courts are included in our judicial system as a separate branch of the judiciary, they are not mentioned here.

**UK-England and Wales:** Her Majesty's Courts and Tribunal Service (HMCTS) merged in 2011/12. CEPEJ survey responses in previous years have only quoted the now merged HM Court Service. Therefore figures provided here are not on a comparable basis to prior submissions. The figures quoted here are for the entire HMCTS, both courts and tribunals. This also includes the cost of tribunals administered within Scotland outside of the Scottish Government which cannot be separated out from the budget figures quoted.

Table 2.9 Distribution of the main budgetary posts of the courts in 2012, in % (Q6)

States/entities	Total annual approved public budget allocated to all courts* (Q6)	Annual public budget allocated to (gross) salaries	Annual public budget allocated to computerisation**	Annual public budget allocated to justice expenses	Annual public budget allocated to court buildings***	Annual public budget allocated to investments in new buildings	Annual public budget allocated to training & education	Other
Albania	12 513 000 €	70,5%	1,8%	21,0%	1,3%	5,1%	0,2%	NA
Andorra****	6 054 897 €	97,5%	NA	1,9%	0,2%	NAP	0,5%	NAP
Armenia	11 717 070 €	77,5%	NA	0,3%	0,1%	NA	2,6%	19,5%
Austria****	751 790 000 €	55,4%	4,8%	13,8%	7,9%	0,0%	0,3%	17,8%
Azerbaijan	58 719 620 €	39,9%	12,0%	NAP	5,3%	34,1%	5,0%	3,6%
Belgium****	911 101 000 €	76,5%	4,1%	9,6%	7,2%	0,9%	0,6%	10,6%
Bosnia and Herzegovina	79 013 297 €	74,2%	1,5%	0,4%	9,0%	NAP	0,9%	13,9%
Bulgaria	124 911 954 €	64,2%	0,3%	NA	NA	NAP	0,0%	26,2%
Croatia	156 601 458 €	95,3%	3,9%	NA	0,5%	NA	0,3%	NA
Cyprus	30 611 480 €	74,5%	0,4%	0,4%	8,1%	9,8%	0,3%	6,6%
Czech Republic	370 751 152 €	74,0%	1,7%	4,2%	2,6%	NAP	0,1%	17,4%
Denmark	243 294 736 €	64,8%	6,6%	4,1%	17,8%	NA	0,9%	5,7%
Estonia	29 728 350 €	75,9%	2,7%	1,1%	16,7%	0,0%	0,6%	3,0%
Finland	249 704 356 €	75,4%	5,1%	3,1%	13,8%	NA	0,4%	2,2%
France****	3 647 125 137 €	63,0%	1,4%	13,1%	6,9%	3,9%	2,3%	9,4%
Georgia	16 714 717 €	56,5%	1,6%	13,5%	7,1%	12,9%	2,7%	5,6%
Germany	8 302 304 846 €	60,7%	2,1%	21,4%	3,5%	0,8%	0,8%	10,7%
Greece****	442 670 924 €	86,4%	1,3%	0,7%	7,8%	1,6%	2,1%	NAP
Hungary	325 687 695 €	72,3%	0,4%	4,4%	8,4%	2,4%	0,1%	12,0%
Iceland	9 602 600 €	NA	0,5%	NA	NA	NA	NA	NA
Ireland	107 090 000 €	46,3%	5,2%	4,5%	12,7%	23,4%	0,5%	7,5%
Italy	2 986 521 397 €	77,7%	2,2%	10,9%	6,1%	NA	0,0%	3,2%
Latvia	44 494 921 €	73,3%	2,4%	5,8%	16,3%	NA	0,6%	1,7%
Lithuania	53 138 612 €	87,2%	0,7%	0,6%	3,1%	1,9%	0,6%	5,9%
Luxembourg****	73 736 940 €	79,8%	1,4%	5,3%	1,1%	NAP	0,1%	12,3%
Malta	11 527 427 €	73,1%	11,6%	12,8%	1,7%	0,7%	0,0%	NAP
Republic of Moldova	9 581 963 €	63,6%	1,7%	NA	19,0%	0,0%	0,3%	15,4%
Monaco****	5 653 156 €	74,6%	1,0%	19,3%	NA	NA	1,2%	3,8%
Montenegro****	NA	NC	NC	NC	NC	NC	NC	NC
Netherlands	983 764 000 €	73,6%	6,7%	0,4%	11,9%	NA	1,9%	5,4%
Norway	234 000 000 €	68,4%	4,0%	NAP	26,6%	0,0%	1,7%	NAP
Poland	1 379 338 000 €	65,1%	4,1%	11,5%	6,7%	2,8%	0,2%	9,6%
Portugal	453 077 390 €	87,5%	1,8%	2,3%	6,9%	NA	1,6%	NA
Romania	324 611 610 €	57,3%	0,2%	0,0%	10,7%	3,6%	1,1%	27,1%
Russian Federation	3 336 134 801 €	57,6%	4,5%	2,2%	5,9%	5,5%	0,5%	23,8%
Serbia****	NA	NC	NC	NC	NC	NC	NC	NC
Slovakia	152 715 786 €	56,5%	2,3%	5,5%	8,8%	0,0%	0,9%	25,9%
Slovenia	165 060 055 €	74,7%	2,1%	18,6%	4,3%	NA	0,3%	NA
Spain	1 241 560 960 €	81,0%	3,6%	NA	3,6%	1,5%	0,2%	10,0%
Sweden	637 246 965 €	70,1%	2,4%	NA	14,2%	NA	1,2%	12,1%
Switzerland	981 206 021 €	73,5%	4,0%	5,0%	6,2%	4,0%	0,4%	6,9%
The FYROMacedonia	29 782 751 €	82,5%	0,4%	4,7%	6,4%	0,2%	1,9%	3,8%
Turkey****	1 295 361 065 €	83,2%	1,9%	6,3%	0,9%	7,4%	0,4%	NA
Ukraine****	NA	NC	NC	NC	NC	NC	NC	NC
UK-England and Wales	2 384 439 794 €	51,1%	2,1%	4,1%	17,7%	0,0%	0,1%	24,9%
UK-Northern Ireland	73 932 000 €	64,0%	9,1%	6,9%	29,9%	0,0%	0,2%	NAP
UK-Scotland	135 811 499 €	35,9%	3,2%	6,1%	23,8%	8,5%	0,5%	22,0%
Average	747 281 941 €	70,0%	3,1%	6,8%	9,0%	4,8%	0,9%	11,7%
Median	160 830 757 €	73,3%	2,2%	4,8%	7,1%	1,9%	0,5%	10,0%
Minimum	5 653 156 €	35,9%	0,2%	0,0%	0,1%	0,0%	0,0%	1,7%
Maximum	8 302 304 846 €	97,5%	12,0%	21,4%	29,9%	34,1%	5,0%	27,1%
Israel	289 565 906 €	67,7%	6,3%	3,2%	10,7%	7,2%	0,5%	4,4%

\* with neither prosecution nor legal aid

\*\* equipment, investments and maintenance

\*\*\* maintenance and operating costs

\*\*\*\* Budget allocated to the public prosecution system cannot be separated from the budget allocated to all courts

\*\*\*\*\* Budget allocated to legal aid can not be separated with budget allocated to all courts

## **Salaries**

Knowing the obvious existence of significant differences between states, on average, at a European level (average of the 35 states for which data is available), the highest expenditure for courts remains the overall salaries for judges and court staff, close to 70%. Extreme differences vary from more than 95 % of the courts budget allocated to salaries in **Croatia** to 36% in **UK-Scotland**. In general, *common law* countries, operating systems with a large number of lay judges (with the exception of **Ireland**), spend less of the budget budgets on wages even though this must be put into perspective by the high amount of wages paid (see Chapter 7 below).

An increase in the budget allocated to salaries might result in an increase in the level of the salaries or in the number of judicial staff to be paid (**Turkey**).

Some member states indicate restrictions in salaries due to the economic and financial crisis (**Andorra, Greece**).

## **New technologies**

In Europe, 3,3% of the court budget (average of 35 European countries for which data is available) is devoted to computerization. The level of investment in IT tools remains low (less than 1% of the budget allocated to the functioning of courts) in **Bulgaria, Cyprus, Hungary, Iceland, Lithuania, Romania, “the former Yugoslav Republic of Macedonia”**, whereas a major effort (more than 5 % of the court budget) is focused on IT in **Denmark, Finland, Ireland, Netherlands, UK-Northern Ireland**, and to a larger extent (more than 10 % of the court budget) in **Azerbaijan** and **Malta** which both continue the efforts already stressed in the previous evaluation exercise.

Several IT programmes for modernizing judicial systems have been launched in **Azerbaijan, Estonia, Georgia**.

## **Justice expenses**

Justice expenses represent on average 6% of the court budgets in Europe (for the 29 states considered), while emphasizing significant differences between the states where the part is more than 20% of the court budgets (**Albania, Germany**) and the states where this part is limited to less than 1% of the budget (**Armenia, Bosnia and Herzegovina, Cyprus**) and is almost insignificant in **Romania**. The differences in the organisation of the judicial system and in the procedures explain *inter alia* these disparities.

## **Court buildings**

The budget part devoted to courts buildings is on average 15% in the 34 states studied, broken down between the maintenance and operation of these buildings (nearly 10%) and investments – in new courts and renovation - (5%). These amounts may fluctuate significantly as regards investments, depending on whether real estate programmes have been conducted or not in a given year (even if these investments are generally amortized over several years). A specific effort in the 2012 budget may be noted in **Azerbaijan** which allocated one third of its court budget to the modernization of the court infrastructure and construction of judicial complexes. As regards the operation of the court buildings, **UK-Northern Ireland, UK-Scotland, UK-England and Wales** and **Norway** spend a large share of the budget on court buildings, although this information must be interpreted prudently: because of the organisation of judicial systems in these countries and entities, other budget parts (e.g. salaries) are more limited, which substantially changes the distribution. Court buildings are not a heavy load (less than 2%) for court budgets (these charges can be referred to other public budgets) in **Armenia, Croatia, Albania**.

## **Judicial training**

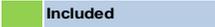
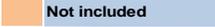
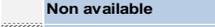
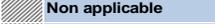
Less than 1% of court budgets is spent on judicial training in Europe in 2012, which has not improved over the past periods studied by the CEPEJ. Judicial training can be considered as a spending priority (more than 2% of the court budgets) in **Armenia, Georgia** and **Azerbaijan**. This budgetary effort is very limited (less than 0.1% of the court budget) in **Bulgaria, Italy, UK-England and Wales**.

Judicial training and education was one of the elements directly impacted by the budgetary cuts due to the economic and financial crisis in **Slovenia**.

Table 2.10 Authorities responsible for the budget allocated to the courts (Q14)

States/entities	Ministry of Justice				Other Ministry				Parliament				Supreme court				Judicial council				Courts				Inspection body				Other			
	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④
Albania																																
Andorra																																
Armenia																																
Austria																																
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Turkey																																
Ukraine																																
UK-England and Wales																																
UK-Northern Ireland																																
UK-Scotland																																
<b>Number of countries</b>	<b>30</b>	<b>6</b>	<b>26</b>	<b>20</b>	<b>20</b>	<b>4</b>	<b>3</b>	<b>16</b>	<b>1</b>	<b>43</b>	<b>0</b>	<b>13</b>	<b>14</b>	<b>2</b>	<b>12</b>	<b>9</b>	<b>15</b>	<b>1</b>	<b>7</b>	<b>4</b>	<b>21</b>	<b>1</b>	<b>13</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>19</b>	<b>15</b>	<b>5</b>	<b>17</b>	<b>17</b>
Israel																																

	Included		Preparation
	Not included		Adoption
	Non available		Management
	Non applicable		Evaluation

## Comment:

**Hungary:** the rules coming into effect in 2012 divided the powers into two groups. The task of central administration of courts is performed by the President of the National Office of Justice (NOJ), supervised by the National Judicial Council (NJC).

The budgetary process (from the preparation to the adoption, the management and the evaluation of budgetary expenditures) is, in most member states, organised in a similar way.

The Ministry of Justice is most often responsible for preparing the budget (proposals). In some states or entities, other Ministries may take on that responsibility: this is especially true for states with specialised courts that do not depend on the Ministry of Justice, for example when a labour court is funded by the Ministry of Social Affairs. The Ministry of Finances is often involved in (part of) the budgetary process for courts. The courts themselves (21 states or entities), the Council of Justice (15 states or entities) or the Supreme Court (14 states or entities) play a central role at the preparatory stage. National court administrations (**Norway**) or specific bodies may also participate in 15 states or entities (for example the Office of the judicial budget administration in **Albania**, the Council of Court Presidents in **Armenia**, the National Audit Office of **Denmark**, the Office of Judicial Services in **Monaco** (which is similar in its functions and duties to the Ministry of Justice), the Court budget Council in "**the former Yugoslav Republic of Macedonia**", the State Planning Organisation in **Turkey**, the Management Board of the Court Service of **UK-Scotland**). The Parliament intervenes only rarely (**Austria**) when preparing the budget.

The responsibility of adopting budget proposals lies with Parliament, allowing sometimes for other bodies to be involved. Some states or entities have reported that the Ministry of Justice or other Ministries may be involved in this field (**Albania, Armenia, UK-England and Wales, UK-Scotland**). However, it is possible that these answers reflect a misunderstanding of question Q14 regarding the formal adoption of the budget. One should be aware of the specific role of federal and autonomous entities in some federal or decentralised states (for instance **Spain**).

Either judicial bodies (courts and/or supreme courts and/or councils of justice), the executive power (Ministry of Justice and/or Ministry of Finances) of national court administrations (**Lithuania, Norway, Sweden, Ukraine, UK-Scotland**) manage most often the overall budget of the judicial system, allowing for frequent participation of several actors combining the executive power and judicial entities. In some states, ad hoc bodies may be involved in preparing the budget and often have a role to play in managing that budget (see above).

Only 16 states or entities involve the Council for the Judiciary in a least one of the steps of the court budgetary process, mainly as regards the preparation of the budgetary request.

The evaluation of the proper implementation of the budget is widely managed in Europe by the executive power, divided between the Ministry of Justice and other Ministries (mostly Finances). Parliament (14 states or entities) or an independent inspection service (19 states or entities) such as an auditing body (**Azerbaijan, Bulgaria, Estonia, Finland, Iceland, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Norway, Poland, Sweden**) or a court accountant (**Romania, Turkey, UK-Scotland**) may get involved, alone or combined with other institutions of the executive (sometimes Ministry of Finances) or judicial powers.

**Budgetary powers within the courts**

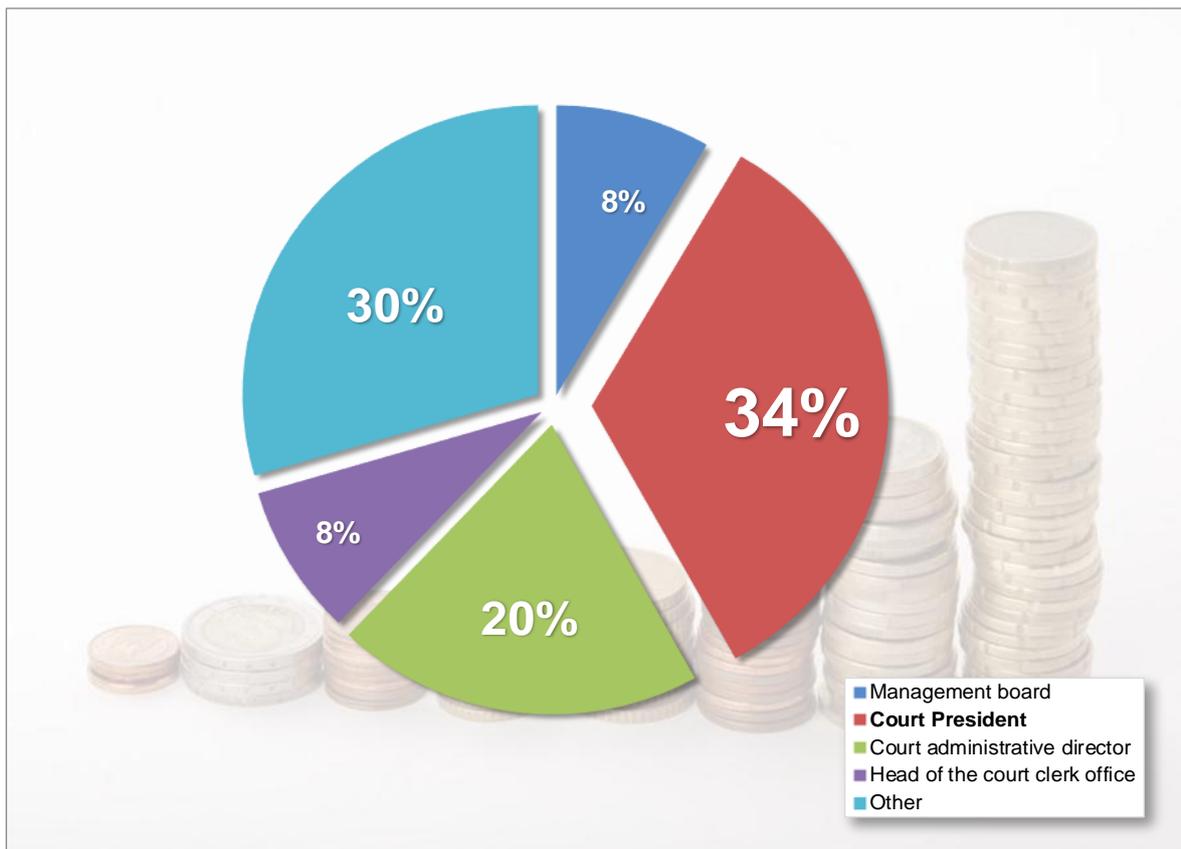
**Table 2.11 Bodies responsible for individual court budget in 2012 (Q61)**

States/entities	Management board				Court President				Court administrative director				Head of the court clerk office				Other			
	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④	①	②	③	④
Albania																				
Andorra																				
Armenia																				
Austria																				
Azerbaijan																				
Belgium																				
Bosnia and Herzegovina																				
Bulgaria																				
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Ukraine																				
UK-England and Wales																				
UK-Northern Ireland																				
UK-Scotland																				
<b>Number of countries</b>	<b>7</b>	<b>7</b>	<b>2</b>	<b>9</b>	<b>28</b>	<b>22</b>	<b>26</b>	<b>24</b>	<b>14</b>	<b>10</b>	<b>20</b>	<b>16</b>	<b>6</b>	<b>1</b>	<b>12</b>	<b>6</b>	<b>23</b>	<b>18</b>	<b>18</b>	<b>29</b>
Israel																				

<span style="color: green;">■</span>	Responsible
<span style="color: orange;">■</span>	Not responsible

①	Preparation of the budget
②	Arbitration and allocation
③	Day to day management of the budget
④	Evaluation and control of the use of the budget

**Figure 2.11b Bodies responsible for individual court budget in 2012 (Q61)**



**Comments:**

**Greece:** the government grant is administered by the three-member Grant Management Committee, which consists of members of the Court, appointed for a two-year term, following a decision of the relevant Court.

**Republic of Moldova:** the structure of the judicial secretariat has been modified and new bodies have been created in 2013, eg. Head of Secretariat of the judicial bodies. One of the competences of this latter instance is the management of the financial resources allocated to the judiciary.

**Spain:** this question is not applicable to the Spanish judicial system as there is no public authority entrusted with such responsibilities (see answer to question 14).

The organisation of the competence and responsibility for the court budgets differs from one state or entity to another. When examining the role of each body, it can be noted that the court president is the most involved authority in all the stages of the budget's management. In 17 states or entities, the court president is responsible for the whole budgetary process, eg. preparation, allocation, day-to-day management and also evaluation/control of the budget. In more than half of the states, she/he is involved in the preparation of the budget. In almost half of cases in the day-to-day budget management, the evaluation and control of the budget, the budget allocation. In one third of the states the court president is not responsible for any of such activities.

Amongst the "other" authorities that can be involved, it can be noted that the Ministry of Justice or one of its bodies (**Albania, Austria, Azerbaijan** for the budget for the 1<sup>st</sup> instance courts, **Belgium, Croatia, Czech Republic, Estonia, Germany, Latvia, Luxembourg, Monaco, Romania, Slovakia, Turkey, UK-England and Wales**), the Ministry of Finances (**Azerbaijan, Croatia, Luxembourg, Monaco, Montenegro, Switzerland, Ukraine**), the Presidents of higher courts (**Austria, France, "the former Yugoslav Republic of Macedonia"**), a Supreme Court Management specific department (**Estonia, Russian Federation, Israel**), the High Council for the Judiciary or equivalent (**Georgia, Hungary**), the national court administration (**Azerbaijan, Denmark, Georgia, Ireland, Ukraine, UK-Northern Ireland, UK-Scotland**), a State Audit Office (**Latvia, Ireland, Malta, Montenegro, "the former Yugoslav Republic of Macedonia"**), the Office of the General Prosecutor (**Luxembourg, Turkey**) or court accountants (**Albania, Bosnia and Herzegovina, Croatia, Germany, Lithuania, Russian Federation**).

Where appropriate, the court administrative director is also often present during all the stages of the budget's cycle, especially in the day-to-day management (in more than half of the states) and budget preparation (a little bit less of one third of the states). The head of the court clerk office, when involved with the budget, is often involved in its day-to-day management, while the management board, even less involved, deals in the majority of cases with budget evaluation and control of the budget. However in **Iceland**, the **Netherlands** and **UK-Northern Ireland**, the management board is involved in all stages.

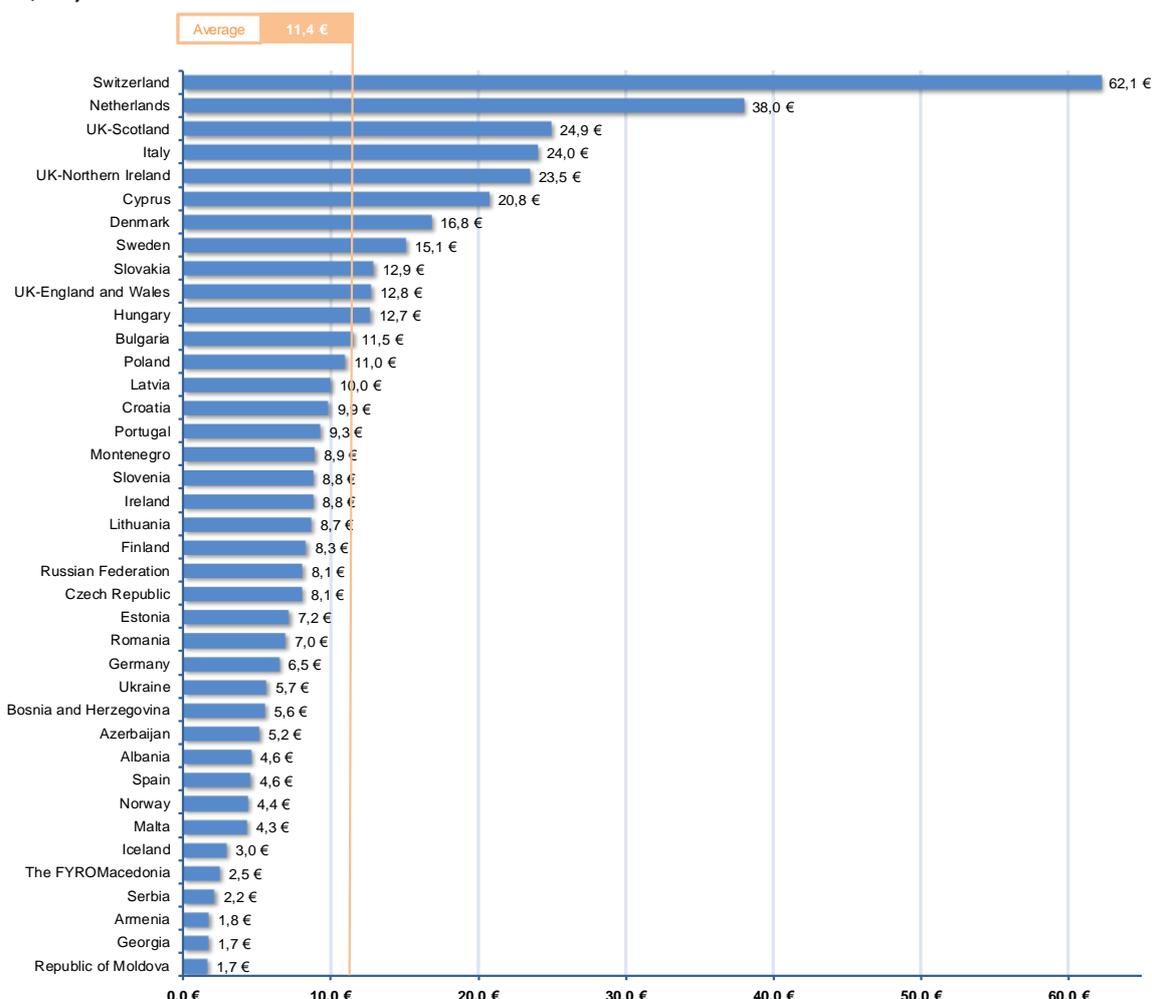
The budgetary process for the court may be arranged at different levels (from national level to regional or local level) and may be different for each instance. At each level and for each court instance, various actors are involved in the process. In several states, the budget allocation, management and control for the Supreme Court is differentiated from that of the other courts (**Estonia, Slovakia, Russian Federation**).

### 2.2.2 Public budget allocated to the public prosecution services

The tables below refer to the 39 states or entities that were able to identify a specific budget for public prosecution. It is recalled that in 8 states or entities, it has not been possible to differentiate the budget for courts and the budget allocated to public prosecution services (**Andorra, Austria, Belgium, France, Greece, Luxembourg, Monaco and Turkey**).

The analysis of the budgets of the public prosecution services must consider the scope of the powers of the latter in criminal proceedings, as well as possible powers outside the criminal field for a number of member states (see Chapter 10 below).

**Figure 2.12 Annual public budget per inhabitant allocated to the public prosecution service in 2012, in € (Q1, 13)**



#### Comments:

**Cyprus:** this budget is only the budget for the Law Office of the Republic and the Attorney General's office.

**Malta:** the Public Prosecution Services is carried out by the Attorney General's office who not only acts as a Public Prosecution but also acts as the Principal Legal Advisor for all the Government Departments: the amount budgeted cannot be considered as being funds allocated solely for public prosecution purposes, but also for other purposes relating to legal work and advice for the Government, both locally and internationally.

**Netherlands:** the budget of the prosecution services include justice expenses in criminal cases.

**Serbia:** the budget of the prosecution services does not include salaries for prosecutorial staff, equipment and investment because this is in the jurisdiction of the Ministry of Justice and Public Administration.

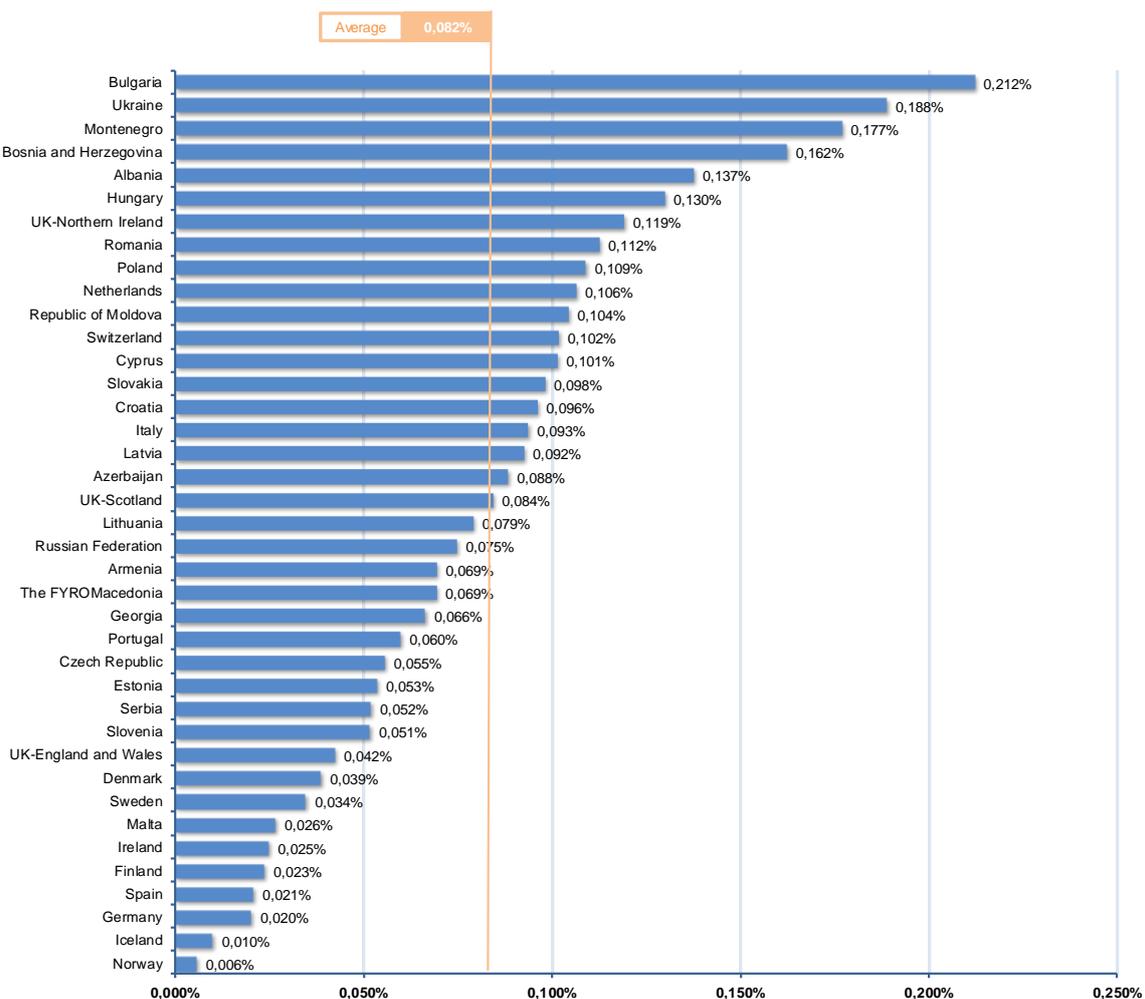
**Switzerland:** the budget of the prosecution service is extrapolated from the responses provided by 25 cantons and the Confederation.

**UK-England and Wales:** the amount represents total voted resource expenditure but does not include capital (land, buildings, plant and machinery). Other Government Departments and local authorities may undertake public prosecutions in certain specific cases, usually regulatory offences, but the above figure represents the vast majority of approved public budget allocated for public prosecutions.

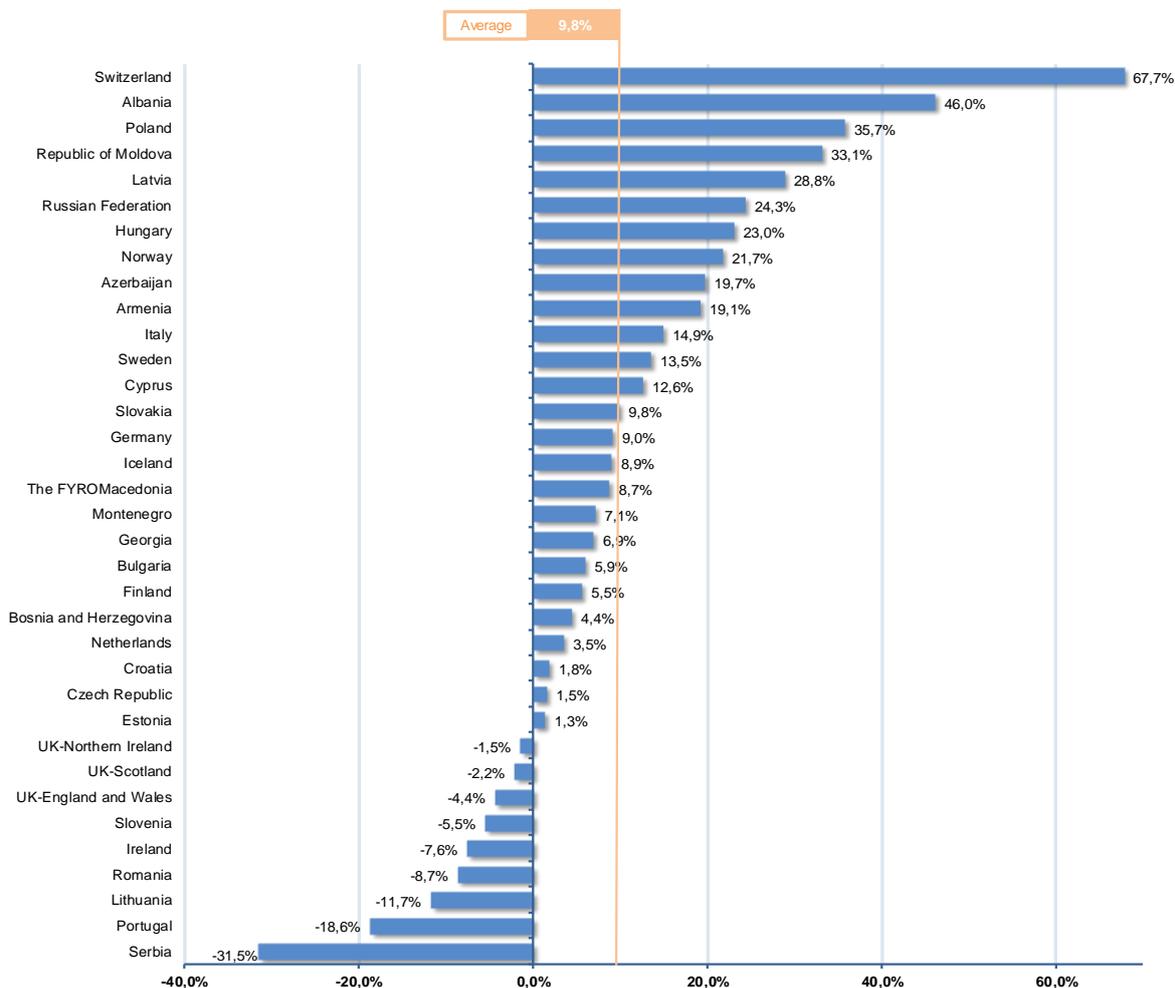
The European average amount allocated to the prosecution per inhabitant has remained stable since 2008. 5 states or entities (**Switzerland, Netherlands, UK-Scotland, Italy and Cyprus**) spend more than 20 € per inhabitant on prosecution services, with **Switzerland** spending a much higher amount in absolute numbers than in any other member state. 10 states spend less than 5 € per capita (**Republic of Moldova, Georgia, Armenia, Serbia, "the former Yugoslav Republic of Macedonia", Iceland, Malta, Norway, Spain, Albania**).

Other realities appear when comparing the public prosecution budget to the level of wealth per capita in each state.

**Figure 2.13 Annual public budget allocated to the public prosecution service per inhabitant as part (in %) of the GDP per capita, in 2012 (Q1, Q3, Q13)**



One may then notice that **Bulgaria, Ukraine, Montenegro, Bosnia and Herzegovina, Albania, Romania, Republic of Moldova** attach budgetary priority to public prosecution services. It must be underlined that amounts may have been allocated by European or international institutions for strengthening the rule of law. **Figure 2.14 Variation of the public prosecution budget between 2010 and 2012, in % (Q13)**



**Comments:**

**Albania:** the increase is mainly due to the increase in the salaries of the prosecutors.

**Denmark:** in the previous exercises the budget of the public services was included into the overall budget of the police.

**Malta:** funds allocated to the Attorney General’s Office were reduced due to reorganisation purposes.

**Republic of Moldova:** the increase in the salaries, rental fees for the headquarters of the territorial prosecution services (previously rented by the local public administration) and the increase in maintenance costs contributed to the increase in the budgets of the prosecution services.

**Switzerland:** the increase in the budget of the prosecution services is explained by the fact that several cantons have increased the staff due to the entry into force of the Swiss Code of Criminal Procedure on 1.1.2011. The new code requires the cantons change the system of investigative judges to a prosecutor system where prosecutors firstly investigate a case and also support the prosecution before the court.

**“the former Yugoslav Republic of Macedonia”:** in 2012 public prosecutors were not competent for conducting investigations; taking this responsibility as from December 2013, the budget of the public prosecution services will be increased in the future.

The variation of the budget allocated to the prosecution service has been examined for 35 states or entities between 2010 and 2012.

Compared with the previous periods analysed by the CEPEJ, it seems that, on average, European states have increased the budget of the prosecution services more significantly in recent years than in the previous periods.

Situations are nevertheless split among member states: 26 of the 35 states concerned have increased their budgetary effort (**Georgia** and **Croatia** cannot be counted here due to the higher variation of their exchange rate; see below) while 9 have decreased it.

It is again worth taking into account the variations in the exchange rates when comparing fluctuations in the euro. Then it appears that the budgets allocated to prosecution services have slightly decreased in **Georgia** and **Croatia** though both appear in the upper part of the figure above. The increase is more significant than it appears in the figure for **Iceland** when considering the negative variation of its exchange rate against the euro. On the contrary, the increases noted in **Norway, Azerbaijan, Sweden, Bosnia and Herzegovina** are actually less significant than it appears in the figure when considering the positive variation in the exchange rate between 2010 and 2012. When considering the decreases in the budget of the prosecution services, one could note that the situation is accentuated in the three entities of the **United Kingdom** when considering the positive variation of the exchange rate. On the contrary, the decrease is more limited than what appears in the figures in **Romania** and **Serbia**.

Public authorities in 8 states or entities have committed large budgets to the prosecution services between 2010 and 2012 (increase above 20%). **Switzerland, Norway, Azerbaijan, Russian Federation, Italy, Cyprus, Slovakia, Iceland** and, to a lesser extent, **Finland, Montenegro, Netherlands, Croatia** have kept increasing the financial means allocated to their prosecution services on a long period (2008 – 2012). The increase in the salaries of the prosecutors and/or their staff is one of the main explanations (**Albania, Republic of Moldova**).

Legislative reforms which enlarge the powers of the prosecution services as regards the investigative phase can also explain the variation of the budgets in **Switzerland**, and its evolution in “**the former Yugoslav Republic of Macedonia**” as from 2013.

Other states have inverted the trend: when significant budgetary cuts could be noticed in the previous period examined, due to the financial and economic crisis, in **Latvia** (2008-2010), an increase of almost 30 % can be highlighted for the period 2010-2012. The same trend can be stressed also in particular for the **Republic of Moldova, Hungary, Poland**.

On the contrary, **Serbia, Malta** (reorganisation of the prosecutions services), **Portugal** and **Lithuania** have seriously decreased this effort in two years. For **Lithuania** and **Serbia**, this is the continuation of a decrease already noticed in the last evaluation report - **Lithuania** indicates that this was the consequences of budgetary policy of restriction to fight excessive deficits. **Romania, Slovenia** and, to a lesser extent, **UK-Scotland** were increasing the budgets allocated to their prosecution services in the previous period and had to invert the trend in the most recent period. Budgetary cuts due to the economic crisis can mainly explain this trend. The continuation of the policy for rebalancing the role of judges in relation to a former and traditionally powerful prosecution service might still have an impact in some central and eastern European states.

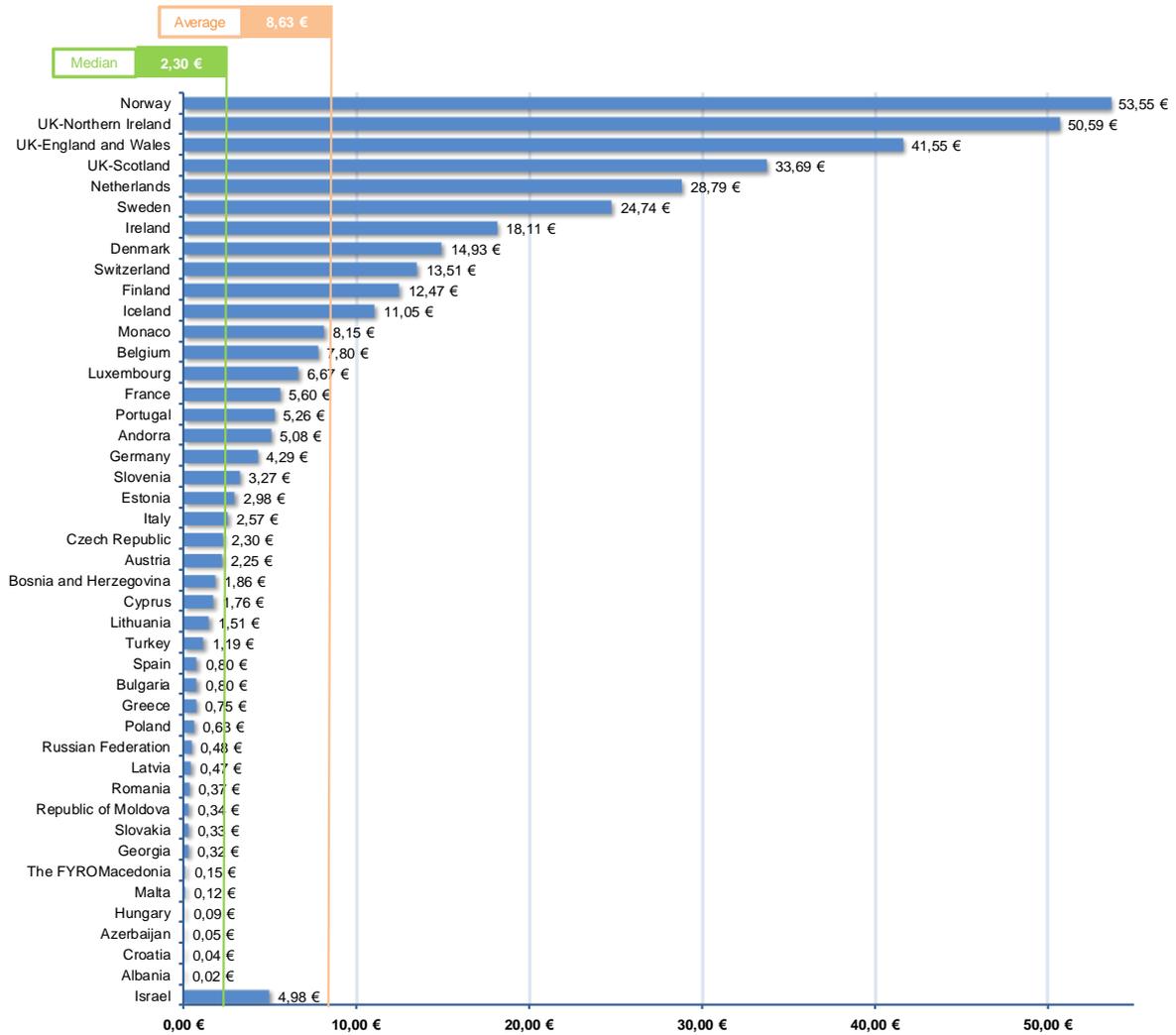
### **2.2.3 Public budget allocated to the legal aid system**

Legal aid is understood here in a broad sense, including also, for example, the costs of legal aid structures, information policies of court users or mechanisms to support the parties in the proceedings for preventing trials. For the first time, the CEPEJ's questionnaire has tried to integrate and to distinguish both the system of access to court and the system of access to law.

A little bit less than 9 € per inhabitant is spent on average by the public authorities to promote access to justice through the legal aid system. However, it seems more relevant to consider the median value in Europe: 2,25 € per inhabitant.

The Northern European states commit the largest budgets to the legal aid systems. As it was the case in previous evaluation years, Northern European states have a strong tradition of generous legal aid systems: more than 50€ per inhabitant are spent in the legal aid system in **Norway** and **UK-Northern Ireland** and between 20 € and 50 € in **UK-England and Wales, UK-Scotland, Netherlands** and **Sweden**. A relatively high amount of the budget (more than 10 € per inhabitant) can also be noted in **Ireland, Denmark, Switzerland, Finland** and **Iceland**.

Figure 2.15 Annual public budget allocated to legal aid in 2012, in € per inhabitant (Q1, Q12)

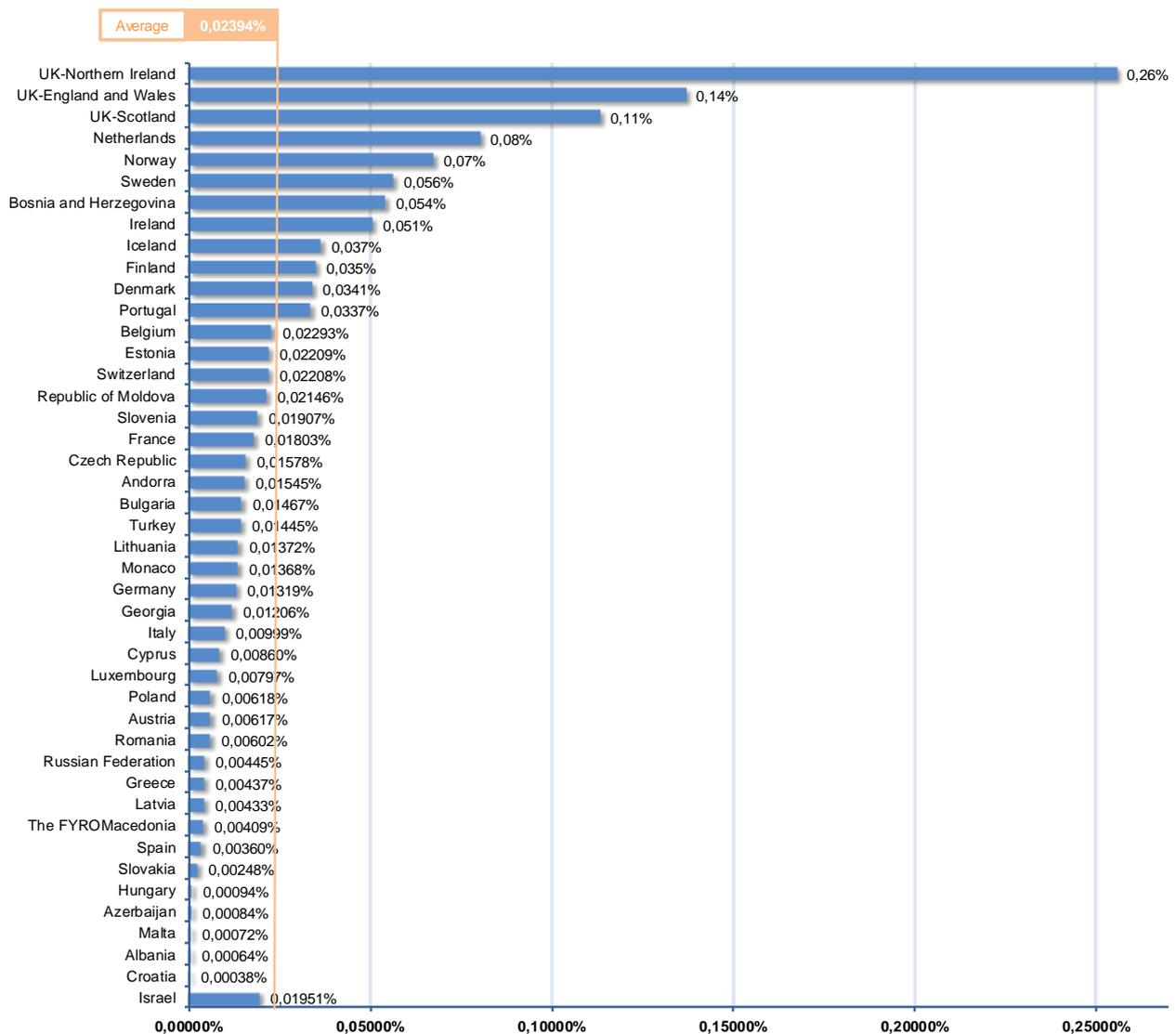


**Austria:** the amount indicated for legal aid includes only the lump sum paid to the bar for representation of the parties 'pro bono'. It does not include court fees or fees for translation or experts, which are also covered by legal aid, but cannot be isolated within the budget.

**Bosnia and Herzegovina:** most costs related to legal aid are paid from budgets of courts (e.g. lawyers' costs when a defense attorney is appointed). The budgets of the legal aid institutions are included in the total annual approved public budget allocated to legal aid.

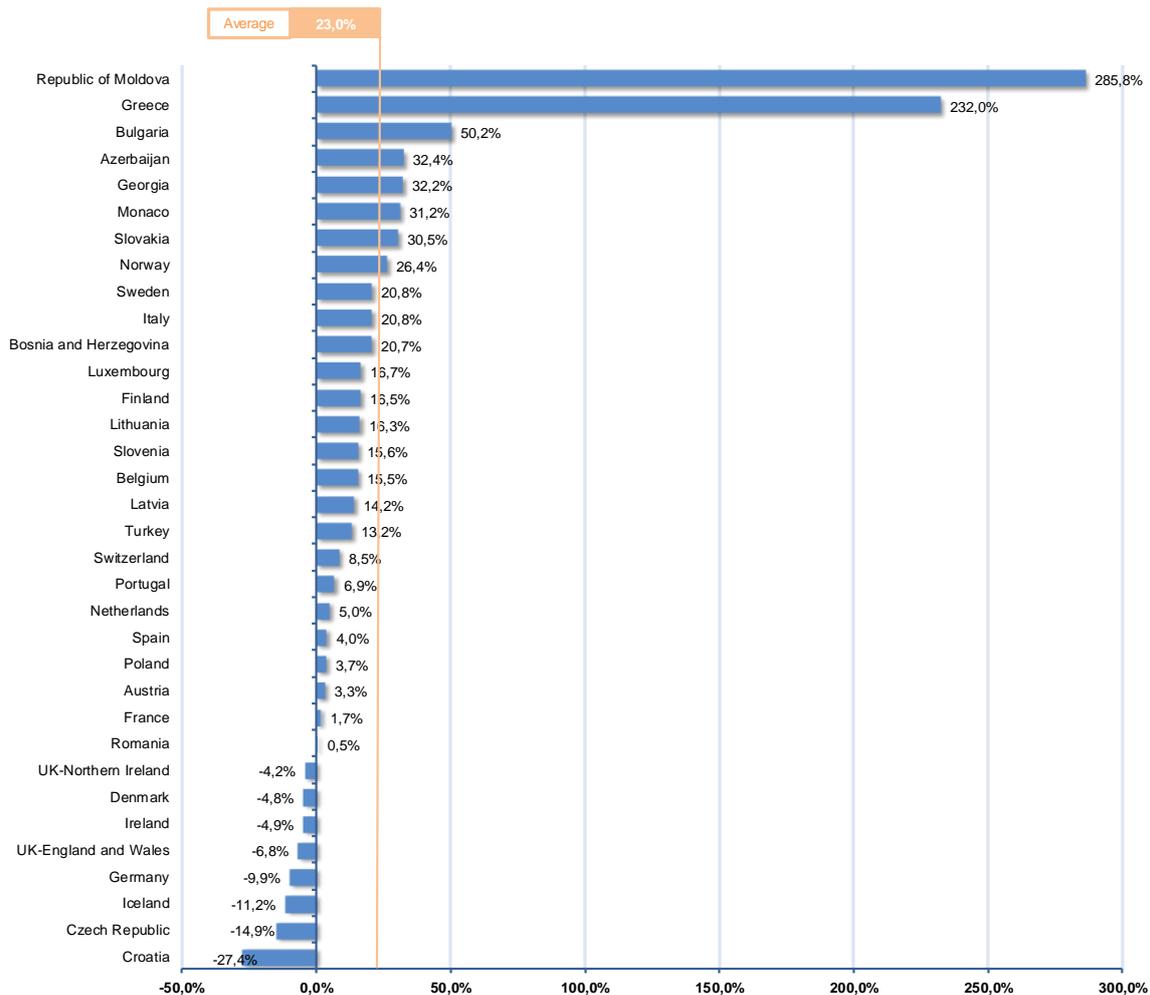
Similarly to previous analyse, introducing the reference to the GDP is useful to measure the impact of the budgetary amount allocated to legal aid, in relation to the states' prosperity, to help people who do not have sufficient means gain access to justice.

**Figure 2.16 Annual public budget allocated to legal aid per inhabitant as part (in %) of the GDP per capita, in 2012 (Q1, Q3, Q13)**



When comparing the effort dedicated to the legal aid budget to the level of wealth of the states, the situation of the states that have a more generous system has not radically changed. It makes it possible, however, to highlight the efforts, supported by European and international funds, of **Bosnia and Herzegovina** as regards access to justice.

**Figure 2.17 Average annual variation of the budget allocated to legal aid between 2010 and 2012, in % (Q12)**



**Comments:**

**Estonia:** 2012 data is not comparable with previous data, as the administrative costs of legal aid were included in the previous years, unlike the current year.

**Greece:** the considerable increase in the budget allocated to legal aid is due to the recession and the great number of foreign accused persons who are in need of legal aid.

**Republic of Moldova:** the increase in the amount of the public budget allocated to legal aid is due to the entry into force on 1 January 2012 of all the provisions of the Act of July 2007, which extends legal aid to misdemeanour civil cases litigation and administrative cases (non-criminal cases).

34 member states have been considered as regards the evolution of their budget allocated to legal aid. This makes it possible to highlight a positive European trend regarding access to justice through the indicator of the amount allocated to legal aid; this positive trend was already underlined in the previous Evaluation Report, which means that continuous efforts are being made in the field of access to justice throughout Europe, such a trend being consistent with the requirements and spirit of the European Convention on Human Rights. An encouraging average increase of 23 % between 2010 and 2012 can be underlined in Europe, though 8 member states or entities have decreased their legal aid budget (**Croatia, Czech Republic, Iceland, Germany, UK-England and Wales, Ireland, Denmark, UK-Northern Ireland**).

Like for the previous budgetary analysis, the variation in the exchange rate between 2010 and 2012 must be taken into account before drawing conclusions from the figure above. The increase appearing in the figure is actually less significant when considering the positive variation of the national currencies against the euro in **Azerbaijan, Georgia, Norway, Sweden, Bosnia and Herzegovina** and **Switzerland**. On the contrary, the increase is more significant than it appears in the figure for **Turkey, Poland** and **Romania**. The decrease is more limited when considering the exchange rate for **Iceland** but should be considered as more significant than in the visual presentation for **UK-Northern Ireland** and **UK-England and Wales**.

It should be noted that an increase in the budget allocated to legal aid might also be the result of the economic situation which means that a greater number of people find themselves below the income threshold for the granting (**Bosnia and Herzegovina, Greece**).

Some central and eastern European states have established legal aid systems only a few years ago when joining the Council of Europe and the European Convention on Human Rights. They continue to develop their system by increasing the public financial means: **Republic of Moldova, Azerbaijan, Bosnia and Herzegovina, Slovenia, Poland, Romania**. Other member states continue to invest more public money every year on their legal aid system: **Norway, Sweden, Italy, Luxembourg, Finland, Belgium, Turkey, Switzerland, Portugal, Netherlands, Spain** and, to a lesser extent, **France**. An increase in the number of incoming cases can be explain the increase in the legal aid budget for some member states (**Slovenia, Sweden**).

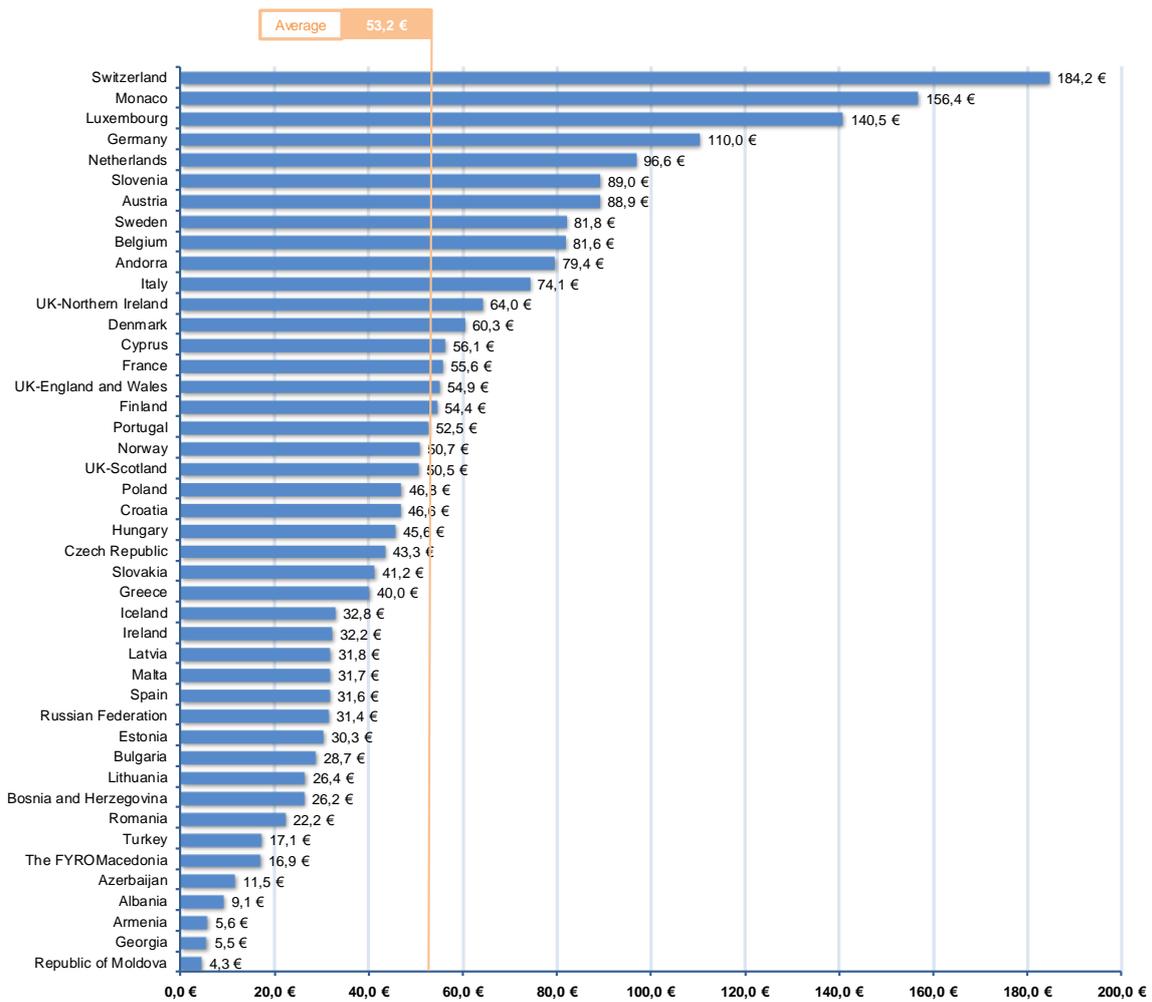
Like for other part of the judicial budget, some member states, which had decreased their budgets in the previous period studied (2008 – 2010), had reverted the trend to increase the budget allocated to legal aid: **Bulgaria, Lithuania, Latvia**.

Budgetary decisions have been taken to reduce the budget of legal aid in **UK-Northern Ireland** and **UK-England and Wales** as a consequence of the economic and financial crisis, though such legal aid systems continue to be among the most generous in Europe. **Iceland, Denmark, Czech Republic**, which had increased their legal aid budget in the previous period, chose to decrease it in the most recent one. **Ireland** continues the decreasing trend already noticed in the previous report.

#### **2.2.4 Public budget allocated to all courts and public prosecution (without legal aid)**

The following analysis, which concerns 44 states or entities, refers to the sum of the budgets for courts and prosecution services. This data allows for the integration of states where the court budget cannot be separated from the budget allocated to the prosecution services (**Andorra, Austria, Belgium, France, Greece, Luxembourg, Monaco** and **Turkey**).

**Figure 2.18 Total annual budget allocated to all courts and public prosecution (without legal aid) per inhabitant in 2012, in € (Q1,Q6, Q13)**

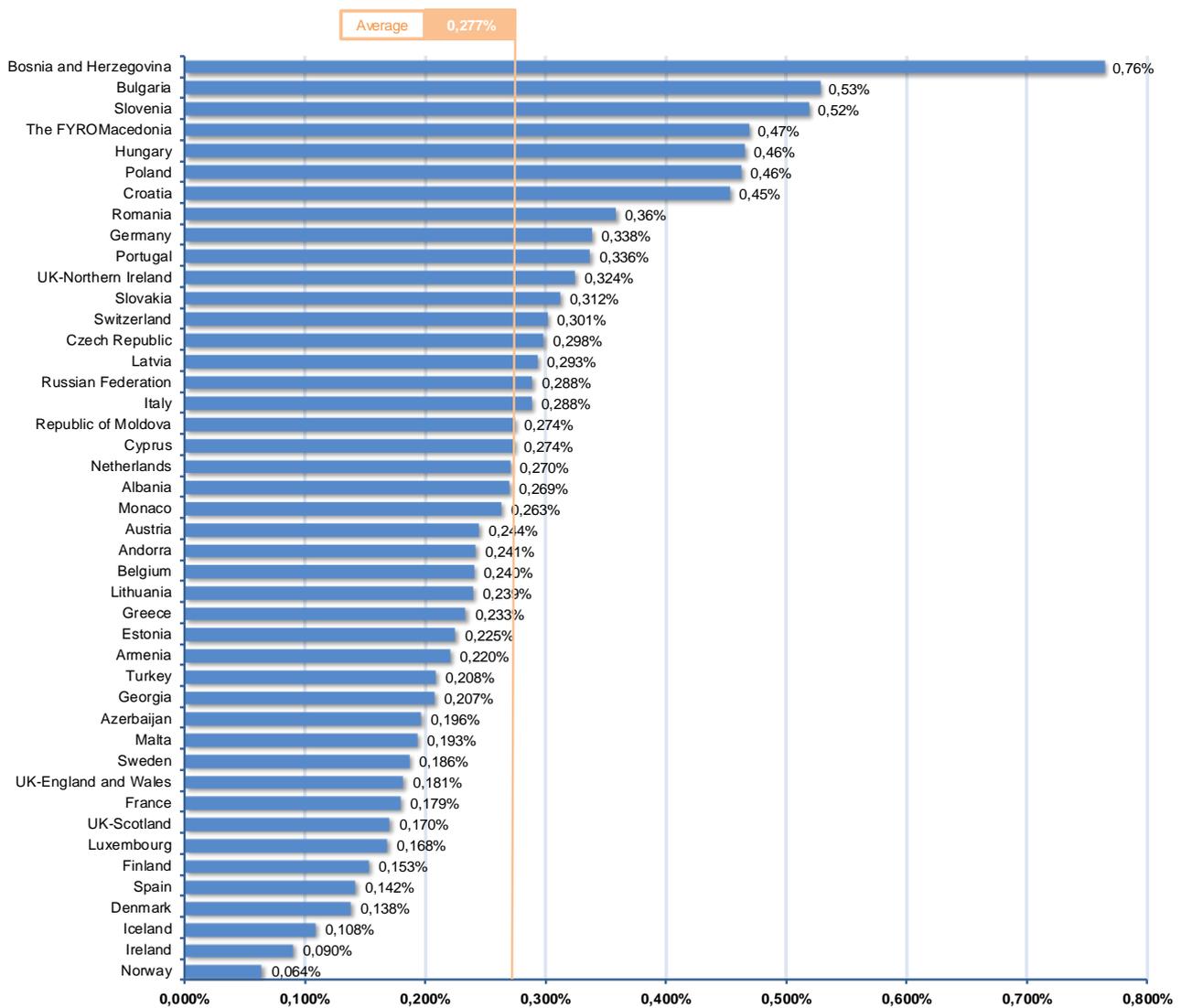


In Europe, the average budget allocated to courts and prosecution services remains stable since the last Evaluation Report at around 53 € per inhabitant.

**Switzerland, Monaco, Luxembourg, Germany** spend the largest amounts (more than 100 € per inhabitant) for courts and public prosecution services. It must be borne in mind that sums per inhabitant in small states should always be put into perspective regarding the small total number of inhabitants. The **Republic of Moldova, Georgia, Armenia, Albania** spend less than 10 € per inhabitant on this budget.

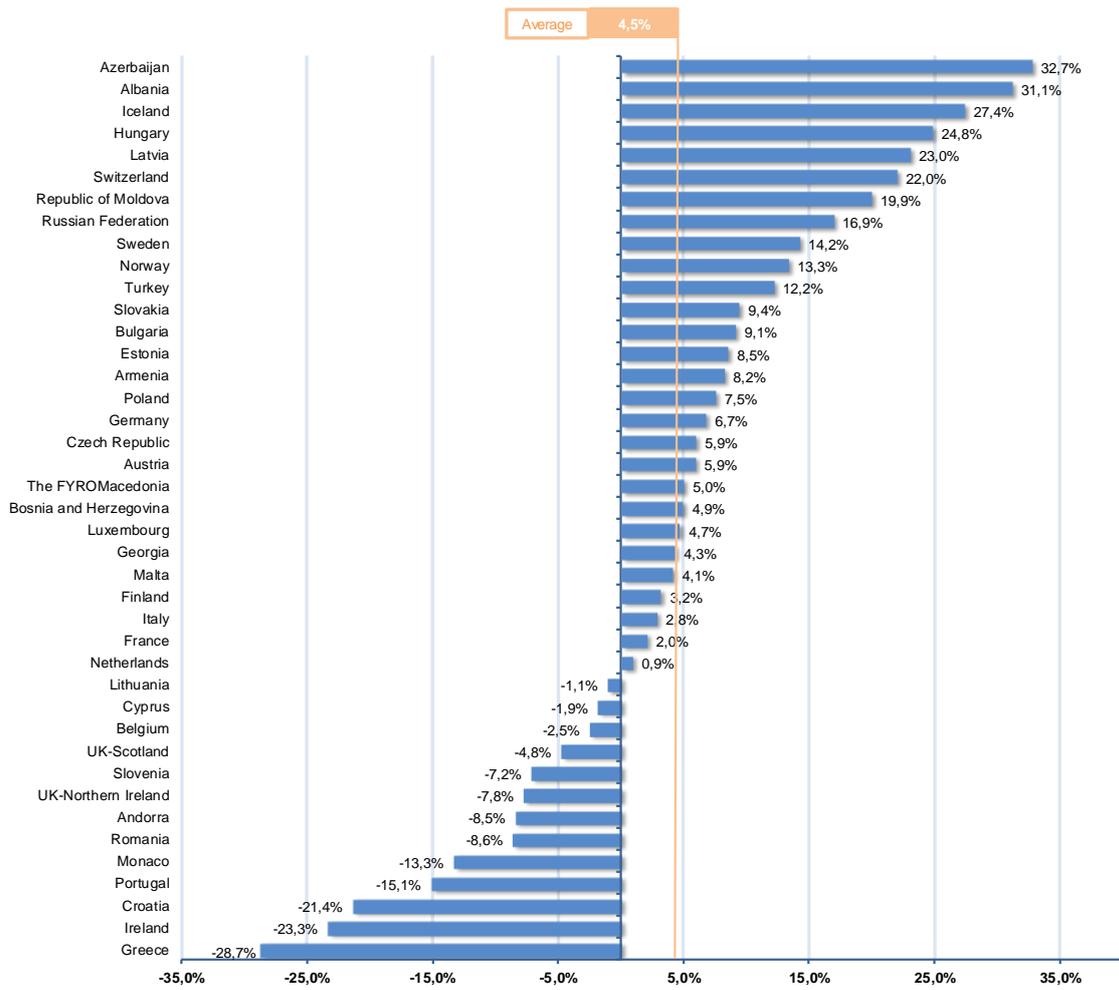
A ratio including the GDP per capita must be analysed in order to compare these sums to the state's prosperity. One can observe that the efforts of public authorities are greater than what the raw data suggest in these countries. According to the previous analysis, the relative commitments of public authorities (supported by European and international funds) to the judicial system remain high in **Bosnia and Herzegovina, Bulgaria, "the former Yugoslav Republic of Macedonia", Hungary, Poland, Croatia.**

**Figure 2.19 Annual public budget allocated to all courts and public prosecution services (without legal aid) per inhabitant as part (in %) of the GDP per capita, in 2012 (Q1, Q3, Q6, Q13)**



The variation between 2010 and 2012 of these aggregated budgets follows the variation of the respective budgets of the courts and prosecution services analysed individually above (see chapters above).

**Figure 2.20 Average annual variation of the budget allocated to all courts and public prosecution services (without legal aid) between 2010 and 2012, in % (Q6, Q13)**



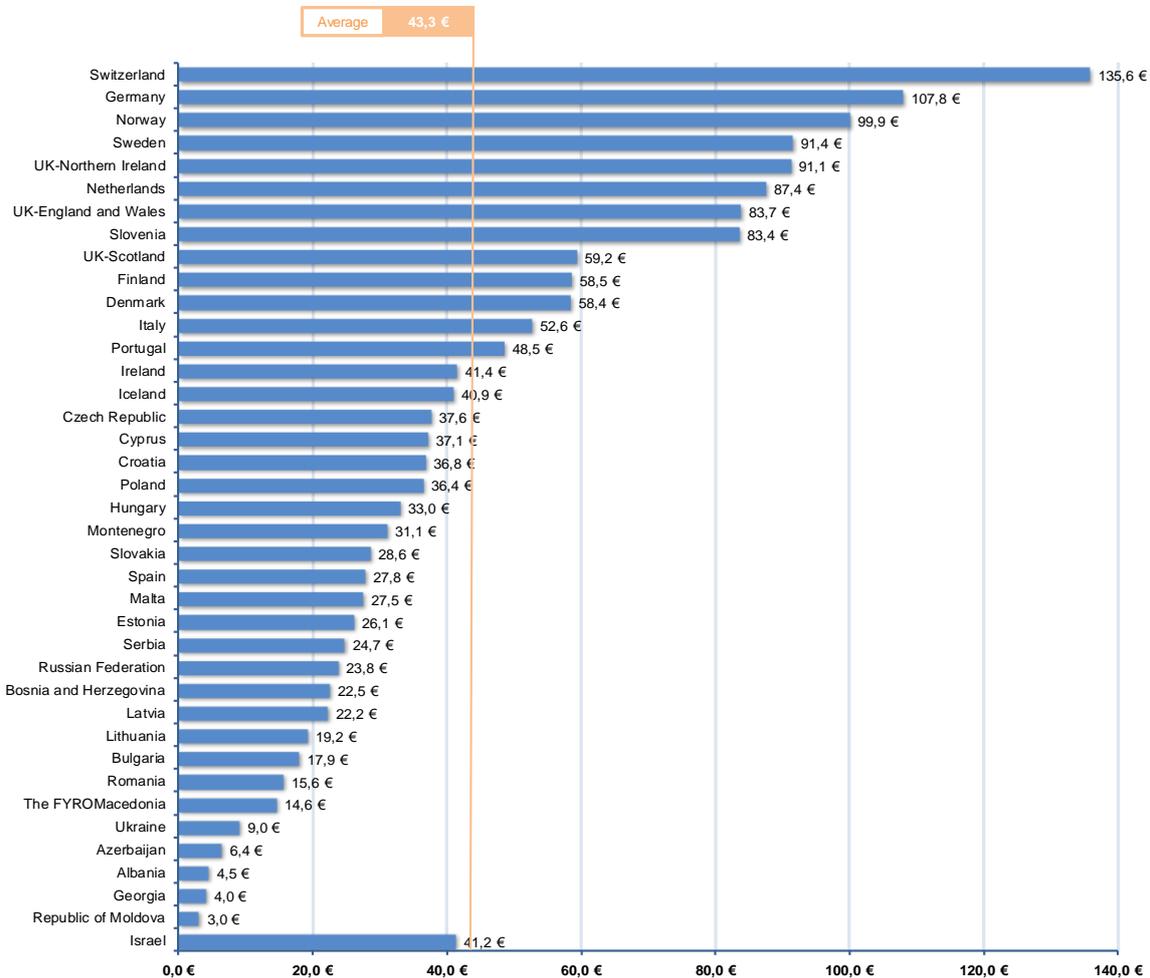
**Comment:**

**UK-England and Wales:** Her Majesty's Courts and Tribunal Service (HMCTS) merged in 2011/2012 and is now one operating entity with a single combined budget. Therefore figures are not on a comparable basis to prior submissions.

## 2.2.5 Public budget allocated to all courts and legal aid (excluding prosecution services)

In this section, it is possible to make a comparison with each other budgetary figure for courts and legal aid of 38 states or entities. In certain states, the legal aid budget is an integral part of the court budget and cannot be isolated. It is now possible to take these countries or entities into account in the following analysis.

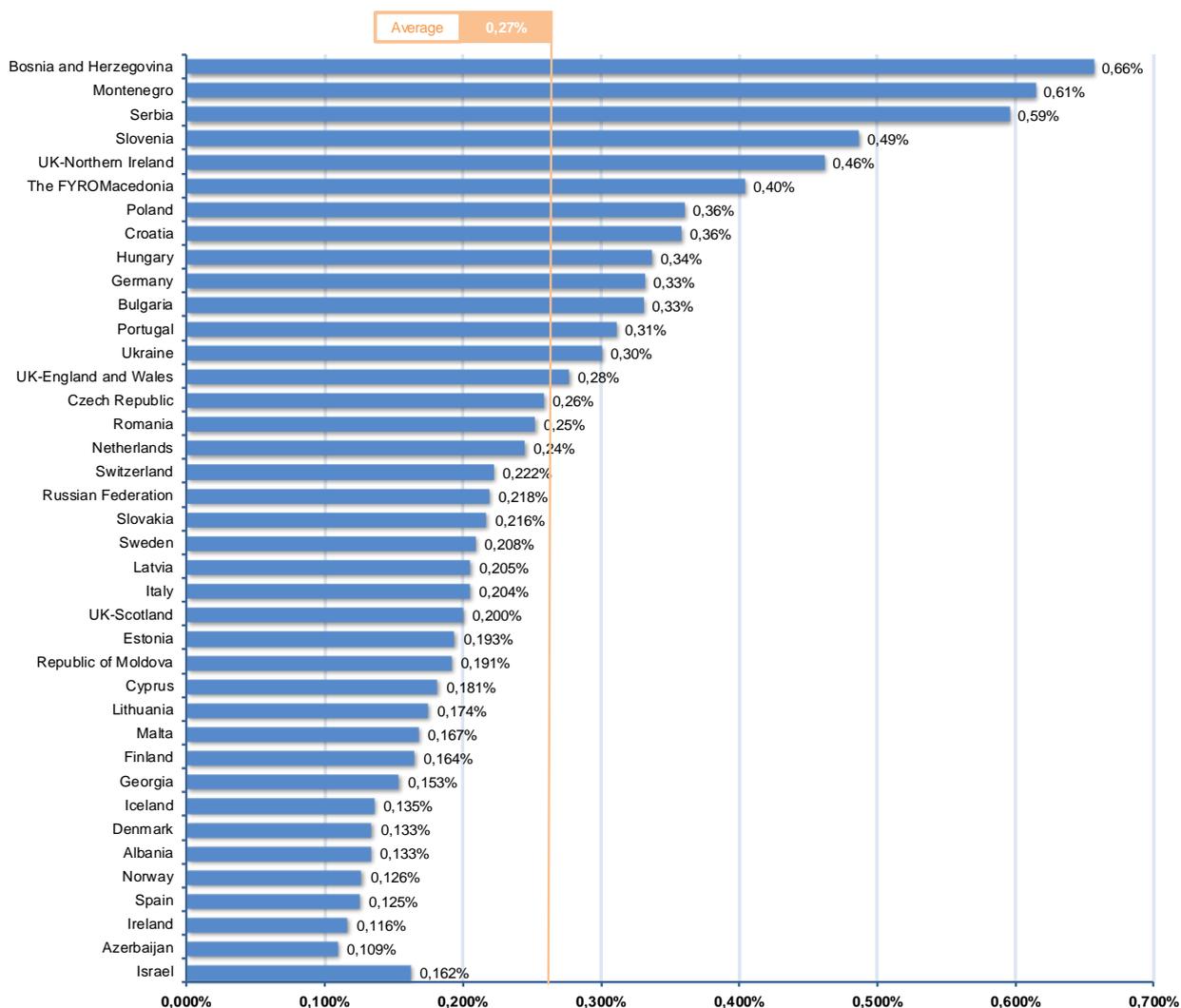
**Figure 2.21 Total annual budget allocated to all courts and legal aid (without public prosecution) per inhabitant in 2012, in € (Q1, Q6, Q13)**



The financial commitment of governments to courts and legal aid may again be related to the level of wealth of each state by calculating a ratio including the GDP per capita.

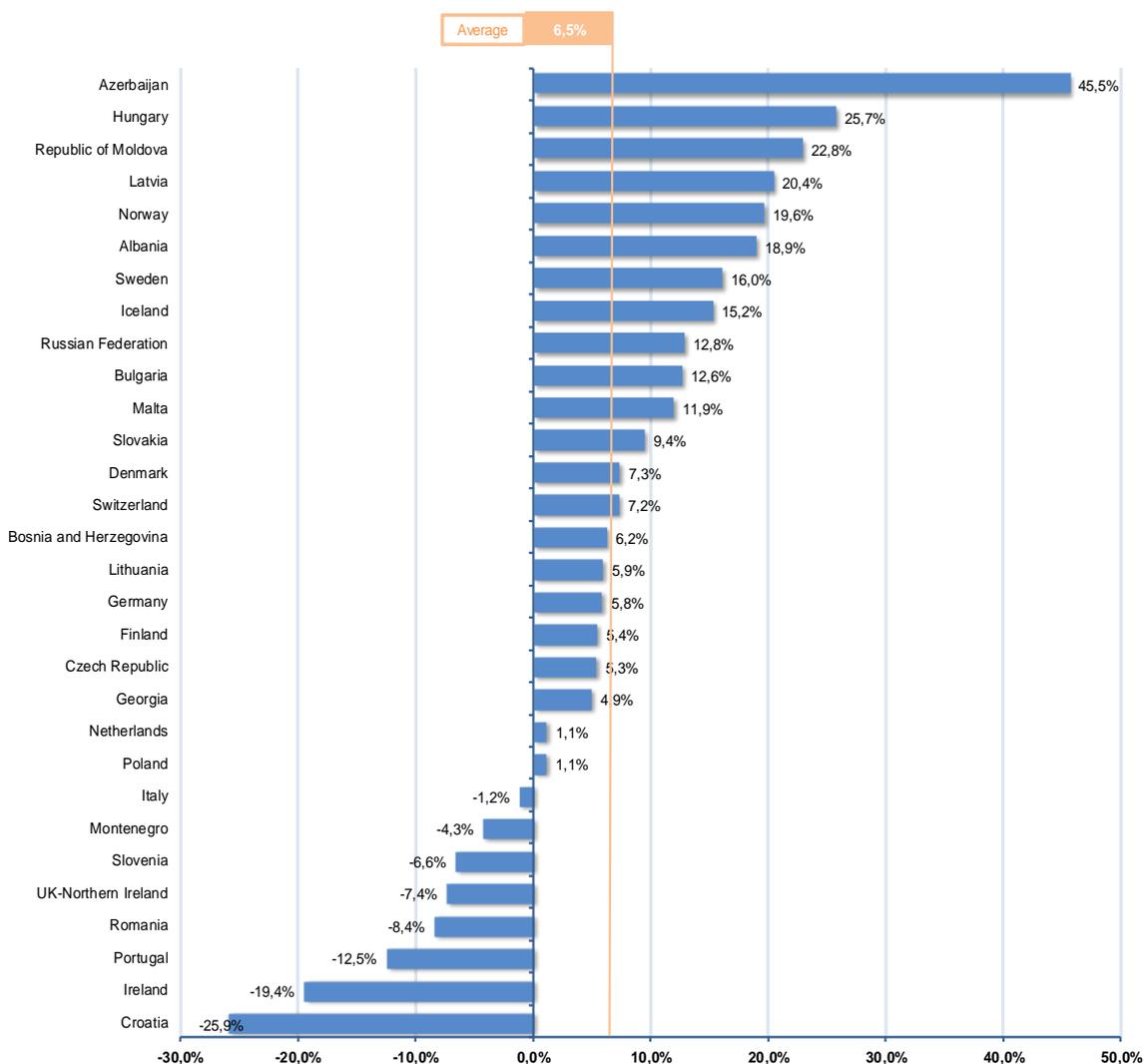
The analysis is similar to those completed above. States or entities that have developed favourable legal aid systems are placed further ahead compared with previous figures: **Switzerland, UK-Northern Ireland, UK-England and Wales, Switzerland, Netherlands, Sweden, Finland, Denmark.**

**Figure 2.22 Annual public budget allocated to all courts and legal aid (excluding prosecution services) per inhabitant as part (in %) of the GDP per capita, in 2012 (Q1, Q3, Q6, Q13)**



The variation between 2010 and 2012 of such aggregated budgets follows the variation of the respective budgets of courts and legal aid analysed individually above (see chapters above).

**Figure 2.23 Average annual variation of the budget allocated to all courts and legal aid (excluding public prosecution services) between 2010 and 2012, in % (Q6, Q13)**



**Comments:**

**Denmark:** in the previous exercises the budget of the public services was included into the overall budget of the police.

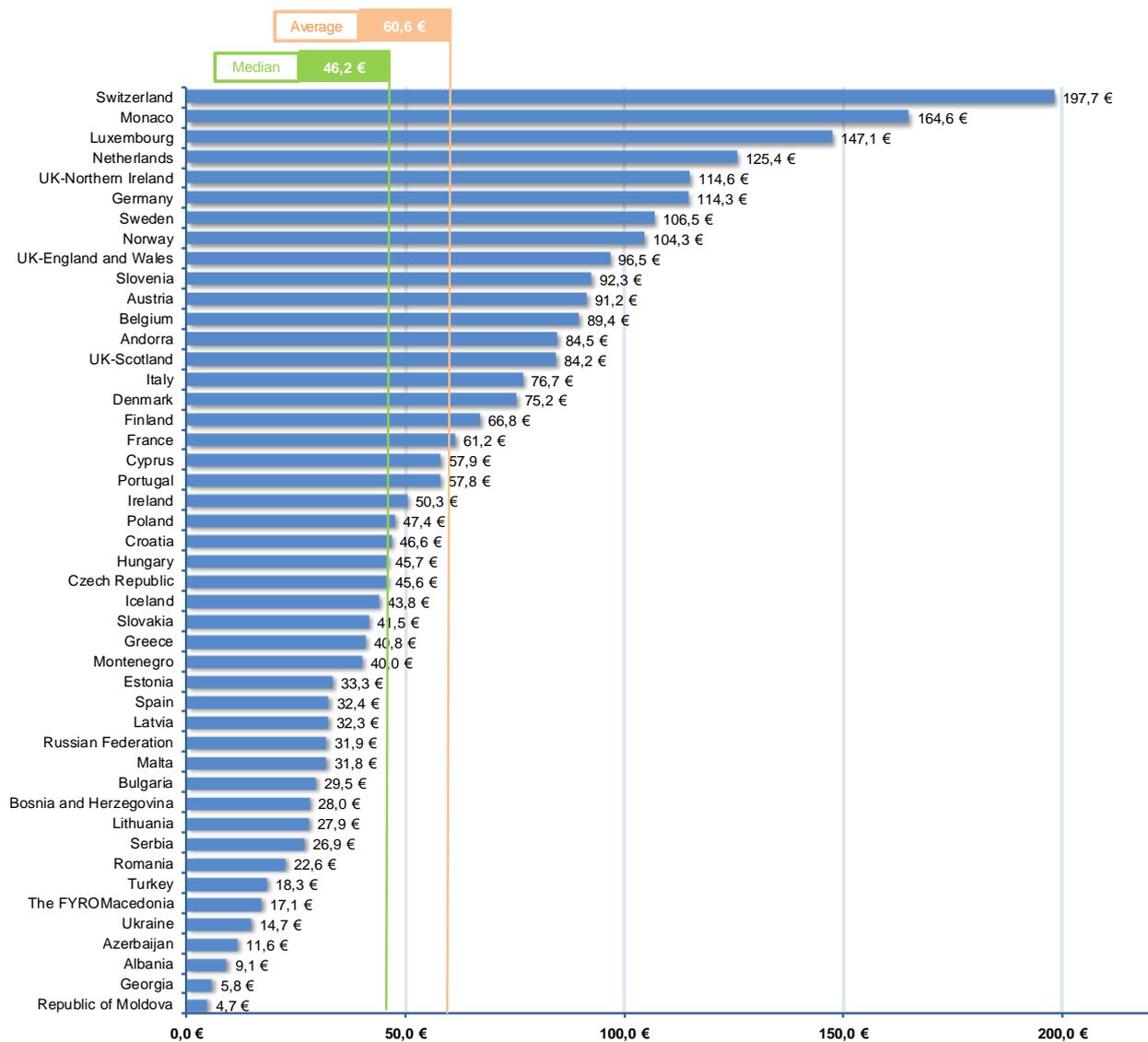
**Estonia:** 2012 data is not comparable with previous data, as the administrative costs of legal aid were included in the previous years, unlike the current year.

**2.2.6 Public budget allocated to the judicial system (courts, public prosecution services and legal aid)**

This part gives an overview of the budget allocated to the judicial system, when studying courts, legal aid and prosecution services together.

This global analysis must be considered as the most significant within this budgetary part of the CEPEJ Report. It allows for the evaluation of 46 out of 47 states or entities participating in this report (in the previous report, they were 40; this is therefore a major improvement for the CEPEJ evaluation process). Only **Armenia**, which could not provide data on legal aid, is missing.

**Figure 2.24 Total annual budget allocated to the judicial system (courts, legal aid and public prosecution) per inhabitant in 2012, in € (Q1, Q6, Q12, Q13)**



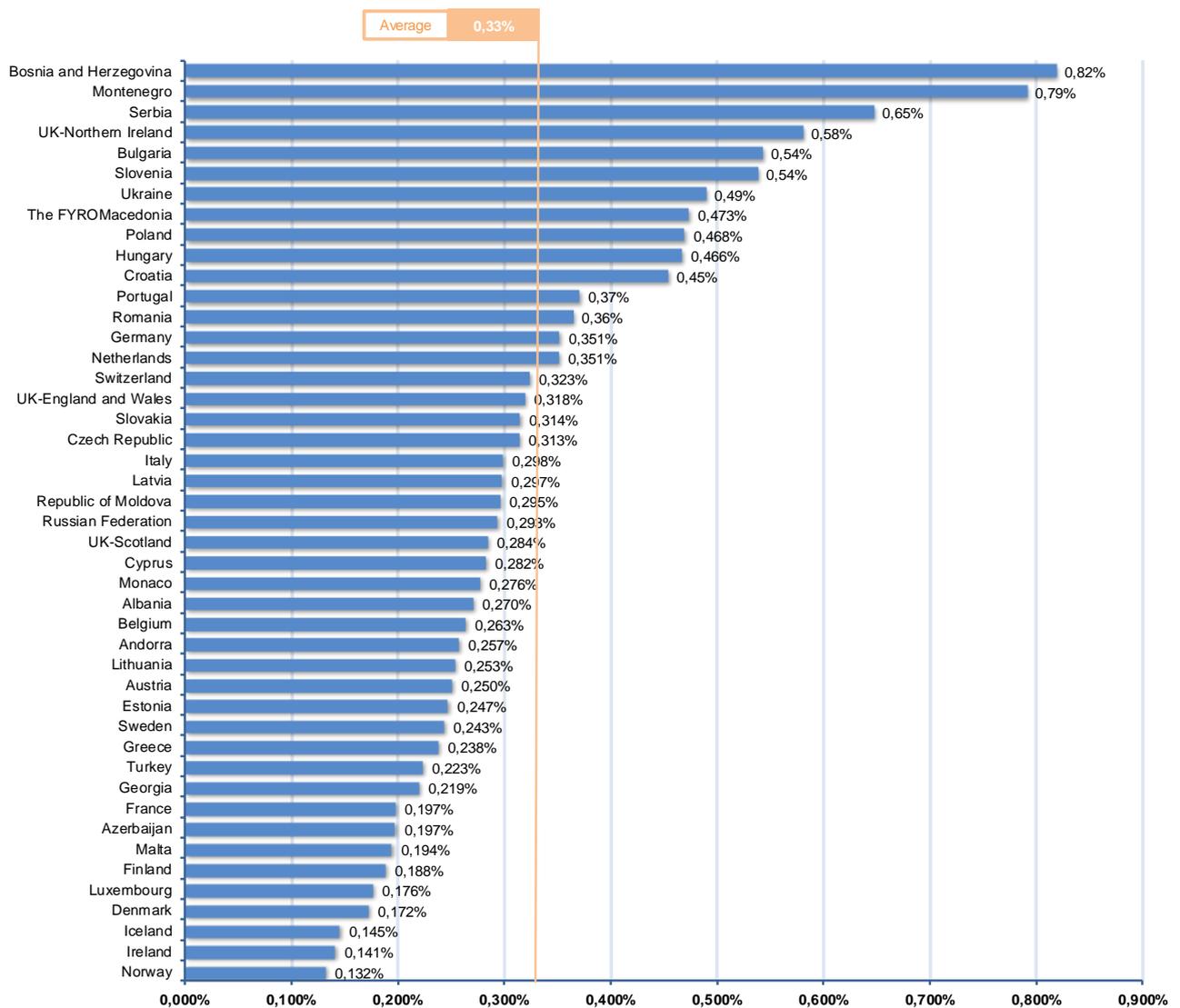
More than 60 € per inhabitant is the average amount of resources spent on the judicial system in Europe.

The same three geographical areas in Europe as those highlighted under chapter 2.2.5 above (budget of courts and prosecution service) can also be distinguished on the basis of the level of economic growth of the known states or entities: given their transitional economic systems, Eastern European States report the lowest budgets; Central European States, many of which have recently joined the European Union, stand at an intermediate level, with the exception of **Slovenia** which has joined the last group of the European countries (North and West of Europe) spending the largest budgets per inhabitant, in accordance with the state of their economy.

5 states spend less than 15 € per inhabitant on the judicial system: **Republic of Moldova, Georgia, Albania, Azerbaijan** and **Ukraine**. 8 states or entities allocate more than 100 € per inhabitant: **Switzerland, Monaco, Luxembourg, Netherlands, UK-Northern Ireland, Germany, Sweden, Norway**, which is consistent with the level of wealth.

Similarly to previous analysis, it is necessary to compare raw data with the wealth of each state or entity by calculating the ratio including the GDP per capita.

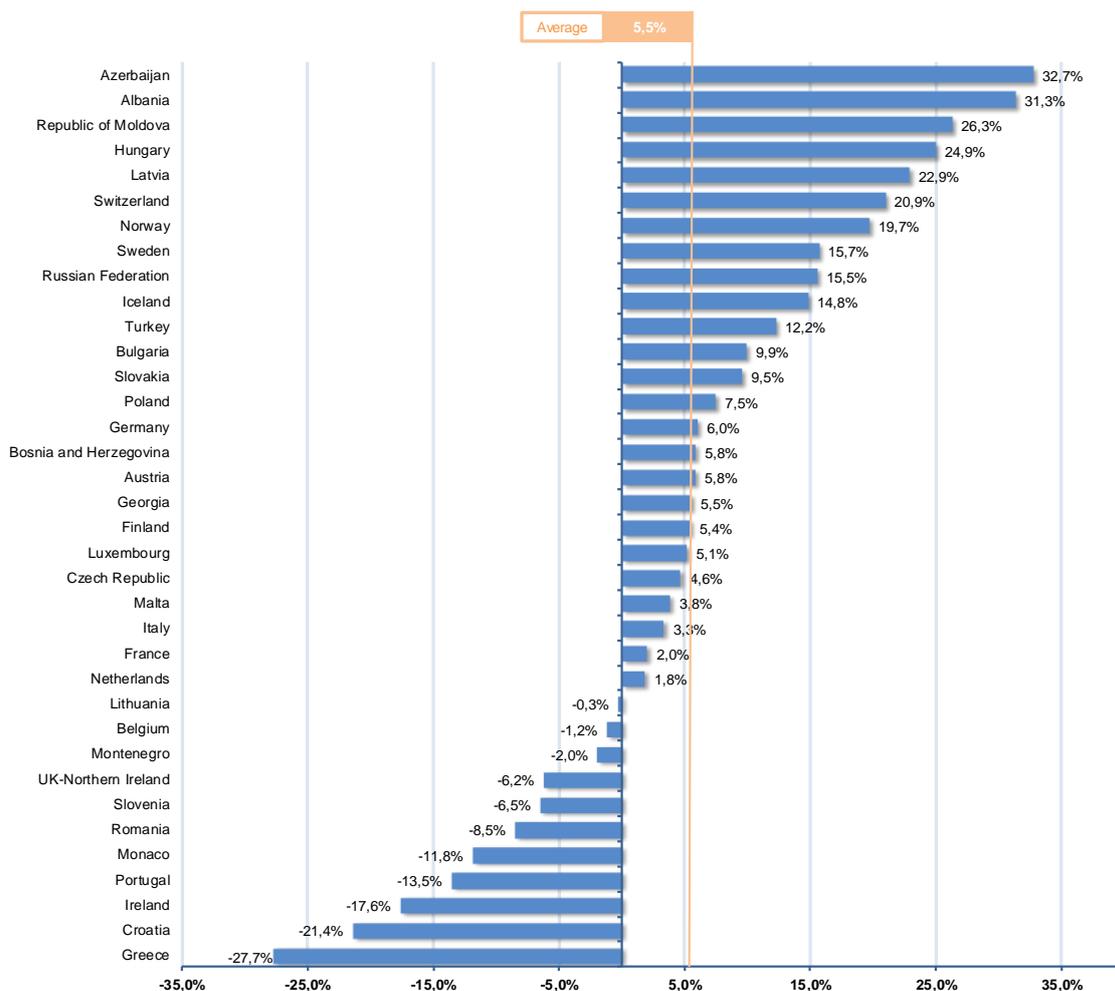
**Figure 2.25 Annual public budget allocated to the judicial system (courts, legal aid and prosecution services) per inhabitant as part (in %) of the GDP per capita, in 2012 (Q1, Q3, Q6, Q12, Q13)**



The budgetary commitments to judicial systems (with the frequent support of European and international funds) in **Bosnia and Herzegovina, Montenegro, Serbia, Bulgaria, Ukraine, "the former Yugoslav Republic of Macedonia"**, and, to a lesser extent, **Poland, Hungary, Croatia, Romania**, are favourable and highlight the ongoing reforms of the judicial systems with these South-East European states as well as the Central European states that have joined the European Union.

**Note to the reader:** the data of the wealthiest states or entities must here be reported once more to the level of prosperity of the state; otherwise it might be wrongly interpreted that they allocate a low amount of their budget to their judicial system, given their high GDP. This is namely the case for **Norway, Ireland, Luxembourg, Finland, France, Sweden** and to a certain extent for **Austria and Belgium**. This fact must be taken into account if relevant comparisons between comparable states are to be drawn. The figure 2.30 (cf. infra) makes it possible to visualise the correlations.

**Figure 2.26 Average annual variation of the budget allocated to judicial system (courts, legal aid and public prosecution services) between 2010 and 2012, in % (Q6, Q12, Q13)**



**Comments:**

**Estonia:** 2012 data is not comparable with previous data, as the administrative costs of legal aid were included in the previous years, unlike the current year.

**Ireland:** in view of the economic climate and in line with the Government commitment to ongoing strong expenditure control, budget allocations across the public sector have generally decreased since the 2012 Report. Measures needed to ensure that Ireland was in a position to stabilise the economy, meet its international commitments and ensure a timely exit from the bail out programme which was achieved at the end of 2013. In 2012, decreases in both the current expenditure allocation for the courts as well as the capital investment allocation were necessitated by the fiscal demands of the period - it should be noted that since 1999 there had been significant capital investment in the courts.

**Spain:** data is not shown in this figure, as in 2012, data is only related to the Ministry of Justice, excluding the global data related to the General Council of the Judiciary and Autonomous Regions (included in 2010), and only budgetary data related to courts is included, excluding Public Prosecutors - in 2012 there are separate budgets, contrary to 2010. Finally, in 2010 all the justice policy programmes related to the Ministry of Justice were taken into account, while in 2012, as there are separate budgets, only data related to court programmes have been considered here.

**UK-England and Wales:** figures provided for 2010 were for the Court Service and excluded the budget for Tribunals. However, these two merged in 2011/12 and are now one. The budget quoted here is for both courts and tribunals. Therefore unfortunately figures are not on a comparable basis to prior submissions and are not available separately.

It is possible to measure changes between 2010 and 2012 budgets by aggregating the budget of courts, prosecutors and legal aid for 36 states or entities.

24 states concerned have increased their budget allocated to the judicial system between 2010 and 2012 (**Georgia** cannot be counted here due to the positive variation of its currency against the euro), whereas 11 states have decreased it.

An average growth of 5,5 % in Europe can be noticed as regards the evolution of the public budget allocated to the overall judicial system.

Like in the previous analyses, part of these results must be tempered because of the variation of the exchange rate between national currencies and the euro. The increase is thus less significant for **Azerbaijan, Norway** and to a lesser extent **Switzerland, Russian Federation, Sweden** or **Bosnia and Herzegovina** when considering the positive variation of their national currencies against the euro in the same period. **Georgia** appears in the figure above with a positive variation in its budget (+5,49%) whereas the budget has indeed decreased when considering the variation of the exchange rate (+7,86%). For the same reason, the decrease in the budget indicated for **Romania** (-8,5%) should be tempered when considering the variation of the exchange rate (-3,05%). The increasing budgetary efforts allocated to judicial systems by **Turkey, Iceland, Hungary** or **Poland** are even more significant than what appears in the figure above when considering the negative variation of the exchange rate in the same period, whereas the decrease in such efforts should appear as even more pronounced in **UK-Northern Ireland**, when considering that their national currency has been raised against the euro in the same period.

Beyond the technical explanations mentioned above, the effects of the financial and economic crisis can be seen in some countries where the budgets of judicial systems have seriously decreased in two years: **Greece** and to a lesser extent **Croatia, Ireland, Portugal**.

On the other hand, some states have continued to increase significantly the budget of their judicial system (more than 20 % between 2010 and 2012): **Albania, Hungary, Republic of Moldova, Latvia**.

In most of the member states or entities, the increase in the budget allocated to the judicial system is homogenous as it results from an increase in the three elements composing the judicial system (courts, prosecution service and legal aid). In **Switzerland** and **Poland**, the increase is mainly due to supplementary financial efforts aimed at the prosecution services, whereas in **Bulgaria, Bosnia and Herzegovina** or **Finland**, this effort is mainly focused on legal aid. In **Italy**, an increase can be noted in the budget of the judicial system, although the functioning of courts has been affected by budgetary restrictions; the budgetary focus has been clearly put on the prosecution services and the legal aid system – the same trend can be noted, to a lesser extent, as regards **the Netherlands**.

However it is worth mentioning that although **Malta** has decreased its budget allocated to legal aid and prosecution services (see above), it continues to increase its financial support to the functioning of courts. **Germany** and, to a much lesser extent, the **Czech Republic** have continued to increase their budgetary efforts allocated to the judicial system in spite of a decrease in the amounts aimed at the legal aid system. In **Lithuania**, the budget of the judicial system continues to increase although a significant decrease can be noticed in the budget of the prosecution system.

"**The former Yugoslav Republic of Macedonia**" recalls that the Law on Court Budget of November 2010 establishes a fixed percentage for financing the judiciary (amounting to 0,8 % GDP) which is twice as high as the current court budget - this level of 0,8 percent of GDP will be reached progressively until 2015. In a case of rebalancing the national budget, the law prevents decreasing the budget of the judicial system.

The decrease in the budget of the judicial system in **Romania** is mainly due to budgetary cuts in the prosecution services and in the legal aid system, while the efforts allocated to the functioning of courts have been pursued. In **Slovenia, Portugal** a decrease can be noticed in spite of efforts focused on legal aid. **UK-Northern Ireland** has chosen to reduce the budgets of the three components of the judicial system, with a specific focus on the prosecution system; in **Ireland**, it is the functioning of courts which has been the most affected by the budgetary cuts.

The CEPEJ has also chosen to study the trend in the budgets allocated to the judicial system over a longer period (2004-2012) for those 27 states or entities which have provided relevant information over the past evaluation cycles.

**Table 2.27 Evolution, in absolute values, of the total annual approved budget allocated to judicial system between 2004 and 2012 (Q6, Q12, Q13)**

States/entities	2004	2006	2008	2010	2012	Evolution 2004-2012
Albania	19 115 515 €	9 730 005 €	19 016 320 €	19 476 006 €	25 573 987 €	
Andorra	5 531 799 €	6 786 322 €			6 442 382 €	
Armenia		8 512 316 €	16 584 352 €	16 076 398 €	NC	
Austria	552 365 392 €			728 380 000 €	770 790 000 €	
Azerbaijan	17 860 297 €	26 377 635 €	60 555 180 €	80 667 565 €	107 058 274 €	
Belgium				1 010 163 000 €	998 125 000 €	
Bosnia and Herzegovina			102 299 477 €	101 513 838 €	107 431 615 €	
Bulgaria	91 629 844 €	96 190 115 €	193 220 545 €	195 282 117 €	214 599 576 €	
Croatia		238 502 563 €		252 830 027 €	198 808 412 €	
Cyprus					50 109 977 €	
Czech Republic	309 489 953 €	408 726 735 €	502 575 022 €	458 305 311 €	479 600 709 €	
Denmark					421 337 784 €	
Estonia	27 740 000 €	33 955 155 €	48 209 288 €	38 915 167 €	42 819 672 €	
Finland	296 787 000 €	308 400 000 €	351 783 310 €	344 103 350 €	362 713 356 €	
France		3 349 960 000 €	3 590 200 000 €	3 935 548 101 €	4 014 305 137 €	
Georgia	14 774 683 €	19 813 558 €	24 940 020 €	24 628 865 €	25 980 182 €	
Germany		9 288 000 000 €		8 651 468 596 €	9 170 186 780 €	
Greece	314 079 000 €			623 500 911 €	450 970 924 €	
Hungary	385 415 333 €	393 953 981 €	406 494 625 €	362 127 276 €	452 447 662 €	
Iceland	15 400 000 €	18 000 000 €	10 729 410 €	12 291 342 €	14 109 339 €	
Ireland	177 762 000 €	209 076 000 €	270 617 000 €	280 011 000 €	230 777 000 €	
Italy	3 983 484 256 €	4 182 181 963 €	4 398 568 067 €	4 427 485 116 €	4 575 001 196 €	
Latvia	33 832 863 €	50 602 780 €	72 254 407 €	53 676 350 €	65 953 173 €	
Lithuania	63 762 663 €	80 469 794 €	107 713 283 €	84 029 050 €	83 783 573 €	
Luxembourg	51 168 823 €	60 284 431 €	66 900 000 €	73 458 676 €	77 236 940 €	
Malta	11 098 195 €	11 320 000 €	11 677 000 €	12 914 000 €	13 405 486 €	
Republic of Moldova	4 587 980 €	7 264 586 €	13 028 918 €	13 203 006 €	16 671 277 €	
Monaco	4 188 200 €	5 771 000 €	6 557 000 €	6 745 400 €	5 947 556 €	
Montenegro	7 988 778 €	10 188 555 €	24 931 077 €	25 290 803 €	24 796 697 €	
Netherlands	1 658 212 000 €	1 622 653 000 €	1 818 111 000 €	2 066 309 000 €	2 103 688 000 €	
Norway	352 359 000 €	339 032 040 €	327 757 043 €	440 129 410 €	526 767 700 €	
Poland	1 073 872 172 €	1 529 403 000 €	1 582 497 000 €	1 700 843 570 €	1 827 573 567 €	
Portugal	580 095 025 €			700 486 047 €	605 812 816 €	
Romania	199 822 663 €	415 728 365 €	545 698 216 €	525 590 308 €	480 890 952 €	
Russian Federation		3 385 701 682 €	3 252 304 836 €	3 953 130 968 €	4 567 147 213 €	
Serbia		169 962 583 €			193 479 528 €	
Slovakia	109 562 553 €	153 587 744 €	205 503 640 €	204 912 226 €	224 434 765 €	
Slovenia		153 592 174 €	182 915 405 €	203 256 633 €	189 999 970 €	
Spain					1 489 804 631 €	
Sweden	684 143 063 €	737 293 741 €	667 112 183 €	880 260 565 €	1 018 131 920 €	
Switzerland		982 706 215 €	1 019 314 753 €	1 314 140 122 €	1 589 359 782 €	
The FYROMacedonia		26 733 838 €	33 731 938 €		35 240 792 €	
Turkey	346 844 613 €	522 486 876 €		1 234 286 802 €	1 385 201 689 €	
Ukraine	149 004 200 €	397 381 820 €	369 409 656 €		668 136 539 €	
UK-England and Wales					5 457 335 444 €	
UK-Northern Ireland	277 000 000 €	322 374 010 €	248 600 000 €	222 934 000 €	209 042 000 €	
UK-Scotland	440 601 917 €	508 311 186 €	447 040 889 €		447 360 849 €	
Average	383 111 868 €	791 868 836 €	617 613 261 €	928 378 182 €	1 000 573 735 €	
Median	163 383 100 €	189 519 292 €	199 362 093 €	266 420 514 €	296 745 178 €	
Minimum	4 188 200 €	5 771 000 €	6 557 000 €	6 745 400 €	5 947 556 €	
Maximum	3 983 484 256 €	9 288 000 000 €	4 398 568 067 €	8 651 468 596 €	9 170 186 780 €	
Israel						NC

**Denmark, Spain and England and Wales (UK)** have changed their method of calculating the budget for the last evaluation exercise. Therefore comparisons with previous years are not possible.

**Note to the reader:** once again, the evolution of the exchange rate of the national currencies against the euro for those states which do not belong to the euro zone must be taken into account before drawing conclusions from this figure.

The decrease which can be noted for **Iceland** in the figure above does not reflect the real variation in the budgets as the national currency has lost almost 100 % of its value against the euro between 2004 and 2012. Therefore the trend should be considered as a growing one between 2004 and 2012.

On the contrary, the national currency in the **United Kingdom** has been appreciated by more than 20 % against the euro during the same period. Therefore the decrease which can be noted for **UK-Northern Ireland** is even more pronounced.

It must be stressed as well that the evolutions which are then measured are absolute values, which means that the inflation has not been taken into account. Therefore some of the budgetary variations which can be noticed must be obviously weighted accordingly.

In **Italy**, the increase of the judicial budget registered over the past decade is mainly due to the increase in the cost of judges. Such variation consists of two components: one is the adjustment of salaries to the cost of living and the other is the recruiting, over the last years, of new judges. Other categories of cost (e.g. overall services, IT, building maintenance, etc.) have not experienced any substantial increase.

In spite of the technical limitations due to the variation of the exchange rates, the general trend is a positive evolution, in absolute value, of the budget allocated to judicial systems in Europe over the last years. The economic and financial crisis might have had an impact on the evolution of these budgets for some member states or entities, which explains for a number of member states or entities that the curves are not always linear. However it seems that for half of the states studied, a continuous and often homogenous increase in the budgets of the judicial system can be underlined. The effects of the crisis in the most recent years can be highlighted in particular as regards **Belgium, Croatia, Greece, Ireland, Lithuania, Portugal, Spain. Estonia, Hungary, Iceland, Latvia** experienced difficulties in a previous period and have been able to reverse the trend and to start again increasing their budgets.

**Figure 2.28 Respective parts in the public judicial system budget of courts, legal aid and public prosecution in 2012 (Q6, Q12, Q13)**

States/entities	Total annual approved public budget allocated to judicial system (Q6, Q12, Q13)	Courts budget (Q6)	Legal aid budget (Q12)	Public prosecution budget (Q13)
Albania	25 573 987,00 €	48,93%	0,24%	50,84%
Andorra	6 442 382,00 €	NC	6,01%	NC
Armenia	NC	NC	NC	NC
Austria	770 790 000,00 €	NC	2,47%	NC
Azerbaijan	107 058 274,00 €	54,85%	0,43%	44,72%
Belgium	998 125 000,00 €	NC	8,72%	NC
Bosnia and Herzegovina	107 431 615,00 €	73,55%	6,64%	19,82%
Bulgaria	214 599 576,00 €	58,21%	2,71%	39,09%
Croatia	198 808 412,00 €	78,77%	0,08%	21,15%
Cyprus	50 109 977,00 €	61,09%	3,05%	35,86%
Czech Republic	479 600 709,00 €	77,30%	5,03%	17,66%
Denmark	421 337 784,00 €	57,74%	19,85%	22,40%
Estonia	42 819 672,00 €	69,43%	8,96%	21,62%
Finland	362 713 356,00 €	68,84%	18,66%	12,49%
France	4 014 305 137,00 €	NC	9,15%	NC
Georgia	25 980 182,00 €	64,34%	5,50%	30,16%
Germany	9 170 186 780,00 €	NC	NC	NC
Greece	450 970 924,00 €	NC	1,84%	NC
Hungary	452 447 662,00 €	71,98%	0,20%	27,82%
Iceland	14 109 339,00 €	68,06%	25,20%	6,74%
Ireland	230 777 000,00 €	46,40%	36,03%	17,56%
Italy	4 575 001 196,00 €	65,28%	3,35%	31,37%
Latvia	65 953 172,90 €	67,46%	1,46%	31,08%
Lithuania	83 783 573,00 €	63,42%	5,42%	31,15%
Luxembourg	77 236 940,00 €	NC	4,53%	NC
Malta	13 405 486,00 €	85,99%	0,37%	13,64%
Republic of Moldova	16 671 277,00 €	57,48%	7,27%	35,26%
Monaco	5 947 556,00 €	NC	4,95%	NC
Montenegro	24 796 697,00 €	NC	NC	22,36%
Netherlands	2 103 688 000,00 €	46,76%	22,96%	30,28%
Norway	526 767 700,00 €	44,42%	51,35%	4,23%
Poland	1 827 573 567,00 €	75,47%	1,32%	23,21%
Portugal	605 812 816,00 €	74,79%	9,11%	16,10%
Romania	480 890 952,00 €	67,50%	1,65%	30,84%
Russian Federation	4 567 147 213,00 €	73,05%	1,52%	25,43%
Serbia	193 479 528,00 €	NC	NC	8,01%
Slovakia	224 434 765,00 €	68,04%	0,79%	31,17%
Slovenia	189 999 970,00 €	86,87%	3,55%	9,58%
Spain	1 489 804 631,33 €	83,34%	2,48%	14,19%
Sweden	1 018 131 920,00 €	62,59%	23,22%	14,19%
Switzerland	1 589 359 782,00 €	61,74%	6,83%	31,43%
The FYROMacedonia	35 240 792,00 €	84,51%	0,86%	14,62%
Turkey	1 385 201 689,00 €	NC	6,49%	NC
Ukraine	668 136 539,00 €	NC	NC	38,58%
UK-England and Wales	5 457 335 444,00 €	43,69%	43,07%	13,24%
UK-Northern Ireland	209 042 000,00 €	35,37%	44,13%	20,50%
UK-Scotland	447 360 849,00 €	30,36%	40,01%	29,63%
<b>Average</b>	<b>1 000 573 735,29 €</b>	<b>64,05%</b>	<b>10,65%</b>	<b>24,00%</b>
<b>Median</b>	<b>296 745 178,00 €</b>	<b>66,37%</b>	<b>5,23%</b>	<b>22,40%</b>
<b>Minimum</b>	<b>5 947 556,00 €</b>	<b>30,36%</b>	<b>0,08%</b>	<b>4,23%</b>
<b>Maximum</b>	<b>9 170 186 780,00 €</b>	<b>86,87%</b>	<b>51,35%</b>	<b>50,84%</b>
Israel	NC	NC	NC	NC

The distribution of the financial allocations to courts, prosecution services and legal aid have been established for 34 states or entities (the states or entities that are not able to isolate one of the three components of the budget of the judicial system are excluded). For these states, on average, 65 % of the

budgets allocated to the judicial systems were devoted to the operation of courts, 25 % to the prosecution services and 10 % to the legal aid system. Such distribution is close to the one noticed in the previous evaluation exercises.

The figure above makes it possible to distinguish priorities set by the states or entities within their budgetary commitment. Such priorities are indicative of fundamental policy choices made by the states to conduct their judicial policies and current evolutions in those systems.

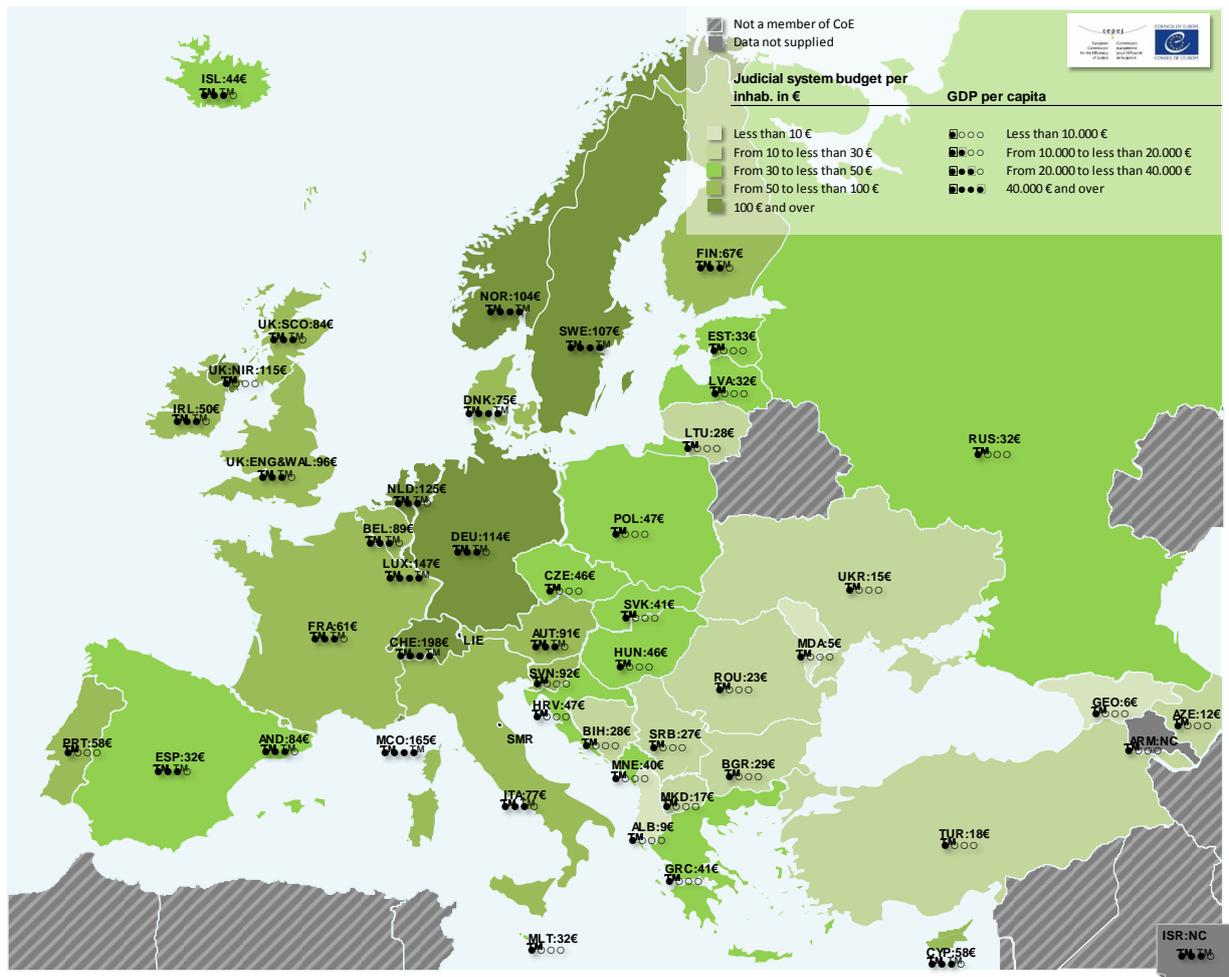
Some member states give a very high priority to the functioning of courts (more than 70% of the budgets allocated to the judicial system): **Slovenia, Malta, “the former Yugoslav Republic of Macedonia”, Spain, Croatia, Czech Republic, Poland, Portugal, Bosnia and Herzegovina, Hungary, Estonia.**

In a system led by the *Habeas Corpus*, the entities of the **United Kingdom** give priority to legal aid – although such budgets are decreasing. This priority remains a significant characteristic of Northern European systems (**Finland, Iceland, Ireland, Netherlands, Sweden**). These same states or entities spend a smaller share of their budgets on the operation of courts. Partly because the amounts allocated to salaries is lower in *Common Law* systems, which allow for an important number of lay judges to sit (with the exception of **Ireland**). For the Northern European states, part of the explanation lies also in the tendency for society to be less litigious compared to the rest of Europe: part of the litigation is diverted from court proceedings (example: divorce, please see chapter 9 below) and assigned to administrative bodies.

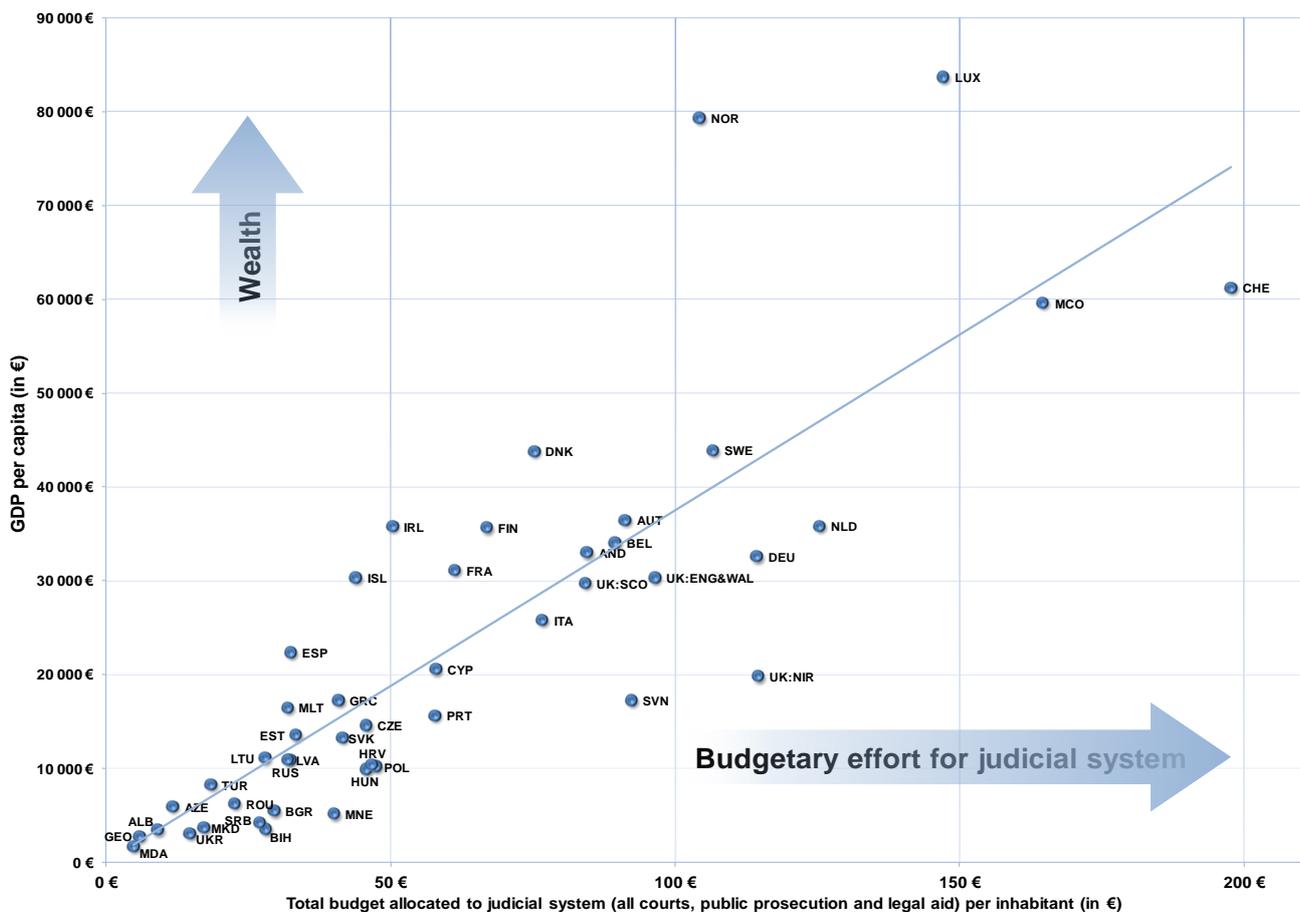
Traditionally, prosecution services in some Eastern and South-eastern European states boast a strong position (more than 30 % of the budget) such as in **Albania** (more than 50 % of the budget), **Azerbaijan, Georgia, Bulgaria, Latvia, Lithuania, Republic of Moldova, Romania, Slovakia**, but this is also the case in **Cyprus, Italy, Netherlands** or **Switzerland**.

One can also observe that some countries have not allocated major priorities (less than 1 % of the budget) to legal aid yet: **Albania, Azerbaijan, Croatia, Hungary, Malta, Slovakia, “the former Yugoslav republic of Macedonia”**).

Figure 2.29 Total annual public budget allocated to the judicial system (courts, legal aid and public prosecution) per inhabitant and GDP per capita in 2012 (Q1, Q3, Q6, Q12, Q13)



**Figure 2.30 Correlation between the GDP per capita and the total budget of judicial systems (courts, legal aid and public prosecution) in 2012 (Q1, Q3, Q6, Q12, Q13)**



These two last figures above make it possible to compare clusters of countries which are comparable due to similarities as regards the level of wealth.

This analysis between the level of prosperity of states or entities and the budgetary commitment to the judicial system shows that there is a strong correlation between the GDP per inhabitant and the level of resources allocated per capita to the operation of the judicial system. 65 % of this phenomenon can be explained on the basis of these two variables only. One can assume that, when the GDP increases, the budget allocated to the judicial system will also evolve upwards.

Yet, even if this correlation is generally high, one must highlight the differences between the states and entities for which GDP per inhabitant is comparable, for example a group such as **Austria, Belgium, France, Finland, Germany, Ireland, Iceland, Netherlands, UK England and Wales, UK-Scotland**. Within such a group, it can be highlighted that **Netherlands** and **Germany** dedicate the biggest budgetary effort to their judicial systems and that **Iceland** and **Ireland** invest proportionally quite less in their judicial systems.

Another way of reading from the amount of euros invested per capita in the judicial systems, quite close in absolute value for several states, makes it possible to highlight, for instance, that the budgetary effort devoted to the judicial systems by **Portugal** or **Cyprus** is more significant, taking into account the respective levels of wealth in the various states, than **France** or **Finland**.

These figures also consolidate the explanations as regards previous figures. For example, it was observed that **Norway** had proportionally often the lowest budgetary parts (prosecution, legal aid) in the GDP per capita. The reason for this is explained by the very high GDP per inhabitant and not by the underfunding of certain parts in the judiciary budget.

### 2.3 Trends and conclusions

Concerning budgetary issues, it is noticeable that the proportion of replies which can be exploited is higher cycle after cycle. The scope of the observed states has never been wider. CEPEJ data continue to influence policy decisions on major changes related to the increase in budgets and court organisation (**Azerbaijan**).

Strong disparities can still be noticed as regards the budgetary efforts dedicated by the member states to their judicial systems. European states spend on average 60 € per inhabitant and per year on the functioning of the judicial system, the median level being 46,60 € (22 states above this amount and 22 states below this amount) with significant gaps (extreme values go from less than 23 € in 8 states or entities to more than 100 € in 8 states and entities. This result must be weighted by taking into account the respective levels of wealth in these states (GDP per capita).

The distribution of the financial commitment to courts, prosecution services and legal aid shows that on average, 65 % of the budgets allocated to the judicial systems were devoted to the operation of courts, 25 % to the prosecution services and 10 % to the legal aid system. A higher priority is given to the legal aid systems in the common law countries and in the Northern European systems. The means allocated to the prosecutions services in some Eastern and South-eastern European states and some few Western European states correspond to historical traditions. Recent reforms in the criminal procedure, which enlarge the powers of the prosecutions services in the investigation phase and suppress the investigative judges (**Austria, Switzerland**) have also affected the domestic budgetary organisation.

The general trend is a positive evolution of the budget allocated to judicial systems in Europe over the last years, in absolute value (without taking inflation into account). Between 2012 and 2014, the European trend is still increasing as regards the budgets for the judicial system (+ 5,5 % for the 36 states or entities which can be analysed here). The development of the judicial system remains a priority in the public budgets for governments in Europe, in particular in **Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Finland, France, Italy, Luxembourg, Malta, Republic of Moldova, Netherlands, Norway, Poland, Russian Federation, Serbia, Slovakia, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine**.

In spite of the economic and financial crisis in Europe, for half of the states studied, a continuous and often homogenous increase in the budgets of the judicial system can be highlighted over the ten last years.

However the crisis has had an impact on the evolution of the budgets in a number of member states or entities, and either the increase in the budget has not always been linear in the recent years, or the budget has experienced a decreasing trend. The member states have taken measures for restricting the budgets at different periods. The effects in the most recent years can be highlighted in particular as regards **Spain, Greece, Croatia, Ireland, Portugal, Lithuania, Slovenia, UK-Northern Ireland, UK-Scotland** and, to a lesser extent, **Romania**. Some states or entities have started decreasing their budgets already between 2008 and 2010, some others more recently. Among them, some states or entities continue the reducing trends while others have been able to reverse the trend and to start again increasing their budgets (**Albania, Estonia, Iceland, Hungary, Latvia**).

At the same time, the crisis has had an indirect impact on the budgets: social, commercial and labour litigations are affected by the worsening economic situation (bankruptcy, dismissals, lacks of payment, foreclosures, etc.). This increase in litigation provokes further costs for justice. Some states have also stressed recent expenses due to the legislation involving courts in the monitoring of immigration policies (asylum seekers, illegal immigration).

The analysis of the breakdown of the court budgets shows that the budgetary investments in the judicial system cover all its components. But according to the states, specific efforts can be focused on specific items. For instance, the common law states, which rely in particular on non-professional judicial staff (with the exception of **Ireland**) and recruit a smaller number of judges (usually very experienced), devote a smaller share of their resources to salaries, while this part is the largest one in the budget of the continental law systems. Similarly, a larger budget is devoted to the prosecution system in states where prosecutors have traditionally occupied a prominent position in the functioning of justice. Systems that rely on a wide access to justice can be identified, with public policies of justice guided by the principles of Habeas Corpus and generous as regards legal aid, in particular in the entities of the United Kingdom and in Northern Europe.

As regards the budget devoted to salaries, some countries which used to make very significant efforts to keep up with standard salaries for the judiciary in Europe have now reached a “cruising speed”. In addition,

the effects of the financial and economic crisis can often affect (mainly the level of) human resources. Computerization of the court system remains an increasing priority in Europe (representing more than 3 % of the court budget), in spite of disparities between the member states. As regards judicial training, the financial effort remains limited to less than 1 % of the court budget on average; judicial training should be a higher priority for European states (though some of them, taken individually, have made major efforts).

Some countries have not allocated major resources (less than 2 % of the budget) to legal aid yet, but the general trend is positive, mainly when considering the requirements of the European Convention on Human Rights. 26 states or entities have increased their legal aid budgets in Europe between 2010 and 2012. Only few states or entities (8) have decreased it, explaining that it took place within the framework of general budgetary cuts.

### Chapter 3. Access to justice

Legal aid is essential in guaranteeing equal access to justice for all, especially for persons who do not have sufficient financial means. This is in line with Article 6.3 of the European Convention on Human Rights as far as criminal law cases are concerned. Especially for persons who do not have sufficient financial means, it will increase the possibility, within court proceedings, of being assisted by legal professionals for free (or at a lower cost) or of receiving financial aid.

Alongside the provision made by the European Convention on Human Rights and the case law of the Strasbourg Court, the Council of Europe encourages its member states to develop their legal aid systems and has adopted several Recommendations and Resolutions in this field: Resolution (76) 6 on legal aid in civil, commercial and administrative matters; Resolution (78) 8 on legal aid and advice; Recommendation No. R (93) 1 on effective access to the law and justice for the poor, and Recommendation Rec (2005) 12 containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (CETS No. 092) and its additional protocol<sup>13</sup>.

Legal aid, for the purpose of this evaluation, is defined as aid given by the State to persons who do not have sufficient financial means to defend themselves before a court or to initiate court proceedings (access to court). For the first time, the CEPEJ has also tried to collect information on the aid granted by certain member states or entities outside the judicial field, to prevent litigation or allow access to legal advice or information (access to law). Some states or entities have sometimes struggled to distinguish between these two categories, which will have to be developed further in future evaluation exercises.

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<sup>13</sup> This Recommendation enables the use of forms common to the European Union and the Council of Europe which are in line with Directive 2003/8/CE of January 2003 on legal aid.

### 3.1 Scope of legal aid

#### 3.1.1 Various types of legal aid

Table 3.1 Scope of legal aid for all cases (Q16, Q21)

States/entities	Types of legal aid				In criminal cases, possibility to be assisted by a lawyer free of charge		Legal aid outside judicial field
	Representation in court		Legal advice		Accused individuals	Victims	
	Criminal	Other than criminal	Criminal	Other than criminal			
Albania							
Andorra							
Armenia							
Austria							
Azerbaijan							
Belgium							
Bosnia and Herzegovina							
Bulgaria							
Croatia							
Cyprus							
Czech Republic							
Denmark							
Estonia							
Finland							
France							
Georgia							
Germany							
Greece							
Hungary							
Iceland							
Ireland							
Italy							
Latvia							
Lithuania							
Luxembourg							
Malta							
Republic of Moldova							
Monaco							
Montenegro							
Netherlands							
Norway							
Poland							
Portugal							
Romania							
Russian Federation							
Serbia							
Slovakia							
Slovenia							
Spain							
Sweden							
Switzerland							
The FYROMacedonia							
Turkey							
Ukraine							
UK-England and Wales							
UK-Northern Ireland							
UK-Scotland							
<b>Number of countries</b>	<b>47</b>	<b>47</b>	<b>39</b>	<b>38</b>	<b>47</b>	<b>37</b>	<b>18</b>
Israel							

Yes  
 No

All the member states provide legal aid both in criminal law and civil law fields, which is welcome when considering the requirements and the spirit of the European Convention of Human Rights and of the case-law of the Court.

In the majority of member states, legal aid is provided for legal representation, legal advice or other forms of (legal) assistance. The scope of legal aid in **Azerbaijan, Germany, Iceland, Italy, Malta, Monaco, Poland** and **Switzerland** does not include the provision of legal advice for either criminal or non-criminal cases. **Ukraine** does not provide for legal advice for non-criminal cases.

In criminal matters, legal aid can be more or less granted for the whole or a part of a criminal procedure (legal aid can be granted for pre-trial investigation in **Estonia, Ukraine**, for instance) or for more or less broad categories of parties in the proceedings: legal aid can be granted to victims of offences in 37 members states or entities. The state can also bear the costs of the proceedings when the accused person is acquitted (**Iceland**).

Outside the criminal law field, legal aid can be more or less granted according to the types of cases concerned. Several states grant legal aid in the main legal fields such as the civil law field or the administrative law field (**Estonia, France**). In some member states the scope of cases which involve an entitlement to legal aid is more limited: for instance, legal aid is restricted to some administrative law cases involving mandatory psychiatric treatment or legal incapacity (**Georgia, Republic of Moldova**), or cases regarding media campaigns where public interests are at stake (**Albania**).

Only two member states provide free access to all courts for all cases, **France** and **Luxembourg**. This generalised access to court must be kept in mind when comparing the legal aid budgets of these states with the budgets of other states which also draw revenues from court fees. In most of the member states and entities, legal aid can take the form of an exemption from court fees. For criminal matters, in all member states, there is no court fee to start a court proceeding in a court, except in **Croatia, Cyprus, Greece, Monaco, Montenegro, Portugal, Serbia** and **Switzerland** who all charge court fees. In these 8 states, when legal aid is granted, these fees are covered by the legal aid granted. Outside the criminal law field, the scope of legal aid does not include the provision to pay court fees in **Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, Republic of Moldova, Slovenia** and **Ukraine**. This exemption can be directly considered as part of the legal aid budget when it is financially counted within the state budget allocated to legal aid (**Finland**). In **the UK-England and Wales**, the system does not take the form of court fee exemption but consists in the effective bearing of court fees by the legal aid system. For the other states, exemption from court fees is an aid which cannot be specifically valued; it is addressed in the chapter on court fees below (see chapter 3.5).

30 states or entities foresee the possibility of granting legal aid as regards the enforcement of judicial decisions.

Legal aid can also consist in bearing the fees of technical advisors or experts in the framework of judicial expertise (**Belgium, Slovenia, Spain**), or interpreters (**Switzerland**), preparing the documents that are needed to file a judicial proceeding (**Bulgaria, Estonia, Latvia, Lithuania, UK-Scotland**), or bearing (fully or partially) the cost of other legal professionals such as notaries, bailiffs (**Greece, Turkey**) or even private detectives (**Italy**). Travel costs can also be borne by the legal aid system (**Sweden**).

### ***Legal aid outside judicial procedures***

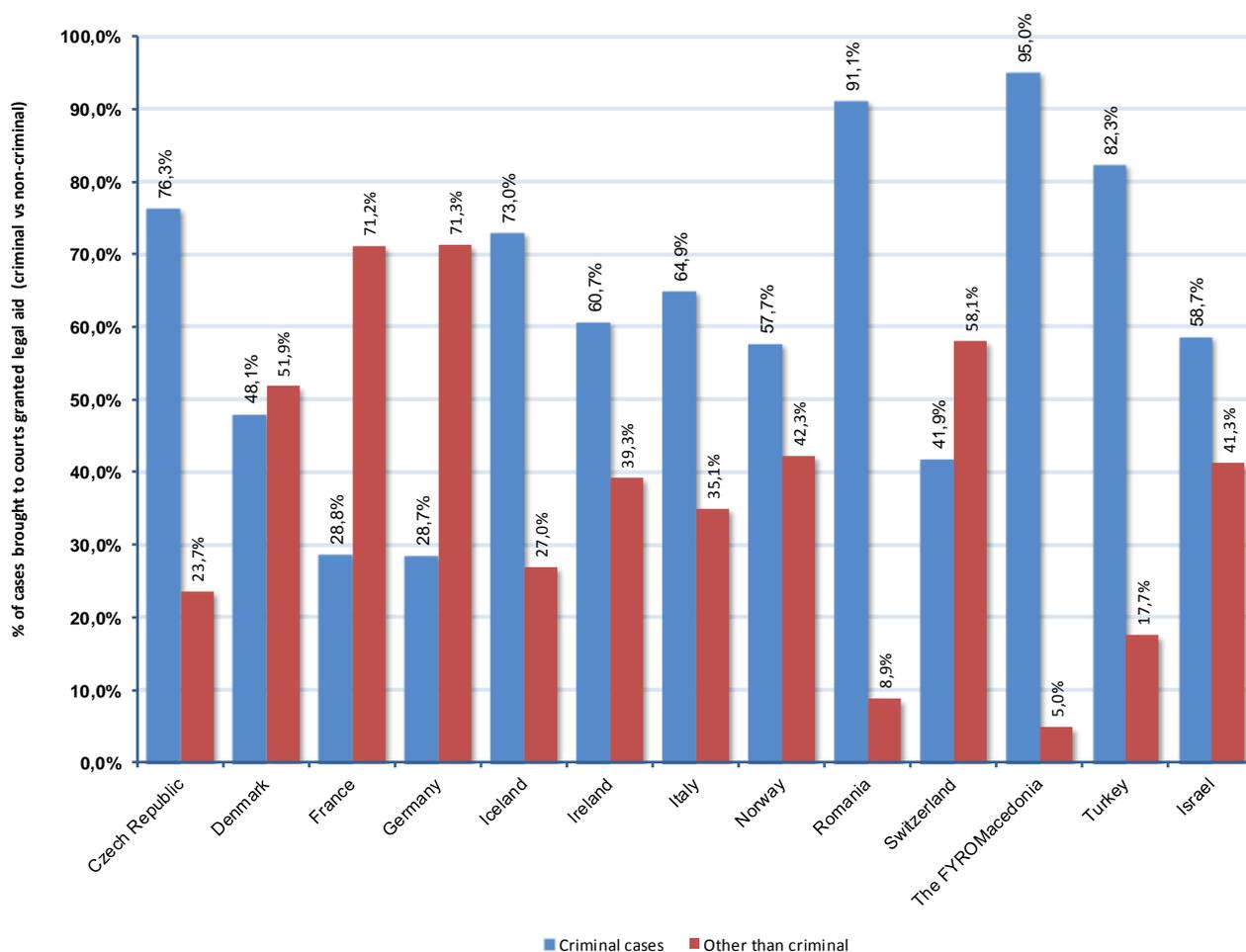
Moreover, 18 member states (**Armenia, Belgium, Bulgaria, Croatia, Finland, France, Georgia, Germany, Hungary, Lithuania, Republic of Moldova, Montenegro, Netherlands, Norway, Portugal, Slovakia, Slovenia, Switzerland**) indicate explicitly that they grant legal aid outside the judicial field, to prevent judicial procedures or facilitate access to law. However, only **Germany, Lithuania** and **Norway** are now able to quantify both the budgets and the volume of cases concerned, where **France** and **Switzerland** are able to indicate the budgets allocated to this type of legal aid. It will be necessary to refine this analysis in the context of future evaluation exercises.

Some systems for instance enable the granting of legal aid within the framework of Alternative Dispute Resolution (ADR) or transactional procedures (**Bulgaria, France, the Netherlands, Portugal, Slovakia**)<sup>14</sup>.

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<sup>14</sup> See Chapter 6.1.3 below.

**Figure 3.2 Proportion of criminal to non-criminal cases in annual public budget allocated to legal aid for case brought to court, in 2012 (Q12)**



In part of the states concerned, legal aid remains mainly focused on the criminal law field (**Czech Republic, Iceland, Ireland, Italy, Norway, Romania, “the former Yugoslav Republic of Macedonia”, Turkey and Israel**). Some states allocate quite similar amounts for both civil and criminal case categories (**Denmark**). In a third group of states, a greater proportion of the legal aid budget is allocated to non-criminal cases (**France, Germany, Switzerland**).

### **3.1.2 Criteria for granting legal aid**

For the types of cases eligible for legal aid, which vary according to the states or entities (see paragraph 3.1 above), there are, as a rule, conditions for granting legal aid, which depend on the financial situation of the applicant concerned and/or on the merits of the case.

**Table 3.3 Authority responsible for granting legal aid & private system of legal insurance (Q24, Q25, Q26)**

States/entities	Authority responsible for granting or refusing legal aid				Private system of legal expense insurance
	Refusal possible for lack of merit of case	Court	External authority	Court and external bodies	
Albania	Yes	No	Yes	No	Yes
Andorra	No	Yes	No	No	Yes
Armenia	Yes	No	Yes	No	No
Austria	Yes	No	No	No	Yes
Azerbaijan	No	Yes	No	No	Yes
Belgium	Yes	No	Yes	No	Yes
Bosnia and Herzegovina	Yes	No	Yes	No	Yes
Bulgaria	Yes	No	Yes	No	No
Croatia	Yes	No	Yes	No	No
Cyprus	No	Yes	Yes	No	Yes
Czech Republic	Yes	No	No	Yes	Yes
Denmark	Yes	No	Yes	No	Yes
Estonia	Yes	No	No	No	Yes
Finland	Yes	No	No	Yes	Yes
France	Yes	No	Yes	No	Yes
Georgia	No	Yes	No	Yes	Yes
Germany	Yes	No	No	No	Yes
Greece	No	Yes	No	No	Yes
Hungary	Yes	No	Yes	No	Yes
Iceland	Yes	No	Yes	No	Yes
Ireland	Yes	No	Yes	No	No
Italy	Yes	No	No	Yes	Yes
Latvia	Yes	No	Yes	No	No
Lithuania	Yes	No	Yes	No	Yes
Luxembourg	Yes	No	Yes	No	Yes
Malta	Yes	No	Yes	No	No
Republic of Moldova	No	Yes	Yes	No	No
Monaco	Yes	No	No	Yes	Yes
Montenegro	Yes	No	No	No	No
Netherlands	Yes	No	Yes	No	Yes
Norway	Yes	No	Yes	No	Yes
Poland	Yes	No	No	No	Yes
Portugal	No	Yes	Yes	No	Yes
Romania	Yes	No	Yes	No	No
Russian Federation	No	Yes	Yes	Yes	No
Serbia	No	Yes	No	No	Yes
Slovakia	Yes	No	No	Yes	Yes
Slovenia	Yes	No	No	No	Yes
Spain	Yes	No	Yes	No	Yes
Sweden	Yes	No	No	Yes	Yes
Switzerland	Yes	No	No	No	Yes
The FYROMacedonia	No	Yes	Yes	No	No
Turkey	Yes	No	Yes	No	No
Ukraine	No	Yes	Yes	No	Yes
UK-England and Wales	Yes	No	Yes	No	Yes
UK-Northern Ireland	Yes	No	Yes	No	Yes
UK-Scotland	Yes	No	Yes	No	Yes
<b>Number of countries</b>	<b>36</b>	<b>21</b>	<b>27</b>	<b>9</b>	<b>34</b>
Israel	Yes	No	Yes	No	No

Yes  
 No

## Comments:

**Denmark:** The following, inter alia, are taken into account when deciding to grant or refuse legal aid: [1] The importance of the case to the applicant; [2] The prospects of the court sustaining the applicant's claim; [3] The value of the case; [4] The estimated legal costs, and [5] The possibility of referring the case to a private complaints board. The district courts mark in the court proceeding if legal aid has been granted. The court itself may grant legal aid, but it may also be granted by other government agencies based on income and/or the character of the case.

**Spain:** If the Bar Association considers that the applicant does not fulfill the basic requirements, or that the main claim of the application is manifestly unsustainable or groundless, it shall notify the applicant within a period of five days that it has not performed the provisional appointment of a solicitor and it shall convey the application to the Legal Aid Commission. The relevant dossier and provisional appointments made shall be notified to the Legal Aid Commission within a period of three days, for it to verify and resolve upon. If the Bar Association does not hand down any resolution at all within the term of fifteen days, the applicant may repeat the application before the Legal Aid Commission, which shall immediately obtain the dossier from the Law Society and order, at the same time, the provisional appointment of a solicitor and barrister-at-law.

**UK-England and Wales:** an applicant must show that they have reasonable grounds for taking, defending or being a party to proceedings, and that it is reasonable, in the particular circumstances of the case, for legal aid to be granted. The Legal Aid Agency must consider, for example, whether the case has a reasonable chance of success, whether the benefits of litigation would outweigh the cost to public funds, and whether the applicant would gain any significant personal benefit from proceeding, bearing in mind any liability to repay the costs if successful. These factors are similar to those that would influence a privately paying client of moderate means when considering whether to become involved in proceedings. Following a recent consultation, the Ministry of Justice announced that all civil cases must have at least a 50% chance of success to be funded.

**UK-Scotland:** It is possible to refuse legal aid for lack of merit of the case as the Board need to be satisfied on several criteria before civil, children's ABWOR and children's legal aid is granted.

### ***The merits of the case***

The merits of the case or whether the case is well grounded in order to be granted legal aid are irrelevant for criminal law cases. The merit of case test, the test used to decide whether a case should be granted legal aid, takes into account the likeliness of the case to succeed, and whether the benefits of litigation outweigh the cost to public funds. This test is only applicable to non-criminal matters. For the member states of the European Union, Directive 2003/8/CE provides that it is in principle possible to refuse legal aid in other than criminal cases for lack of merit, although **Cyprus, Greece and Portugal** seem not to have changed their procedure so far. In 11 states, **Andorra, Azerbaijan, Cyprus, Georgia, Greece, Republic of Moldova, Portugal, Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia"** and **Ukraine**, it is not possible to refuse legal aid on the basis of the merit of the case.

The decision to grant or refuse legal aid on the basis of the merit of the case is usually taken by the court (21 states or entities) or by an external authority (15 states or entities), or by a court and/or an external authority (27 states or entities) or by a mixed body composed of judges and non-judges (9 states or entities). The Bar association may be entrusted with such decisions (**Croatia, Turkey**). Prosecutors or the police have such power for the cases in which they have jurisdiction in **Estonia**.

### ***The individual's eligibility for legal aid***

In some member states, the eligibility is examined on a case-by-case basis (as in **Bulgaria, Czech Republic, Poland, Switzerland**), but generally, legal aid is usually granted according to the individual's financial means. These eligibility rules can include an assessment of the individual's income and financial assets. Comparing eligibility for legal aid across member states is difficult due to the wide variation in the eligibility rules and financial thresholds.

The law can also determine the level of legal aid to be granted, to fully or partly cover the total legal costs (**Austria, Belgium, France**) or define a specific method of assessing the amount of legal aid to award (**Finland, Republic of Moldova**) which can, for instance, depend on the minimum living wage in the country or in a given entity (**Russian Federation**).

A majority of the member states have eligibility rules based on either personal or household income thresholds, some of these member states and entities also specify, as part of the eligibility rules, categories of persons who are eligible for legal aid without prior examination of the means of the individuals, such as socially vulnerable persons (**Bosnia and Herzegovina, Croatia, Latvia, Monaco, Montenegro, Spain, Turkey**). In **Lithuania, Hungary, UK-England and Wales** and **UK-Scotland**, the decision to grant legal is based on more comprehensive eligibility frameworks, which specify in detail income thresholds and categories of beneficiaries. In **Turkey**, court users can be granted legal aid upon presentation of a social certificate. In certain states and entities, only certain members of society are eligible (as in **Georgia**, where

insolvent persons, registered in their United Database of Socially Vulnerable Families, can be granted legal aid). In **Greece**, legal aid is restricted to European Union citizens or citizens of third countries provided that the users are residents of a European Union member state (with some exceptions for certain administrative cases).

### **3.1.3 Court fees, taxes and reimbursement**

In the majority of member states, the exemption from court fees is aimed at specific cases, for instance some civil procedures (**Albania**), procedures related to the defence of constitutional rights and values (**Portugal**), administrative law (**Bulgaria, Estonia**), labour law and/or social law (**Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Italy, Lithuania, Moldova, Poland, Romania, Slovakia, Slovenia, Switzerland**), family or juvenile law (**Finland, Ireland, Italy, Lithuania, Moldova, Norway, Spain, Poland, Portugal, Romania**), civil status (**Spain**), agriculture (**Italy**), taxes (**Portugal**), electoral law (**Romania**) or as regards house rentals (**Switzerland**). Some states require that court fees be paid only at the end of the proceedings (**Finland**).

The costs of judicial proceedings do not only consist of the costs of legal representation, legal advice, court fees/court taxes, but may also include costs to be paid by the losing party. This can include compensation, costs related to the damage caused or all the legal costs that were engaged by the successful party.

The court costs must usually be reimbursed by the losing party or when the criminal court decides that the party is not guilty. In all the responding states or entities (47), the decision of the judge has an impact on who bears the legal costs in cases other than criminal ones. The judicial decision does not have any effect on the liability for the costs in criminal cases in **Germany, Ireland, Malta, Moldova, the Netherlands, UK-Scotland**.

### **3.1.4 Access to justice without legal aid**

One development, which is facilitating access to justice in European states, particularly for individuals who are not granted legal aid, is the availability of private legal expense insurance. Individuals in 34 member states or entities are able to insure themselves to cover the cost of legal advice, legal assistance and representation in court proceedings, compared to 29 member states in 2012.

The system of private insurance for legal costs does not exist in **Armenia, Bulgaria, Croatia, Ireland, Latvia, Malta, Republic of Moldova, Montenegro, Romania, Russian Federation, Serbia, “the former Yugoslav Republic of Macedonia” and Turkey**. All these member states provide legal aid for legal advice and legal representation in court for all cases, except for **Malta** which only provides legal aid for representation in court for all types of cases.

Several countries include clauses in their eligibility criteria for legal aid to the effect that legal aid is not granted when the insurance covers legal expenses, whether it is for advice, representation in court or court fees (as in **Denmark, Finland, France and Sweden**).

## **3.2 The budget for legal aid**

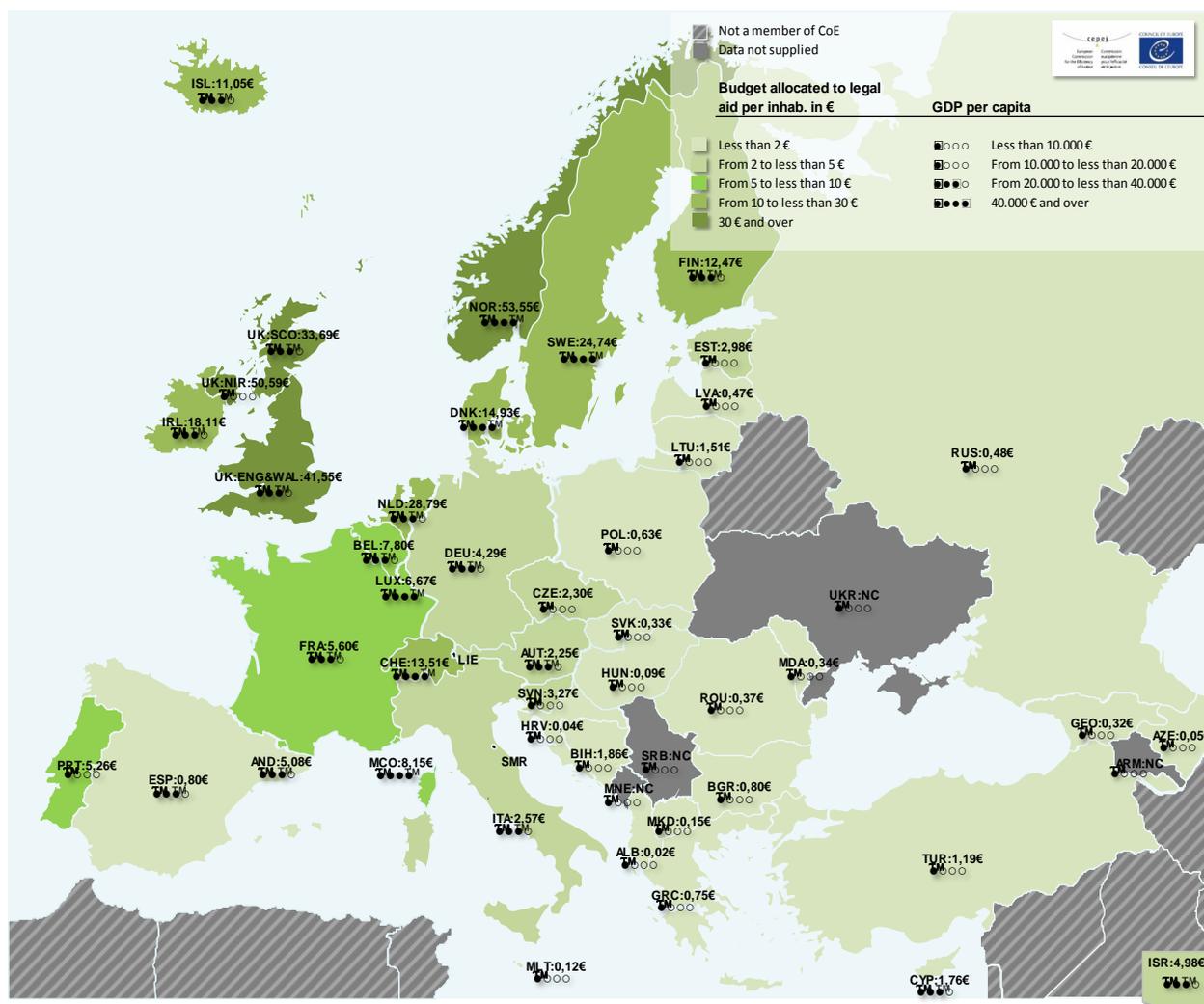
Chapter 2 includes the analysis of the legal aid budget in member states and entities by examining it ‘per inhabitant’ and ‘as a percentage of GDP per inhabitant’. With details of the number of cases that are supported by legal aid (for both criminal and other than criminal cases, whether they are taken to court or not), it is possible to calculate the average amount of legal aid allocated per case. Only 20 states and entities were able to provide data on the number of cases where legal aid had been granted.

Comparing the legal aid budget<sup>15</sup>, whether it is per case or per inhabitant, is difficult given the differences in the scope and eligibility for legal aid and the legal service products the states make provision for. There are also other drivers that can explain the difference, such as differences in the actual justice system, procedural differences (whether it is an inquisitorial or adversarial style system), and the state or entity’s use of Alternative Dispute Resolution (ADR) systems. For this reason, it is not possible to draw any firm conclusions as to why the budget expenditures are so varied.

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<sup>15</sup> The explanatory note for the evaluation states that the legal aid budget reported ‘must be formally approved by the Parliament (or by another competent body), but not the one effectively executed.’ Some states and entities have reported actual expenditure, for details see comments;

**Figure 3.4 Global annual public budget allocated to legal aid for all cases per inhabitant (in €) and GDP per capita in 2012 (Q1, Q3, Q12)**



Global annual public budget allocated to legal aid is the sum of budget allocated to cases brought to court and not brought to court, in criminal and non-criminal matters.

Two entities of the United Kingdom (**UK-Northern Ireland, UK-Scotland**), the countries of Northern Europe (**Norway, Netherlands, Sweden, Ireland, Denmark, Iceland, Finland**) and **Switzerland** spend the highest budget for legal aid per inhabitant. This support to access to law and to court reaches levels which remain low (less than 1 € per inhabitant) in the states of Central and Eastern Europe which did not have such systems before becoming members of the Council of Europe and are in the process of developing them (**Albania, Croatia, Azerbaijan, Hungary, "the former Yugoslav Republic of Macedonia", Georgia, Slovakia, Republic of Moldova, Romania, Latvia, Russian Federation, Poland, Bulgaria**) as well as in some states of Southern Europe (**Greece, Malta, Spain**).

**Table 3.5 Number of legal aid cases (Q20, Q20.1) per 100.000 inhabitants (Q1) and amount allocated in the public budget for legal aid (Q12) per case in 2012**

States/entities	Number of cases for which legal aid has been granted			Number of cases granted legal aid per 100 000 inhab.			Annual public budget allocated to legal aid per case granted legal aid		
	Cases brought to court (Q20)	Not brought to court (Q20.1)	Total	Cases brought to court	Not brought to court	Total	Cases brought to court	Not brought to court	Total
Albania	NA	NA	NC	NC	NC	NC	NC	NC	NC
Andorra	NA	NA	NC	NC	NC	NC	NC	NC	NC
Armenia	3 119	172	3 291	103	6	109	NC	NC	NC
Austria	20 239	nap	20 239	239	NC	239	NC	NC	939 €
Azerbaijan	6 040	NAP	6 040	65	NC	65	NC	NC	76 €
Belgium	68 597	58 050	126 647	615	520	1 135	NC	NC	687 €
Bosnia and Herzegovina	5 843	NA	NC	152	NC	NC	NC	NC	NC
Bulgaria	40 134	2 112	42 246	551	29	580	NC	NC	138 €
Croatia	NA	465	NC	NC	11	NC	NC	NC	NC
Cyprus	NA	NA	NC	NC	NC	NC	NC	NC	NC
Czech Republic	NA	NA	NC	NC	NC	NC	NC	NC	NC
Denmark	NA	NA	NC	NC	NC	NC	NC	NC	NC
Estonia	NA	NA	17 031	NC	NC	1 324	NC	NC	225 €
Finland	43 255	34 794	78 049	797	641	1 438	NC	NC	867 €
France	915 563	NA	NC	1 396	NC	NC	337 €	NC	NC
Georgia	7 173	121	7 294	160	3	163	NC	NC	196 €
Germany	715 191	767 278	1 482 469	891	956	1 848	434 €	45 €	232 €
Greece	NA	NA	NC	NC	NC	NC	NC	NC	NC
Hungary	7 460	12 414	19 874	75	125	201	NC	NC	46 €
Iceland	NA	NA	NC	NC	NC	NC	NC	NC	NC
Ireland	60 552	NA	NC	1 319	NC	NC	1 373 €	NC	NC
Italy	191 122	NA	NC	320	NC	NC	803 €	NC	NC
Latvia	NA	NA	NC	NC	NC	NC	NC	NC	NC
Lithuania	49 692	44 195	93 887	1 654	1 471	3 126	81 €	12 €	48 €
Luxembourg	NA	NA	NC	NC	NC	NC	NC	NC	NC
Malta	528	NA	NC	125	NC	NC	94 €	NC	NC
Republic of Moldova	9 705	20 526	30 231	273	577	849	NC	NC	40 €
Monaco	753	NAP	753	2 084	NC	2 084	NC	NC	391 €
Montenegro	241	63	304	39	10	49	NC	NC	NC
Netherlands	486 573	60 312	546 885	2 900	359	3 260	NC	NC	883 €
Norway	45 661	19 048	64 709	904	377	1 281	5 639 €	684 €	4 180 €
Poland	NA	NAP	NA	NC	NC	NC	NC	NC	NC
Portugal	166 919	1 359	168 278	1 592	13	1 605	NC	NC	328 €
Romania	41 767	NA	NC	196	NC	NC	191 €	NC	NC
Russian Federation	NA	NA	NC	NC	NC	NC	NC	NC	NC
Serbia	NA	NAP	NA	NC	NC	NC	NC	NC	NC
Slovakia	NA	13	NC	NC	0	NC	NC	NC	NC
Slovenia	5 607	698	6 305	272	34	306	1 202 €	NC	1 069 €
Spain	NA	NA	NC	NC	NC	NC	NC	NC	NC
Sweden	NA	NA	NC	NC	NC	NC	NC	NC	NC
Switzerland	N.A.	NA	NC	NC	NC	NC	NC	NC	NC
The FYROMacedonia	2 456	NAP	2 456	119	NC	119	124 €	NC	124 €
Turkey	102 305	NA	NC	135	NC	NC	878 €	NC	NC
Ukraine	NA	NAP	NA	NC	NC	NC	NC	NC	NC
UK-England and Wales	714 294	NA	NC	1 263	NC	NC	NC	NC	NC
UK-Northern Ireland	57 400	N/A	NC	3 148	NC	NC	NC	NC	NC
UK-Scotland	NA	NA	NC	NC	NC	NC	NC	NC	NC
<b>Average</b>	139 563	63 851	142 999	792	321	1 041	1 014,10 €	246,84 €	615,87 €
<b>Median</b>	41 767	7 263	20 239	320	80	849	433,54 €	44,93 €	232,41 €
<b>Minimum</b>	241	13	304	39	0	49	81,10 €	11,62 €	40,08 €
<b>Maximum</b>	915 563	767 278	1 482 469	3 148	1 471	3 260	5 638,79 €	683,97 €	4 180,27 €
Israel	NA	NA	NC	NC	NC	NC	NC	NC	NC

**Table 3.6 Total annual approved public budget allocated to legal aid, in €, and its breakdown between cases brought to court and not brought to court (Q12)**

States/entities	Total annual approved public budget allocated to legal aid, in € (Q12.1 + Q12.2)	Annual public budget allocated to legal aid for cases brought to court (Q12.1)	Annual public budget allocated to legal aid for non litigious cases or cases not brought to court* (Q12.2)
Albania	60 253 €	NA	NA
Andorra	387 485 €	NA	NA
Armenia	NA		
Austria	19 000 000 €	na	na
Azerbaijan	457 000 €	NA	NAP
Belgium	87 024 000 €	NA	NA
Bosnia and Herzegovina	7 128 234 €	NA	NA
Bulgaria	5 811 015 €	NA	NA
Croatia	166 631 €	NA	NA
Cyprus	1 526 738 €	NA	NA
Czech Republic	24 142 835 €	24 142 835 €	NA
Denmark	83 643 048 €	83 643 048 €	NA
Estonia	3 835 000 €	NA	NA
Finland	67 697 000 €	NA	NA
France	367 180 000 €	308 120 000 €	59 060 000 €
Georgia	1 428 885 €	NA	NAP
Germany	344 535 431 €	310 062 277 €	34 473 154 €
Greece	8 300 000 €	NA	NA
Hungary	907 974 €	NA	NA
Iceland	3 555 654 €	3 555 654 €	NAP
Ireland	83 159 000 €	83 159 000 €	NA
Italy	153 454 322 €	153 454 322 €	NA
Latvia	962 294 €	NA	NA
Lithuania	4 543 826 €	4 030 145 €	513 681 €
Luxembourg	3 500 000 €	NA	NA
Malta	49 500 €	49 500 €	NA
Republic of Moldova	1 211 570 €	NA	NA
Monaco	294 400 €	NA	NAP
Montenegro	NA	NA	NA
Netherlands	483 000 000 €	NA	NA
Norway	270 501 300 €	257 473 000 €	13 028 300 €
Poland	24 107 000 €	24 107 000 €	NA
Portugal	55 184 100 €	NA	NA
Romania	7 958 050 €	7 958 050 €	NA
Russian Federation	69 401 711 €	NA	NA
Serbia	NA	NA	NA
Slovakia	1 771 287 €	NA	NA
Slovenia	6 741 620 €	6 741 620 €	NA
Spain	36 890 711 €	NA	NA
Sweden	236 399 146 €	NA	NA
Switzerland	108 609 657 €	106 077 162 €	2 532 495 €
The FYROMacedonia	304 741 €	304 741 €	NAP
Turkey	89 840 624 €	89 840 624 €	NA
Ukraine	NA	NA	NAP
UK-England and Wales	2 350 470 057 €	NA	NA
UK-Northern Ireland	92 250 000 €	NA	NA
UK-Scotland	179 000 000 €	NA	NA
<b>Average</b>	<b>122 939 351 €</b>	<b>91 419 936 €</b>	<b>21 921 526 €</b>
<b>Median</b>	<b>8 300 000 €</b>	<b>53 650 918 €</b>	<b>13 028 300 €</b>
<b>Minimum</b>	<b>49 500 €</b>	<b>49 500 €</b>	<b>513 681 €</b>
<b>Maximum</b>	<b>2 350 470 057 €</b>	<b>310 062 277 €</b>	<b>59 060 000 €</b>
<b>Israel</b>	<b>39 771 572 €</b>	<b>39 771 572 €</b>	<b>NA</b>

\* legal consultation, ADR, etc

**Note:** the legal aid budget included in the above table is the total amount for those benefiting from legal aid, including lawyers. This expenditure does not include legal aid administrative costs.

**Comments:**

**Estonia:** legal aid can be granted both for cases brought to court and for cases not brought to court. The total number of cases for which legal aid has been granted in 2012 is 17.031. It cannot be distinguished how many of these cases were brought to court and how many of these cases were not brought to court. Similarly, the budget allocated to legal aid cases brought to court and to legal aid cases not brought to court cannot be separated in the total budget allocated to legal aid."

**Georgia:** the following non-criminal cases are included: [1] Cases of disciplinary proceeding against inmates; [2] Cases of Administrative offences that imply administrative imprisonment [3] Cases of compulsory psychiatric treatment; the significant drop in cases granted legal aid between 2010 and 2012 relates to a drastic decrease of crime across the country in 2012.

**Hungary:** extra-judicial assistance can be granted in two forms by the system of legal aid: legal advice and drafting legal documents.

**Ireland:** the figure of 10.913 represents civil legal aid certificates granted and includes cases that may not have proceeded to a court hearing. It does not include asylum cases where legal aid was granted.

**Italy:** the higher number of cases for which legal aid has been granted compared to 2010 is due to the fact that the threshold was slightly increased. To be eligible for legal aid it is necessary that the applicant annual income is less than 10.766 €. If the person is living with a spouse or other relatives, the sum of the incomes of all members of the family has to be taken into account. The threshold was slightly increased (compared to the year 2010) in accordance with the cost-of-living index.

**Lithuania:** the number of criminal cases include cases where legal aid was granted by a decision of a pre-trial investigation officer (17.853 cases), prosecutor or the court (15.312 cases) (when the presence of a defense lawyer is mandatory) and where legal aid was granted in a criminal case by a decision of state-guaranteed legal aid services (where defense is not mandatory or the person is an aggrieved party) (2146 cases). The number of 'other than criminal cases' include cases where legal aid was granted in civil (13.595) or administrative (786) cases by a decision of state-guaranteed legal aid services.

**Malta:** in criminal cases, statistics started being collected with effect from August 2012, and the number of cases indicated above refers to the period August till December 2013. Between January and October 2013, the number of criminal cases granted legal aid amounted to 463. As the 'other than criminal law' statistics, this refers to all the number of legal aid requests made for civil proceedings to be commenced.

**Montenegro:** In 2012, 427 applications for granting legal aid were submitted. Legal aid was granted for 304 applications, for 70 applications for legal aid was refused, 31 applications were rejected, in 24 cases, proceedings for granting legal aid was suspended. At the end of the 2012, decisions on 2 applications were pending. Figure 304 represents the overall number of cases granted legal aid (cases referred to court + cases not brought to court). Out of this figure, 63 cases were not referred to court.

**Netherlands:** the total includes the stand-by duty cases, excluding Granted Legal Aid for lawyers during 'Piketdienst' (= Standby duty lawyers). In 2012, approximately 127,000 Stand-by duty lawyers were assigned. To note: [1] the budget and cases of the Legal Counters (one of the modes of primary legal aid) are not included; [2] Budgets and cases of stand by duty cases concerning the division criminal and non-criminal law are estimated by assuming that the distribution of assignments between these type of cases is the same within the stand-by duty cases.

**Norway:** the numbers are based on an individual perspective. Hence, we have extracted the numbers from the courts' centralized accountancy system, and not from the courts' Case Management system, as each case registered in the CMS might contain several individuals receiving legal aid (the defendant and the aggrieved persons for instance). Norway were not able to give legal aid case numbers for 2010, hence the difference from 2010 to 2012 will be substantial. For this reason, 2012 should be considered to be Norway's starting point of comparison.

Legal aid cases not brought before the courts (i.e. do not include the involvement of a judge in the ordinary processing of the case) are regulated in the Act related to Free Legal Aid. These cases include inter alia family cases, complaints related to decisions from the Norwegian Labour and Welfare authorities, housing cases and claims for compensation for victims of violence. Furthermore, legal aid may be granted in several case categories regulated in the Immigration Act.

**Romania:** data is available only for the Courts of Appeal and Tribunals. The database ECRIS was not functional for the first instance courts and for the High Court in 2012.

**Slovakia:** the number of criminal cases, where an 'ex officio' counsel has been appointed to the defendant free of charge is not available.

**Spain:** in 2012, 662.434 applications benefited from legal aid, the data does not separate cases brought or not brought to court.

**Switzerland:** most of the cantons do not collect statistics on the number of cases for which legal aid is granted. Indeed, there is not always a decision on this item. Often the court decides on the granting of legal aid in the final decision.

**"the former Yugoslav Republic of Macedonia":** in 2012 there were 2.305 criminal cases referred to the court for which a court granted free legal aid. Additionally in the same year there were 97 civil cases referred to the court for which a court granted free legal aid and 54 civil cases for which the Ministry of Justice granted legal aid according to the Law on free legal aid.

**Turkey:** the data reports the number of individual beneficiaries of legal aid, not the number of case files; a case file could provide legal aid to more than one person;

**UK-England and Wales:** it is not possible to break-down the proportions of legal aid funds which are spent or allocated to cases brought to court and those not brought to court. Total spending in resource terms is from the Legal Aid Agency's annual report and the Legal Services Commission 2012/13 Annual report.

**UK-Scotland:** Scottish Government funding for legal aid in Scotland is not cash limited. Therefore, there is no set budget as such. The Scottish Government does allocate an amount to cover the cost of legal aid cases in their budgets based on projected expenditure. This is called the Legal Aid Fund. The Scottish Government also allocates Grant in Aid to the Scottish Legal Aid Board to meet the costs of the administration of the organisation. The budget allocation for Legal Aid is not split between criminal and civil matters. The figure provided above covers the period April 2012 to March 2013.

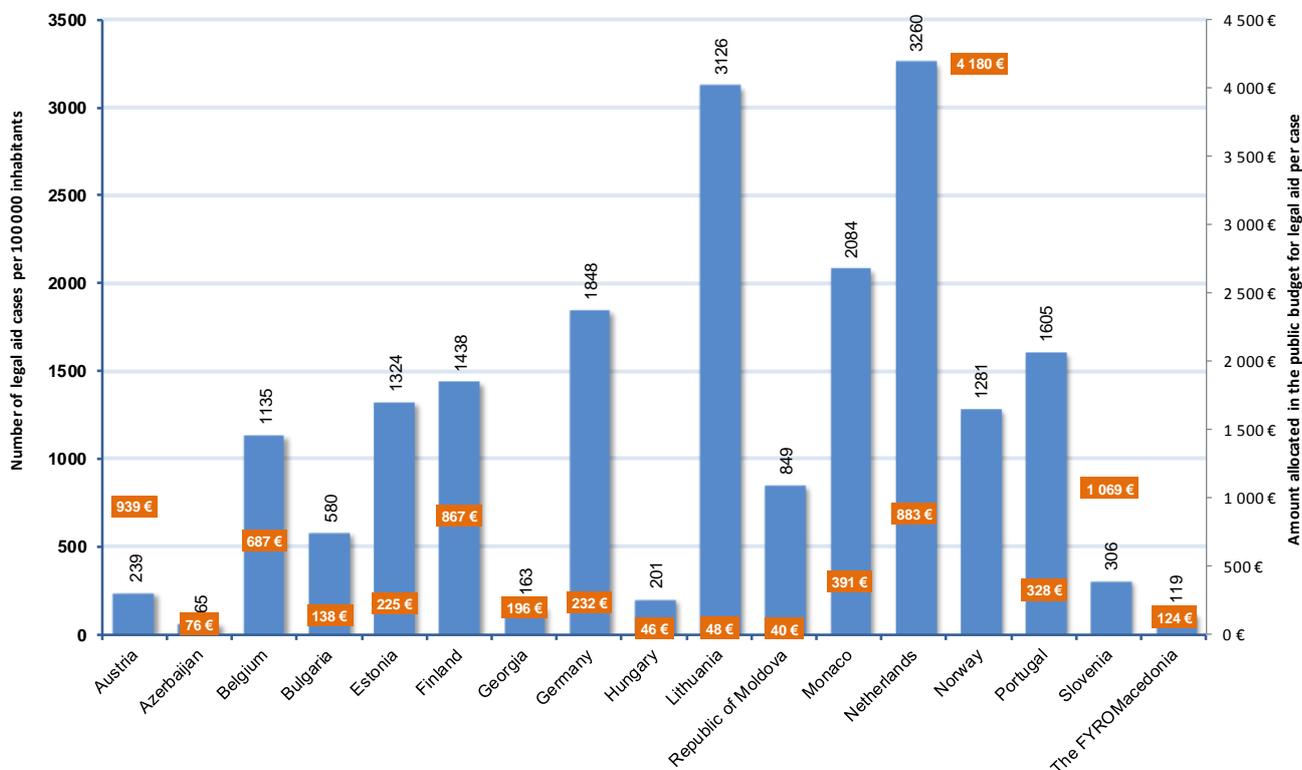
**Israel:** legal aid is not provided for non-litigious cases or in cases where the purpose of the legal aid is to prevent court action. Legal aid is provided in cases which are meant to come before the courts or before other quasi-judicial committees, as specified in the comment following question 20 (in all these instances, the case can be resolved before coming before the courts, but that is not the primary goal).

In comparing the average legal aid spend per inhabitant or per case, it should be noted that the demand for legal aid (the number of individuals/cases applying for legal aid), the criteria by which legal aid is granted (the state's scope and eligibility criteria), the complexity of the case, and professional and administrative costs all have an impact on the level of legal aid spend per case; and any comparison of legal aid spend should be treated with care.

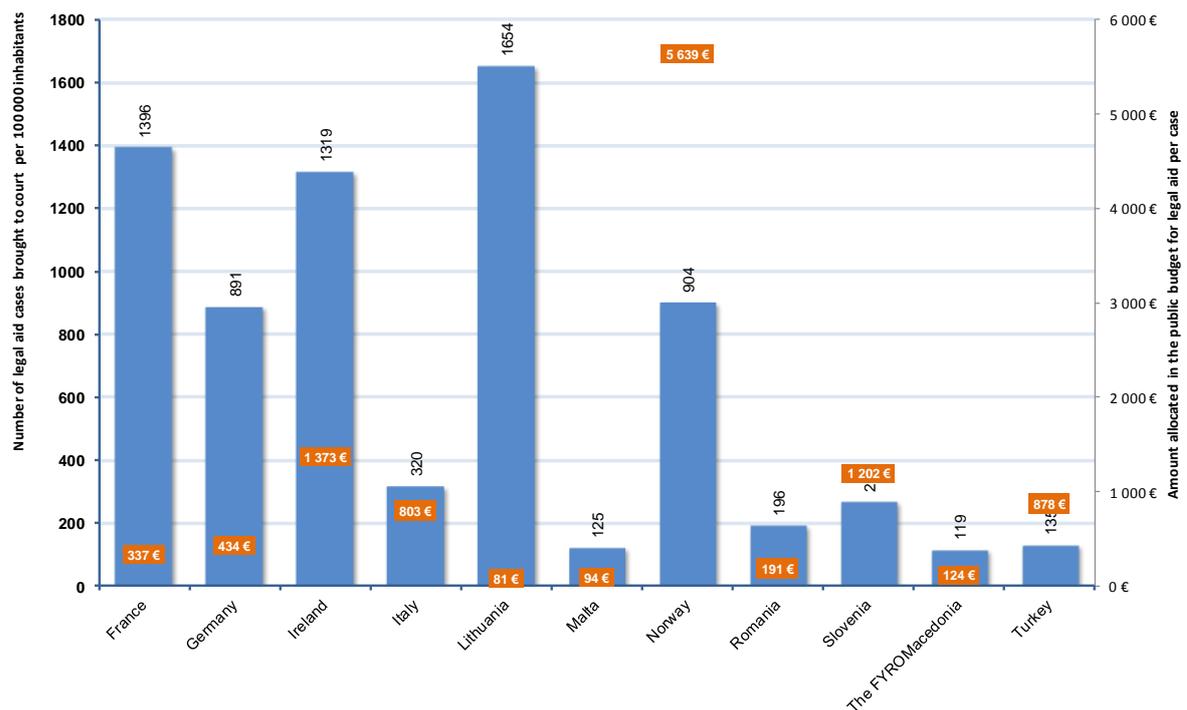
In this evaluation exercise, the CEPEJ has tried to refine its analysis of the budgetary effort devoted to legal aid by taking into account cases not brought to court supported by some legal aid policies. For that, the calculation of the amount of legal aid devoted to a single case is more relevant. Considering the information available on budgets and on the number of cases covered by legal aid globally, whether they are litigious or non-litigious cases, it is possible to study the legal aid policy of 17 member states. Focusing on litigious cases and the corresponding budget, it is possible to draw lessons for 6 additional member states.

The 23 member states studied here must be thanked for the information provided. However it is regrettable that at this stage of the evaluation process there are not more member states with accurate information making it possible to analyze more in depth their commitment to the public policy on access to law and to court and to implement ADR with legal aid. This should be a major concern for the CEPEJ in the context of its future action.

**Figure 3.7 Total number of legal aid per cases (Q20, Q20.1) per 100.000 inhabitants and amount allocated in the public budget for legal aid (Q2) per case in 2012**



**Figure 3.8 For cases brought to court, total number of legal aid cases (Q20) per 100.000 inhabitants and amount allocated in the public budget for legal aid (Q12.1) per case in 2012**



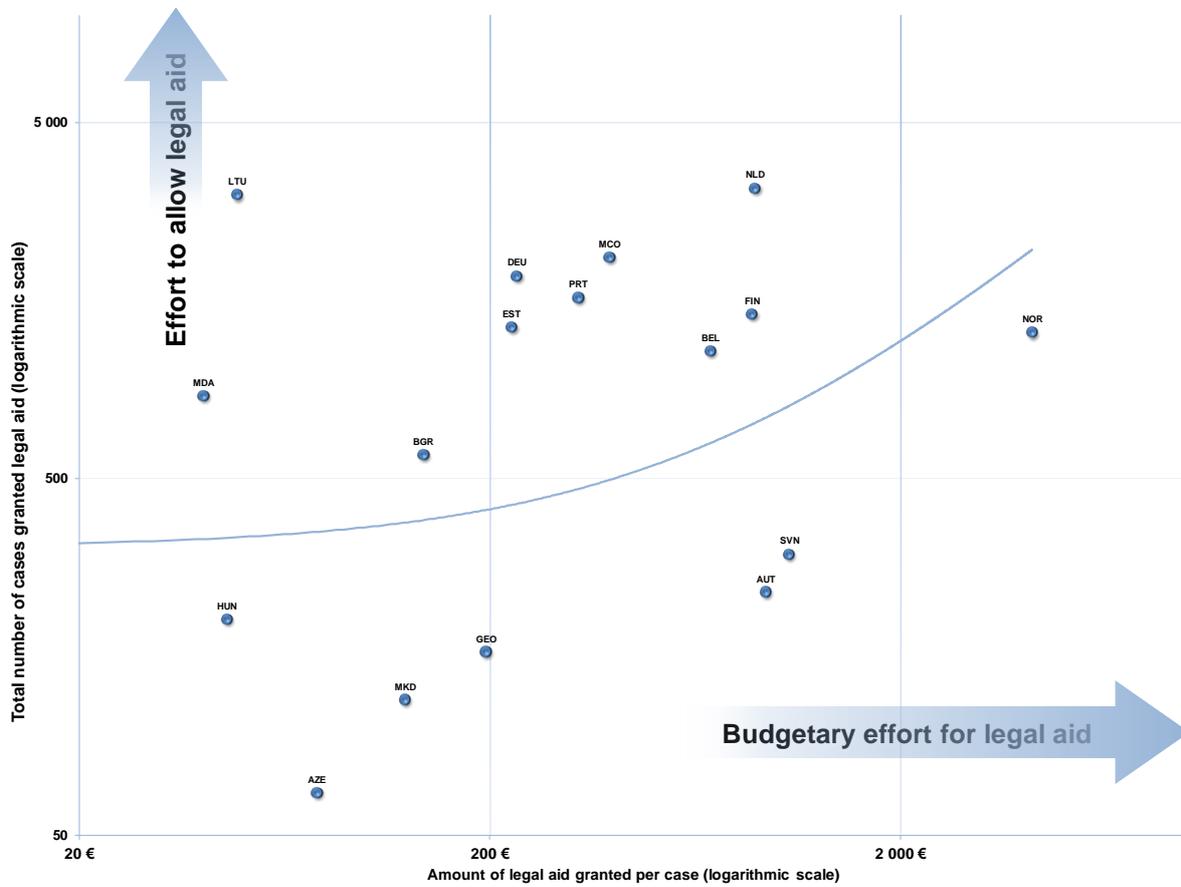
It must be stressed that the global effort dedicated by each member state to legal aid (amount per capita and taking into account the GDP) is highlighted in tables 2.14 and 2.15 in chapter 2 focused on the budgets of the judicial systems.

The above figures make it possible to specify various policy options for legal aid among the member states, taking into account legal aid globally (supporting contentious and non-contentious cases) or focused on contentious cases:

- a high number of cases are eligible for legal aid (over 900 per 100.000 inhabitants) and a very high amount of legal aid (between 4000 and 6000 €) is granted per case in **Norway**; **Netherlands**, **Ireland** also spend a significant amount per case (over 800 €) while granting legal aid to a large number of cases (between 1000 and 3000 per 100.000 inhabitants); these countries implement the most generous legal aid policies in Europe;
- other member states extend legal aid to a large number of cases while granting relatively substantial amounts (**Finland**, **Monaco**, **Belgium**, **France**, **Germany**, **Portugal**, **Estonia**);
- a third group of states remain generous as to the eligibility of cases, but allocating more modest financial means (**Bulgaria**, **Lithuania**, **Republic of Moldova**);
- other states have made the opposite choice to grant individual cases relatively large amounts, while limiting the number of cases eligible (**Austria**, **Italy**, **Slovenia**, **Turkey**);
- finally, others restrict the eligibility of cases while limiting the amount of public budget allocated per case (**Azerbaijan**, **Hungary**, **Malta**, **Georgia**, **Romania**, "the former Yugoslav Republic of Macedonia").

This appears even more intuitively in the graphical presentation below.

**Figure 3.9 Correlation between the total number of cases granted legal aid per 100.000 inhabitants and the amount of legal aid per case in 2012 (Q1, Q12, Q20, 20.1)**



### 3.3 Revenues of the judicial system

Only 2 member states provide free access to all courts for all cases, **France** and **Luxembourg**<sup>16</sup>. For criminal matters, in all member states, there is no court fee to start a court proceeding in a court, except in **Croatia, Cyprus, Greece, Monaco, Montenegro, Portugal, Serbia** and **Switzerland** who all charge court fees - in these 8 states, when legal aid is granted, these fees are covered by the legal aid granted.)

**Table 3.10 General requirements to pay a court fee or tax to initiate a proceeding before a court of general jurisdiction (Q8)**

States/entities	Criminal	Other than criminal
Albania	No	Yes
Andorra	No	Yes
Armenia	No	Yes
Austria	No	Yes
Azerbaijan	No	Yes
Belgium	No	Yes
Bosnia and Herzegovina	No	Yes
Bulgaria	No	Yes
Croatia	Yes	Yes
Cyprus	Yes	Yes
Czech Republic	No	Yes
Denmark	No	Yes
Estonia	No	Yes
Finland	No	Yes
France	No	Yes
Georgia	No	Yes
Germany	No	Yes
Greece	Yes	Yes
Hungary	No	Yes
Iceland	No	Yes
Ireland	No	Yes
Italy	No	Yes
Latvia	No	Yes
Lithuania	No	Yes
Luxembourg	No	Yes
Malta	No	Yes
Republic of Moldova	No	Yes
Monaco	Yes	Yes
Montenegro	Yes	Yes
Netherlands	No	Yes
Norway	No	Yes
Poland	No	Yes
Portugal	Yes	Yes
Romania	No	Yes
Russian Federation	No	Yes
Serbia	Yes	Yes
Slovakia	No	Yes
Slovenia	No	Yes
Spain	No	Yes
Sweden	No	Yes
Switzerland	Yes	Yes
The FYROMacedonia	No	Yes
Turkey	No	Yes
Ukraine	No	Yes
UK-England and Wales	No	Yes
UK-Northern Ireland	No	Yes
UK-Scotland	No	Yes
<b>Number of countries</b>	<b>8</b>	<b>45</b>
Israel	No	Yes
	Yes	
	No	

<sup>16</sup> France and Luxembourg both provide free access to all courts. When comparing legal aid budgets against these states, it should be noted that other states draw revenues from court fees.

## Comments:

**Austria:** the duty to pay court fees arises from the starting of the civil procedure at the court, but the proceedings themselves are not dependent on the payment of this fee.

**Czech Republic:** the law regulates exceptions from the duty to pay the court fee. There is a list of certain persons (e.g. the state, diplomatic representation of foreign states, the foundations), and types of procedures (e.g. proceedings on guardianship, adoption, probate proceeding, election proceedings) which are exempt from the court fees. Besides these situations, there is a possibility for participants in the proceedings to ask for a waiver of the court fees.

**Finland:** charges are collected once the performance has been completed. Payment liability lies with the initiator of the matter (plaintiff or petitioner); on appeal with the appellant; and with other performances with the person ordering the performance.

**Germany:** the court is not to serve the action on the opposing party in civil disputes until the fee for the proceedings in general has been paid (procedural fee).

**“the former Yugoslav Republic of Macedonia”:** the court will not proceed or undertake any procedural action if the parties have not paid the court tax in advance.

**UK-England and Wales:** the civil and family courts are, in the main, self-funding with the majority of the cost funded by court fees. The part of cost not covered by fees is met by the general taxpayer as part of the resource budget of the Ministry of Justice. The taxpayer's contribution is made up of two elements: [1] Potential fee income foregone under the system of remissions (fee waivers); [2] Fees set below full cost levels (i.e. they would not cover the total cost even if none were remitted). The objective is to recover the total cost, not counting the cost of providing fee remissions (waivers). In other words, although the term is often used, the target is not 'full-cost recovery'. A better way of describing the policy is 'full-cost pricing'. Court fees have to comply with the general policy principles that apply to all services where Government charges fees authorised by Parliament. The most important of these is that fees should not exceed the total cost of providing the service. Fees should generally be set at levels which, on average, if charged in every case rather than waived, would recover the full cost of providing the service – fees cannot be set to make a profit. All fee-charging services must have a financial objective agreed with Her Majesty's Treasury.

The fundamental principle in setting fees and charges, including to other government departments, is a) to promote efficient allocation of resources so that those who consume the services are encouraged to use them efficiently, and b) to maintain the link between costs and benefits, improving decision-making and accountability as a result. The remission system ensures that access to justice is protected for individuals who are less well-off and allows people on low incomes to access HMCTS services free of charge or at a reduced rate, depending on their eligibility. It is central to the policy of full-cost pricing that this system achieves its purpose. The remission system is targeted only to those who cannot afford to pay a fee and those who can afford to pay all or part of a fee, do. The system has three elements: an automatic full fee remission for those in receipt of a qualifying benefit, a full fee remission for those whose gross annual income is calculated to be lower than the stated thresholds and a full or part fee remission based on an income and expenditure means test to calculate monthly disposable income. Anyone who seeks a remission from paying a fee either in full or in part, must apply to do so at the time of making a fee bearing application to HMCTS or at any time when a fee is due and provide documentary evidence of their financial eligibility.

**UK-Northern Ireland:** amount of fee depends on what the case is and which court it appears in, i.e. magistrates / county / court of judicature.

**UK-Scotland:** fees payable for various civil applications are set in Statutory Instruments, which are updated periodically by Parliament, on the recommendation of Scottish Ministers.

The level of revenue generated by a state from court fees is dependent on several factors, which include: 1) the number of cases brought before a court; 2) the type and complexity of the cases; 3) the value of any claims being disputed in court; 4) the fee structure employed by the state (defining the type of cases for which a fee would be charged); 5) the actual level of fees charged and if any individuals are exempt from paying the court fees; 6) the categories of persons exempt from paying fees. For this reason it is difficult to rationalise the reasons behind the varying levels of revenue from court fees across the member states. Additionally, when examining an individual member state, it is difficult to rationalise the reasons for any changes in the revenue from one review period to another as anyone or even all of these factors can change. For this reason, this analysis only highlights significant changes in the revenue generated by court fees and is unable to give a reason for the change or pinpoint the key drivers for the change.

Assuming that revenues obtained by the state from taxes and other judicial fees can be used to fund the judicial system beyond the sole operation of the courts, the CEPEJ has chosen to observe the phenomenon reported both to the budget of the courts and to the total budget of the judicial system (court operating, legal aid and public prosecution services).

**Table 3.11 Annual amount of court fees (or taxes) received by the state/entity (Q9) and the approved allocated budget for the courts (Q6) and judicial system\* (Q6, Q12, Q13)**

States/entities	Annual approved budget allocated to the court (Q6)	Total annual approved budget allowed to the judicial system* (Q6+Q12+Q13)	Annual income of court fees (or taxes)	Share of court fees (or taxes) in the court budget	Share of court fees (or taxes) in the budget allocated to the judicial system*
Albania	12 513 000 €	25 573 987 €	4 335 000 €	34,6%	17,0%
Andorra	NA	6 442 382 €	NA	NC	NC
Armenia	11 717 070 €	NC	2 871 855 €	24,5%	NC
Austria	NA	770 790 000 €	834 870 000 €	NC	108,3%
Azerbaijan	58 719 620 €	107 058 274 €	1 208 144 €	2,1%	1,1%
Belgium	NA	998 125 000 €	34 917 000 €	NC	3,5%
Bosnia and Herzegovina	79 013 297 €	107 431 615 €	26 179 300 €	33,1%	24,4%
Bulgaria	124 911 954 €	214 599 576 €	61 595 758 €	49,3%	28,7%
Croatia	156 601 458 €	198 808 412 €	28 759 251 €	18,4%	14,5%
Cyprus	30 611 480 €	50 109 977 €	11 377 030 €	37,2%	22,7%
Czech Republic	370 751 152 €	479 600 709 €	59 014 432 €	15,9%	12,3%
Denmark	243 294 736 €	421 337 784 €	98 520 187 €	40,5%	23,4%
Estonia	29 728 350 €	42 819 672 €	7 219 348 €	24,3%	16,9%
Finland	249 704 356 €	362 713 356 €	33 833 367 €	13,5%	9,3%
France	NA	4 014 305 137 €	NAP	NC	NC
Georgia	16 714 717 €	25 980 182 €	NA	NC	NC
Germany	8 302 304 846 €	9 170 186 780 €	3 567 436 506 €	43,0%	38,9%
Greece	NA	450 970 924 €	99 050 000 €	NC	22,0%
Hungary	325 687 695 €	452 447 662 €	14 897 692 €	4,6%	3,3%
Iceland	9 602 600 €	14 109 339 €	NA	NC	NC
Ireland	107 090 000 €	230 777 000 €	43 720 000 €	40,8%	18,9%
Italy	2 986 521 397 €	4 575 001 196 €	465 147 222 €	15,6%	10,2%
Latvia	44 494 921 €	65 953 173 €	16 573 777 €	37,2%	25,1%
Lithuania	53 138 612 €	83 783 573 €	7 600 585 €	14,3%	9,1%
Luxembourg	NA	77 236 940 €	NA	NC	NC
Malta	11 527 427 €	13 405 486 €	6 399 974 €	55,5%	47,7%
Republic of Moldova	9 581 963 €	16 671 277 €	2 341 804 €	24,4%	14,0%
Monaco	NA	5 947 556 €	NA	NC	NC
Montenegro	NA	24 796 697 €	3 918 273 €	NC	15,8%
Netherlands	983 764 000 €	2 103 688 000 €	237 570 000 €	24,1%	11,3%
Norway	234 000 000 €	526 767 700 €	22 100 683 €	9,4%	4,2%
Poland	1 379 338 000 €	1 827 573 567 €	408 787 000 €	29,6%	22,4%
Portugal	453 077 390 €	605 812 816 €	207 899 840 €	45,9%	34,3%
Romania	324 611 610 €	480 890 952 €	54 301 587 €	16,7%	11,3%
Russian Federation	3 336 134 801 €	4 567 147 213 €	452 826 397 €	13,6%	9,9%
Serbia	NA	193 479 528 €	107 047 455 €	NC	55,3%
Slovakia	152 715 786 €	224 434 765 €	53 448 064 €	35,0%	23,8%
Slovenia	165 060 055 €	189 999 970 €	40 461 043 €	24,5%	21,3%
Spain	1 241 560 960 €	1 489 804 631 €	171 689 715 €	13,8%	11,5%
Sweden	637 246 965 €	1 018 131 920 €	5 134 908 €	0,8%	0,5%
Switzerland	981 206 021 €	1 589 359 782 €	239 397 840 €	24,4%	15,1%
The FYROMacedonia	29 782 751 €	35 240 792 €	10 113 139 €	34,0%	28,7%
Turkey	NA	1 385 201 689 €	637 583 272 €	NC	46,0%
Ukraine	NA	668 136 539 €	9 174 192 €	NC	1,4%
UK-England and Wales	2 384 439 794 €	5 457 335 444 €	586 777 526 €	24,6%	10,8%
UK-Northern Ireland	73 932 000 €	209 042 000 €	38 492 000 €	52,1%	18,4%
UK-Scotland	135 811 499 €	447 360 849 €	26 862 101 €	19,8%	6,0%
Average	715 192 008 €	1 000 573 735 €	213 206 177 €	26,4%	20,5%
Median	154 658 622 €	296 745 178 €	38 492 000 €	24,5%	16,3%
Minimum	9 581 963 €	5 947 556 €	1 208 144 €	0,8%	0,5%
Maximum	8 302 304 846 €	9 170 186 780 €	3 567 436 506 €	55,5%	108,3%
Israel	289 565 906 €	NC	80 071 536 €	27,7%	NC

\* Sum of the budget of all courts, legal aid and prosecution services

### Comments:

**Albania:** based on the acts for setting service fees for acts and services performed by the judicial administration, courts have income which is reported each year at the office. Until 2012, the income derived by the courts is fully paid to the state budget. Starting from 2013 to present, a normative framework is completed, which allows their use at the extent of 10 % for operations and investments. Collection of income, as defined in guidance is realized through stamp and fixed fees in %, depending on the value of the damage. With regard to income derived through stamps, the court conducted the branch tax reconciliations. Under these circumstances it is thought that time affects the income derived, due to reconciliation procedures, which means that a portion of revenues realized for the period last year, are reported for the next year. More specifically a part of the last income year 2010 are reported for 2011.

**Azerbaijan:** the increase in state fees caused the increase in the annual income of court taxes or fees.

**Cyprus:** the amount in question 9 includes also income from transfers.

**Estonia:** the decrease in income of court taxes can be explained by the fact that in 2012 state fees regarding court procedures have been reduced significantly (the fees were reduced from 1-2% to almost 50%).

**Germany:** this information is incomplete as not all the Länder have been able to respond.

**Romania:** due to the legislative amendments, in 2012 the incomes realized through stamp duties were incomes at the local budgets.

**Russian Federation:** the total amount consists of state duty on the cases reviewed by commercial courts, regular courts and peace justices.

**Sweden:** the change between the years is due to a misjudgment from our side about the budgeted amounts. It is not the outcome that has changed over the years, but the budgeted amounts. Due to differences in nomenclature within different audit systems there is an inherent problem in comparing numbers. As a result, the figures presented in question 6 should be used with prudence. The figures are not approved budget but executed expenses. The reason that last year's (2010) figure is much lower is primarily an underestimation of the budget need concerning the application fees. This was corrected in 2012.

**Turkey:** the rates of taxes and fees increase every year on the basis of "revaluation rate". "Revaluation rate" is used for all kind of public services (taxes, fees, salaries, etc.) and is decided by the Ministry of Finance. "Revaluation rate" was 10,26 % for 2011 and 7,8 % for 2012 and therefore 18,86 % for 2 years. However, the increase of the euro against the Turkish liras is below this rate: 14 %. Also, there are some increases in taxes and fees more than "Revaluation rate".

Court fees or court taxes are used to cover part of the operational costs of courts. The states have chosen to generate a certain level of income for the courts. With the exception of two states, **France** and **Luxembourg**, which do not have court fees and apply the principle of free access to courts, all the member states generate revenues from court fees and taxes. However, in the majority of states where court fees or court taxes are applied, these receipts are not "earmarked" for the payment of the costs related to the operation of courts but are defined as general revenue for the state or regional budget.

The revenues from court fees have varying levels of impact on the budget of the judicial systems and the courts for **Sweden** (which exempts court fees for administrative law cases). They account for less than one per cent of these budgets, but a substantial part of the budget of the judicial system can be supplemented by the revenue from court fees. Indeed, in **Bosnia and Herzegovina**, **Malta** and **UK-Northern Ireland** the revenue from court fees accounts for almost or over half of the court budget. They are close to or even more than half of the total budget of the judicial systems in **Serbia** and **Turkey**. **Austria** can even generate a surplus and goes beyond the self-financing of the system.

To a large extent, the high level of court fees can be explained by the fact that courts are responsible for the land registers. Fees are charged for retrieving information from these registers or for recording modifications. In three of such states (**Austria**, **Germany** and **Poland**), revenues are also generated through business registers. For **Italy** and **the Netherlands** there is no clear relationship between court fees and registers. It is possible that in these states – and in other states as well – court fees are only connected with judicial proceedings (and not with registration tasks).

In **Austria**, generally, court users have to pay a certain fee for most of the judicial services. The level of court fees depends on the type and complexity of a case, as well as on the value of the claim. The corollary of this system is the existence of a specific legal aid system: accessing justice and court registries has a cost, but if the users do not have proper financial means to do so, the availability of legal aid means that access to courts is not denied to them.

A high degree of standardization and computerization of the judiciary and the use of "Rechtspfleger", especially in the branches with a high numbers of cases (land registry, business registry, family law, enforcement cases, and payment orders), enable courts to keep the costs low and allow the revenue (derived from court fees) to be distributed to other parts of the court system (for example, criminal proceedings).

Figure 3.12 Evolution between 2010 and 2012 of the share of court fees (or taxes) in the court budget, in % (Q6, Q9)

States/entities	Share of court fees (or taxes) in the court budget 2010	Share of court fees (or taxes) in the court budget 2012	Biennial variation 2010-2012
Albania	15,1%	34,6%	19,5%
Andorra	NC	NC	NC
Armenia	NC	24,5%	NC
Austria	109,8%	NC	NC
Azerbaijan	1,9%	2,1%	0,1%
Belgium	3,7%	NC	NC
Bosnia and Herzegovina	35,3%	33,1%	-2,2%
Bulgaria	52,0%	49,3%	-2,7%
Croatia	11,9%	18,4%	6,5%
Cyprus	29,2%	37,2%	7,9%
Czech Republic	10,8%	15,9%	5,1%
Denmark	44,3%	40,5%	-3,8%
Estonia	48,2%	24,3%	-23,9%
Finland	12,9%	13,5%	0,7%
France	NC	NC	NC
Georgia	NC	NC	NC
Germany	45,1%	43,0%	-2,2%
Greece	14,2%	NC	NC
Hungary	4,3%	4,6%	0,3%
Iceland	NC	NC	NC
Ireland	31,8%	40,8%	9,0%
Italy	10,7%	15,6%	4,9%
Latvia	47,8%	37,2%	-10,6%
Lithuania	13,7%	14,3%	0,6%
Luxembourg	NC	NC	NC
Malta	65,3%	55,5%	-9,8%
Republic of Moldova	NC	24,4%	NC
Monaco	NC	NC	NC
Montenegro	31,3%	NC	NC
Netherlands	19,3%	24,1%	4,9%
Norway	10,5%	9,4%	-1,0%
Poland	38,8%	29,6%	-9,2%
Portugal	41,2%	45,9%	4,7%
Romania	13,0%	16,7%	3,7%
Russian Federation	14,6%	13,6%	-1,1%
Serbia	76,7%	NC	NC
Slovakia	41,2%	35,0%	-6,2%
Slovenia	28,5%	24,5%	-4,0%
Spain	4,1%	13,8%	9,7%
Sweden	0,8%	0,8%	0,0%
Switzerland	30,2%	24,4%	-5,8%
The FYROMacedonia	35,4%	34,0%	-1,4%
Turkey	45,5%	NC	NC
Ukraine	4,0%	NC	NC
UK-England and Wales	46,2%	24,6%	-21,6%
UK-Northern Ireland	41,6%	52,1%	10,5%
UK-Scotland	18,2%	19,8%	1,6%
Average	26,4%	26,4%	-0,5%
Median	24,5%	24,5%	0,1%
Minimum	0,8%	0,8%	-23,9%
Maximum	55,5%	55,5%	19,5%
Israel	NC	27,7%	NC

#### Comment:

**UK-England and Wales:** there are two reasons that account for the change in the biennial variation percentage: firstly, the merging of the courts service with the tribunals service to create HMCTS has increased the expenditure budget and diluted the percentage. Secondly, fine income was included in the income total in 2010 and this transferred out of the Ministry of Justice in subsequent years so the income total in 2012 is lower.

The above table shows that between 2010 and 2012 there has been considerable variation in the revenue from court fees and the proportion of the total court budget this revenue makes up. **Estonia, Latvia, Malta** and **Poland** have seen some of the largest drops in court fee revenue (as a proportion of their court budget). **Estonia** has explained that the amounts of court fees have decreased sharply.

**Slovakia, Switzerland** and **Slovenia** have also reported a fall in their revenue from court fees (when examined as a percentage of their court budget). For these member states, the fall in revenue ranges approximately between 9% and 4%. **Slovenia** indicates a drop of over 20% in the number of cases brought to court over the period 2010 - 2012.

In other states or entities, the user of justice increases his/her participation in the operation of the system against the part financed by the tax payer. **Croatia, Cyprus, Ireland, Spain, UK-Northern Ireland** and **Albania** have reported an increase in their court fees revenue (as a percentage of their court budget) of approximately between 6% and 20%.

### 3.4 Trends and conclusions

All the member states provide legal aid both in criminal law and civil law fields, which is welcome when considering the requirements and the spirit of the European Convention on Human Rights and of the case-law of the Court. In the majority of member states, legal aid is provided for legal representation, legal advice or other forms of (legal) assistance.

Legal aid can be granted to victims of offences in 37 member states or entities. Outside the criminal law field, legal aid can be more or less granted according to the types of cases concerned. In most of the member states and entities, legal aid can take the form of an exemption from court fees. 30 states or entities foresee the possibility of granting legal aid as regards the enforcement of judicial decisions.

Moreover, 18 member states indicate explicitly granting legal aid outside the judicial field, to prevent judicial procedures or facilitate access to law. Some systems for instance enable granting legal aid within the framework of ADR or transactional procedures (**Bulgaria, France, the Netherlands, Portugal, Slovakia**)<sup>17</sup>. These policies, which make it possible for individuals to find solutions to some litigations thanks to an appropriate legal advice, should be further developed.

Recognising the difficulties of comparing one justice system to another, particularly given the limitations due to differences in data collection and reporting, for the sample of member states who reported legal aid cases over the two reporting periods, 2010 and 2012, 12 member states have reported an increase in the number of cases that have been granted legal aid, 6 member states have reported a fall in the number of cases.

It is possible to distinguish various policy options for legal aid among the member states: **Norway** and to a lesser extent **Netherlands** and **Ireland** implement the most generous legal aid policies in Europe both as regards the number of cases concerned and the amount allocated per case. Other member states extend legal aid to a large number of cases while granting relatively substantial amounts (**Finland, Monaco, Belgium, France, Germany, Portugal, Estonia**). A third group of states remains generous as to the eligibility of cases, but allocate more modest financial means (**Bulgaria, Lithuania, Republic of Moldova**). Other states have made the opposite choice to grant relatively large amounts to individual cases, while limiting the number of cases eligible (**Austria, Italy, Slovenia, Turkey**). Finally, others restrict the eligibility of cases while limiting the amount of public budget allocated per case (**Azerbaijan, Hungary, Malta, Georgia, Romania, "the former Yugoslav Republic of Macedonia"**).

One development, which is facilitating access to justice in European states, particularly for individuals who are not granted legal aid, is the availability of private legal expense insurance. Individuals in 34 member

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<sup>17</sup> See Chapter 6.1.3 below.

states are able to insure themselves to cover the cost of legal advice, legal assistance and representation in court proceedings, compared to 29 member states in 2010.

Payment of court fees is now a key characteristic of the justice system in Europe: the tax payer is not the only one to finance the system, as the court user is requested to contribute too. Only **France** and **Luxembourg** foresee access to court free of fees. The revenues generated by court fees vary from less than 1% to over 50 % of the court budget, and even, in some member states, more than half of the budget of the judicial system. For the majority of member states, this revenue accounts for a significant resource covering a major part of their court operating costs, and in the case of **Austria**, being in the position of generating a revenue that far exceeds the operating cost of the whole judicial system.

Several member states plan reforms of their legal aid system. **Azerbaijan** has initiated a large-scale programme of judicial-legal reforms in order to bring their court system in line with international and European standards. These reforms include building the capacity of the court system and reforming their legal aid system. **Portugal** also has plans to improve the transparency and the equality in the access to justice system. The **Netherlands** (by adjusting lawyers' fees, narrowing the scope of legal aid and adjusting income thresholds), **UK-England and Wales** (by removing legal aid for civil cases with borderline prospects of success, and introducing tighter financial eligibility threshold) and **Spain** (aims to reform court fees and legal aid reform to include further controls on granting legal aid) have all initiated a programme of cost cutting measures. In the **Netherlands**, in order to modernise access to justice, a new service model is being developed: individuals will be able to get first-line legal aid from the so called Legal Counter; cases which concern a serious legal dispute will be referred to lawyers who participate in the Dutch Legal Aid system. **Lithuania** (with its new law where a lawyer can propose state guaranteed legal aid service for mediation for consenting parties), **Norway** (with its proposed new service model where individuals will be able to get first-line legal aid from a lawyer or a private legal helper free of charge) and "**the former Yugoslav Republic of Macedonia**" (by advancing a system of pro bono assistance and E-Justice enabling the public to access information on judicial procedure) have all initiated a programme of work to reduce the volume of litigation.

## Chapter 4. Court users: rights and public confidence

The justice system is entrusted with a public service mission to serve the interests of the public and the rights of court users must therefore be protected. This chapter describes the means and procedures implemented by the public services of justice in order to protect and improve those rights.

The rights can be protected and improved in various ways. One of the means of doing so is to provide information not only about relevant legal texts, the case law of higher courts, electronic forms and courts, but also concerning the foreseeable timeframes of judicial proceedings, as well as specific assistance for victims of crimes (Item 4.1). Some of these actions can be specifically funded in the context of the access to law policy as developed in Chapter 3 (in particular table 3.5).

When court proceedings are launched, special provisions can be foreseen for certain categories of persons, in particular vulnerable persons such as victims, minors, minorities, disabled persons, etc. (Item 4.2.)

The prosecutor can also play a specific role in protecting rights and assisting victims of crime (Item 4.3).

In criminal proceedings, a compensation procedure can enable a victim of a crime or his/her relatives to be compensated (Item 4.4).

Court users may also be faced with dysfunctions of the courts. Therefore court users must be entitled to means of redress (for instance the possibility of appealing or seeking review or filing a complaint and/or initiating a compensation procedure) (Item 4.5).

Courts may have already introduced a quality control system within their organization. Court user satisfaction surveys can be carried out (Item 4.6) as a part of this system.

### 4.1 Provisions regarding the provision of information to the court users

#### *General information*

Correct and sufficient information is essential for effective access to justice. It is now very easy to obtain information regarding laws, procedures, forms, documents and courts from official websites.

Every state or entity has established websites referencing national legislation, within the Ministry of Justice, Parliament, Official Journal, etc. These websites, such as those providing case law of the higher courts, are often used by practitioners.

Court users seeking practical information about their rights or the courts will make more use of specific websites offered by the relevant courts or those created in their interest by the Ministry of Justice. Many states or entities indicate that these websites include forms that users can download to allow them to exercise their rights (**Bulgaria, Estonia, Finland, Greece, Hungary, Lithuania and Portugal**), applications concerning, for example, legal aid (**Finland**) or the obtaining of certificates (**Serbia**). These "practical" websites are developing in Europe but currently do not exist in **Andorra** and **Cyprus**. These are small states where it is easy to go directly to the court.

For additional information on all existing official websites concerning legal texts, high courts' case-law and other documents which can be accessed by the general public, free of charge, see the corresponding table in Appendices.

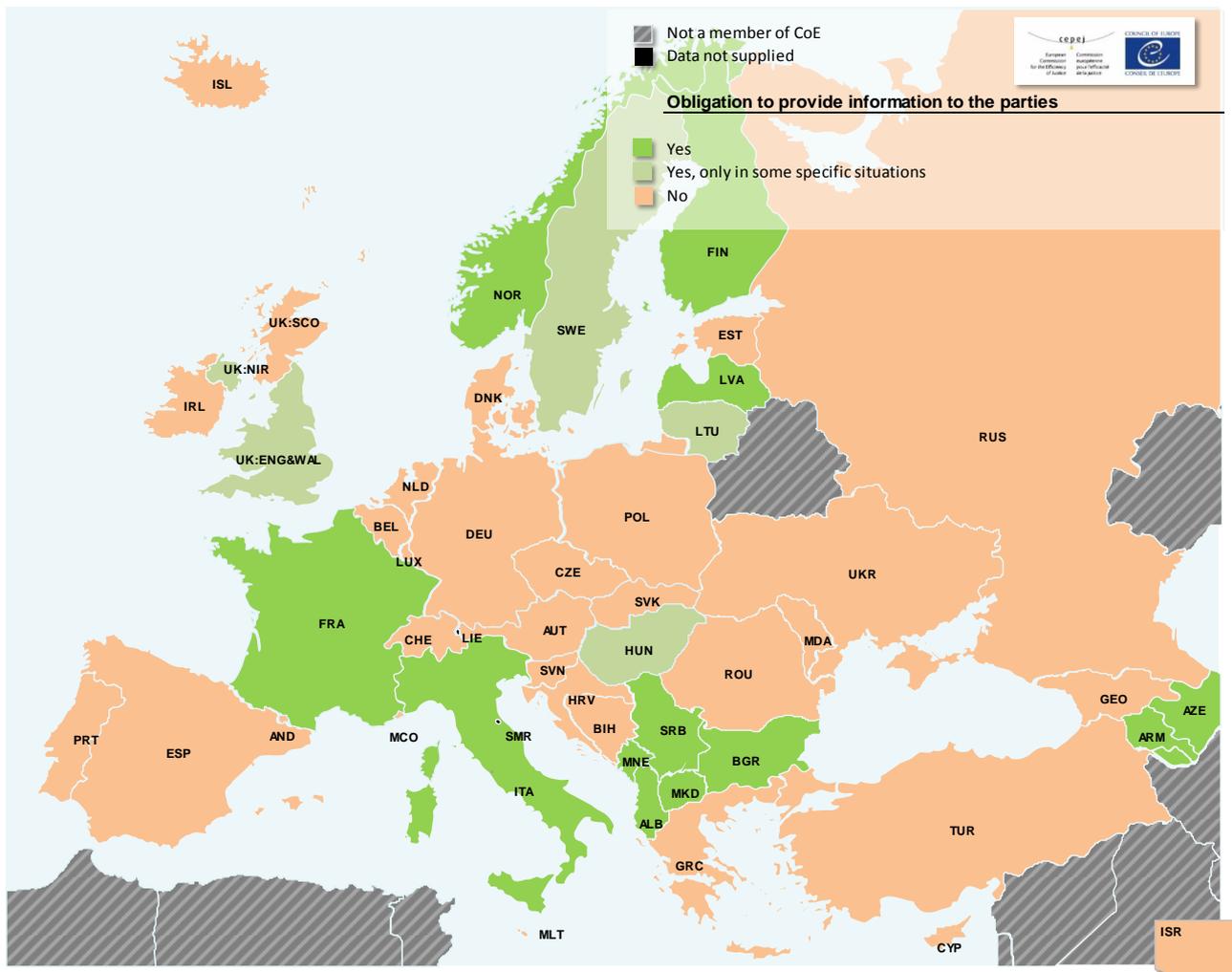
#### *Information on timeframes of proceedings*

It is not only important to provide general information on the rights and proceedings via websites, but also to provide court users with information, in accordance with their expectations, concerning the foreseeability of procedures, i.e. the expected timeframe of a court procedure. This specific information, provided in the interests of the users, but not yet general across Europe, can only be given by states which have set up an efficient case management system within their jurisdictions.

Factors such as an increase in the court case load, the complexity of which may require the intervention of experts or other legal actors, or the backlog of courts, make this requirement difficult to meet: indeed, it is not easy for the court to provide the parties with a detailed timetable of the planned procedure or a specific and reliable date for the final hearing. More and more member states, even if their number is still low, (6 in the 2008 edition, 12 in the preceding edition, 17 for this evaluation exercise) are obliged to provide this

information, at least in certain particular circumstances. This latest figure illustrates mainly the efforts made by some states to inform the users, and thereby increase their confidence, rather than the means implemented to limit the lengths of proceedings.

**Figure 4.1 Obligation to provide information to the parties concerning the foreseeable timeframes of the proceedings (Q29)**



There is no obligation to provide information to the parties concerning the foreseeable timeframes of proceedings in **Andorra, Malta and Monaco**.

In the previous exercise, the 12 states or entities which indicated having an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings were: **Albania, Bulgaria, Finland, France, Hungary, Italy, Latvia, Montenegro, Norway, UK-England and Wales, UK-Northern Ireland and "the former Yugoslav Republic of Macedonia"**. **Armenia, Azerbaijan, Lithuania, Serbia and Sweden** have since established such an obligation. Some member states also indicate that ongoing reforms foresee the introduction of this requirement. This is the case in **Romania** where the new Code of Civil Procedure, which entered into force on 15 February 2013 and the new Code of Criminal Procedure, which entered into force on 1 February 2014, provide for such an obligation.

This obligation is not necessarily applied the same way in every member state. In **Hungary**, it is only applied to criminal cases, whereas in **Sweden** it only concerns civil cases. In **Norway**, the procedural rights of victims have been strengthened so that the police and prosecutors provide such information, especially concerning certain types of victims (victims of sexual offenses, serious violence, domestic violence, forced marriage, trafficking in human beings or genital mutilations).

This information requirement may also take different forms. **Latvia**, for example, has set up since November 2008 a new electronic service called "track court proceedings", free of charge and available online, to allow the follow-up of all Latvian legal procedures. Information is provided, notably on the scheduled hearings.

In some states, despite the lack of a specific rule or obligation, in practice, information on foreseeable timeframes of proceedings is available (in **UK-Scotland** or in **Slovenia** for example).

### **Information for victims of crime**

Victims of crime form a category of court users that requires special attention. For them, the state should establish structures which are known to the public, easily accessible and free of charge. They should be able to find (practical) information about their rights and adequate remedies. Most member states or entities (43) have set up such structures.

The 5 states which have not yet set up a specific public free system of charge to inform and help victims of crimes are: **Andorra, Armenia, Latvia, Montenegro** and **Serbia**.

Such mechanisms, whether set up for victims in general or for some categories of victims (victims of rape, victims of domestic violence, children and minors, etc.), tend to provide various information (mainly legal advice, psychological counselling or a social support) directly or indirectly through associations by hosting, accompanying and/or by guiding victims to other services or specialized organisations (for example in **Belgium, Croatia, Finland, France, Hungary, Italy, Monaco, Norway, Portugal, Romania, Slovakia, Spain, Switzerland, UK-England and Wales** and **UK-Scotland**). In concrete terms, member states set up free telephonic structures (for example in **Croatia, France, Ireland, Republic of Moldova, Romania**), distribute information leaflets (for example in **Iceland**) or encourage and/or conduct awareness raising campaigns for specific victims (for example in **Republic of Moldova** and **Romania**). Numerous states indicate having established assistance websites and/or information areas dedicated to victims on ministries' website (in particular **Albania, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Ireland, Lithuania, Malta, Poland, Russian Federation, Slovakia, Sweden, Turkey, UK-Northern Ireland**).

### **4.2 Protection of vulnerable persons**

For vulnerable persons (victims of rape, terrorism, children witnesses/victims, victims of domestic violence, ethnic minorities, disabled persons, juvenile offenders), special mechanisms may be used to protect and to strengthen their rights during court proceedings, for example by introducing specific information mechanisms (telephone hotlines, Internet, leaflets, etc.) for the various vulnerable groups.

Another possibility is the use of special hearing procedures. Another possibility is the use of quasi generalized specific hearing modalities for the protection of minors (46 states), rape victims (44 states) or the now very developed modalities for persons with disabilities (36 states) and victims of domestic violence (32 states). For example, minors can be protected by holding *in camera* court sessions (particularly **Monaco** and **Montenegro**) or hearings in a particular location (**Malta**). Victims of certain crimes can be protected during a court hearing by making use of a one-way screen or audio/video recording of their statements (**Latvia, Monaco, Romania, Russian Federation, Slovakia** and "**the former Yugoslav Republic of Macedonia**" for example).

Specific procedural rights can also strengthen the status of vulnerable persons, in particular by means of initiating an urgent procedure for victims of domestic violence with the possibility of special measures such as banning the presumed perpetrator from entering the home (for example, in **Albania** and **Romania**) or the taking of statements without the presence of the presumed perpetrator (**Slovenia** for example).

There are many special provisions in members states regarding minors (whatever their status – victim, witness, perpetrator): special protection by means of prohibiting the publication of photographs (**Albania** for example); the possibility of specific assistance (including in **Italy, Lithuania, Monaco, Montenegro, Russian Federation, Serbia** and **Slovakia**); placing limits on certain measures such as remand in custody or pre-trial detention (**Republic of Moldova**); implementation of urgent procedures (**Montenegro** and **Serbia**); special training for judges in matters relating to minors (**Montenegro**), limiting the age at which testifying is allowed (**Romania** and **Slovakia** for example) and adapting the rules regarding the obligation to testify (**Russian Federation**).

For ethnic minorities this protection is possible due to recourse to court interpreters and the possibility to speak in their own language (in **Hungary, Lithuania, Montenegro, Romania, Slovenia, Turkey** and **Ukraine**, for example).

**Table 4.2 Special favourable arrangements applied during judicial proceedings to certain categories of vulnerable persons (Q31)**

States/entities	Information mechanism								Special hearing modalities								Other special arrangements								Total	
	①	②	③	④	⑤	⑥	⑦	⑧	①	②	③	④	⑤	⑥	⑦	⑧	①	②	③	④	⑤	⑥	⑦	⑧		
Albania																									16	
Andorra																									7	
Armenia																									7	
Austria																									24	
Azerbaijan																									17	
Belgium																									12	
Bosnia and Herzegovina																									10	
Bulgaria																									14	
Croatia																									16	
Cyprus																									16	
Czech Republic																									4	
Denmark																									8	
Estonia																									18	
Finland																									13	
France																									17	
Georgia																									12	
Germany																									8	
Greece																									9	
Hungary																									10	
Iceland																									21	
Ireland																									12	
Italy																									7	
Latvia																									6	
Lithuania																									7	
Luxembourg																									10	
Malta																									11	
Republic of Moldova																									11	
Monaco																									21	
Montenegro																									14	
Netherlands																									18	
Norway																									16	
Poland																									12	
Portugal																									15	
Romania																									22	
Russian Federation																									8	
Serbia																									4	
Slovakia																									21	
Slovenia																									11	
Spain																									15	
Sweden																									8	
Switzerland																									12	
The FYROMacedonia																									15	
Turkey																									18	
Ukraine																									5	
UK-England and Wales																									24	
UK-Northern Ireland																									8	
UK-Scotland																									18	
Number of countries	28	18	36	33	14	21	28	18	44	27	46	32	22	36	44	23	18	11	27	21	11	17	22	11		
Israel																										

Average number of countries/entities per arrangement					
①	Victims of rape	30	⑤	Ethnic minorities	16
②	Victims of terrorism	19	⑥	Disabled persons	25
③	Children (witness/victim)	36	⑦	Juvenil offenders	31
④	Victims of domestic violence	29	⑧	Other	17

**Comments:**

**Estonia:** there is a special information mechanism for victims of human trafficking (including victims of forced marriage).

**Greece:** Other: Victims of human trafficking.

**Italy:** there is a special public fund for victims of human trafficking.

**Monaco:** for juvenile victims: they are heard by the Tribunal but only their legal representatives may bring civil action.

**Montenegro:** hearing of a juvenile shall be performed, as a general rule, by a public prosecutor and a judge of the same gender as the juvenile in a separate room equipped with technical devices for audiovisual recording. By exception, a juvenile may be heard again if there are justified reasons for doing so. So the hearing shall be carried out in the presence of the juvenile's legal custodian and, as a rule, with the assistance of professional support staff, unless when it is contrary to the interests of the proceedings or the juvenile.

A person with special needs and victims of the crime of family or domestic violence and of human trafficking shall have the right to legal aid. In all the courts in charge of criminal cases support services had been established. Those services provide support to the victims/witnesses of criminal offences of trafficking in persons, trafficking in children for adoption and domestic violence.

The task of the service is to create conditions for a safe and secure testimony, to explain the functioning of the court and the criminal proceeding and to provide answers to all questions.

Regarding the column "Other", it is important to point out that a law on Legal Aid was adopted in 2011, granting to, among others, a person with special needs, a victim of the crime of family or domestic violence and of human trafficking, the right to legal aid.

Also, a law on Domestic Violence Protection was adopted in 2010. The Government has also established a shelter for victims of human trafficking as well as an SOS line by which victims can receive information and report criminal offences. It is also important to mention that non-governmental organizations play an important role in the protection of women and child victims of domestic violence.

**Norway:** in cases of an examination of a witness who is under 14 years of age or a witness who is mentally retarded or similarly disabled in cases of sexual felonies or misdemeanors, the judge shall take the statement separately from a sitting of the court when s/he finds it desirable in the interest of the witness or for other reasons.

According to Criminal Procedure Act, the court may decide that the person charged or other persons shall leave the court room during the examination of the aggrieved person or of a witness under 18 years of age, if for special reasons this is in the best interest of the aggrieved person or the witness.

**Portugal:** victims of trafficking in persons are afforded special protection through a number of procedural arrangements, such as the exclusion of trial publicity, restrictions on the revelation of their identity in the media or pro memoria statements, also allowed when a witness is seriously ill or is going abroad.

**Slovakia:** there are specific provisions in the Criminal Procedure Code concerning minors as victims and young offenders. Other types of victims are not specifically defined (e. g. victims of sexual violence, rape, terrorism or ethnic minorities victims). However, there are provisions protecting special types of endangered persons. They are not strictly defined, their vulnerability is assessed by the court during the procedure.

According to the individual case, there is a possibility (for example) for victims of sexual violence, rape or domestic violence to have proceedings excluding the public, a prohibition on publishing personal details or other means of covering their identity, e.g. live audio or videoconferencing of the hearing. They also have the right to be informed in case of the release of the offender, - ethnic minorities have the right to language assistance during a court proceeding, - disabled persons have the right to help to compensate for their disability, e. g. live audio or videoconferencing of the hearing.

**Sweden:** 'Others' may for example include a person who is so afraid that he or she does not openly tell the truth because of the presence of a party or audience.

**Switzerland:** victims of sexual offences may ask to have their statements taken by a person of the same gender.

**"the former Yugoslav Republic of Macedonia":** the victim of crimes against gender freedom and gender morality, humanity, and international law, shall also have the following rights: 1) before the interrogation, to speak to a counselor or a proxy free of charge, if he or she participates in the procedure as an injured party; 2) to be interrogated by a person of the same gender in the police and the public prosecution office; 3) to refuse to answer questions that refer to the victim's personal life, if those are not related to the crime; 4) to ask for an examination with the use of visual and audio means in a manner established in this Law; 5) to ask for an exclusion of the public at the main hearing.

**Turkey:** in this context, 157 Help Line was created in order to detect victims of human trafficking and ensure they benefit from help. Under the topic of access of victims to justice, studies on prohibiting human trafficking (Article 80 of Turkish Penal Code), investigation and prosecution of traffickers and rights of victims are still going on.

**UK-Northern Ireland:** special arrangements exist for juveniles (called Youth in Northern Ireland) where the court sits without the usual formality of wigs and gowns, and the defendants are not required to sit in the dock.

**UK-Scotland:** COPFS has a Victim and Information Service (VIA) who proactively engage with the above categories and also with victims of any solemn (serious) crime, hate crime, any victim or witness over 60 years old and any other vulnerable witness or victim who may need special measures in Court. VIA assess victims for vulnerability and where appropriate and relevant apply to the court for special measures such as supporter, screens, CCTV link to the court and others.

SG-Victims and Witnesses Team: All of these groups are eligible to be considered for special measures to help them give evidence in court under the Vulnerable Witnesses (Scotland) Act 2004. Children (up to age 16, or up to 18 in human trafficking cases) are automatically eligible for a screen or to use a live TV link and have a supporter with them (child accused are eligible to use a live TV link and have a supporter with them). At the discretion of the court, their evidence through a prior statement or via a commissioner. Vulnerable adults (including accused) can be considered for any of these measures if they have a defined mental disorder or if their evidence would be significantly affected by fear or distress.

**Israel:** "Other" - ethnic minorities are entitled to translation services during the hearings; victims of domestic violence are entitled to the use of a safe house; victims of sexual violence are entitled to protection inside and outside of the courts; prohibition on publishing personal details and photographs of minor defendants, offenders and witnesses.

This table gives a comprehensive picture of all existing specific rules during legal proceedings according to categories of vulnerable persons for all the states involved in this cycle.

States or entities having indicated the most specific elements (information mechanisms, special procedures and other) for vulnerable persons are: **Albania, Austria, Azerbaijan, Croatia, Cyprus, Estonia, France, Iceland, Monaco, Netherlands, Norway, Romania, Slovakia, Turkey, UK-England and Wales and UK-Scotland.** On the contrary, states having few specific devices for vulnerable persons are: **Andorra, Armenia, Czech Republic, Denmark, Germany, Italy, Latvia, Lithuania, Russian Federation, Serbia Sweden, Ukraine and UK-Northern Ireland.**

There has also been a general increase in special arrangements for hearings and other specific arrangements applicable to vulnerable persons in the course of judicial proceedings.

However, there has been no clear similar trend with regard to special mechanisms for providing information. Some states indicate that they have no specific information mechanisms at all: **Armenia, Bosnia and Herzegovina, Italy, Latvia, Republic of Moldova, Russian Federation, Sweden, Ukraine** and **UK-Northern Ireland**. Moreover, these states, except **Armenia, Bosnia and Herzegovina Italy** and **Republic of Moldova**, indicate having no other specific elements for vulnerable persons.

As to categories of vulnerable persons taken into consideration to set up specific mechanisms (information mechanisms and/or specific procedures of hearing and/or others), states or entities taking into account the largest number of categories are: **Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Georgia, Iceland, Monaco, Montenegro, Netherlands, Norway, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", UK-England and Wales, UK-Northern Ireland** and **UK-Scotland**, with at least one specific provision provided for 7 or 8 categories of vulnerable persons.

A group of states or entities have few special services for categories of vulnerable persons and victims: **Andorra, Armenia, Czech Republic, Denmark, Hungary, Poland, Serbia** and **Switzerland**, with the consideration of 4 or even less categories of vulnerable persons.

The measure that is the most used for vulnerable persons is the particular manner in which hearings are conducted, especially for child victims (every member state, except **Germany**, provide such procedures), victims of rape and juvenile offenders.

Generally, almost all the different mechanisms (information mechanism, particular hearing modalities and others) are widely applied to cases involving children (witnesses and victims) for young offenders and for victims of rape. Several information mechanisms are made available for victims of domestic violence. Particular hearing modalities are quite developed for persons with disabilities.

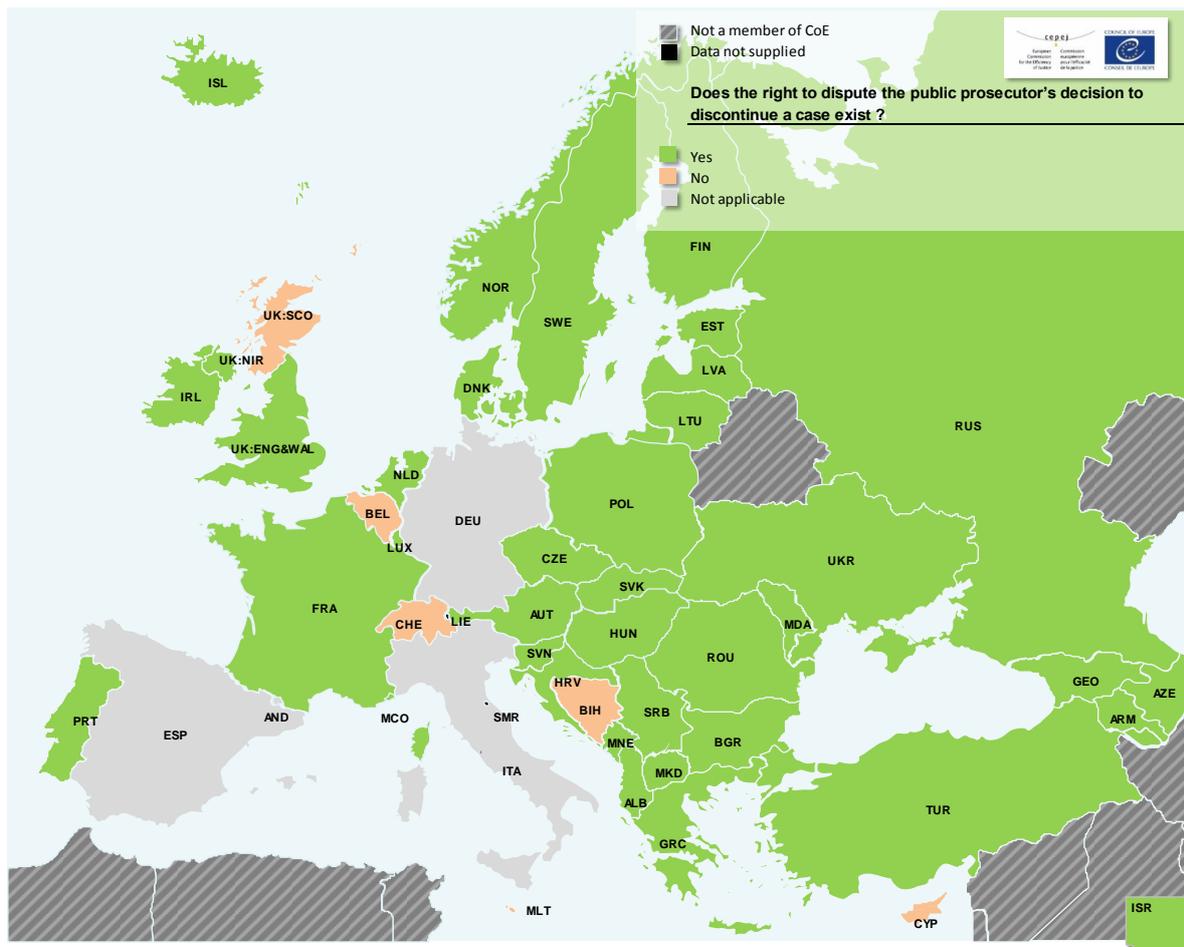
#### **4.3 Role of the public prosecutor in protecting the rights or assisting victims of crime**

Even if the public prosecutor's role is primarily to represent the interests of society, rather than the interests of victims, the public prosecutor can play a specific role in the protection and assistance of victims during criminal proceedings:

- in most states or entities, there is the possibility / obligation to provide the victims with information about their rights, in particular to receive compensation (for example in **Austria** or **Portugal**) or information on certain stages of the procedure such as the hearing dates, the closure of the procedure or the moment when the defendant is released (for example in **Austria, Denmark, in Estonia** or in **Norway**);
- the role of the public prosecutor may also include supporting or introducing civil claims on behalf of the victims (for example in **Andorra** or **Finland**), in particular when the victim is not able to do so (for example **Bulgaria, Romania**), or making sure the victim receives compensation (for example the **Netherlands**);
- the public prosecutor may also appeal to victims support associations (as in **France**) or have a duty to inform other services.

40 states or entities have indicated that the public prosecutor has a specific role in relation to victims. This large majority may seem obvious, as it is difficult to argue that the prosecutor does not have to be concerned with the protection of victims. In comparison with the previous edition of the Report, **Estonia** has indicated that the public prosecutor has a specific role concerning victims. In total, 7 states or entities have indicated that the prosecutor has no specific competences in respect of victims of crime (**Armenia, Cyprus, Czech Republic, Ireland, Latvia, Malta** and **Switzerland**).

Figure 4.3 The right to dispute the public prosecutor's decision to discontinue a case (Q36)



Andorra: NAP, Malta: No; Monaco: Yes.

**Comments:**

**Andorra:** the Code of Criminal Procedure makes no provision for a prosecutor to discontinue a case. There is no principle of discretionary prosecution in this model. However, each victim may refer a case directly to the courts.

**Belgium:** in principle, there is no appeal possible against a decision by the prosecution service to discontinue a case. However, victims may bring a civil action before the investigating judge; this opens a judicial procedure at the end of which there must be a court decision.

**Bosnia and Herzegovina:** according to the relevant provisions of the Criminal Procedure Code, a prosecutor is obliged to inform the injured party and the person who reported the offence of the fact that the investigation shall not be conducted, as well as the reasons for not doing so, within three (3) days. The injured party and the person who reported the offence have a right to file a complaint with the prosecutor's office within eight (8) days. However, the prosecutor's office makes a final decision about the discontinuation of the case, and the victim has no other legal remedy against such a decision of the prosecutor's office.

**Hungary:** there are cases where private prosecution or supplementary private prosecution is allowed. If so, the court notifies the victim of the decision of the public prosecutor and the victim has 30 days from receipt of the notification to declare whether (s)he intends to go on with the case as a private or supplementary private prosecutor.

Sometimes, public prosecutors can decide to discontinue a case and to stop criminal investigation procedures: for the states where public prosecutors are free to act as described, there should be a possibility for a victim of crime to contest the decision of public prosecutors (37 states or entities replied that such a possibility to contest a decision of a public prosecutor exists); in the states where such a possibility does not exist, the right of victims to have their case heard is often guaranteed in different ways. **Hungary** indicates the possibility (at the end of the procedure) of a private request for prosecution. In many states or entities, the victim may also bring a legal action against the responsible if the prosecutor decides to discontinue the proceedings (**France, Monaco and Slovenia** for instance). Finally, in the states where prosecutors do not have the power to discontinue a case, the victim is often given the right to contest the decision by the judge to discontinue a case (for example in **Spain**).

#### 4.4 Compensation procedures

In criminal proceedings, a compensation procedure can enable a victim of crime or his/her relatives to be compensated. Sometimes there is a special public fund for which a judicial intervention is not requested. In other cases, a judgment is necessary to benefit from such public funds. Only one state (**Greece**) indicates that there is both a private and public mechanism and that sometimes a court decision is required to get compensation.

The table below provides a classification of the states according to whether the compensation procedure consists of private funds, public funds or result from a judicial decision (or a combination thereof). A column is also provided for the states which do not provide compensation procedures: **Andorra** and **Armenia**. These states are an exception at the European level.

Table 4.4 Compensation procedures for victims of criminal offences (Q32, Q33)

States/entities	Does a compensation procedure exist ?	This compensation consists in :		
		Public fund	Damages (Court decision)	Private fund
Albania	Yes	Yes	Yes	No
Andorra	No	No	No	No
Armenia	No	No	No	No
Austria	Yes	Yes	Yes	No
Azerbaijan	Yes	No	Yes	No
Belgium	Yes	Yes	Yes	No
Bosnia and Herzegovina	No	No	No	No
Bulgaria	Yes	Yes	Yes	No
Croatia	Yes	No	Yes	No
Cyprus	Yes	Yes	Yes	No
Czech Republic	Yes	Yes	Yes	No
Denmark	Yes	Yes	Yes	No
Estonia	Yes	Yes	Yes	No
Finland	Yes	Yes	Yes	No
France	Yes	Yes	Yes	No
Georgia	Yes	No	Yes	No
Germany	Yes	Yes	Yes	No
Greece	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	No
Iceland	Yes	Yes	Yes	No
Ireland	Yes	Yes	Yes	No
Italy	Yes	Yes	Yes	No
Latvia	Yes	Yes	Yes	No
Lithuania	Yes	Yes	Yes	No
Luxembourg	Yes	Yes	Yes	No
Malta	Yes	Yes	Yes	No
Republic of Moldova	Yes	Yes	Yes	No
Monaco	Yes	Yes	Yes	No
Montenegro	Yes	No	Yes	No
Netherlands	Yes	Yes	Yes	No
Norway	Yes	Yes	Yes	No
Poland	Yes	Yes	Yes	No
Portugal	Yes	Yes	Yes	No
Romania	Yes	Yes	Yes	No
Russian Federation	Yes	Yes	Yes	No
Serbia	Yes	No	Yes	No
Slovakia	Yes	Yes	Yes	No
Slovenia	Yes	Yes	Yes	No
Spain	Yes	Yes	Yes	No
Sweden	Yes	Yes	Yes	No
Switzerland	Yes	Yes	Yes	No
The FYROMacedonia	Yes	Yes	Yes	No
Turkey	Yes	Yes	Yes	No
Ukraine	Yes	No	Yes	No
UK-England and Wales	Yes	Yes	Yes	No
UK-Northern Ireland	Yes	Yes	Yes	No
UK-Scotland	Yes	Yes	Yes	No
<b>Number of countries</b>	<b>45</b>	<b>39</b>	<b>33</b>	<b>1</b>
Israel	Yes	Yes	Yes	No

	Yes
	No

**Comments:**

**Albania:** victims of organized crime have the possibility of compensation through a public (state) fund consisting of confiscated assets from organized crime. Additionally, victims are in general entitled to claim compensation in criminal and civil proceedings.

**Austria:** anybody who claims to have suffered damage deriving from an alleged offence is in principle entitled to claim compensation for this damage within the criminal proceeding.

**Azerbaijan:** according to the Law of the Republic of Azerbaijan, all damages caused to the individuals by the preliminary investigating bodies, prosecutors and courts should be reimbursed by the state.

**Belgium:** victims are entitled to reparation for the damage suffered as a result of the offence. If they wish to obtain compensation, they must join criminal proceedings as a party claiming damages or bring an action before the civil court. However, pre-established and subsidiary intervention by the state in respect of the damage suffered by individuals who have sustained injury to their body or health following an act of intentional violence or an act of rescue is possible. The intervention is “possible and subsidiary” insofar as victims may not apply to the Committee to Assist Victims of Intentional Acts of Violence unless they are unable to obtain effective compensation due to the fact that the perpetrator of the acts is insolvent or unknown or because they have been or are unable to obtain appropriate redress through other channels.

**Bulgaria:** obtaining compensation from the offender: Under civil law in Bulgaria, every person must redress the damage he is guilty of causing to another person. Obtaining compensation from the state: In Bulgaria, the possibility for victims to receive compensation from the state is governed by the Law on Support and Financial Compensation to Victims of Crime. This special law provides financial compensation for the material damage suffered, expressly specifying crimes committed after June 30, 2005, namely: terrorism, intentional murder, intentional severe injury of health, adultery and rape resulting in severe injury of health, human trafficking, crimes committed by or through a decision of an organized criminal group, and other serious intentional crimes resulting in death or serious injury.

**Cyprus:** compensation may be awarded by the state to victims of violent crimes. Violent crimes have been defined as offences committed with intent and violence which results in death, serious physical injury or shaking of health and includes murder and manslaughter, rape, abduction.

**Denmark:** the procedure, inter alia, concerns all cases where a person has suffered injury due to a violation of the Criminal Code or the Act on Restraining Order, Exclusion Order and Expulsion.

**France:** victims may bring a civil action before the civil and/or criminal courts. In addition, with regard to criminal offences, the state has tasked a body of the Guarantee Fund for Victims of Acts of Terrorism and other Criminal Offences (FGTI) with fully compensating victims, under certain conditions, in pursuance of a decision by the Commission for the Compensation of Victims of Offences (CIVI). Lastly, a department to assist the recovery of sums allocated to victims of offences (SARVI) was set up in 2008 for those victims who are not eligible to apply to the CIVI. It is run by the FGTI.

**Georgia:** in order to obtain compensation, the victim is entitled to file a civil complaint through the civil procedure outside the criminal or administrative cases.

**Germany:** compensation in accordance with the Act on Compensation for Victims of Violent Crime (Opferentschädigungsgesetz, OEG) is not contingent on the nature of the criminal offence. It is also not conditional on the offenders being prosecuted. It is, rather, conditional on a person having suffered harm to their health by an intentional, unlawful violent act within German state territory.

**Hungary:** severely injured victims of violent intentional crimes and family members of the deceased may apply for state compensation. State compensation is granted to victims of intentional and violent crimes in the event that their physical integrity and health has been seriously damaged as a result of the criminal act.

**Iceland:** a victim and whoever believes s/he has a claim for compensation regarding a criminal case can request a judgment on the claim in a criminal case.

**Italy:** for all kind of offences.

**Latvia:** the right to state compensation is granted, if, as a result of an intentional criminal offence: 1) the person dies; 2) heavy or medium-heavy bodily injuries were caused to the victim; 3) violation of a person’s sexual integrity; 4) the victim is infected with human immunodeficiency virus, type A or type B virus hepatitis.

**Luxembourg:** any person who has suffered pecuniary or non-pecuniary damage in the Grand Duchy resulting from intentional acts constituting an offence is entitled to compensation paid by the state.

**Malta:** these offences are not established; however there exists a fund set up by the Government from which it may pay victims of crime whilst exercising their public office, such as the Police.

**Monaco:** there are specific provisions for victims of terrorism (victims of acts of terrorism committed in the Principality or their beneficiaries and persons of Monegasque nationality who are victims of such acts abroad are compensated by the state), with the state being subrogated to the rights of the victim against the person responsible for the damage. The Commission for the Compensation of Victims of Spoliation set up by Sovereign Order No. 461 of 23 March 2006 to assist victims of spoliation of property suffered in Monaco during the Second World War or their beneficiaries, is tasked with examining claims from natural persons for compensation to be paid to victims or their beneficiaries of material or financial damage resulting from spoliation of property which took place in Monaco during the Second World War, during the occupation of the Principality. The Commission is authorised to recommend that the state pay compensation.

**Montenegro:** for all criminal offences.

**Netherlands:** there is a national fund for the compensation of damages.

**Norway:** the public fund for compensation is available for all victims of violent crimes, including sexual offences. Compensation by court decision is available in all kinds of cases, either pursued separately in a civil case or jointly with the criminal case.

**Poland:** all types of crimes.

**Portugal:** it applies to all cases in which intentional crimes that cause grievous bodily harm or death occur. Should any of these situations occur, the persons who have access to the compensation fund are the victim himself/herself and his/her legal heirs.

**Romania:** the persons which were victims of the following types of offences benefit from financial compensations: attempt to the offence of murder, aggravated murder and particularly serious murder, serious body injury, laid down by Article 182 of the Criminal Code, an intentional offence which has as consequence a serious body injury of the victim, rape, sexual relation with a minor, sexual perversion, an offence concerning the trafficking in human beings, an offence of terrorism, any other intentional offence committed with violence.

**Slovakia:** the compensation can be provided only to the victims of intentionally committed violent crimes. This compensation is reimbursed from the public funds. In the criminal proceedings the court may impose on the convicted person the financial compensation of the victim.

**Slovenia:** one condition for access to the compensation is that the applicant was a victim of a violent intentional crime

**Spain:** Victims of violent crimes and sexual offences benefit from the compensations for this type of crimes, and the victims of certain offences such as gender violence and terrorism too.

**Sweden:** the compensation is not dependent on a specific type of crime.

**Switzerland:** for any offence involving a direct violation of the physical, mental or sexual integrity of the victim.

**“the former Yugoslav Republic of Macedonia”:** According to the new Law on the Criminal Procedure, a fund for the compensation of victims shall be established. This matter will be regulated by separate law. In the Law on justice for children there are provisions that guarantee the right for children (victims of crime) to compensation of damage.

**Turkey:** damages of victims of terrorism are compensated in accordance with the Law on Compensation for Damage Arising from Terrorism and Combating Terrorism.

**Ukraine:** to all victims if it is requested by means of civil action against an offender.

45 states or entities indicated that they have a compensation procedure for victims. Among them, 39 said that the compensation procedure consists of a system using public funds, 33 said that compensation takes the form of reparation to be paid by the person responsible, ordered by court decision. Only one state (**Greece**) said that it had a system based on private funds.

Studies have been undertaken in 8 states or entities (among the 45 where a compensation procedure exists) to assess the rate of recovery of damages and interest awarded by courts for victims: **Finland, France, Hungary, Luxembourg, Netherlands, Norway, Poland, and Serbia.**

The exact level of this collection is specified only by a small number of countries with excellent rates. However in **Norway** and the **Netherlands**, a recovery rate of 90% is common (only in criminal cases, and within three years after receipt by the agency in charge of the compensation for the **Netherlands**).

#### **4.5 Compensation of the users for dysfunction of the judicial system and complaints**

All court users should have the right to apply to a national court for compensation for the damage he/she has suffered due to a dysfunction of the judicial system. This dysfunction may consist in excessive length of proceedings, non-enforcement of court decisions, wrongful arrest or wrongful conviction.

All states or entities participating in the Evaluation exercise now have a compensation mechanism in case of dysfunctions of justice. Among these dysfunctions, most states have a procedure for wrongful arrest (except **Monaco**) and a large majority considers wrongful conviction eligible (all states or entities except for **Belgium, Georgia, Malta, UK-Northern Ireland and UK-Scotland**). Almost two thirds of states or entities (34) report having compensation procedures for excessive length of proceedings and half of the states (24) provide such proceedings for the non-enforcement of court decisions.

Therefore, in case of dysfunctions of the judicial system, several particular circumstances lead to right to compensation. Whether or not the states have taken these circumstances into account is shown in the table below.

Table 4.5 System for compensating users in various particular circumstances (Q37)

States/entities	Excessive length of proceedings	Non execution of court decisions	Wrongful arrest	Wrongful condemnation	
Albania					3
Andorra					4
Armenia					2
Austria					4
Azerbaijan					4
Belgium					2
Bosnia and Herzegovina					4
Bulgaria					4
Croatia					3
Cyprus					4
Czech Republic					3
Denmark					3
Estonia					2
Finland					3
France					4
Georgia					1
Germany					4
Greece					4
Hungary					4
Iceland					3
Ireland					4
Italy					3
Latvia					2
Lithuania					3
Luxembourg					2
Malta					2
Republic of Moldova					4
Monaco					1
Montenegro					4
Netherlands					2
Norway					4
Poland					4
Portugal					4
Romania					4
Russian Federation					4
Serbia					4
Slovakia					3
Slovenia					3
Spain					4
Sweden					4
Switzerland					3
The FYROMacedonia					4
Turkey					3
Ukraine					2
UK-England and Wales					2
UK-Northern Ireland					1
UK-Scotland					1
<b>Number of countries</b>	<b>34</b>	<b>24</b>	<b>46</b>	<b>42</b>	
Israel					

	Yes
	No

**Comments:**

**Albania:** parties are entitled to request compensation for wrongful detention or imprisonment in proportion with the duration of the sentence and personal and familiar consequences deriving from the sentence. There is no daily fee; the amount of compensation depends on individual circumstances. Funds are provided by the Ministry of Finance.

A second possibility is the law on the liability of public entities for misconduct, which also provides a compensation mechanism for persons who have suffered damages, which includes also cases on non-execution of court decisions.

**Austria:** in case of wrongful arrest or wrongful criminal conviction, compensation can also be obtained without proving the fault of the authorities. To make sure that compensation is paid following the concrete circumstances of each

individual case, there is no such thing as a daily tariff or a flat compensation sum. The amount of compensation depends solely on the magnitude of damage suffered by the victim and the degree of fault attributable to the Public Authority. In cases in which the detention started after the 31st of December 2010, changes in the law are applicable and the liability for immaterial damage for detention is limited to a minimum compensation of 20 € and a maximum of 50 € per day

**Croatia:** the amount of monetary compensation offered to injured persons on the basis of non-monetary damage depends on the length of time during which they were deprived of freedom, because the criteria that the Ministry and the courts use for determining the amount of compensation is based on the number of days the person was detained.

**Czech Republic:** when setting the amount of reasonable compensations the seriousness of the harm sustained as well as its circumstances shall be taken into consideration.

**Finland:** the Act on Compensation for Excessive Length of Judicial Proceedings entered into force on 1 January 2010. According to the acts a private party is entitled to receive reasonable compensation out of the State funds if the excessive length of judicial proceeding is considered to violate the right of a part to a trial within a reasonable time. The amount of the compensation is 1 500 € for each year during which the proceedings have been delayed for reasons that the State is liable for. The maximum amount of compensation is 10 000 €

The State Treasury provides compensation for innocent people who have lost their freedom due to the action of the authorities. Compensation is not granted if freedom was lost for less than 24 hours. Someone who has been given a travel ban has the same right, as applicable, to obtain compensation for the restriction in their freedom. In 2010, the compensation amount per day of unjustified detention or conviction was about 100-120 € if the loss of freedom was no longer than 14 days and about 150 € if the loss of freedom was more than 2 weeks.

**Georgia:** the compensation is issued from the state budget. The amount is defined by the Court.

**Germany:** as a general rule, in the case of excessively long court proceedings, the person concerned has to file a complaint about undue delay (Verzögerungsrüge) with the court where the proceedings seem excessively long. If necessary, s/he can then file a complaint for compensation even if the original proceedings have not yet been concluded. Adequate compensation is granted for pecuniary disadvantages. To the extent that an alternative form of redress would appear insufficient, a fixed amount of 1 200 € per year is granted as a general rule for non-pecuniary disadvantages.

**Greece:** In the case of excessive length of proceedings, the right of the parties to compensation is introduced in case of breach of the reasonable time requirement in administrative proceedings. A similar remedy was established for excessive length of proceedings in civil and criminal courts, as well as before the Court of Auditors, and other provisions were made,

**Latvia:** the amount of compensation is evaluated individually in each case.

**Lithuania:** under the Civil Code and the Law on the Compensation of the Harm Caused by Illegal Actions of Public Authorities and Representation of the state, the damage resulting from unlawful conviction, unlawful arrest, unlawful detention, unlawful application of procedural coercive measures, illegal application of administrative penalty, arrest, has to be reimbursed by the state in full, regardless of pre-trial investigation officers, prosecutors and court officials' fault. Compensations for unlawful arrest and unlawful conviction are paid from a separate budgetary programme on compensation of damages operated by the Ministry of Justice. These compensations may be paid according to court decisions on damages as well as through out-of-court procedure. Damages can be compensated after court trial and without court trial (the property damage may not exceed 5 000 Lt. (1 448,1 €), the moral damage may not exceed 10 000 Lt. (2 896,2 €)).

**Monaco:** draft law No. 879 comprising various measures in the field of state liability and remedies – establishing the principle of state liability in the event of dysfunction of the justice system and initiating a new remedy for citizens against the state – was tabled by the Government of Monaco before the National Council on 2 November 2010. This draft law has not yet been examined by the National Council.

**Montenegro:** the Law on Protection of the Right to a Court Trial in Reasonable Time defines the protection of the right to trial within a reasonable time, and just compensation for the breach of this right. The Law defines two legal means: Request to Accelerate the Proceedings and the Claim for Fair Redress. The sum of money is between 300 and 5 000 €. As a consequence of unmerited apprehension, unfair sentence, tangible or intangible damages might occur. The court of justice assesses the amount of compensation for both tangible and intangible damages, and the legal position is that 3 000 to 4 000 € per month of unmerited detention should be paid for mental anguish caused by unmerited limitation of freedom (apprehension), depending on the circumstances in the case concerned as laid down by the Obligations Act.

In accordance with the Criminal Procedure Code, in the Ministry of Justice an agreement is concluded on the existence of damage, the sort and amount of compensation for wrongful arrest. Funds for payment of compensation for these damages are earmarked to the Ministry of Justice in a separate budgetary item, in accordance with which the amount of up to 2 000 € is paid for a month, depending on the circumstances in a case concerned. By accordance with court practice, for a month of unjustified detention, the amount of 3 000-4 000 € is determined. The amount will depend on the severity and type of criminal offence of which the person was accused, the earlier life of the accused person (convicted or not convicted), how much the arrest of the accused person and the criminal proceeding against him was under attention of the media.

**Norway:** the Criminal Procedure Act section 447 concerns damage for non-economic loss as a consequence of arrest or remand in custody when the person is acquitted or no legal proceedings are instituted against him. Regulations are given with fixed rates, saying that for periods of less than four hours, no damages for non-economic loss are paid. After that, the first two periods of 24 hours detention are compensated by 183 € (1 500 NOK) each. If the charged person is transferred to a prison, each following day shall be compensated by 49 € (400 NOK). If the person spends custody in remand in complete isolation, the damages should be raised by 25% of the calculated sum.

**Poland:** excessive length of proceedings (at pre-trial proceedings, at the court or/and enforcement stage) – under the party's motion pecuniary satisfaction can be granted by the higher court in amounts from 2 000 zł. (about 500 €) as a minimum up to 20 000 PLN (about 5 000 €) Wrongful arrest/condemnation – The court is free to grant the compensation and pecuniary satisfaction in any amount justified in individual circumstances. Especially, there is no fund or maximum or

minimum limitation in such claims. Each case is assessed individually under the court's discretion taking into account all relevant factors: e.g. property and income loss, personal hardship, etc.

**Romania:** there is no mechanism for calculating compensation. The courts take into consideration the national case law and the jurisprudence of the European Court of Human Rights in similar cases.

**Slovakia:** the rates and tariffs are not laid in law.

**Slovenia:** the Protection of Right to Trial without Undue Delay Act gives a party to court proceedings the right to have his rights, duties and any charges brought against him in his case before the court to be decided upon by the court without undue delay. The amount of monetary compensation for an individual case is limited by law to the figures between 300 and 5000 EUR. When deciding on the amount of compensation, the criteria that are taken into account are in particular the complexity of the case, actions of the State, actions of the party and the importance of the case for the party. The procedure of compensation in the case of wrongful arrest and wrongful condemnation is regulated by the Criminal Procedure Act. Chapter 32 is entitled Proceedings for compensation, rehabilitation and the exercise of other rights of unjustifiably convicted or arrested persons. The tariff, offered by the State Attorney's Office for wrongful arrest is 300 EUR per day, if the detention lasted from 1 to 3 days, while it is 42 € per day for more than 3 days.

**Sweden:** financial compensation for a wrongful arrest/wrongful condemnation can be received for suffering, loss of income and expenses. Suffering is normally compensated with approximately 85-115 € per day, but the amount can - depending on the circumstances in the case - be lower or (in some extraordinary cases) much higher. Compensation can be awarded by the Chancellor of Justice or decided by court. Damages for excessive length of proceedings is awarded according to the case-law of the European Court of Human Rights.

**Switzerland:** a) In general, compensation for excessive length of proceedings is mandatory in the context of an appeal to the higher judicial supervisory body which, as a matter of priority, will attempt to repair the damage by ordering the relevant authority to give priority to dealing with the case in question and may award compensation. b) Wrongful arrest and conviction: Articles 429 et seq. of the Swiss Code of Criminal Procedure govern the question of damages and reparation of the non-pecuniary damage sustained by the accused and the complainant. In principle, compensation is calculated based on the damage sustained and not on a daily rate. Some cantons do have rates for each day of wrongful arrest.

**Ukraine:** an amount of compensation is defined by the court in each particular case.

Of the four circumstances presented in this table:

1. 22 states or entities have set up a compensation procedure for the **4 circumstances** contained in the questionnaire (a) excessive length of proceedings, (b) non-execution of court decisions, (c) wrongful arrest and (d) wrongful conviction: **Andorra, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, France, Germany, Greece, Hungary, Ireland, Republic of Moldova, Montenegro, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Spain, Sweden** and "**the former Yugoslav Republic of Macedonia**".
2. 10 states have set up a compensation procedure for the **3 following circumstances** only (a) excessive length of proceedings, (c) wrongful arrest and (d) wrongful conviction: **Croatia, Czech Republic, Denmark, Finland, Iceland, Italy, Lithuania, Slovakia, Slovenia** and **Switzerland**.
3. 2 states have set up a compensation procedure for the **3 following circumstances** only (b) non execution of court decisions, (c) wrongful arrest and (d) wrongful conviction: **Albania**, and **Turkey**.
4. 7 states have set up a compensation procedure for the **2 following circumstances** only (c) wrongful arrest and (d) wrongful conviction: **Armenia, Estonia, Latvia, Luxembourg, Netherlands, Ukraine** and **UK-England and Wales**.
5. In **Belgium** and **Malta**, compensation is available for the two following categories: (a) excessive length of proceedings and (c) wrongful arrest. In **Belgium**, there is also a possibility to claim compensation for a wrongful pre-trial detention.
6. In **Georgia, UK-Northern Ireland** and **UK-Scotland**, the only compensation available is in the category of (c) wrongful arrest.

In addition to the possibility of a compensation procedure, in almost all of the responding states or entities (42) there is a national or local procedure for filing a complaint on the functioning of the judicial system (for example the handling of a case by a judge or length of proceedings). Only in **Ireland**<sup>18</sup>, **Monaco, UK-England and Wales, UK-Northern Ireland** and **UK-Scotland** such a facility does not exist.

Various organs or authorities can be entrusted with the examination and processing of the complaint. It can be the court concerned, a higher court, the Ministry for Justice, the Judicial Council or another external body, such as the ombudsman.

Generally, there are always several bodies to which it is possible to address complaints. In the majority of cases, the relevant court is the one responsible. Courts of higher instance, the Ministry of Justice or a Council for the Judiciary may also be responsible for dealing with such complaints. The shared configuration of the complaint (a mixed configuration between 2 and 5 authorities) is a recurrent feature.

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<sup>18</sup> Draft legislation has recently been published in Ireland (August 2010) which would establish a complaint procedure concerning judicial misconduct.

It is relevant to know if this body is also given a timeframe within which to reply to the complaint, as well as a timeframe for processing the complaint. Thirty six states or entities (32 in the previous exercise) among the 42 which set up a national complaint system are given a timeframe to reply to the complaint. Apart from **Albania, Bulgaria, Croatia, France, Germany, Greece, Montenegro, Norway, Romania** and **Sweden**, these states or entities are also given a timeframe to process the complaint. **Luxembourg** indicates the existence of timeframes to process with the complaint, but no timeframes for replying.

It is not always easy for a court user to understand whom he/she should contact to file a complaint about dysfunctions of the judicial system. However, imposing deadlines for the relevant bodies to reply to the complaint enables dissatisfied users to know that they have been heard. In order to carry out a genuine analysis of the efforts of the public justice service to assist these users, it would also be necessary to be able to analyse the substantive follow-up action taken with regard to the complaints.

**Table 4.6 Time limits given to the authorities responsible for responding to and dealing with complaints about the functioning of the judicial system (Q40, Q41)**

States/entities	Procedure for making complaints about the functioning of the judicial system ?	Time limit to respond					Time limit for dealing with the complaint				
		①	②	③	④	⑤	①	②	③	④	⑤
Albania											
Andorra											
Armenia											
Austria											
Azerbaijan											
Belgium											
Bosnia and Herzegovina											
Bulgaria											
Croatia											
Cyprus											
Czech Republic											
Denmark											
Estonia											
Finland											
France											
Georgia											
Germany											
Greece											
Hungary											
Iceland											
Ireland											
Italy											
Latvia											
Lithuania											
Luxembourg											
Malta											
Republic of Moldova											
Monaco											
Montenegro											
Netherlands											
Norway											
Poland											
Portugal											
Romania											
Russian Federation											
Serbia											
Slovakia											
Slovenia											
Spain											
Sweden											
Switzerland											
The FYROMacedonia											
Turkey											
Ukraine											
UK-England and Wales											
UK-Northern Ireland											
UK-Scotland											
<b>Number of countries</b>	<b>42</b>	<b>24</b>	<b>21</b>	<b>17</b>	<b>20</b>	<b>15</b>	<b>19</b>	<b>19</b>	<b>11</b>	<b>17</b>	<b>12</b>
Israel											

■ Yes  
■ No

Average number of countries/entities	
① Court concerned	22
② Higher court	20
③ Ministry of Justice	14
④ High Council of the Judiciary	19
⑤ Other external bodies	14

**Comments:**

**Albania:** the Ministry of Justice and the High Council of Justice are the authorities responsible for investigating complaints on different subjects concerning the functioning of the judicial system. The law on information provides 40 days for the public authority to deal with the case, except in certain specific cases. (When it is the Ministry of Justice that treats the complaints, there is a period of time to treat the claims of between 1 to 15 days, in order for claims to be rapidly resolved).

**Armenia:** 1. The following shall have the right to instigate disciplinary proceedings against first instance and appellate court judges and chairmen: The Minister of Justice and the Disciplinary Committee of the Justice Council.

2. The following shall have the right to instigate disciplinary proceedings against a Cassation Court chamber judge and chamber chairman: The Cassation Court Chairman and the Disciplinary Committee of the Justice Council, upon motion by the Ethics Committee of the Council of Court Chairmen.

3. The Disciplinary Committee of the Justice Council, upon motion by the Ethics Committee of the Council of Court Chairmen, has the right to file disciplinary proceedings against the Cassation Court Chairman.

**Austria:** if a court is dilatory in taking any procedural step, according to the Courts Act, any party may submit a request to this court for the superior court to impose an appropriate time limit for the taking of the particular procedural step. If the court takes all procedural steps specified in the request within four weeks of receipt and informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request.

**Azerbaijan:** every citizen has the right to file a complaint to the court about the decisions and acts (inactions) of the state and local bodies, organizations, departments, non-government organizations and officials. The ombudsman has the right to investigate the complaints relating to violation of human rights connected with undue delays, loss of and non-issuing the documents in time in first instance courts, as well as the delay of execution of court decisions. The complaint is to be considered within 30 days, but if it is necessary to investigate or demand additional material the term may be extended for 1 month. Besides that, on the basis of the request of the applicant, the term may be extended for a longer period.

**Belgium:** the High Council of Justice is responsible for receiving all complaints concerning the operation of justice. Disciplinary authorities are competent to deal with complaints against individual judges.

**Bosnia and Herzegovina:** when a complaint is filed against a judge to a court or Ministry of Justice, it is their obligation to immediately forward the complaint to the High Judicial and Prosecutorial Council which has 5 days' time to acknowledge receipt of the complaint and, all in all, up to two years to investigate the complaint and make a final decision about it, meaning whether to initiate disciplinary proceedings or to reject it as ill-founded. If a complaint is filed against a court employee, then the president of the court is responsible for making a final decision about the complaint, but no time limits are given in the law. There is no time limit for the Ministry of Justice or the ombudsman institution.

**Croatia:** there are no national legal provisions prescribing a mandatory time limit for the Ministry of Justice, but in practice the Ministry of Justice responds/deals with the complaint within 45 days. According to the Law on courts, which entered into force in March 2013, everyone has the right to submit written or oral complaints to the President of the Court about the work of the court judge because of delays in the proceedings in which a party has a legal interest or because of inappropriate or improper conduct by the judge and the employees in official relations with the party that is contrary to the code of ethics, and to receive a reply. The President of the Court is obliged to respond to the petition no later than 30 days from its receipt, but the above mentioned law on Courts entered into force in March 2013, so in 2012 there was no time limit for dealing with the complaint for all types of court.

**Denmark:** complaints against judges can be submitted to the president of the court concerned or to the Special Court of Indictment and Revision, which deals with, inter alia, complaints against judges and deputy judges. There is a time limit 4 weeks from the time when the complainant becomes aware of the cause of the complaint. The Special Court of Indictment and Revision can disregard the fact that the time limit has been exceeded under certain circumstances. There is no time limit for dealing with such complaints.

**Estonia:** on 1 September 2011, the regulation of the expedition of the proceedings for civil and criminal cases entered into force. The regulation allows the parties to the proceeding to request the court to take a suitable measure for expediting the completion of the court proceeding if the court fails to perform a necessary procedural act without good reason in order to ensure the conduct of the court proceeding within a reasonable period of time. If the court considers the application reasoned, it orders, within 30 days from receipt of the application, the implementation of such a measure which is presumed to make it to complete the court proceeding within a reasonable period of time. The same regulation entered into force on 1 January 2012 for administrative cases.

**Finland:** the institutions which receive such complaints have an obligation to respond. The Chancellor of Justice, along with the Parliamentary Ombudsman, is the supreme guardian of the law in Finland. Questions concerning High Council of the Justice: NAP in Finland.

**France:** the state is required to redress the damage caused by the malfunctioning of the justice system in the event of gross negligence or a denial of justice. Citizens may, for example, complain of excessive length of proceedings. In 2012, 100 referrals for malfunctioning of the judicial system were made to the Ministry of Justice. The Ministry of Justice will also opt to settle where the dysfunction is unquestionable, especially in case of excessive length of proceedings. The average amount of a proposed settlement is 3 000 €.

**Georgia:** a person is entitled to file the complaint to the High Council of Justice of Georgia, which shall examine the grounds of such a complaint and make the decision whether to start disciplinary proceedings in two months or not. If the judge receives a disciplinary sanction and the decision is served accordingly, the disciplinary case is transferred to the Disciplinary Board for consideration. The Disciplinary Board considers the case within 2 months. The decision of the Disciplinary Board can be appealed to the Disciplinary Chamber of the Supreme Court within 10 days. Disciplinary proceedings will be considered by the Disciplinary Chamber within a month from the moment of submission of the complaint. If there are objective circumstances, the Chief Justice may extend the period of disciplinary proceedings for a month.

**Hungary:** everybody may file a complaint – in an oral, written or electronic way – to the head of the affected court or the president of NOJ. The complaint shall be considered within 30 days of receipt.

**Iceland:** if the Chief Judge considers that the professional conduct, performance of a judge or his/her private conduct is reprehensible and the provisions of the second paragraph are not applicable, s/he can request, orally or in writing, that the judge corrects the matter. If a request made in accordance with the first paragraph is not successful, or if the person in charge of the court considers the matter so serious that a request of this kind is not suitable, the person in charge of the court shall refer the matter to the Committee on Judicial Functions in writing, stating the reasons.

**Italy:** citizens can submit their complaints to the Ministry of Justice. Once the Ministry has received a complaint they can ask the "Inspectorate Body" to investigate the issue further.

**Lithuania:** the review of complaints is an administrative procedure. Time Limits for the Administrative Procedure: the administrative procedure shall be completed and the decision on the administrative procedure shall be adopted within 20 working days from the beginning of the procedure. Where, due to objective reasons, the administrative procedure cannot be completed within the set time limit, the entity of public administration that has initiated the administrative procedure may extend it for a period not longer than 10 working days. A person shall be notified about the extension of the time limit for the administrative procedure in writing or by e-mail (where the complaint has been received by e-mail) and the reasons for the extension (Article 31 of Law on Public Administration). Other: Judicial Court of Honour and Judicial Ethics and Discipline Commission (for violation of other requirements of the Code of Ethics of Judges; for non-compliance with the limitations on the work and political activities of judges provided by law).

**Luxembourg:** complaints against judges and/or prosecutors or their way of handling cases can be brought to the attention of the Public Prosecutor General, as well as of the President of the Superior Court of Justice. This legal situation will probably change with the planned instauration of a High Council of Judiciary, as this council will probably have competence in disciplinary matters, as the project stands now. Neither the Ministry of Justice, nor the Ombudsman have any competence to deal with complaints about the judicial functioning of the courts.

**Malta:** though all complaints on the administration of justice are addressed to the Commission for the Administration of Justice, an ad hoc procedure exists wherein, when a case has been adjourned for judgment for over three years, any one of the parties may personally write to the Chief Justice, requesting the case to be transferred from one judge/magistrate to another, and the Chief Justice, after considering the case, may choose to transfer the case or retain the case before the presiding Judge/Magistrate.

**Montenegro:** complaints on the work of the judge can be filed to the president of the court in which the judge performs his/her function. In the Supreme Court of Montenegro, there is an Office for reception of the complaints of the citizens. Every citizen can file a complaint to this Office. In accordance with art. 128 of the Constitution of Montenegro, one of the competences of the Judicial Council is to analyse petitions and complaints about the work of judges, and to define stands upon these. The Control request is filed to the president of the referred court who is obliged to decide upon the request in 60 days. If the president of the court rejects the Control request or omits to decide in due time, the complaint can be filed to the president of the court of higher instance in 8 days. The president of the court of higher instance is obliged to decide upon a complaint within 60 days from the receipt of the complaint. The decision upon Claim for Fair Redress is the competence of the Supreme Court, which is obliged to decide upon claim in 4 months since the receipt of the complaint. The Ministry of Justice shall perform supervision in the courts through its authorized officer in relation to the handling of applications and complaints. If the authorized officer finds irregularities in the course of supervision, he or she shall issue a warning to the president of the court or a judge and give them 15 days to rectify the irregularities found. In accordance with The Rules of Procedure of The State Prosecution Office complaints about the work are filed to the state prosecutor for deputy prosecutor or officer, and to the directly higher state prosecutor for lower state prosecutor. On the complaint or statement the state prosecutor is obliged to inform the person filing a complaint in the time frame of 15 days.

**Netherlands:** since 1<sup>st</sup> of January 2002 a uniform complaints procedure is applicable to all courts. The time limit to respond/acknowledge receipts of a complaint is a.s.a.p. The time limit for deciding on the complaint is < 6 weeks. This period can be prolonged by 4 weeks, if the court administration decides to act up a complaint committee. All answers in the three columns concerning 'Ministry of Security and Justice', 'Higher court', 'High Council of the Judiciary', and 'Other...' = NAP. All answers third column 'No time limits' = NAP

**Norway:** parties can forward complaints to the concerned court concerning a specific case, for example on the duration of proceedings. In civil cases a party can make a petition to the Chief Judge asking for his/her interference. The decision of the Chief Judge can be appealed to the Higher court. General complaints regarding the overall functioning of the Judiciary can be forwarded to the National Courts Administration or to the Ministry of Justice. However, there are no established procedures related to the handling of such complaints.

**Portugal:** the Portuguese Ombudsman is an independent State agency with the primordial function of defense and promotion of the citizens' fundamental rights. The efficiency of the intervention of the Portuguese Ombudsman is also emphasized by short investigation periods of the complaint procedures whose decision must be pronounced in no more than one year, after its inception. Although the Statute of the Portuguese Ombudsman does not provide a deadline (to reply to the complainant or to conclude the analysis of the complaint), there are internal regulations that provide:

- Immediate preliminary assessment;
- 8 days for computer processing of data;
- Immediate dispatch to the complainant of a letter acknowledging receipt of the complaint;
- 30 days to hear the entity addressed;
- Review the matter within 30 days from receipt of the explanations of the appropriate entity;
- Maximum period of 12 months for a final decision, unless otherwise authorized.

**Romania:** the petitions within the competence of the Superior Council of Magistracy, about the way of accomplishment of the judicial system attributions may be addressed either directly to the Council, by a petition formulated in writing, either by the leaders of the courts or prosecutor's offices. The Council has a petition form published on its own web site. The petitions may aim inclusively at the activity of judges and prosecutors, of courts and prosecutor's offices, if the notified aspects are within the limit of the SCM competence. The time-limit to answer to these complaints (petitions) is the legal one: 30 days from their registration date.

**Russian Federation:** written and electronic applications shall be registered by State bodies (including courts) within 3 days after having been received. If the problem described in the application is beyond the competence of the State body that has received it, the application shall be forwarded to the competent authority within 7 days after its registration, and the applicant shall be notified accordingly. Article 12 of the law sets a 30 days' time limit for the resolution of written and electronic applications (the term is counted from the date of registration). In exceptional cases the term can be extended for up to 30 days.

**Slovakia:** the complaint has to be responded by the president of the court within 30 days.

**Slovenia:** according to the Act on the Protection of the Right to a Trial without Undue Delay the party in the proceedings who feels that his/her right has been violated has three legal remedies:

- the supervisory appeal (motion to expedite the hearing of the case); If the president of the court rejects the supervisory appeal or fails to answer to the party within two months or fails to send the notification within the said deadline or if appropriate procedural acts were not performed within deadlines set in the notification or ruling of the president of the court, the party may file the motion for a deadline. If the president of the court rejects the supervisory appeal or fails to answer to the party within two months or fails to send the notification within the said deadline or if appropriate procedural acts were not performed within deadlines set in the notification or ruling of the president of the court, the party may file the motion for a deadline.

- the motion for a deadline (motion to set a deadline);

- the claim for just satisfaction.

**Spain:** regarding complaints about the functioning of the courts, the General Council of the Judiciary acknowledges receipt in 48 hours and responds within a month. In relation to complaints about the Ministry of Justice's administrative units, upon receipt of the complaint by the respective department, the citizen will be informed within a period of twenty days of the actions carried out, and the relevant measures are taken within six months' time.

**Switzerland:** in general, when citizens complain of a dysfunction within a court, they may lodge a complaint with the supervisory authority of the court in question. These are the canton supreme courts for the canton courts of first instance, and the judicial services councils and the Federal Court for the courts of first instance of the Confederation.

**"the former Yugoslav Republic of Macedonia":** the Ministry of Justice has competence to examine the complaints by citizens about the work of the courts related to the delay of court proceedings as well as about the work of court services. At least once a month, there will be public session of the Council discussing all petitions and grievances submitted by citizens and legal entities, regarding the work of judges and courts. The Ombudsman shall undertake actions and measures for protection against unjustified delay of court proceedings or unconscientious and irresponsible performance of the work of the court's services, hence not infringing the principles of independence and autonomy of the judicial authority.

**UK-England and Wales:** the only way to challenge a judicial decision or judicial case management is by appeal or judicial review as appropriate in relation to a specific case. There is, however, an official body (Judicial Conduct Investigations Office) which handles complaints about the personal misconduct of a judge, but this will not affect the case or its outcome. Some examples of misconduct are the use of racist, sexist or offensive language, general rudeness, conflict of interest, criminal convictions or failure to fulfil judicial obligations or duties, such as failing to meet sitting requirements or failing to produce a judgment within a reasonable timeframe.

**UK-Northern Ireland:** complaints and possible disciplinary matters will be investigated in accordance with the Lord Chief Justice's Code of Practice on complaints.

**UK-Scotland:** the usual way to challenge a decision is to appeal. Information about complaints regarding the judiciary are available on the Judiciary of Scotland website: (<http://scotland-judiciary.org.uk/23/0/Judicial-Office-for-Scotland>) Complaints regarding the administrative functions of the courts are dealt with by the Scottish Court Service. The website contains contact details and a complaints procedure: (<http://www.scotcourts.gov.uk/footer-pages/bottom-menu-bar/complaints-and-feedback>)

#### 4.6 Assessment of the satisfaction of users

Information about the level of court users' and court personnel's (judges and staff) satisfaction with (and trust in) the courts are relevant tools for the policies of quality of judicial systems. Within its framework, the CEPEJ has adopted a report and a model survey and its subsequent guide of methodology prepared by Jean-Paul Jean and H  l  ne Jorry<sup>19</sup>.

Surveys to measure the level of satisfaction are conducted with persons who have actually had contact with a court (litigants, victims, lawyers, other legal professionals - legal experts, interpreters, representatives of government agencies, etc.), and have been directly involved in the procedure (e.g. parties, victims). General surveys of opinion which measure only general representations of justice at a given time are not feasible. This also applies to satisfaction surveys conducted among court staff (judges and non-judge court) or the public prosecution system (prosecutors or non-prosecutor staff).

Thirty-two states or entities have indicated that they use such surveys aimed at court users or legal professionals. In 15 States or entities such surveys do not exist (see next table). Small states do not often organize satisfaction surveys (**Andorra, Cyprus**); this may be due to greater proximity between court users, professionals and the courts.

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<sup>19</sup> CEPEJ Study n  14 "Report on conducting satisfaction surveys aimed at Court users in Council of Europe's member States".

Table 4.7 Surveys conducted among legal professionals or litigants to measure public confidence and/or satisfaction (Q38) at national or court level (Q39)

States/entities	Surveys at national level		Surveys at court level		Persons targeted by surveys							Total	
	Regular	Occasional	Regular	Occasional	Professionals				Litigants				
					Judges	Court staff	Public prosecutors	Lawyers	Parties	Other court users	Victims		
Albania													0
Andorra													0
Armenia													0
Austria													6
Azerbaijan													6
Belgium													2
Bosnia and Herzegovina													0
Bulgaria													0
Croatia													0
Cyprus													0
Czech Republic													0
Denmark													7
Estonia													4
Finland													4
France													2
Georgia													5
Germany													7
Greece													0
Hungary													3
Iceland													0
Ireland													6
Italy													3
Latvia													3
Lithuania													3
Luxembourg													0
Malta													0
Republic of Moldova													0
Monaco													2
Montenegro													0
Netherlands													7
Norway													6
Poland													2
Portugal													1
Romania													7
Russian Federation													7
Serbia													0
Slovakia													0
Slovenia													5
Spain													3
Sweden													7
Switzerland													4
The FYROMacedonia													5
Turkey													2
Ukraine													1
UK-England and Wales													1
UK-Northern Ireland													6
UK-Scotland													6
<b>Number of countries</b>	<b>17</b>	<b>18</b>	<b>11</b>	<b>21</b>	<b>17</b>	<b>18</b>	<b>18</b>	<b>22</b>	<b>26</b>	<b>18</b>	<b>14</b>		
Israel													

Yes  
No

It may be noted that 6 states (**Denmark, Germany, Netherlands, Romania, Russian Federation, and Sweden**) have indicated that they organize surveys at all levels (court users, professionals), which demonstrates their efforts to ensure that the service of justice is consistent with the expectations of users and those who work there daily.

The largest category of those who organize surveys are the states or entities that conduct surveys aimed not only at some court users (parties, victims, other users) but also at some professionals who are "attached" to the court (judges, court staff) and those who may not be, such as lawyers and prosecutors.

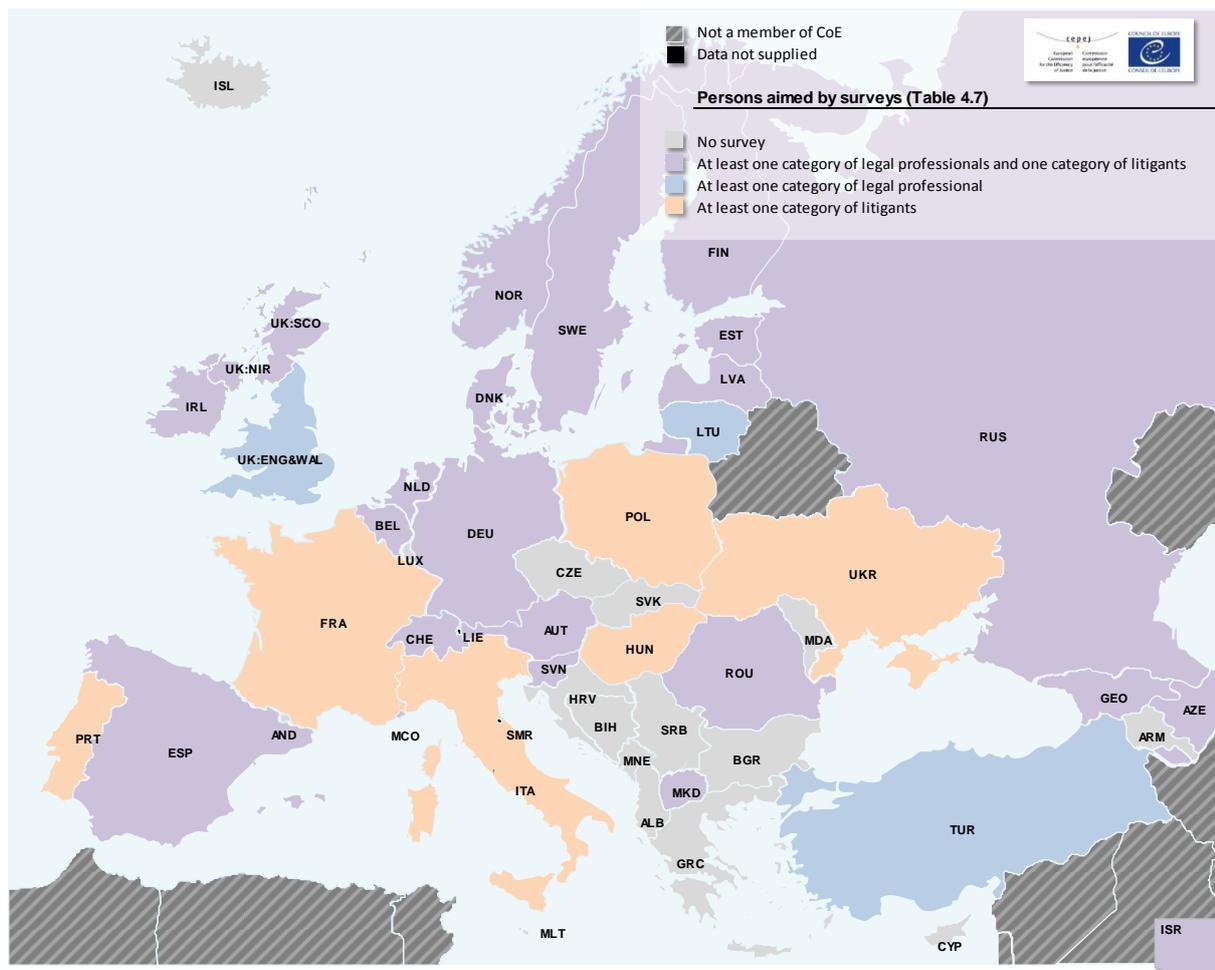
In 5 countries (**France, Hungary, Poland, Portugal and Ukraine**) only court users are concerned by the surveys, while in 3 states (**Lithuania, Turkey and UK-England and Wales**) surveys are only for justice professionals.

The category of victims is least concerned by satisfaction surveys, and logically, parties to proceedings are the ones who are most frequently consulted.

As for the concerned professionals involved in the surveys, they vary from state to state: judges and prosecutors in **Turkey**, all professionals in **Austria, Azerbaijan, Denmark, Germany, Ireland, Netherlands, Norway, Romania, Russian Federation, Slovenia, Sweden** and "**the former Yugoslav Republic of Macedonia**" or judges and lawyers in **Spain**. The least consulted professional categories are judges and prosecutors, although it should be noted that the four professional categories are consulted in almost the same way.

Nonetheless, these results need to be put into perspective in light of the frequency of the surveys and of the authority of these surveys (surveys conducted at court or State level). Indeed, a state having completed only one occasional survey may for example be present in the table in the same category as other states which have conducted frequent surveys thus allowing to measure the evolution of opinions and to improve the judicial institution's answers.

**Figure 4.8 Distribution of regular or occasional surveys by legal professionals or litigants (Q38)**



#### 4.7 Trends and conclusions

Information available for court users is a growing trend in Europe. Easy access to certain types of information seems to gradually become a European standard. Indeed, there is a trend in European countries according to which individuals and legal professionals can access information about the most important relevant laws, courts' jurisdiction and functioning, and follow-up of the proceedings that involve them easily and free of charge via the internet. The availability of specific information intended for victims of crime, seems to be growing as it is foreseen in 43 states or entities. Another trend is apparent: specific arrangements are developing in Europe in order to inform the (potential) users of the courts about the foreseeability of procedures (i.e. the expected timeframes of a procedure) (6 in 2008 edition, 12 for the preceding edition and 17 for this evaluation exercise).

With respect to vulnerable persons (even if the definition of vulnerability may be different among the states or entities concerned), rape victims, child victims and perpetrators are the most protected categories in legal proceedings. This is done mostly by providing these categories with special hearing arrangements during the investigation and the organization of the hearing. In 40 states or entities, public prosecutors have a particular role to play in assisting the victims of crimes.

The majority of countries also have a compensation procedure for victims of crime. Often a public fund is set up. As part of the protection of the court users against dysfunctions of the courts, judicial systems may implement compensation procedures. In 34 countries or entities, there is a compensation mechanism for excessively long proceedings and in 24 countries or entities, compensation for non-enforcement of a court decision exists. Almost all countries have provisions for compensating a person in cases of wrongful arrest or wrongful conviction.

The attention devoted to the expectations and needs of court users is increasing. There is a growing trend in Europe towards the introduction and use of specific tools, such as surveys, to evaluate the court users' level

of satisfaction or public confidence in courts. In many European countries, it is common practice to conduct a survey at national level or court level on a regular basis. The model survey and the methodological guide provided by the CEPEJ facilitate future implementation of surveys conducted among court users to improve the quality of the public service of justice (a training program by the CEPEJ is available for the courts, at their request, to be addressed to the Secretariat: [www.coe.int/cepej](http://www.coe.int/cepej)).

## Chapter 5. Courts

A *court* is defined in the explanatory note as a “body established by law and appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis”.

The major on-going or planned reforms of the court systems are listed in Chapter 17.

### 5.1 Court organisation

#### 5.1.1 1<sup>st</sup> instance courts of general jurisdiction and specialised 1<sup>st</sup> instance courts and geographic locations

In this section, a distinction is made between:

- *first instance courts of general jurisdiction (legal entities)*: these courts deal with all issues which are not attributed to specialised courts owing to the nature of the case,
- *first instance specialised courts (legal entities)*,
- *all courts considered as geographical locations*: these are premises or court buildings where judicial hearings take place. If there are several court buildings in the same city, they must be taken into account. The figures include the locations for first instance courts of general jurisdiction and first instance specialised courts, as well as the locations for High Courts and/or Supreme Courts.

**Table 5.1 Number of 1st instance courts as legal entities and number of all the courts as geographic locations from 2008 to 2012 (Q1, Q42)**

States/entities	1st instance courts of general jurisdiction (legal entities)				Specialised 1st instance courts (legal entities)				Total number of 1st instance courts (legal entities) in 2012	% of specialised 1st instance courts in 2012	Total number of 1st instance courts per 100 000 inhab. in 2012	All the courts (geographic locations)			
	2008	2010	2012	Variation 2008 - 2012 (absolute numb.)	2008	2010	2012	Variation 2008 - 2012 (absolute numb.)				2008	2010	2012	Variation 2008 - 2012 (absolute numb.)
Albania	22	22	22	0,00%	1	1	1	0,00%	23	4,35%	0,82	31	33	31	0,00%
Andorra	1	2	2	100,00%	NAP	NAP	NAP	NC	NC	NC	NC	1	3	3	200,00%
Armenia	16	16	16	0,00%	1	1	1	0,00%	17	5,88%	0,56	20	27	21	5,00%
Austria	154	154	154	0,00%	7	7	7	0,00%	161	4,35%	1,90	149	149	149	0,00%
Azerbaijan	85	85	86	1,18%	19	18	18	-5,26%	104	17,31%	1,13	112	111	111	-0,89%
Belgium	27	27	27	0,00%	262	262	262	0,00%	289	90,66%	2,59	288	288	288	0,00%
Bosnia and Herzegovina	64	64	67	4,69%	NAP	5	5	NC	72	6,94%	1,88	93	98	98	5,38%
Bulgaria	156	NA	113	-27,56%	33	34	34	3,03%	147	23,13%	2,02	182	184	70	-61,54%
Croatia	67	66	67	0,00%	123	70	74	-39,84%	141	52,48%	3,31	190	154	158	-16,84%
Cyprus	7	6	6	-14,29%	11	11	14	27,27%	20	70,00%	2,31	18	18	21	16,67%
Czech Republic	86	86	86	0,00%	NAP	NAP	NAP	NC	NC	NC	NC	98	98	98	0,00%
Denmark	24	24	24	0,00%	1	1	2	100,00%	26	7,89%	0,46	30	29	29	-3,33%
Estonia	4	4	4	0,00%	2	2	2	0,00%	6	33,33%	0,47	22	22	22	0,00%
Finland	51	27	27	-47,06%	11	11	11	0,00%	38	28,95%	0,70	131	82	82	-37,40%
France	484	774	778	60,74%	1 251	1 157	1 156	-7,59%	1 934	59,77%	2,95	900	630	640	-28,89%
Georgia	61	40	26	-57,38%	NAP	NAP	NAP	NC	NC	NC	NC	64	43	29	-54,69%
Germany	NA	777	765	NC	NA	256	250	NC	1 015	24,63%	1,27	NA	1126	1108	NC
Greece	435	462	402	-7,59%	4	4	NA	NC	NC	NC	NC	435	462	402	-7,59%
Hungary	131	131	131	0,00%	20	20	20	0,00%	151	13,25%	1,52	157	157	157	0,00%
Iceland	8	8	8	0,00%	2	2	2	0,00%	10	20,00%	3,11	9	10	10	11,11%
Ireland	3	3	3	0,00%	1	1	1	0,00%	4	25,00%	0,09	130	119	105	-19,23%
Italy	1 231	1 231	1 231	0,00%	87	87	87	0,00%	1 318	6,60%	2,21	1 378	1 378	1 378	0,00%
Latvia	34	34	34	0,00%	1	1	1	0,00%	35	2,86%	1,71	42	48	48	14,29%
Lithuania	59	59	59	0,00%	5	5	5	0,00%	64	7,81%	2,13	67	67	67	0,00%
Luxembourg	5	5	5	0,00%	5	5	3	-40,00%	8	37,50%	1,52	8	8	8	0,00%
Malta	1	1	1	0,00%	7	7	7	0,00%	8	87,50%	1,90	2	2	2	0,00%
Republic of Moldova	46	46	46	0,00%	2	2	2	0,00%	48	4,17%	1,35	55	55	54	-1,82%
Monaco	1	1	1	0,00%	4	4	4	0,00%	5	80,00%	13,84	1	1	1	0,00%
Montenegro	17	17	15	-11,76%	3	3	3	0,00%	18	16,67%	2,90	22	22	22	0,00%
Netherlands	19	19	19	0,00%	1	1	1	0,00%	20	5,00%	0,12	64	64	60	-6,25%
Norway	66	66	66	0,00%	2	2	2	0,00%	68	2,94%	1,35	75	74	73	-2,67%
Poland	364	365	287	-21,15%	30	28	26	-13,33%	313	8,31%	0,81	690	705	827	19,86%
Portugal	231	217	231	0,00%	95	109	102	7,37%	333	30,63%	3,18	336	336	318	-5,36%
Romania	179	235	233	30,17%	10	10	10	0,00%	243	4,12%	1,14	246	246	244	-0,81%
Russian Federation	10 082	9 978	9 381	-6,95%	82	92	NAP	NC	NC	NC	NC	NA	NA	3024	NC
Serbia	138	60	60	-56,52%	17	62	62	264,71%	122	50,82%	1,69	199	129	129	-35,18%
Slovakia	54	54	54	0,00%	12	9	9	-25,00%	63	14,29%	1,16	68	64	64	-5,88%
Slovenia	55	55	55	0,00%	5	5	5	0,00%	60	8,33%	2,91	66	66	66	0,00%
Spain	2 109	2 243	2 349	11,38%	1 305	1 433	1 458	11,72%	3 807	38,30%	8,27	743	749	763	2,69%
Sweden	76	60	60	-21,05%	11	12	12	9,09%	72	16,67%	0,75	134	95	95	-29,10%
Switzerland	295	259	198	-32,88%	82	81	140	70,73%	338	41,42%	4,20	462	405	359	-22,29%
The FYROMacedonia	25	25	25	0,00%	3	3	3	0,00%	28	10,71%	1,36	33	34	34	3,03%
Turkey	4 141	4 298	4 349	5,02%	1 617	1 437	2 107	30,30%	6 456	32,64%	8,54	5758	750	652	-88,68%
Ukraine	726	720	719	-0,96%	54	NAP	NAP	NC	NC	NC	NC	783	788	767	-2,04%
UK-England and Wales	543	627	497	-8,47%	NA	NA	NA	NC	NC	NC	NC	573	631	500	-12,74%
UK-Northern Ireland	27	27	27	0,00%	NAP	NAP	NAP	NC	NC	NC	NC	0	NA	NA	NC
UK-Scotland	72	99	99	37,50%	NAP	NAP	NAP	NC	NC	NC	NC	76	64	64	-15,79%
Average	489	513	488	-0,24%	133	132	156	16,87%	463	26,18%	2,37	513	513	288	-43,80%
Median	63	60	60	-4,00%	10	8	8	-20,00%	66	16,99%	1,70	60	60	89	48,74%
Minimum	1	1	1	0,00%	1	1	1	0,00%	4	2,86%	0,09	1	1	1	0,00%
Maximum	10 082	9 978	9 381	-6,95%	1 617	1 437	2 107	30,30%	6 456	90,66%	13,84	9978	9978	3024	-69,69%
Israel			29				5		34	14,71%	0,43			43	

## Comments:

**Albania:** there is one first instance specialized court, competent in certain types of disputes, for example the Administrative Court or the First Instance Court for Serious Crimes. A decree of the President of the Republic no.7818 dated 16 November 2012 establishes the organisation of administrative courts in 6 judicial districts and 1 Appeal Court. Administrative courts started in November 2013.

**Armenia:** there are more geographic locations (21) than legal entities (17) since some courts, such as the Administrative Court, are divided into several buildings.

**Austria:** other specialised 1st Instance Courts: 2 civil law courts (in Vienna and Graz); the sum of the numbers in the categories exceeds the total number of specialised courts because the labour and social court in Vienna is one court that is competent for labour and (some) social welfare cases. If there was more than one court in one single place (e.g. a Regional court and a county court in the same building), we counted only one establishment.

**Azerbaijan:** there are 7 commercial-administrative courts. In the future it is planned to split them into separate courts.

**Belgium:** 5 first instance courts have specialized chambers for penalties enforcement. Indeed, the penalty enforcement court is in reality a specialized chamber. In "other" specialized courts, there are Justices of the Peace (187) along with police courts (31).

**Bosnia and Herzegovina:** in May 2010, 5 commercial courts of first instance were created.

**Bulgaria:** one specialized Criminal Court of the Republic of Bulgaria was established in 2011. Specialized courts regarding the perpetrators of crimes are military courts; and regarding the subject of crime activity - administrative courts and the specialized criminal court. Its jurisdiction covers criminal cases of a general nature for crimes carried out throughout the Republic of Bulgaria. The Specialized Criminal Court is treated as a District Court and is situated in Sofia. The criteria for determining the jurisdiction of the trials before the Specialized Criminal Court is the subject of the case, not the type of perpetrator.

**Croatia:** the significant decrease in the number of specialized courts between 2008 and 2012 (from 123 to 74) is the result of a reform to rationalize the judicial system. The other specialised first instance courts are all misdemeanour courts and the Municipal Criminal Court in Zagreb.

**Denmark:** the Maritime and Commercial Court has been classified as a commercial court. However, it also deals to a great extent with insolvency cases (bankruptcies etc.), but not exclusively. So there is an overlap with the category 'Insolvency courts'. The other specialized 1<sup>st</sup> instance court is the Land Registration Court.

**Estonia:** Estonia has 17 county courts (first instance courts), 4 administrative courts (first instance courts), 2 circuit courts (second instance court) and a Supreme Court (the highest court). However, as some courts are gathered in the same buildings (e.g. Administrative Court and the circuit court in Tallinn), and considering that the county court of Pärnu is located in two buildings, there are currently 22 geographic locations for the different courts. Estonia has no specialized first instance court other than administrative courts. All cases are handled by courts of first instance.

**Finland:** in early 2010, the number of district courts decreased from 51 to 27. The 82 geographic locations represent: 27 district courts, 13 "Branch offices" of the district courts, 23 courtrooms within district courts, 3 specialized courts, 8 administrative courts, 6 courts of appeal, the Supreme Court and the Supreme Administrative Court. In specialised courts, there are 8 Administrative Courts, 1 Market Court, 1 Labour Court and 1 Insurance Court. Then there is the High Court of Impeachment that hears charges against Ministers (i.e. Members of the State Council), Chancellor of Justice, Parliamentary Ombudsman and Supreme Court Justices for unlawful conduct in office but it is convened only when necessary.

**France:** the data for 2010 increases because it takes into account the "juges de proximité". The 2008 data of legal entities of general law should not be taken into account, since some jurisdictions have been omitted. In 2012, the labour courts include 210 *prud'homme* courts and 6 labour courts. Other specialized courts are: specialized courts in criminal matters (3), the local jurisdictions of police courts (3), Juvenile Courts (155), the courts handling disability-related disputes (26), agricultural land courts (281), the penalties enforcement courts (50), the courts of military pensions (106), the court for the Navigation on the Rhine, courts of maritime trade (14), the first instance court for the navigation in Moselle (1). It should be noted that the Military Court in Paris (*Tribunal aux armées de Paris*) was closed on 1st January 2012 and its functions were transferred to the High Instance Court (*Tribunal de Grande Instance*) of Paris. This court is now the sole jurisdiction concerning offences committed by or against the French military in peacetime and outside the territory of the Republic.

**Georgia:** an institutional reorganisation of the judicial system took place in Georgia in 2009-2010 and ended in 2012 with a significant reduction in the number of courts – 30 district courts of first instance (cities) have been merged and 9 "new" courts are created from this merger.

**Germany:** depending on the value at dispute, commercial cases are dealt with at Local or Regional Courts, on application in a chamber established at the Regional Court for commercial cases. There are no separate commercial courts, nor are there any independent rent courts, execution courts or courts for insurance cases. Depending on the caseload, special panels of judges are established for this purpose at the Local and Regional Courts. Family cases are dealt with at first instance in special departments of the Local Courts. The Federal Armed Forces do not have any military courts of their own; its members are subject to civil jurisdiction.

**Greece:** specialized courts include 39 administrative and military courts. There are other specialized first instance courts. The exact figure has not been provided in 2012 (hence written "NA") and another counting method was used in 2008 and 2010.

**Hungary:** there are 111 generally competent district courts in first instance and out of these the district courts in the seat of the regional courts have special competences in many cases. There are 20 administrative and labour courts in first instance, 20 regional courts – dealing with cases in first instance as well as appeals coming from administrative and labour courts in second instance; 5 regional courts of appeal – dealing with first instance cases coming from regional courts, third instance in criminal cases; the Curia – reviews legal remedies, appeals, adopts uniformity decisions, which are binding for all other courts, analyses final decisions to examine and explore judicial practice, publishes decisions on principles. The Curia passes decisions in cases where the local government decrees violate legal rules, and reverses

them, and it passes decisions in cases where the local government fails to legislate as laid down in the act on local governments.

**Iceland:** the other 1<sup>st</sup> instance specialized courts are the "*Landsdomur*", a High Court for criminal proceedings against current or former elected officials. The judgements of this court cannot be appealed.

**Ireland:** there is no specialisation - all judges within a court jurisdiction may be allocated to any category of case falling within the jurisdictional remit of the court concerned. In 2013, a new cadre of specialist judges was created in the Circuit Court with specific jurisdiction in relation to certain types of personal insolvency remedy and certain pre-trial order making powers.

**Italy:** presented here is the data collected prior to the implementation of the reform of the judicial system that took place in 2013. The other 1<sup>st</sup> instance specialized courts are 29 Minor (or Juvenile) Courts. There are also specialized first instance courts which are not administered and financed by the Ministry of Justice: 29 Regional administrative courts, 21 Regional Audit Commissions, 103 Provincial Tax commissions, Military courts. Figures provided only concern courts administrated and financed by the Ministry of Justice. Moreover, in Italy specific matters (such as Labour, family) are dealt with by specific divisions within the same Court. There are also 26 divisions called DDA (that is *Direzioni Distrettuali Antimafia*) which deal specifically with mafia and organised crime.

**Latvia:** there are district (city) courts (34), Regional courts (5 + 2 court houses), Administrative district court (1 + 4 court houses), 1 administrative regional court, 1 Supreme Court. Only the Administrative Court is a specialised court, therefore all answers, excepted administrative courts and military courts, can be NAP. For Administrative Court it is 1, and for military courts, NA (competent only in state of emergencies or during war).

**Luxembourg:** commercial and family courts are organized at the district court level, whereas labour courts and rent/tenancies courts are set at the justices of the peace level. This explains why the total of question 43 is superior to the total in question 42.

**Malta:** the specialized courts are the Family Court, the Court of First Instance and the Administrative Court (that is why in the previous cycle, 3 was mentioned). But there are also a couple of other courts, these being the Industrial Court and the Small Claims Court. There are also several other Boards which exist, these being the Land Arbitration Board, Rural Leases Control Board, Value Added Tax Board, Partition of Inheritance Board and the Rent Regulation Board.

**Republic of Moldova:** the Commercial District Court deals, as a primary jurisdiction, with all cases and demands within its jurisdiction, i.e. civil cases in dispute, in accordance with the law, arbitral awards, the issuance of enforcement provisions in arbitral awards, reorganization and dissolution of legal persons, and the defence of professional reputation in business and economic activities.

**Monaco:** as defined in the explanatory note, there is only 1 first instance court in Monaco, 1 Court of Appeal, and 1 (non-permanent) Reviewing Court (*Cour de révision*). There are also 4 specialized courts: Justice of the Peace, the Arbitration Commission of commercial rents, the Arbitration Commission of housing, the Labour Court. Commercial cases (bankruptcy, etc.), family cases, work accidents are handled by a single judge or by specialized panels of the first instance court, from which they emanate. The information provided in previous exercises was not in line with the CEPEJ explanatory note and the figures mentioned in previous editions have been revised. Therefore, there has not been any modification in the structural organization of the court, but merely a correction in counting methods. Indeed, it has been considered that judicial panels, constituting emanations of the first instance court (e.g. lower court exercising in chambers or business panels of the court, or the court sitting in correctional issues) were independent jurisdictional entities and as such should be classified as "courts".

**Montenegro:** within the two High Courts in Podgorica and Bijelo Polje, specialized divisions are established to work on these criminal offences of organized crime, corruption, terrorism and war crimes in the first instance.

**Netherlands:** there is one specialised first instance court, the Trade and Industry Court (*College van Beroep voor het bedrijfsleven* (CBb)).

**Norway:** the number of first instance courts is 66, even though the number presented in Q45 is 65 (see comments below table 5.5). The two specialized courts are located in Oslo: the Oslo County Court deals with probate, bankruptcy and enforcement cases and the Oslo District Court handles criminal cases and civil cases. In addition, there are courts of particular jurisdiction (e.g. the Labour Court, the Land Consolidation Courts (34 for 1<sup>st</sup> instance and 5 for appeal). The courts of particular jurisdiction are not included in the figures. The Conciliation Boards also form part of the court system. There are approximately 430 Conciliation Boards and 1320 Conciliation Board members.

**Poland:** there has been a structural change for district courts, and some of them have been included in other existing courts. This reform, aiming at reducing the number of courts, will go on in 2013.

**Portugal:** other specialised 1st instance courts are criminal Instruction Courts, Maritime Courts, Intellectual Property and Competition Court, Enforcement Courts.

**Romania:** first instance legal entities are: 176 first instance courts, 42 "*tribunals*" and 15 courts of appeals.

**Serbia:** Since 1st January 2010, a comprehensive reform of the judicial system has resulted in the reduction of a number of courts and judges as well as of the number of structures of the judiciary. There are 45 other specialized courts for misdemeanours.

**Slovakia:** there has been a 25% decrease in the number of first instance specialized courts between 2008 and 2010 and three district military courts were closed. The 8 regional courts are generally courts of appeal acting in the appeal procedure against the decisions of the District courts within their local jurisdiction in the civil, commercial and the criminal cases. As courts of first instance, the Regional courts are competent in administrative matters and in the several types of civil cases, stipulated by the Code of the civil proceedings. The Specialized Criminal court is the court competent to judge grave criminal matters (e. g. premeditated murder, corruption, organised crime, severe economic crimes etc.).

**Slovenia:** the number given under question 43 is not the same as the one given under question 42.2, since there are 3 labour courts and 1 labour and social disputes court. Altogether (with the Administrative court) there are 5, but 1 is both labour and insurance / social welfare court. For that reason the sum is 6, although there are 5 specialised courts altogether.

**Spain:** the other first instance specialized courts are: 380 Penal Courts, 17 Penal Courts specialised in violence against women, 106 Violence against women courts, 82 Juvenile Courts, 1 Juvenile Enforcement Courts, 50 Prison Courts, 9 Capacity courts, 26 Civil Register Courts, 8 *Decanatos* exclusive, 4 Labour enforcement courts, 4 Mortgage Courts.

**Switzerland:** the significant increase in the number of specialised judicial entities is firstly due to a more accurate identification of these entities within the cantons, and secondly due to a change in the cantonal judicial organizations between 2010 and 2012. Cantonal administrative courts are counted as specialised courts. These are first instance courts. Sometimes, they are considered as second instance courts, e.g. when the court decides on the decisions of a specialised commission of appeal.

**“The former Yugoslav Republic of Macedonia”:** there are 3 specialised first instance courts: the Administrative Court, the basic Court Skopje 1 (criminal court) and the basic Court Skopje 2 (civil court).

**Turkey:** data for 2008 only included the number of court buildings, while 2010 figures represent the total number of buildings of judicial and administrative services, as well as buildings of high courts. The numbers of court locations were 5 758 in 2008, 750 in 2010 and 652 in 2012. In 2012, 102 courthouses have been closed in small provinces. Judges, prosecutors and auxiliary personnel have been relocated to other cities and provinces. Therefore the number of courts has increased, whereas the number of geographic locations has decreased. The establishment of new specialized courts is a long term goal prescribed in the Judicial Reform Strategy entered into force at the beginning of 2009.

**Ukraine:** the system of courts of general jurisdiction is composed of local courts, courts of appeals, high specialized courts and the Supreme Court of Ukraine. The number of local courts (first instance courts) is 665 (criminal cases), 26 (commercial cases) and 27 (administrative cases).

**UK-England and Wales:** the substantial reduction in numbers can be attributable to reforms in the courts estate (rationalisation/co-location (mainly county into existing Magistrates' Courts), and other business as usual closures. For specialised courts, the words "NA" replaced too different figures (627 in 2010 and 3 in 2012) from one cycle to another due to different methods of counting.

**UK-Scotland:** some specialized courts (e.g. courts for domestic abuse, Juvenile court) are under the jurisdiction of the sheriff and subject to specific procedures. They are not included in the figure of the specialized courts.

**UK-Northern Ireland:** the figure 27 represents the number of actual court locations.

**Israel:** as regards first instance specialised courts, only labour courts are counted because only these courts answer to the definition of 'first instance specialized courts'. For the rest, NAP should be mentioned. All other issues are dealt with by the ordinary courts, be it magistrate or district courts. So for example, family law cases are dealt with under subdivisions of the magistrate courts, and administrative law cases are dealt with under subdivisions of the district courts (and in some cases – in the Supreme Court). The exception to this is the military courts – as elaborated in the comment following question 109, the military courts are not part of the general court system and therefore our data does not include them.

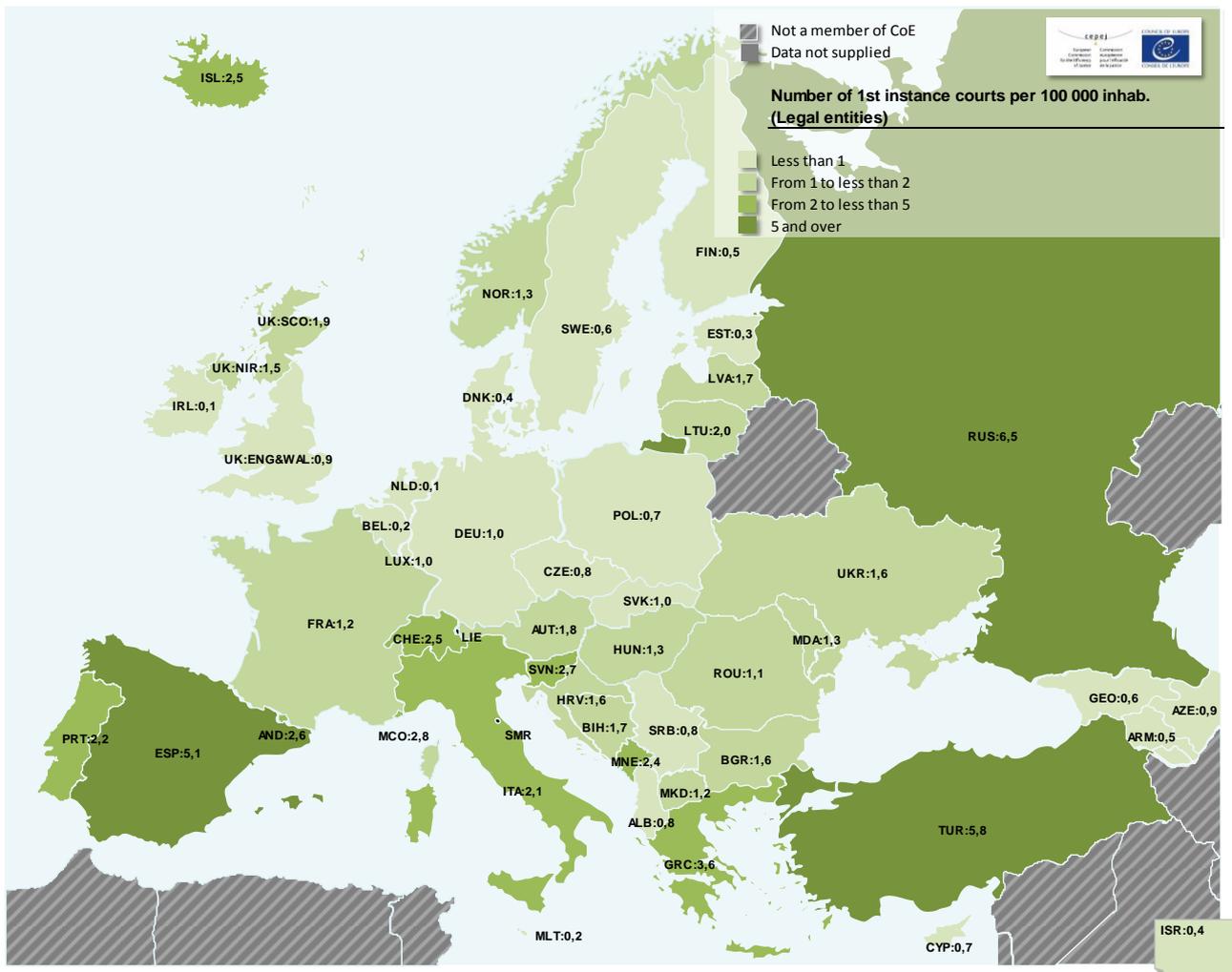
Courts perform different tasks according to the competences that are described by law. In the majority of cases, courts are responsible for dealing with civil and criminal law cases, and possibly administrative matters. In addition, courts may have a responsibility for the maintenance of registers (land, business and civil registers) and have special departments for enforcement cases. Therefore, a comparison of the court systems between the member states or entities needs to be addressed with care, taking into consideration the differences in competences.

Specialised first instance courts deal with various matters. Most of the responding states or entities mentioned specialised administrative courts, commercial courts and labour courts. Several states or entities listed courts that deal with family, minors and guardianship, insurance and social welfare, military, (specialised) criminal offences, enforcement of criminal sanctions and rent and tenancies. Particular courts exist for example in **Finland** (High Court of Impeachment: charges against Ministers), **Spain** (violence against women) and **Turkey** (civil and criminal intellectual property courts). In **Azerbaijan**, there are regional specialised courts dealing with both administrative and economic cases. A process of specialisation of judges on these two types of cases is currently being implemented.

Nearly all member states or entities have specialised courts, except **Andorra**, **Czech Republic**, **Georgia**, **Ukraine** (since 2010) and **UK-Scotland**. **Bosnia and Herzegovina** has specialised courts since 2010. Data is unavailable for some member states, including **Greece**, **Russian Federation** and **UK-England and Wales** (NA) because of another counting method which made unclear the exact number of specialized courts.

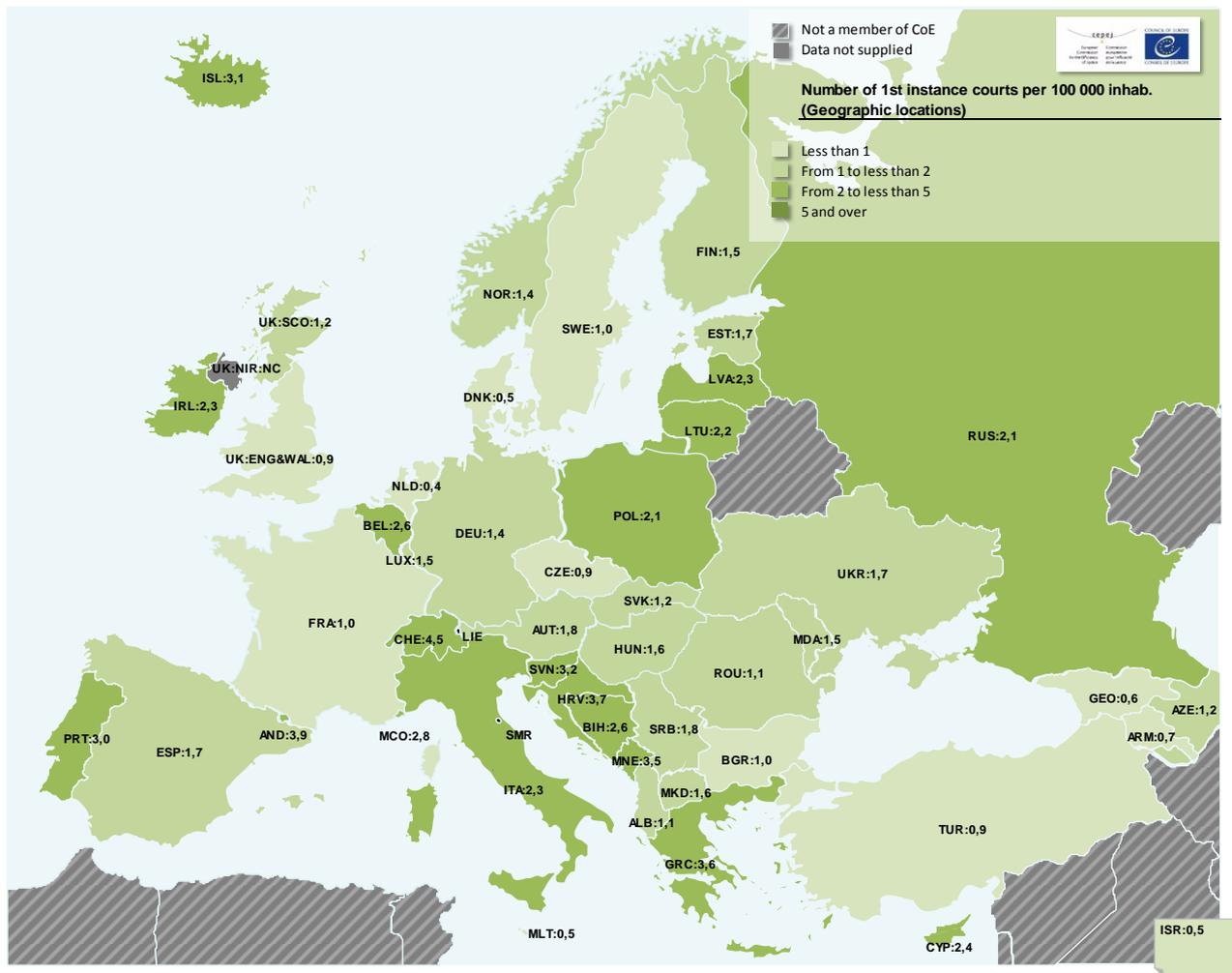
As a European average, specialised first instance courts represent 26 % of all the first instance courts considered as legal entities (24 % in 2010 and 19 % in 2008). The court system with the highest percentage of specialised first instance courts considered as legal entities can be found in **Belgium**, with 90,6 %. Most of these courts are related to the Justice of the Peace. **Malta** (87,5 %), **Cyprus** (70 %) and **France** (59,7 %) also have a relatively significant number of specialised courts. Since 2008, some of the member states have also increased significantly the number of their specialized courts: **Serbia**, **Spain** or **Turkey**. However, for **Croatia**, the number has considerably decreased between 2008 and 2010 – and a slighter decrease occurred in **Slovakia** and **Poland**. In **Latvia** (2,8 %) and **Norway** (3 %) there are very few specialised courts.

Figure 5.2 Number of first instance courts of general jurisdiction (legal entities) per 100.000 inhabitants in 2012 (Q1, Q42)



Most of the states or entities (28) have less than one first instance court of general jurisdiction per 100.000 inhabitants. In 16 states, the rate is between 1 and 2 first instance courts per 100.000 inhabitants. 10 states have higher rates, but out of these, only **Turkey**, **Russian Federation** and **Spain** have indicated more than 5 courts per 100.000 inhabitants. However, these figures have to be interpreted with great care as each State has a different definition of the concept of “general jurisdiction”.

Figure 5.3 Number of all courts (geographic locations) per 100.000 inhabitants in 2012 (Q1, Q42)



11 states or entities: **Armenia, Bulgaria, Czech Republic, Denmark, France, Georgia, Malta, Netherlands, Sweden, Turkey** and **UK-England and Wales** have one, or less than one court per 100.000 inhabitants. On the other hand, **Croatia, Greece, Iceland, Montenegro, Portugal, Slovenia** have between 3 and 5 courts per 100.000 inhabitants. The highest rate (around 5 courts per 100.000 inhabitants) can be found in **Switzerland**.

Many states or entities indicate nearly the same number of first instance courts considered as legal entities and geographic locations. However, significant differences can be noted in **Estonia, Finland, Germany, Ireland, Netherlands, Poland** and **Israel**, which have more geographic locations than legal entities: the same court can be located in various premises. 5 states reported a higher number of legal entities than geographical locations. For **Monaco**, being a small country, there is just one geographical location. In the case of **Spain**, first instance courts are constituted by single judges, all of them being counted as single legal entities. This implies that the same building/geographical location can group together several general and/or specialised first instance courts.

**Figure 5.4 Variation of the absolute number of all courts (geographic locations) between 2008 and 2012 (Q42)**



In many member states, the judicial organisation is old. To take into consideration demographic trends, new technical means of transport and communication of court users, and the increased specialization of judges, many states are currently thinking about a new division of jurisdictions that would improve the efficiency of justice while creating economies of scale. These reforms of the judicial system are designed to lead to a better management of property assets, by grouping jurisdictions together and transferring staff from different small courts into one single place. These reforms have not always generated the anticipated savings, nor been implemented in full consultation with court staff; however, they constitute a real challenge for the distribution of the courts on the territory and for the equal access to justice for court users, and even for the redefinition of powers between various courts.

The variation 2008-2012 clearly demonstrates the trend of reducing the number of courts in the Council of Europe member states. The largest decrease in the number of geographic locations (over 10%) between 2008 and 2012 can be observed in **Bulgaria, Croatia, Finland, France, Georgia, Ireland, Serbia and Sweden**. Overall, the number of courts (geographic locations) decreased in 22 states or entities and increased in 8. A significant increase can be observed in **Cyprus and Poland**. This dominant trend continued after 2012, through draft reforms of the judicial systems (see Chapter 17).

## 5.1.2 First instance courts competent for small claims, dismissals and robbery cases

**Table 5.5 Number of 1st instance courts competent for cases concerning: debt collection for small claims, dismissal and robbery (geographic locations) in 2012 (Q1, Q45)**

States/entities	Debt collection for small claims		Dismissal		Robbery	
	Absolute number	Per 100 000 inhabitants	Absolute number	Per 100 000 inhabitants	Absolute number	Per 100 000 inhabitants
Albania	22	0,78	22	0,78	22	0,78
Andorra	1	1,31	1	1,31	1	1,31
Armenia	NAP	NC	NAP	NC	NAP	NC
Austria	141	1,67	16	0,19	16	0,19
Azerbaijan	86	0,93	86	0,93	5	0,05
Belgium	229	2,05	34	0,30	27	0,24
Bosnia and Herzegovina	56	1,46	51	1,33	51	1,33
Bulgaria	NAP	NC	NA	NC	NA	NC
Croatia	73	1,71	66	1,55	49	1,15
Cyprus	6	0,69	3	0,35	6	0,69
Czech Republic	NAP	NC	NAP	NC	NAP	NC
Denmark	24	0,43	24	0,43	24	0,43
Estonia	16	1,24	16	1,24	16	1,24
Finland	27	0,50	27	0,50	27	0,50
France	309	0,47	216	0,33	165	0,25
Georgia	26	0,58	26	0,58	26	0,58
Germany	650	0,81	113	0,14	650	0,81
Greece	155	1,40	NA	NC	NA	NC
Hungary	111	1,12	20	0,20	131	1,32
Iceland	8	2,49	8	2,49	8	2,49
Ireland	102	2,22	NAP	NC	103	2,24
Italy	846	1,42	385	0,65	385	0,65
Latvia	34	1,66	39	1,91	39	1,91
Lithuania	54	1,80	59	1,96	54	1,80
Luxembourg	3	0,57	3	0,57	2	0,38
Malta	2	0,47	2	0,47	2	0,47
Republic of Moldova	47	1,32	46	1,29	47	1,32
Monaco	1	2,77	1	2,77	NAP	NC
Montenegro	15	2,42	15	2,42	17	2,74
Netherlands	51	0,30	51	0,30	19	0,11
Norway	65	1,29	65	1,29	65	1,29
Poland	245	0,64	245	0,64	287	0,74
Portugal	1	0,01	56	0,53	229	2,18
Romania	176	0,83	42	0,20	218	1,02
Russian Federation	NA	NC	NA	NC	NA	NC
Serbia	50	0,69	34	0,47	34	0,47
Slovakia	54	1,00	54	1,00	54	1,00
Slovenia	44	2,14	4	0,19	11	0,53
Spain	1745	3,79	345	0,75	1546	3,36
Sweden	48	0,50	48	0,50	48	0,50
Switzerland	N.A.	NC	N.A.	NC	N.A.	NC
The FYROMacedonia	26	1,26	26	1,26	26	1,26
Turkey	NAP	NC	210	0,28	276	0,36
Ukraine	NAP	NC	NAP	NC	NAP	NC
UK-England and Wales	173	0,31	NA	NC	90	0,16
UK-Northern Ireland	13	0,71	NAP	NC	17	0,93
UK-Scotland	NAP	NC	NAP	NC	49	0,92
Average	147	1,22	68	0,89	124	1,02
Median	50	1,12	37	0,61	39	0,81
Minimum	1	0,01	1	0,14	1	0,05
Maximum	1745	3,79	385	2,77	1546	3,36
Israel	29	0,36	5	0,06	6	0,08

### Comments:

**Belgium:** the increase from 2010 data can be explained by the fact that geographical locations were taken into account (for the recovery of small claims, there are 187 Justice of the Peace courts out of 229 geographic locations; for employment dismissals, there are 34 labour courts, district offices and sections included).

**Estonia:** the increase from the 2010 data can be explained by the fact that the geographical locations were taken into account (4 courts in 16 geographic locations).

**Denmark:** with a few exceptions, all cases (small claims, employment dismissals, robberies) are brought before the district courts.

**Greece:** 155 peace courts have jurisdiction over disputes for an amount which does not exceed 5 000 €, in accordance with the Law No. 3994/2011 entitled "Rationalization and improvement in the allocation of justice in civil courts and other provisions".

**Italy:** since the implementation of the 2013 reform concerning the judicial organisation in districts, the figures are: about 200 for the recovery of small claims, 135 employment dismissals and 135 robberies.

**Netherlands:** disputes involving small claims and employment dismissals are dealt with by the sub-district courts (*sector kanton*).

**Russian Federation:** data is not available for commercial courts (the figures provided above do not reflect the real situation).

**Turkey:** there are more specialized courts for the recovery of small claims since 1 October 2011. The significant decrease in the number of courts for employment dismissals comes from the new definition of *dismissal*.

### Small claims

The European average and European median are 1,2 and 1,1 courts per 100.000 inhabitants, respectively. The largest number of first instance courts competent for debt collection of small claims per inhabitant (over 3 courts per 100.000 inhabitants) can be observed in **Spain** (3,79) – having in mind the specific definition of courts in this country: one judge = one court. A low number (less than 0,5 courts per 100.000 inhabitants) can be noted in **France** (0,47), **Malta** (0,47), **Denmark** (0,43), **UK-England and Wales** (0,31) **Netherlands** (0,30) and **Portugal** (0,01). However, this indicator can only be interpreted along with comparable states, and is very sensitive to the definition of a small claim.

Indeed, there is a large difference between states or entities with respect to the financial amount of the dispute. The lowest value is observed in **Czech Republic** (≤ 398€), the highest in **Romania** (≤ 45 351 €). These differences may partly be due to the specific economic situation of the countries, the civil procedural rules that are applied, and the level of specialisation of courts in this area.

**Table 5.6 Monetary value of a small claim 2012 (Q45)**

States/entities	Monetary value of small claims	States/entities	Monetary value of small claims
Andorra	≤ 1 200 €	Malta	≤ 3 494 €
Armenia	No definition	Republic of Moldova	No definition
Austria	≤ 10 000 €	Monaco	≤ 1 800 €
Azerbaijan	No definition	Montenegro	≤ 500 €
Belgium	≤ 1 860 €	Netherlands	No definition
Bosnia and Herzegovina*	≤ 1 500 €	Norway	≤ 15 985 €
Bulgaria	No definition	Poland	≤ 2 446 €
Croatia	≤ 1 325 €	Portugal	≤ 15 000 €
Cyprus	≤ 2 000 €	Romania**	≤ 45 351 €
Czech Republic	≤ 398 €	Russian Federation	No definition
Denmark	No definition	Serbia	≤ 3 000 €
Estonia	≤ 2 000 €	Slovakia***	≤ 500 €
Finland	No definition	Slovenia	≤ 2 000 €
France	≤ 4 000 €	Spain	≤ 6 000 €
Georgia	No definition	Sweden	≤ 2 567 €
Germany	≤ 600 €	Switzerland	No definition
Greece	≤ 5 000 €	The FYROMacedonia	≤ 2 926 €
Hungary	≤ 3 413 €	Turkey	No definition
Iceland	No definition	Ukraine	No definition
Ireland	≤ 2 000 €	UK-England and Wales	≤ 6 131 €
Italy	≤ 5 000 €	UK-Northern Ireland	≤ 3 678 €
Latvia	≤ 2 134 €	UK-Scotland	≤ 3 678 €
Lithuania	≤ 1 448 €	Israel	≤ 6 747 €
Luxembourg	≤ 10 000 €	-	-

\* with regard to Republika Srpska, the amount is ≤ 2 500 € since 2013

\*\* the value has decreased since 15th february 2012 to about 2 200 €

\*\*\* the value has increased since 1st january 2013 to 1 000 €

### Comments:

**Albania:** there is no specific definition for small claims but all cases up to 20 million ALL are handled by a single judge. If the amount of the claim is higher, and if the parties make the request explicitly, the decision is made by a panel of 3 judges.

**Bosnia and Herzegovina:** small claims are those for which the amount does not exceed 1 500 € (as of 2013: 1 500 € in the Federation of Bosnia and Herzegovina and 2 500 € in the Bosnian Serb Republic). Disputes involving small claims also include cases that are not of a pecuniary nature for which the plaintiff has accepted a sum of money not exceeding that amount, as well as disputes focusing on the transfer of property for which the value specified by the applicant does not exceed that amount.

**Bulgaria:** there is no definition or specific procedure for "small claims". However, the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European procedure for small claims apply.

**Cyprus:** there is no definition or specific procedure for "small claims". However, the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European procedure for small claims apply.

**Czech Republic:** there is no definition for "small claims", but the appeal is not admitted when the litigious value is less than 10 000 CZK.

**Denmark:** before the district courts, the disputes in civil matters as regard claims whose amount does not exceed 50 000 DKK are handled in accordance with the regulation on "small claims". Concerning recovery, requests up to 100.000 DKK are processed as "small claims".

**Estonia:** there are several meanings for "small claim": 1. claims up to 2 000 €. In this case, the court may rule through a simplified procedure. All general jurisdictions are competent over these cases; 2. claims up to 6 400 € in payment orders procedures. Since 2009, these requests can only be filed electronically and are only handled in one court.

**Finland:** the concept of "small claim" does not exist legally. Non-contentious civil cases can be handled by a simplified procedure.

**France:** a small claim is the one for which the amount does not exceed 4 000 €. Currently these claims are under the jurisdictions of first instance courts (there are 309). Between 4 000 € and 10 000 €, the *tribunal d'instance* (district court) is competent (there are 304).

**Hungary:** local courts are competent.

**Ireland:** small claims include company claims and consumer claims on the condition that, in each case, the amount of the claims does not exceed 2 000 €.

**Latvia:** the amendments of the Law on the civil procedure that entered into force on 30 September 2011 have introduced the concept of small claims. It refers to monetary and maintenance claims whose amount does not exceed 1 500 LVL the day the formal request is made.

**Montenegro:** small claims are cases of a pecuniary nature whose amount does not exceed 500 €. Non-monetary disputes are also disputes of "small claims": 1) when the plaintiff has accepted an amount not exceeding 500 € instead of the requirements mentioned in its request or 2) when the request concerns movable properties whose amount does not exceed 500 €. Disputes concerning immovable properties, the work and the dispossession are not disputes that can be classified "small claims".

**Norway:** the 2005 Law on disputes, which entered into force on 1 January 2008, has introduced a simplified procedure for small claims.

**Poland:** small civil claims are 1) property claims based on contracts with a total value not exceeding 10 000 PLN, 2) disputes over lease payments, 3) consignments from the courts.

**Portugal:** the procedure for "small claims" applies whenever a party wishes to confer an enforceable status on a request for compliance with financial obligations arising from contracts not exceeding 15 000 €.

**Romania:** as of 15 February 2013 - the date of entry into force of the new Civil Procedure Code, which provides a procedure for complaints of a very small value established according to the model of the Regulation No. 861/2007 of the European Parliament and the Council establishing a European procedure for small claims - this amount is 10 000 RON.

**Serbia:** small claims, in civil procedures, are claims whose monetary value does not exceed 3 000 € at the moment of the formal request. In commercial procedures, small claims are claims whose amount does not exceed 30 000 € at the moment of the formal request.

**Slovenia:** a dispute over a small claim refers to a dispute over a monetary dispute whose amount does not exceed 2 000 €. Disputes on small claims also include disputes over non-monetary claims for which the applicant has declared its acceptance of a sum not exceeding 2 000 € instead of having his/her request fulfilled, as well as disputes over requests for movable properties whose value does not exceed 2 000 €. Disputes on small claims do not include disputes relating to immovable properties, copyright, protection and use of inventions and marks with distinctive characters, the right to use a company name, or to the protection of competition, disturbances of possession.

**Spain:** oral procedures for claims do not exceed 6 000 €.

**Sweden:** small claims are claims whose value does not exceed half of the basic amount (44 000 SEK) namely 22 000 SEK

**Switzerland:** no definition at the national level; cantons freely establish their judicial organisation.

**UK-England and Wales:** there are 3 types, called tracks: 1) small claims track – generally for claims of a small value and the least complex claims not exceeding 5 000 £ (but there are exceptions); 2) fast track – for claims of a value of between 5 000 £ and 25 000 £ ; 3) multi-track – very complex claims exceeding 25 000 £ or more.

**UK-Northern Ireland:** small claims are generally those whose value does not exceed 3 000 £. Claims related to road traffic accidents and personal injury, and those who have been referred by the High Court to the County Court are excluded.

**UK-Scotland:** the courts do not enforce the decrees or collect the debts.

**Israel:** requests concerning small claims are made before courts for small claims, but since they do not have the exclusive jurisdiction, the request can be made before the Magistrate Courts.

## **Employment dismissal cases**

The European average and median of first instance courts (geographic locations) competent for employment dismissal cases are respectively 0.89 and 0.61 for 100.000 inhabitants. But the highest ratios calculated on the basis of a very small number of courts and inhabitants, as it is the case in **Monaco**, are not relevant. **Germany** presents the lowest number (0,14) followed by **Austria** (0,19), **Slovenia** (0,19), **Hungary** (0,20) and **Romania** (0,20). A correlation between these figures and the activity of labour courts cannot be made.

### **Comment**

**UK-Scotland:** employment issues like dismissals are dealt with through a dedicated Employment Tribunals system and it should be noted that legislation to merge the Scottish Court Service and the Scottish Tribunal Service is planned for 2014.

## **Robberies**

The highest number of courts (geographic locations) competent for robbery cases per 100.000 inhabitants can be found in **Spain** (3,36) – where one judge is one court -, **Montenegro** (2,74), **Iceland** (2,49), **Ireland** (2,24) and **Portugal** (2,18). On the contrary, **Azerbaijan** (0,05), **UK-England and Wales** (0,16), **Austria** (0,19), **Belgium** (0,24) and **France** (0,25) present the lowest numbers of courts. Because of the lack of relevant information about specialised courts for less serious criminal offences, a comparison between the numbers of courts competent for robbery cases cannot be established.

### **Comments:**

**Germany:** the cases of violent robbery are referred to local courts if the sentence does not exceed 4 years in prison, and to regional courts (there are 115) if a longer sentence is envisaged.

**Monaco:** a violent robbery is an offence of a criminal nature that falls within the competence of the Criminal Court (the equivalent in France would be the *Cour d'assises*)

## **5.2 Information and communication technology (ICT) in the courts (e-justice and e-courts)<sup>20</sup>**

The use of information and communication technologies (ICT), ranging from end user applications such as smart phones, personal computers and tablet PCs, to information infrastructures, such as internet and the derived services, are taken more and more for granted. Introduced as a tool to improve performance, ICT is proving to be more than a technical element, changing the relations between individuals and between individuals and organisations, both in the private and the public sector.

It is no surprise, therefore, that the CEPEJ evaluation exercises have shown since 2004 with factual data that ICT is playing a growing role within the justice administration and the justice service provision. Examples range from the support of case and file management, to the use by judges of templates to support the formulation of judicial decisions, on-line access to law and jurisprudence databases, availability of web services, use of electronic filing, and exchange of electronic legal documents. ICT can be used to enhance efficiency, but also “to facilitate the user’s access to the courts and to reinforce the safeguards laid down in Article 6 ECHR: access to justice, impartiality, independence of the judge, fairness and reasonable duration of proceedings”.<sup>21</sup>

However, as many empirical examples show, this endeavour is more complex than expected. This is because the nature of ICT and its action is not just technical, but also organisational and (especially in judiciaries), normative. In order to perform a technology must not just be technically functional, but also normatively efficient and institutionally sound<sup>22</sup> (i.e. it “should not compromise the human and symbolic faces of justice”<sup>23</sup>). The data collection and analysis conducted by CEPEJ on the one hand makes it possible to take stock of the efforts and changes that are taking place across Europe, and on the other hand to support the sharing of positive and less positive experiences in order to allow judiciaries to learn from one another.

<sup>20</sup> Detailed information is described in: Velicogna M. (2007), *Use of Information and Communication technology in European Judicial systems*, CEPEJ Study N° 7 (Strasbourg).

<sup>21</sup> Consultative Council of European Judges (CCJE), Opinion No.(2011)14 “Justice and information technologies (IT)” adopted by the CCJE at its 12th plenary meeting (Strasbourg, 7-9 November 2011).

<sup>22</sup> On the subject see: Contini, F. and Lanzara, G.F. (eds) *ICT and Innovation in the Public Sector - European Studies in the Making of E-Government*, New York, Palgrave Macmillan, 2009.

<sup>23</sup> CCJE Opinion No.(2011)14 “Justice and information technologies (IT)” – see above.

For the analysis of the installation of computer facilities within the European courts, three areas have been distinguished:

- *Computer facilities used for the direct assistance of judges and court clerks:* one of the "basic" applications concerns word processing/office facilities where a judge or staff member can draft his/her decisions or the preparation of a court case in an "electronic file". In the field of legal research, various tools and applications, from CD-ROMs to Intranet and Internet software, make it possible for a judge to gain access to statute law, appeal decisions, rules, court working methods, etc. Office applications, together with tools for jurisprudence, can be combined with facilities in the field of "standard-decisions" models or templates that can be used by judges to reduce their workload when drafting a judgment. Other computer facilities used for the direct assistance of judges and court clerks are electronic databases of jurisprudence, e-mail facilities and internet connections.
- *Systems for the registration and management of cases:* traditional court docket books and other registers are replaced by computerised databases with court records. These systems are not limited to registration of case information, but they introduce functionalities in the area of the management of cases. Fields of applications are: the generation of information concerning the performance of courts, financial management of courts and non-judicial case management support systems (for case tracking, case planning and document management).
- *Electronic communication and information exchange between the courts and their environment:* regarding court users one of the most common tools is a court website providing different information on the court activities (e.g. the follow-up of cases online) and organisation. Typically, it will offer downloadable forms or enable a claim to be submitted electronically. Electronic registers such as business registers and land registers also exist. Text-messaging can keep parties informed of the position of their case in the court list. Regarding technology in the courtroom, this includes a range of hardware and software made available to assist the parties in presenting their case to the court, including for instance video conferencing, electronic evidence presentation software, overhead projectors, scanning and bar-coding devices, digital audio technology and real-time transcription.

Table 5.7 is based on a point system and presents the use of different computer facilities for the three areas mentioned.

Table 5.7 Computer facilities used within the courts for three areas of use (Q62, Q63, Q64)

States/entities	Direct assistance to judges and court clerks					Administration and management					Communication between courts and the parties										IT Score	Evolution 2010 - 2012		
	Word processing	Electronic database of jurisprudence	Electronic files	E-mail	Internet connection	Total	Case registration system	Court management information system	Financial information system	Videoconferencing	Total	Electronic web forms	Website	Follow-up of cases online	Electronic registers	Electronic processing of small claims	Electronic processing of undisputed debt recovery	Electronic submission of claims	Videoconferencing	Other electronic communication facilities			Total	
Albania	●	●	○	●	●	15	●	●	○	○	8	○	●	●	●	○	○	○	○	○	○	11	34	↓
Andorra	●	●	○	●	●	16	●	●	○	○	8	○	○	○	○	○	○	○	○	○	○	0	24	→
Armenia	●	●	●	●	●	20	●	●	○	○	8	○	○	○	○	○	○	○	○	○	○	20	48	→
Austria	●	●	●	●	●	20	●	●	○	○	16	●	●	●	●	●	●	●	●	●	●	36	72	→
Azerbaijan	●	●	●	●	●	20	●	●	○	○	13	●	●	●	●	○	○	○	○	○	○	26	59	→
Belgium	●	●	●	●	●	20	●	○	○	○	9	○	○	○	○	○	○	○	○	○	○	6	35	→
Bosnia and Herzegovina	●	●	○	●	●	19	●	○	○	○	11	○	○	○	○	○	○	○	○	○	○	23	53	↑
Bulgaria	●	●	●	●	●	20	●	●	○	○	13	●	●	○	○	○	○	○	○	○	○	13	46	↑
Croatia	●	●	○	●	●	18	●	●	○	○	12	○	○	○	○	○	○	○	○	○	○	15	45	↓
Cyprus	●	●	○	●	●	16	○	○	○	○	8	○	○	○	○	○	○	○	○	○	○	8	32	↓
Czech Republic	●	●	○	●	●	18	●	●	○	○	10	●	●	●	●	●	●	●	●	●	●	34	62	↑
Denmark	●	●	●	●	●	20	●	●	○	○	16	○	○	○	○	○	○	○	○	○	○	12	48	→
Estonia	●	●	●	●	●	20	●	●	○	○	16	●	●	●	●	●	●	●	●	●	●	36	72	→
Finland	●	●	●	●	●	20	●	●	○	○	16	●	●	○	○	○	○	○	○	○	○	32	68	→
France	●	●	○	●	●	19	●	●	○	○	16	●	●	○	○	○	○	○	○	○	○	20	55	→
Georgia	●	●	●	●	●	20	●	○	○	○	6	●	●	●	●	○	○	○	○	○	○	17	43	↓
Germany	●	●	○	●	●	17	●	○	○	○	13	○	○	○	○	○	○	○	○	○	○	28	58	↑
Greece	○	○	○	○	○	10	○	○	○	○	6	○	○	○	○	○	○	○	○	○	○	11	27	↑
Hungary	●	●	○	●	●	18	●	●	○	○	12	○	○	○	○	○	○	○	○	○	○	22	52	↑
Iceland	●	●	●	●	●	20	●	○	○	○	8	○	○	○	○	○	○	○	○	○	○	8	36	→
Ireland	●	●	●	●	●	20	●	○	○	○	11	○	○	○	○	○	○	○	○	○	○	23	54	↑
Italy	●	●	●	●	●	20	●	●	○	○	14	○	○	○	○	○	○	○	○	○	○	28	62	↑
Latvia	●	●	●	●	●	20	●	○	○	○	13	●	●	●	●	●	●	●	●	●	●	36	69	↑
Lithuania	●	●	●	●	●	20	●	○	○	○	14	●	●	●	●	●	●	●	●	●	●	35	69	↑
Luxembourg	●	●	●	●	●	20	●	●	○	○	16	○	○	○	○	○	○	○	○	○	○	16	52	→
Malta	●	●	●	●	●	20	●	●	○	○	16	●	●	●	●	●	●	●	●	●	●	36	72	→
Republic of Moldova	●	●	○	●	●	19	●	○	○	○	9	○	○	○	○	○	○	○	○	○	○	13	41	↑
Monaco	●	●	●	●	●	20	●	○	○	○	12	●	●	●	●	●	●	●	●	●	●	36	68	↑
Montenegro	●	●	●	●	●	20	●	●	○	○	16	●	●	●	●	●	●	●	●	●	●	24	60	↑
Netherlands	●	●	○	●	●	17	●	●	○	○	15	●	●	●	○	○	○	○	○	○	○	24	56	→
Norway	●	●	●	●	●	20	●	○	○	○	15	○	○	○	○	○	○	○	○	○	○	12	47	↑
Poland	●	●	○	●	●	17	●	○	○	○	13	○	○	○	○	○	○	○	○	○	○	19	49	→
Portugal	●	●	●	●	●	20	●	●	○	○	16	●	●	●	●	●	●	●	●	●	●	36	72	→
Romania	●	○	○	●	●	16	●	○	○	○	14	○	○	○	○	○	○	○	○	○	○	26	56	↑
Russian Federation	●	●	●	●	●	20	●	○	○	○	13	●	●	●	○	○	○	○	○	○	○	25	58	↑
Serbia	●	○	○	●	●	18	●	○	○	○	12	●	●	○	○	○	○	○	○	○	○	18	48	↑
Slovakia	●	●	○	●	●	17	●	○	○	○	13	○	○	○	○	○	○	○	○	○	○	19	49	→
Slovenia	●	●	○	●	●	19	●	○	○	○	16	○	○	○	○	○	○	○	○	○	○	28	63	→
Spain	●	●	●	●	●	20	●	●	○	○	15	●	●	○	○	○	○	○	○	○	○	21	56	↑
Sweden	●	●	●	●	●	20	●	●	○	○	16	●	●	○	○	○	○	○	○	○	○	32	68	↑
Switzerland	●	●	○	●	●	19	●	○	○	○	13	○	○	○	○	○	○	○	○	○	○	25	57	↑
The FYROMacedonia	●	●	●	●	●	20	●	○	○	○	14	○	○	○	○	○	○	○	○	○	○	15	49	↑
Turkey	●	●	●	●	●	20	●	○	○	○	14	○	○	○	○	○	○	○	○	○	○	21	55	↑
Ukraine	○	○	○	○	○	15	○	○	○	○	9	○	○	○	○	○	○	○	○	○	○	7	31	↑
UK-England and Wales	●	●	●	●	●	20	●	○	○	○	15	●	●	○	○	○	○	○	○	○	○	27	62	↑
UK-Northern Ireland	●	●	●	●	●	20	●	○	○	○	15	○	○	○	○	○	○	○	○	○	○	28	63	↑
UK-Scotland	●	●	●	●	●	20	●	○	○	○	16	●	●	○	○	○	○	○	○	○	○	24	60	→
Israel	●	●	●	●	●	20	●	○	○	○	13	●	●	●	●	●	●	●	●	●	●	33	66	→

●	100% of courts	4 points
◐	>50% of courts	3 points
◑	<50% of courts	2 points
◒	<10% of courts	1 point
○	0% of courts	0 point

The total number of points is displayed for information only. The calculation has been done when the data was available for all categories, but also when one of the categories was missing.

The questionnaire consists of a general categorisation by type of equipment (100%, >50%, <50%, >10%); therefore, this is a general assessment by each Member State which only allows a first approach concerning the level of equipment of jurisdictions, on a declarative basis, and can indicate the evolutions over several exercises, complemented with the different comments showing the importance of the on-going changes.

**Comments:**

**Czech Republic:** “other” means data boxes as a mean of communication with the parties (they are obligatory in particular for legal entities, lawyers, notaries and optional for individuals) and state authorities.

**Denmark:** "other" means general public encrypted/secure e-mail (mandatory for citizens and companies from 2014). The videoconference system is partially implemented and expected to be countrywide by the end of 2014.

**Finland:** "other" means electronic applications for legal aid.

**Ireland:** in the last report +50 was reported, however, it is considered that there was a misinterpretation of the question and electronic availability of forms rather than submission was reported.

**Latvia:** "other" means sound recording systems.

**Norway:** "other" means the Case Management System in first and second instance courts which communicates electronically with the Register of Bankruptcy, several legal information systems, and indictments from the prosecutors which are sent electronically to the courts. The courts are also electronically connected to a vast number of public registers.

**Slovakia:** "other" means points of contact.

**Slovenia:** "other" means the use of e-delivery (used at the Central department for enforcement on the basis of authentic documents (CoVL), in land register procedures (eZK) and in insolvency procedures (eINS)).

**Israel:** "other" means the computerized management of all cases, which includes a systemized task manager for each of the cases handled by a specific judge.

There are 4 states or entities which have a 100% implantation of computer facilities in all the sectors listed in the questionnaire: **Austria, Estonia, Malta and Portugal.** **Sweden** has computer facilities in all sectors except the follow-up of cases online, and **Monaco** has computer equipment in all sectors except the financial information system. 4 states reported a relatively low level of computerisation compared to other states or entities (**Andorra, Cyprus, Greece, Ukraine**).

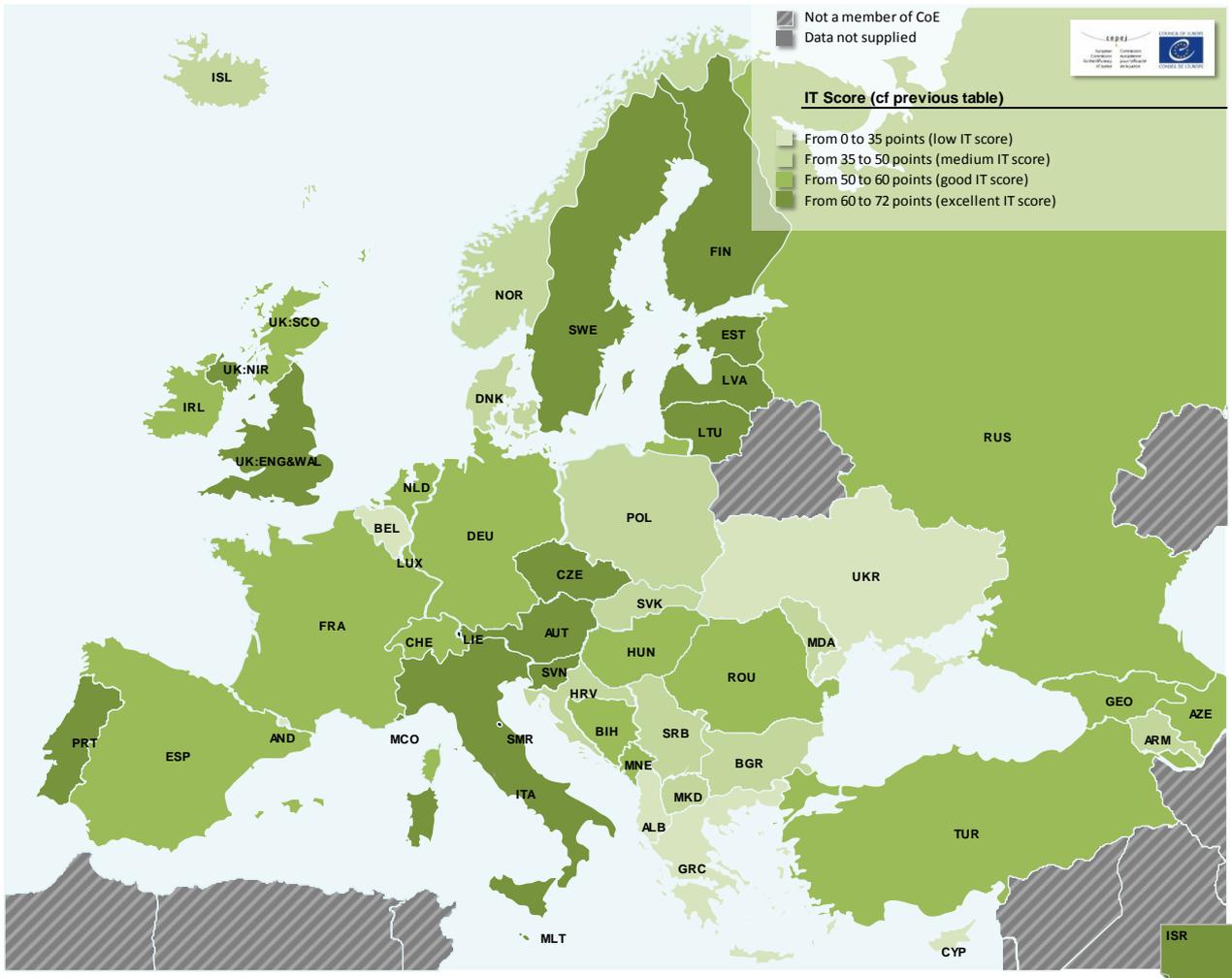
45 states use an internet connection and e-mail in all courts, **Greece** in about <50 % of courts and **Ukraine** in >50 %. Part of the member states (28 out of 47 countries) had 100 % computer facilities used in the field of direct assistance to judges and clerks, and 9 other states or entities had a very good level of computer facilities in this field.

However, electronic case files do not exist in **Albania, Andorra and Cyprus**, and have a minimal presence (-10% of courts) in **Germany, Netherlands, Poland, Romania and Slovakia**.

The computerisation of the management and administration of the courts is effective and complete in 12 states or entities (**Austria, Denmark, Estonia, Finland, France, Luxembourg, Malta, Montenegro, Portugal, Slovenia, Sweden and UK-Scotland**). A lower rate of computerisation of courts can be found in **Albania, Andorra, Armenia and Iceland**.

Communication between courts and parties can be ensured by various means (electronic forms, websites, electronic monitoring of case files, electronic records, electronic recovery of small claims, electronic processing of undisputed debt recovery, etc.). **Austria, Czech Republic, Estonia, Latvia, Lithuania, Malta, Monaco, and Portugal** have such means in the vast majority of their courts, while **Belgium, Cyprus, Iceland and Ukraine** have a very low rate of computer facilities in this sector. **Andorra** has no means of communication between courts and parties, but a convention is about to be signed in order to set up a complete system of procedural management (electronic record, communication with employees and users).

Figure 5.8 Level of computerization of courts: (Q62, Q63, Q64)



The three areas of application: direct assistance to judges and court clerks, administration and management and communication between courts and the parties

**Comments:**

**Andorra:** the *Consell Superior de la Justícia* is about to sign a convention with the government of Navarra (Spain) to acquire an integrated procedural management system (electronic record, communication with employees and users).

**Cyprus:** an electronic filing system does not exist, however computer technology is used for facilitating the management of cases.

**Denmark:** the changes in the Danish Administration of Justice Act (*Retsplejeloven*) § 748a and § 748b have been implemented.

**Estonia:** the everyday-tool of the judges and other court staff which is the Courts Information System, connected to different electronic registers and information systems that are used by the state authorities or by the parties to the proceeding. There is a special online information system for citizens, which is connected to the court information system and allows for the electronic submission of procedural documents and the observation of proceedings. As a rule, all Estonian courts use automatic systems for allocating incoming cases. However, there are a few small courthouses that do not use it due to the fact that there are few judges and the court official will choose the judge for the incoming case.

**Germany:** the equipment with network computers has taken place across-the-board. The hardware and software are being gradually renewed at intervals. Specialist procedures have now been developed for almost all applications in the judiciary. Preparations are currently being made for the introduction of electronic justice and the electronic file. A schedule has already been drawn up for the electronic court and administration pigeon hole.

**Hungary:** the electronic administration of the court procedures will be instituted with the financing of the European Union and European Regional Development Fund. The aim of the project is the development of electronic registration and access to the documents that come into existence during the judicial actions. The purpose of the project is to increase the electronic communication between the citizens and the courts, to make possible the electronic submission of petitions by the parties and concerned authorities, the electronic delivery of documents by the courts to the parties.

**Luxembourg:** it should be noted that, although electronic processing of small claims as well as of undisputed debt recoveries is not possible, electronic access to a certain number of set formulas is possible through the Justice and the Internet stand.

**Monaco:** since the entry into force of the Law No. 1.349 of 9 October 2012 amending the Criminal Code and the Code of Criminal Procedure with regard to corruption and special investigative techniques.

**Netherlands:** follow-up of cases online is only possible by lawyers in civil cases. Electronic registers only for insolvencies and legal restraint cases. Electronic web-forms and website should have been 100% for the year 2008. The abolishment of the '*procureur*' made it possible to harmonize ICT on a national level in 2010.

**Norway:** scheduled dates for proceedings are published on the internet. The courts in Norway do not have a major role when it comes to registers. The Brønnøysund Register Centre is a government body under the Norwegian Ministry of Trade and Industry, and consists of several different national computerised registers.

**Slovenia:** since the IT system provision and support in Slovenian courts is provided centrally by the Supreme Court, Slovenian courts are equally equipped with IT. Collectively more than 50% of cases are processed by an IT system, supporting electronic case files. All courts are equipped with Case management systems, but not all court procedures use one – however, currently about 97% of cases are processed by the courts using the appropriate electronic case management system. A new Business Intelligence tool for the support of court management was introduced, providing relevant information on case processing, personnel and costs, using information from all the CMS used by the courts.

**Spain:** the Ministry of Justice has the competence for systems of court management information and financial information. The Act of use of ICT in Justice 18/2011 foresees the harmonious and widespread use of IT technologies in the justice administration. LEXNET - enables bidirectional communication between the courts and several legal actors in their exchange of documents, notices, letters or claims. The latest version of this system enabled more than thirty million electronic notifications to be delivered in 2012, double the number of the previous year. ELECTRONIC JUDICIAL FILE replaces the traditional dossier by its digital equivalent and promotes the exchange of communication between the judiciary agencies and other institutions of the justice system. SIRAJ provides management of the different records through a single application, allowing simultaneous on-line consultation of the information contained in the Central Record of Convicts, Injunctions and Domestic Violence. E-FIDELIUS is a secure recording system applied for hearings and trials by means of electronic signature used by many Courts in Spain. Parties and legal representatives can download the video recording files signed electronically by the Judicial Secretary from machine dispensers located at courts buildings. Video-recording courtroom systems are geared to support communication between different agencies and professionals, using the latest technology.

**Sweden:** it is possible to submit a claim (or appeal) electronically through email but it must also be submitted, signed in original by post or directly to the court. As part of the process of implementing an electronic flow of information in criminal proceedings, prosecutors have since the spring of 2012 started to file lawsuits and written reports to the courts electronically. Swedish courts will have access to two ways to send secure e-mail, either via an encrypted public authority or by secure e-mail stored on the server. The main reason for the differences in numbers from 2010 is probably that the questions have been interpreted in different ways. In the interpretation we made we consider for instance pdf-files to be electronic files; as to electronic submission of claims, we do not have a special system for this but claims can be sent in by e-mail.

**Switzerland:** the answers reflect the average of the answers received by the cantons. The other means of communication are fax and email (unsecured) used for the informal communication with the court. With the entry into force (beginning of 2011) of the new codes of civil and criminal procedure, filing electronic storage is allowed. The use is complicated (electronic signature), that is why this possibility is not used so far.

**"the former Yugoslav Republic of Macedonia":** there is a process of introducing the electronic submission of claims. Also in the civil procedures, a system of audio recording of trials in all courts is implemented. Progress in the area of information technology in the judiciary is achieved through the introduction of Automated Court Cases Management Information System (ACCMIS), which generates reports for judges and court management to track the court cases and hearings for any case, date, courtroom and judge. There is an on-going process of upgrading the ICT in the Public Prosecutor's Offices that will be connected with the ICT system of the courts. Also the software within the Court Council for generating processing and analysing statistic information for the work of courts was created.

**Turkey:** although it is not possible to file a case via the Internet, the National Judicial Network System, which is the IT system used by courts and other judicial bodies, allows citizens to follow the stage of their cases through the Internet. In addition, lawyers are able to file a case via the National Judicial Network System using electronic signature. Also, all citizens have the opportunity to learn the stage of their case by text message.

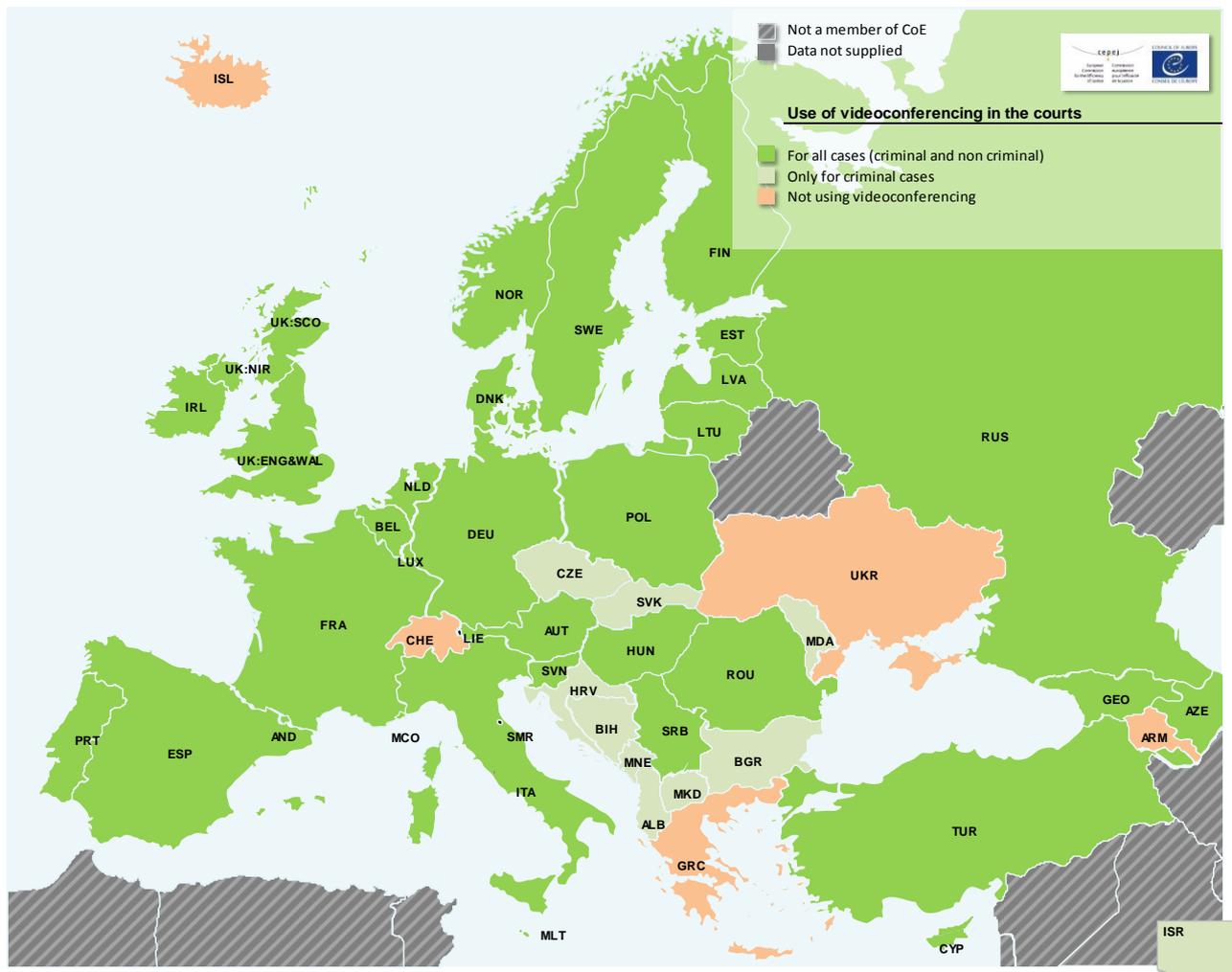
**Ukraine:** the Law of Ukraine "On the Judicial System and the Status of Judges" of 7 July 2010, which became effective on 30 July 2010, substantially reformed the court system of Ukraine and modified the procedural rules for all types of court proceedings. Amendments to the Code of Commercial Procedure of Ukraine: the implementation of an automatic system of document circulation aiming at the automatic assignment of judges to consider cases; the possibility for the respondent in the dispute to file its counter-claim against the plaintiff only before the commencement of the consideration of the dispute on the merits. The amended Code of Administrative Procedure now explicitly provides for the possibility of e-mailing or faxing a court's summons to the subject of governmental authority involved in the dispute, as well as to the other parties.

**UK-England and Wales:** percentages given are for the relevant jurisdiction. MCOL for small claims has the ability for cases to be followed online, this is less than 50% of specified civil claims customers. Currently 80% of specified civil claims are issued electronically with no manual intervention, and the remaining 20% are submitted in paper but processed electronically through the case management system by court staff. Considerable development work is underway in both criminal and civil/family jurisdictions to increase the use of digital files and allow submission of civil claims digitally.

Many states or entities are proceeding with reforms in ICT through the introduction or the expansion of computer equipment to constitute an electronic database of jurisprudence, electronic case files, electronic records etc. Many states focus on communication between individuals and courts, by improving the system

of procedural management (**Andorra** through electronic forms (**Estonia, Germany, Hungary, Netherlands**) or electronic case tracking (**Norway**), or by improving the case management system ("the former Yugoslav Republic of Macedonia", **Slovenia** and **Spain**).

**Figure 5.9 Use of videoconferencing in criminal cases and other than criminal cases (Q65)**



**Comments:**

**Albania:** there are several laws on videoconferencing (“On Protection of Witnesses and Collaborators of Justice”); “On the Organization and Functioning of the Serious Crimes Court”;) and provisions of the Criminal Procedure Code.

**Andorra:** So far, the use of videoconferencing took place in buildings outside of the administration of justice buildings.

**Austria:** since 2005, the procedural preconditions exist for the use of video conferencing systems in the hearing of witnesses, parties, experts and interpreters in civil proceedings, as well as in the hearing of witnesses in criminal proceedings. For scheduling video conferencing hearings, a database for videoconferencing-system reservation was provided to judges and prosecutors via the intranet. Since March 2011, any court, prosecution office and penitentiary is equipped with a video-conferencing system. In 2012, 3330 videoconferencing settings have been held, about 16% with courts from foreign countries.

**Belgium:** it is possible to hear witnesses or experts but not defendants. The system of Federal Prosecutor’s Office is working and is used in criminal matters upon request of foreign countries or for Belgium or for meetings. It is available for other prosecutors’ offices. There is also equipment in the Appeal Court of Anvers for civil cases. A project to make available videoconferences of administrative authorities of provinces to the provincial Prosecutor’s Office is on-going.

**Bosnia and Herzegovina:** depending on their age, physical and mental condition, or other justified reasons, the witness may be examined using technical means for transferring image and sound in such a manner as to permit the parties and the defence attorney to ask questions although not in the same room as the witness. An expert person may be assigned for the purpose of the examination.

**Croatia:** according to the Amendments to the Criminal Procedure Act that entered into force in July 2011, there is a possibility for all criminal cases to hold a court hearing in premises other than a court (including police station/prison). There is a legal and technical possibility of using videoconference in other than criminal cases but in practice it is used only in criminal cases (especially cross border proceedings).

**Czech Republic:** from 2013, there is a project financed from the EEA Norway Grants called “Building capacities and cooperation in justice”, which is oriented on the reconstruction of several prisons, education of employees of the Probation and Mediation Service and Prison Service and also increasing of the efficiency of justice by the introduction and expansion of videoconferencing.

**Denmark:** two amendments have been implemented in the Danish Administration of Justice Act (*Retsplejeloven*). They cover two types of videoconferencing: (1) a court can allow a suspect/accused to participate in a court hearing by use of videoconferencing if the presence of the suspect/accused in the court is not required; (2) embraces the use of videoconferencing in court actions regarding extensions of remands in custody. The videoconference system is partially implemented and expected to be countrywide by the end of 2014.

**Estonia:** in criminal proceedings, videoconference is used to organise hearings of the witnesses. There is no specific regulation with regard to the rights of the defence. As regards telephone conferences, in order to protect the suspect and accused person, their consent is necessary. The number of videoconference devices has increased lately. At the moment, in every Estonian courthouse and prison there is at least one videoconference device.

**Finland:** according to the Criminal Procedure Act, in criminal cases, a preparatory hearing may be arranged by the use of videoconferencing or by telephone if the court deems that this is appropriate. Persons in prison may be heard by videoconference. In civil, administrative and criminal cases, a witness, another person to be heard for probative purposes or a party may be heard in the main hearing without his or her appearance in person with the use of a videoconference or other appropriate technical means of communication, if the court deems that this is suitable.

**France:** the Criminal Procedure Code allows the use of means of telecommunication during an enquiry or during an investigation for hearings, interrogations, confrontations, including detainees or prolongations of custodies. Article 100 of the Law on orientation and programming for the performance of the internal security provides on 14 March 2011as of for a new extension for the use of the videoconference but with strict conditions.

**Germany:** all in all, the courts, public prosecution offices, prisons and the judicial administration have approx. 160 systems at their disposal. The number has increased considerably in recent years. Essentially, all major judicial locations are adequately equipped. It is also used in the administrative and finance courts. The use of the systems is regulated in the respective codes of procedure. Questioning of undercover investigators can be carried out in a secret location in criminal proceedings by disguising the voice and face. The use of video conferencing has however not yet become implemented across the board in court practice. The strict condition includes in the codes of procedure concerning the consent of those concerned is to be abolished by the Act to Increase the Use of Video conferencing Technology in Court and Public Prosecution Proceedings of 25 April 2013, and the use of video conferencing technology is to be largely placed at the duty-bound discretion of the court. The increased support of video conferencing at EU level is proving to be helpful.

**Ireland:** the Judge is always in the courtroom. The accused may be heard through video link with the prison. Video conferencing and video display technology has been deployed extensively in the High Court and Circuit Court and in certain courtrooms in the District Court. Video conferencing is permissible in criminal proceedings under legislation for the hearing of evidence of certain types of witness and where used, a video record must be kept; it is also possible for certain cases of pre-trial applications and appeals where the accused/convicted person is in prison custody. Video conferencing is available for use in civil proceedings where the court directs that a party may participate, or that a witness may give evidence, by such means. The Irish Courts Service has invested heavily in the deployment of digital audio recording.

**Italy:** video conferencing has gone through a particular focus in the last period and is part of a three-year plan (2012-2014) that aims to enhance the technological infrastructure of the Italian Judicial System.

**Latvia:** in order to implement the use of videoconferencing tools, the following laws were amended – Civil Procedure Law, Criminal Procedure Law and Administrative Procedure Law. Within the Latvian and Swiss cooperation programme, the project entitled 'Modernization of Courts in Latvia', starting from June 2012, at least one court room in each court is equipped with videoconference equipment and all court rooms are equipped with sound recording equipment.

**Lithuania:** it should be noted that the law on questioning the witness by means of video conference will come into force on 1 January 2014. However, the prosecution service uses videoconferencing as an international cooperation tool. In addition, it should be mentioned, the “NCA” implements a project within the Lithuanian-Swiss Cooperation programme which aims to create a system for arranging remote court sessions and recording and preserving materials of these sessions in the electronic form.

**Luxembourg:** although both the technical and legal possibilities of videoconferencing exist, the practical impact is limited due to the short distances in Luxembourg. Frequent use of the video facilities is, however, made in civil as well as criminal MLA cases.

**Malta:** video conferences are used in civil cases relating to family matters when minors requiring protection are involved.

**Republic of Moldova:** During the second half of 2012, audio/video equipment was installed in the courts of appeal and the Prosecutor’s Offices of Chisinau, Balti, Cahul. This equipment allows the hearing of victims or witnesses in criminal trials. It includes a mechanism to record testimonies, in accordance with the requirements of section 110 of the Criminal Procedure Code. On 21 September 2012 was launched a videoconferencing system for hearings that will be used during judgments’ sessions. It will give the ability and the right for witnesses and victims of sexual exploitation and workplace harassment to testify in a safe environment without being subject to a new victimisation or to multiple hearings.

**Monaco:** Law No. 1349 amending the Criminal Code and the Criminal Procedure Code with regard to corruption and special investigative techniques came into force on 9 October 2012. Three rooms of the Palace of Justice were equipped with videoconferencing equipment primarily for criminal cases. The hearing by videoconference was, before October 2012, exclusively provided for by international conventions. This law has modified the Criminal Procedure Code providing that: “when the needs of the inquiry or the investigation warrant the hearing or the interrogation, as well as the confrontation between several persons, can be realised between a point in the territory of the Principality and a point outside, being connected by means of electronic communication for the visualisation and the hearing of the parties, and to ensure the transmission confidentiality (...)”. The law does not prohibit the use of such a method in police stations or in

the only prison of the Principality. However, the proper equipment together with a secure network is available in the above rooms.

**Montenegro:** the criminal Procedure Code provides for the possibility of questioning witnesses located in another state, as well as a person who because of age or illness is not able to give their statements on court premises. The witness statements can be made using the equipment for the transmission of sound and picture (videoconferencing devices), with the possibility of answering questions of other participants in the proceedings.

**Netherlands:** videoconferencing is only used for some specific criminal cases (e.g. related to extension of punishment) and in immigration law cases. There is a decree (*'Besluit videoconferentie'*, 2006) restricting the use of video conferencing in criminal cases (e.g. not in case of suspects who are minors and suspects of murder and sexual offenses).

**Norway:** the scope for the finalized pilot project for six courts was implemented for all courts by an enactment that entered into force in 2011. The new provisions in the criminal procedure act enhanced the use of videoconferencing in criminal pre-trial detention cases compared to the pilot by authorizing the judge to decide to use videoconferencing in hearings related to the prolonging of pre-trial detention even though the accused person does not consent.

**Portugal:** in Portugal, videoconferencing is widely used in the courts. In civil cases, the Portuguese Civil Procedure Code establishes in article 621 that witnesses testify at the final hearing in person or by videoconferencing except in certain specific circumstances. When witnesses reside outside the country they can also be heard by videoconferencing if the court abroad has the necessary means for videoconferencing. In criminal proceedings, experts from official entities, laboratories or other official entities can be heard by videoconferencing at their place of work if it is technically possible. The use of teleconference is also allowed for other special cases, such as protection of witnesses (Law n.93/99, July 14) and domestic violence (Law n.º 112/2009, September 16).

**Romania:** the Criminal Procedure Code stipulates at present the possibility to use the audio-video means for recording the statements of the wounded party, civil party and witnesses, as a means for the protection of life, body integrity or their freedom or that of their close relatives. The new Criminal Procedure Code (adopted by Law 135/2010 which is to enter into force on 1 February 2014), extends the use of the audio-video means for the recording of the statements for other situations when the body for criminal research or the legal court considers it necessary, ex officio or at the request of the interested person. Regarding the videoconferencing infrastructure, in Romania 139 (out of 236) courts are endowed with videoconference terminals, capable for connection using IP technology. As regards the videoconferences with more than 5 participants, the Minister of Justice and all courts have access to the videoconference server facility of the Special Telecommunication Service. The SCM also has videoconferencing facilities.

**Russian Federation:** articles 240 (4) and 278.1 of the Russian Criminal Procedure Code have been introduced in 2011 to expressly allow the use of videoconferencing for interrogation of defendants and witnesses. Previously only the participation of convicts in cassation and supervisory instance proceedings by means of videoconferencing was allowed. The Russian Civil Procedure Code does not provide for the use of videoconferencing. By the Federal Law no. 228-FZ of 27 July 2010, the Russian Commercial Procedure Code was amended to allow videoconferencing in commercial procedure. Since December 2010, videoconferencing facilities have been available in 100% of commercial courts.

**Serbia:** Serbia has ratified the Second Additional Protocol to the European Convention on mutual assistance in Criminal matters which gives in accordance with its article 9 the possibility of using of conference calls. The Law on international mutual assistance in Criminal matters and the Criminal Proceedings Law provides the possibility of using conference calls. In accordance with the Civil Procedure Code, the Court may decide by a decision in its official capacity or at the proposal of the parties to examine a witness by video link, phone conference connection, or by using equipment for audio or video recording. In accordance with the Criminal Procedure Code, the authority conducting the proceedings may order that the undertaking of an evidentiary or other action be recorded by a device for audio or video recording.

**Slovakia:** the Criminal procedure Code regulates the process of the hearing of a witness by technical means. If the heard witness is not personally present in the court room (e. g. protected witness), the substitute judge (member of the panel) has to be present with the witness simultaneously during the hearing.

**Slovenia:** videoconferencing equipment can be found in 100 % of courts; all 11 district courts are equipped with the technology + 2 mobile units are available, meaning that the technology is available to all the courts when needed. Three mobile videoconference sets have also been provided that can be used in local courts or anywhere else when needed. For hearings of protected witnesses there is a videoconference room (unknown location) prepared, that is under the supervision of police. A similar room is available also in our strictest prison, so the inmate can give his/her statement in a court proceeding by the use of videoconference (see [https://e-justice.europa.eu/content\\_videoconferencing-69-en.do](https://e-justice.europa.eu/content_videoconferencing-69-en.do)). Videoconferencing systems are used also for interviews with children, victims of crimes, abused, who are the most vulnerable groups within the society. Children are staying in a child-friendly room at the social care centre, where the judge or an expert conducts the interview with the child and all the other participants can follow the interview online from the courtroom.

**Spain:** the facilities for the use of videoconferencing are more extended nowadays in the Spanish courts. Courts are extending the implementation of electronic submission of claims. The Act on Civil Procedure Code 1/2000 sets the capacity and the obligation to record oral proceedings and judgments using computer systems. The Act on the New Judicial Office 13/2009 allows the *Secretario Judicial* (Judicial Secretary) to be absent from the courtroom during the hearing or trial if there is a safe system to ensure the authenticity and integrity of the recorded video. The Criminal Procedure Code regulates the use of videoconferencing. The restrictions on the type of evidence that can be obtained by videoconference concern fundamental rights or minors. In accordance with article 147 of the Law on Civil Procedure 1/2000, oral proceedings, trials and hearings before the trial can be recorded on a suitable support designed to record and reproduce sound and image. All courts in Spain have audio-visual devices to record trials and hearings. Videoconferencing is available in all the jurisdictions.

**Sweden:** the legal framework concerning the use of videoconferencing is documented in the code of judicial procedure and in the administrative court procedure act. The court decides if videoconferencing is to be used. The rules are the same that apply to a hearing of a person present in the court.

**Switzerland:** article 144 of the Swiss Code of Criminal Procedure (CCP) allows videoconferencing if the person to be heard is unable to be physically present or at disproportionate costs.

**“the former Yugoslav Republic of Macedonia”:** using the video conferencing in criminal cases is regulated in the Law on criminal procedure.

**Turkey:** within the framework of the Better Access to Justice Project, which is carried out with the support of the European Union, Audio and Visual Recording Equipment and Video Conference System have been put into operation in order to perform audio and visual record of the hearings conducted at 133 Heavy Penalty Centres and 225 High Criminal Courts of Special Jurisdiction, and to ensure live discussion of the issues between different courts. The system is currently being used by some of the courts. The Law on Civil Procedure allows civil courts to use videoconferencing during the hearings.

**Ukraine:** the national legislation of Ukraine did not provide the use of videoconferencing by the courts.

**UK-England and Wales:** in criminal hearings video conferencing can be used for defendants and witnesses from police stations, defendants from prison and other witnesses particularly vulnerable. Nearly all criminal court buildings have at least one courtroom equipped with video conferencing equipment. Some conferencing takes place in civil, family and tribunals cases at the discretion of the judge.

A videoconference is a major asset and constitutes a step forward for the efficiency and swiftness of justice, be it to better protect witnesses and victims, and facilitating interviews with experts, defendants, and other users without requiring their physical presence in the court. Videoconferencing is a pillar in the efforts concerning e-justice which are being made in Europe.

A growing trend can be noted in the use of videoconferencing in European judicial systems, especially in criminal cases. In many European states, these new reforms or projects aim at introducing or extending the use of videoconferencing (**Germany, Croatia, Denmark, France, Italy, Lithuania, Republic of Moldova, Monaco, Norway, Romania, Russia, Czech Republic,** etc.)

A vast majority of states or entities use videoconference for both criminal and non-criminal cases. For 9 states or entities, videoconference is only used in criminal cases (**Albania, Bosnia-and-Herzegovina, Bulgaria, Croatia, “the former Yugoslav Republic of Macedonia”, Republic of Moldova, Montenegro, Slovakia and Czech Republic**).

In **Croatia**, the law allows the use of videoconferencing in non-criminal cases, yet in practice videoconferencing is only used for criminal cases. Only 5 states or entities report no use of videoconferencing: **Armenia, Greece, Iceland, Switzerland, and Ukraine.** **Switzerland** is a particular case: the data provided reflects the average of the answers given by the cantons. Therefore, it should not be inferred that videoconferencing does not exist at all in Switzerland.

### **5.3 Means for measuring the quality of the courts’ performance.**

#### **5.3.1 Quality standards and performance targets**

To underline the growing importance of the development of a quality policy concerning courts or the judiciary in general, the CEPEJ has created a special working group and has adopted a checklist for the promotion of the quality of justice and courts: a practical tool that can be used by the courts to introduce specific quality measures. The use of court users’ satisfaction surveys constitutes another means to improve the quality of justice and of courts. A specific Handbook for setting up and implementing satisfaction surveys by the court users has been drafted and published by the CEPEJ. Furthermore, a specific Study on quality systems with courts in Europe has been published by the CEPEJ (see: [www.coe.int/cepej](http://www.coe.int/cepej))<sup>24</sup>.

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<sup>24</sup> Report on conducting satisfaction surveys of court users in Council of Europe member states, Jean-Paul Jean and H el ene Jorry, CEPEJ Study N 15.

**Table 5.10 States or entities which have defined quality standards and specialised staff entrusted with quality policy and/or quality systems (Q78, Q79)**

States/entities	Quality standards determined for the whole judicial system	Specialised court staff entrusted with these quality standards
Albania	No	No
Andorra	No	Yes
Armenia	No	No
Austria	No	No
Azerbaijan	Yes	No
Belgium	No	No
Bosnia and Herzegovina	No	No
Bulgaria	No	No
Croatia	Yes	No
Cyprus	No	No
Czech Republic	No	No
Denmark	No	No
Estonia	Yes	No
Finland	Yes	No
France	Yes	Yes
Georgia	Yes	No
Germany	No	No
Greece	Yes	Yes
Hungary	Yes	No
Iceland	No	No
Ireland	No	No
Italy	No	No
Latvia	Yes	No
Lithuania	No	No
Luxembourg	No	No
Malta	Yes	No
Republic of Moldova	No	No
Monaco	No	No
Montenegro	Yes	No
Netherlands	Yes	Yes
Norway	No	No
Poland	Yes	No
Portugal	No	No
Romania	No	Yes
Russian Federation	Yes	No
Serbia	Yes	No
Slovakia	Yes	Yes
Slovenia	Yes	Yes
Spain	Yes	Yes
Sweden	No	No
Switzerland	No	No
The FYROMacedonia	Yes	Yes
Turkey	Yes	No
Ukraine	No	No
UK-England and Wales	Yes	No
UK-Northern Ireland	Yes	No
UK-Scotland	No	No
<b>Number of countries</b>	<b>22</b>	<b>9</b>
Israel	No	No
	Yes	No
	No	Yes

**Comment:**

**Germany:** data for this question does not include the following Lander: Mecklenburg-Western Pomerania and Thuringia. Four Länder stated “Yes”: Baden-Württemberg (BW), Brandenburg (BB), Lower Saxony (NI), Schleswig-Holstein (SH). The remaining Lander stated “No”. Since the majority of the Länder answered “No”, this is the answer that has been retained.

Most of the responding states or entities (24) have no defined quality standards and do not have any qualified staff entrusted with this task. However, 22 states or entities reported having quality standards for

the courts (18 in 2008) and 9 have specialised staff. 7 states (3 more than in 2008): **France, Greece, Netherlands, Slovakia, Slovenia, Spain** and "**the former Yugoslav Republic of Macedonia**" indicated having both a quality policy and specialised staff.

Several states or entities reported that general quality policies are set up by law (**Greece, Russian Federation, Turkey**) or by a judicial authority (**Croatia, Slovenia**).

**Finland** provided information on quality projects in the courts of appeal of Rovaniemi and Helsinki and mentioned a cooperation project between administrative courts. Since 2012 in **Estonia**, quality standards have been developed for courts regarding court management, court administration and court proceedings. In **France**, a project initiated by the government in 2009 sets quality standards for courts and ultimately aims at rationalizing and mutualizing tasks concerning the reception of court users in court houses, and the increased recognition of this reception in court houses. **Latvia** reported on existing standards regarding the quality of service provided to court users and visitors. In **Croatia**, the quality of the judiciary is assessed using the number of issued cases as a basis. **Poland** uses the judgement stability ratio as a major indicator. **Serbia** uses the percentage of confirmed and revoked judgements, as well as the percentage of overturned judgement in first instance courts. The **Russian Federation** is also based on quality indicators measuring the workload of judges, procedural delays, the number of cancelled or modified decisions, the quality of texts and decisions, judicial ethics standards, professional development and participation in the activities of courts and the bodies of the judiciary. New criteria have been adopted by the Judicial Council in 2010 in **Slovenia**, in order to assess quality of court work. There is now a 3-year trial period in which some pilot courts will be monitored regarding the selected criteria. After the trial period, the criteria will be revised and then adopted at state level. In **Spain**, the National Quality Commission has approved a new quality system which has been implemented in the new Judicial Offices. **Germany** also provided a number of useful experiences: in Baden-Württemberg Land, for example, courts are fixing their performance in courts, concerning the number of proceedings, their length and the development of standards to compare its performance with the Land. More generally, currently tested and applied strategies in the Länder to ensure the quality of the judiciary are based on tools such as the cost and performance accounting, judicial control, staff cost budgeting, benchmark proceedings, the Balanced Scorecard, the EFQM model, various tools of personnel and organisation development, personnel requirements calculation, process optimisation, questionnaires among lawyers, citizens and staff, as well as evaluation tools both for the individual judicial and public prosecution work, and for the courts and public prosecution offices as organisational units. In **UK-England and Wales**, a rating system exists for most judges. **UK-Northern Ireland** has standards of service excellence for court users, and has established a national professional qualification for clerks that includes service modules for the user. Performance standards have been established by the *Lord Chief Justice* for the handling of cases.

All states or entities and **Israel**, except **Andorra, Armenia, Belgium, Bulgaria, Cyprus, Ireland, Luxembourg, Malta, Romania** and **Ukraine**, have indicated that they have regular systems to evaluate the performance of the courts (Q69).

Many judicial systems should expand the initiatives in this field, and there are an increasing number of countries' experiences to learn from.

**Table 5.11 Performance and quality indicators emphasized by countries for the proper functioning of courts (Q70, 71)**

States/entities	Performance and quality indicators defined	Quality indicators emphasized by countries / entities				
		Incoming cases	Length of proceedings (timeframes)	Closed cases	Pending cases and backlog	Productivity of judges and court staff
Albania						
Andorra						
Armenia						
Austria						
Azerbaijan						
Belgium						
Bosnia and Herzegovina						
Bulgaria						
Croatia						
Cyprus						
Czech Republic						
Denmark						
Estonia						
Finland						
France						
Georgia						
Germany						
Greece						
Hungary						
Iceland						
Ireland						
Italy						
Latvia						
Lithuania						
Luxembourg						
Malta						
Republic of Moldova						
Monaco						
Montenegro						
Netherlands						
Norway						
Poland						
Portugal						
Romania						
Russian Federation						
Serbia						
Slovakia						
Slovenia						
Spain						
Sweden						
Switzerland						
The FYROMacedonia						
Turkey						
Ukraine						
UK-England and Wales						
UK-Northern Ireland						
UK-Scotland						
<b>Number of countries</b>	<b>42</b>	<b>26</b>	<b>36</b>	<b>35</b>	<b>33</b>	<b>16</b>
Israel						

Yes  
 No

Only 6 states have reported the absence of defined performance and quality standards. **Monaco** stressed that it had no institutionalized standard.

Among the states which defined standards, 5 in particular have been highlighted.

1. indicator of the length of proceedings (36 states or entities),
2. indicator of the number of closed cases (35 states or entities),
3. indicator of pending cases and backlogs (33 states or entities),
4. indicator of the number of incoming cases (26 states or entities), and
5. indicator of the productivity of judges and court staff (16 states or entities – only 11 in 2008).

Other indicators, less commonly used in justice systems across Europe, are not included in the table below. Nevertheless, several states or entities mention them:

- the percentage of cases that are dealt with by a single judge : **Albania, Azerbaijan, Georgia, Republic of Moldova, Netherlands** and **Turkey**.



### 5.3.2 Evaluation and monitoring

As part of the management of courts, a periodic evaluation and monitoring of the quality of justice and of the court performance is recommended. Also, for the visibility of the activity of the judiciary, annual (public) reports should be produced and provided to the public.

**Table 5.13 Modalities of monitoring systems (Q67, Q68)**

States/entities	Obligation to prepare an annual activity report for the individual courts		Categories of regular monitoring system of court activities				
	Yes	No, only in an intranet website	Number of incoming cases	Number of decisions delivered	Number of postponed cases	Length of proceedings (timeframes)	Other
Albania							
Andorra							
Armenia							
Austria							
Azerbaijan							
Belgium							
Bosnia and Herzegovina							
Bulgaria							
Croatia							
Cyprus							
Czech Republic							
Denmark							
Estonia							
Finland							
France							
Georgia							
Germany							
Greece							
Hungary							
Iceland							
Ireland							
Italy							
Latvia							
Lithuania							
Luxembourg							
Malta							
Republic of Moldova							
Monaco							
Montenegro							
Netherlands							
Norway							
Poland							
Portugal							
Romania							
Russian Federation							
Serbia							
Slovakia							
Slovenia							
Spain							
Sweden							
Switzerland							
The FYROMacedonia							
Turkey							
Ukraine							
UK-England and Wales							
UK-Northern Ireland							
UK-Scotland							
<b>Number of countries</b>	<b>43</b>	<b>4</b>	<b>47</b>	<b>47</b>	<b>39</b>	<b>43</b>	<b>20</b>
Israel							

Yes  
 No

## Comments:

**Germany:** data for question 68 does not include the following Länder: Mecklenburg-Western Pomerania and Thuringia, Rhineland-Palatinate, Saarland and Schleswig-Holstein.

**UK-England and Wales:** not all activities are measured in all jurisdictions.

**Israel:** the annual activity reports are established at the regional level of the courts and not at the specific level of each court as specified in the question.

A vast majority of states or entities reported that courts are required to prepare an annual activity report and to have monitoring systems on the number of incoming cases, number of decisions and length of proceedings. In **France** and **Greece**, the courts prepare an annual activity report, but there is no legal or regulatory provision about it. In **Spain**, the reports are prepared every three months through an electronic statistical bulletin.

In several countries (**Czech Republic, Monaco, Slovakia, Sweden**), annual activity reports are not an obligation for courts. However, in the **Czech Republic** for example, an annual activity report on the regional and district courts is prepared by the Minister of Justice. In **Slovakia**, courts only have to send statistics to the Minister of Justice, who publishes them on the internet for the entire judicial system.

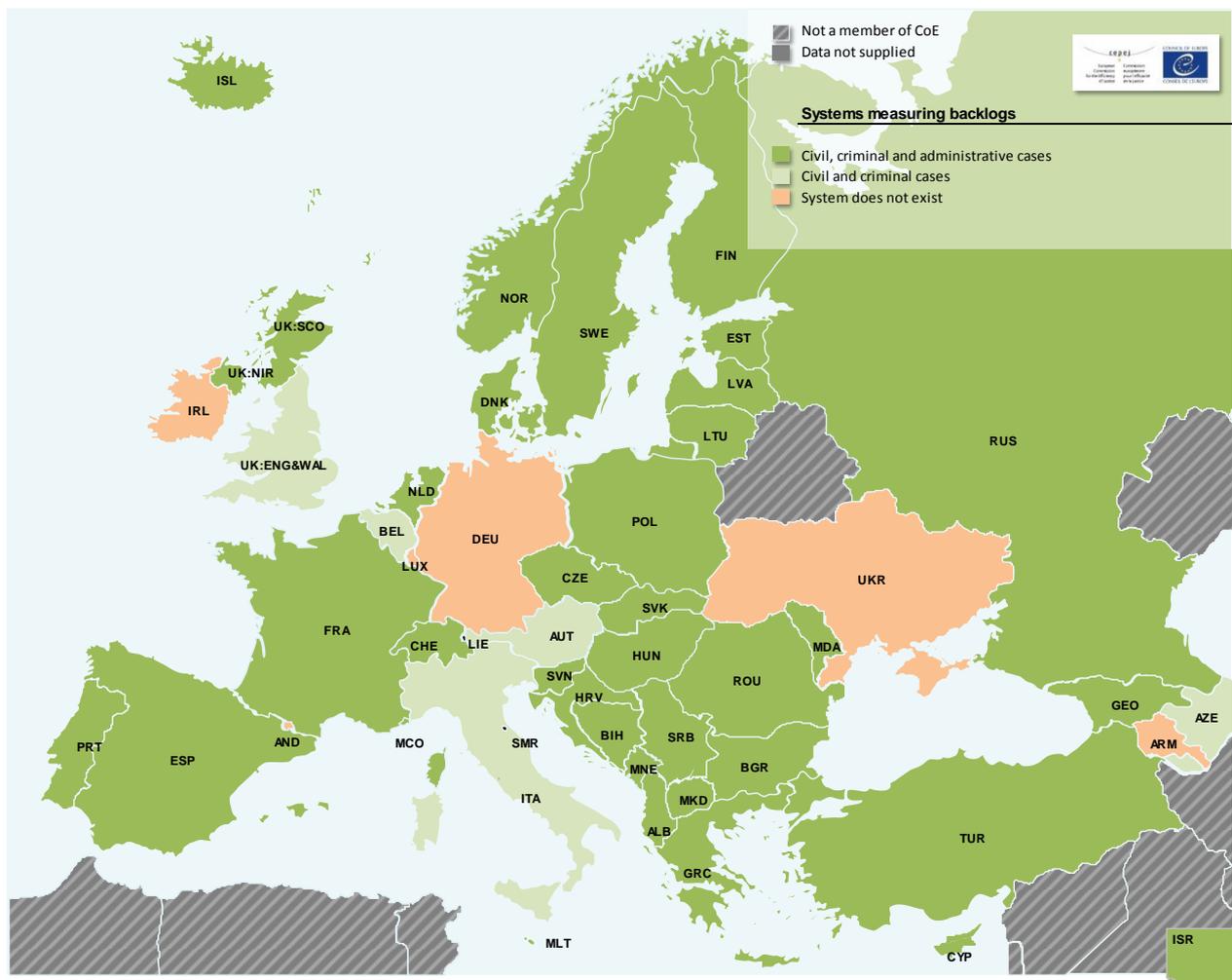
All states or entities reported that they control the number of incoming cases and the number of decisions taken. Concerning the length of proceedings, some countries do not use a monitoring system: **Andorra, Ireland, Luxembourg** and **Malta**.

The monitoring of adjourned cases is applied in 40 states or entities. States which do not have this system are: **Andorra, Germany, Iceland, Ireland, Luxembourg, Norway, Serbia**, and **Sweden**.

20 states or entities have other monitoring methods:

- in **Spain**, the number of cases enforced and the number of letters rogatory received and issued is also measured;
- in **Poland**, the number of hearings is counted;
- **Romania** examines the length of administrative proceedings, the number of final convictions, legal aid, and the number of adjourned cases;
- **Hungary** monitors elements which cause the postponement of a trial, the length of trials, the number of hearings scheduled on one day and the number of cases handled by a judge;
- in **Slovakia**, the number of cases investigated by type of litigation and issued decisions (reconciliation, referral, etc.) is studied,
- in **Slovenia**, the statistical data collected and published four times a year by the Department of Justice includes in particular the number of judges and court staff, the delay for unresolved cases, the length of proceedings, the average time to close a case, court backlogs, the remedies and the time for issuing a decision. Slovenian courts also have special activity reports which include performance standards and advice for the attention of presidents and directors of courts;
- in **Sweden**, the collected statistics concern the number of decisions reviewed by higher courts, but also the number of hearings, parties to the proceedings, the number of types of cases, the teams in a court in charge of a case and the number of judges involved in the same case;
- in **Estonia**, there is also a monitoring system for the results of judicial proceedings, the number of types of cases, the number of decisions on appeal or revoked, partially or totally, the delay and the delays of pending cases;
- in **France**, the backlog by age is an indicator used in the judicial system. It should be noted that for administrative courts, all the indicators presented in the table are monitored except the number of cases which are postponed;
- in **Turkey**, in addition to statistics on number of files, decisions, pending cases and the average duration of cases, through the ICT infrastructure (UYAP), case type, judgment type, offence type, number of accused persons, age groups, and nature of the conviction decisions can also be monitored regularly.
- similarly, through its LITEKO computer system for courts, **Lithuania** records numerous data on cases brought before courts and parties to the proceedings;
- in **Armenia**, an electronic programme exists, but no legislative mechanism regulates the monitoring or the evaluation of the judiciary.

Figure 5.14 Systems of measuring backlogs (Q80)



**Comments:**

**Netherlands:** monitoring exists, but it does not concern backlogs.

**Norway:** there are no administrative courts in Norway. Administrative cases form part of the civil cases, but the backlog measures also apply to these cases.

**Portugal:** backlogs are only monitored in superior courts and on the initiative of the parties.

In addition to the previously described modalities of monitoring the performance of the justice system, a large majority of states or entities use specific systems in order to measure backlogs. 36 states or entities and Israel have a system to measure the backlogs in civil, criminal and administrative matters. In 5 states or entities: **Austria, Azerbaijan, Belgium, Italy and UK-England and Wales**, the backlogs are measured in civil and criminal cases. 6 states, **Andorra, Armenia, Germany, Ireland, Luxembourg and Ukraine**, do not have a such measuring system.

Most of the time, the states or entities that apply a measuring system for backlogs also monitor the length of proceedings (timeframes). This is not the case for **Malta**. On the contrary, **Armenia, Germany and Ukraine** do not measure the backlogs, but use a monitoring system for the length of proceedings (timeframes).

However, considering the few answers given to the specific question on the average length of proceedings (Q68), such systems deserve to be further developed. To this end, the CEPEJ's SATURN Centre could play an important role in the sharing of information on positive experiences and also on possible problems that can be avoided or better managed when properly anticipated.

**Table 5.15 States or entities that use a way of analysing the waiting time during court procedures (Q81)**

States/entities	Waiting time during court procedures monitored
Albania	Yes
Andorra	No
Armenia	No
Austria	No
Azerbaijan	Yes
Belgium	No
Bosnia and Herzegovina	Yes
Bulgaria	No
Croatia	No
Cyprus	Yes
Czech Republic	No
Denmark	No
Estonia	No
Finland	Yes
France	No
Georgia	Yes
Germany	No
Greece	Yes
Hungary	Yes
Iceland	No
Ireland	Yes
Italy	No
Latvia	No
Lithuania	Yes
Luxembourg	No
Malta	No
Republic of Moldova	No
Monaco	Yes
Montenegro	Yes
Netherlands	Yes
Norway	No
Poland	Yes
Portugal	No
Romania	Yes
Russian Federation	Yes
Serbia	Yes
Slovakia	No
Slovenia	Yes
Spain	Yes
Sweden	No
Switzerland	Yes
The FYROMacedonia	Yes
Turkey	Yes
Ukraine	No
UK-England and Wales	Yes
UK-Northern Ireland	No
UK-Scotland	Yes
<b>Number of countries</b>	<b>24</b>
Israel	Yes
	<b>Yes</b>
	<b>No</b>

More than 50% of states or entities explicitly mention the use of management information systems for the analysis of the length of proceedings, backlogs, delays or other steps in the proceedings.

The following examples should be highlighted:

- in **Finland**, the courts perform self-inspections with the support of their case management systems.
- in **Croatia**, court waiting times are analysed in cases concerning the right to trial within a reasonable time. Statistics of the individual performances of judges also allow an effective monitoring of the duration of court proceedings.
- in **Georgia**, the High Council of Justice studies the reasons for excessive length of time-frames according to statistical data, as well as through on-site visits.
- in **Slovenia**, cases are considered as backlogs when they exceed a certain delay starting from the moment they are filed, which varies according to the type of case. An agreement between courts, the Ministry of Justice and the Council of Justice foresees to rely more on timeframes rather than backlogs when making judicial decisions.
- in **Ireland**, court waiting times, from the decision of parties to refer a case to trial to the actual trial date, are the subject of annual reporting by the Courts Service.
- in **Lithuania**, the national judicial administration analyses the elements which cause extended hearings and transmits its results to the Judicial Council.
- in **Monaco**, for civil cases, the instruction phase (*mise en état*) of procedures is analysed during bimonthly hearings. For criminal cases, the monitoring of the investigating judges' quarterly reports.
- in **Montenegro**, the head of the court is responsible for the supervision of every chamber and court service. If a report states that a court or a chamber of a court has a backlog higher than the three months allowed for a new case, the chief judge must implement a programme to remove the backlog by 31 January of the following year.
- in **Bosnia-and-Herzegovina**, courts must send reports every six months of the calendar of pending cases, mentioning for example the date when the case started and whether there has been an appeal or not, along with the date of reception by a higher court. In addition, the HJPC collects monthly calendars of pending cases on computers, and publishes them on its website. There is an increasing process of computerization used to control the duration of each phase of the proceedings.
- **Turkey** also uses a computer system (UYAP) allowing inspectors to access all the information contained therein. In addition, the court waiting times are analyzed during inspections of courts, which take place every two years.
- likewise, in **Spain**, monitoring of court waiting times is provided through a computer system. Virtual inspections are conducted by the General Council of the Judiciary to follow procedural delays.
- in **Albania** and in "**the former Yugoslav Republic of Macedonia**", the president of the court measures the court waiting times during court proceedings.
- in **Hungary**, judges must regularly report on cases older than a certain period. These reports make the introduction of appropriate measures possible. Presidents of courts must then transfer the information to the President of the National Office of the judiciary.
- in **UK-England and Wales**, delays are analysed in the Crown Court, first instance courts and county courts.

For the states or entities that provided a negative reply to this question, this does not necessarily mean that some efforts are not being made in this field. In **Portugal** for example, waiting time during court proceedings is not generally measured, but in some courts this is a common procedure, while in **Iceland** the Supreme Court considers the timeframe of proceedings at the district courts when handling appeals. In **UK-Scotland**, in criminal matters, the number of weeks between the first hearing of a case (*pleading diet*) and the trial is measured; in civil cases, the number of weeks before the evidence is received or before a discussion can take place is measured. In **Estonia**, the future implementation (2014) of a new system of court management permits the monitoring of waiting times during court proceedings.

### 5.3.3 Responsible authorities

The two following tables aim at identifying the authorities in charge of developing the performance standards for judges and court users, and of assessing the courts' activity.

**Table 5.16 Authorities responsible for setting the targets for the courts and for each judge (Q73, Q75)**

States/entities	Authorities setting targets for the courts					Authorities setting targets for each judge				
	Executive power	Legislative power	Judicial power	President of the court	Other	Executive power	Legislative power	Judicial power	President of the court	Other
Albania	Yes	No	Yes	No	No	No	No	Yes	No	No
Andorra	No	No	No	No	No	No	No	No	No	No
Armenia	No	No	No	No	No	No	Yes	Yes	No	No
Austria	No	No	No	No	No	No	No	No	No	No
Azerbaijan	No	Yes	Yes	No	No	No	Yes	Yes	No	No
Belgium	No	No	No	No	No	No	No	No	No	No
Bosnia and Herzegovina	No	No	Yes	No	No	No	No	Yes	No	No
Bulgaria	No	No	No	No	No	No	No	No	No	No
Croatia	Yes	No	Yes	Yes	No	Yes	No	No	No	Yes
Cyprus	No	No	Yes	No	No	No	No	No	No	No
Czech Republic	No	No	No	No	No	Yes	No	No	No	No
Denmark	No	No	No	No	Yes	No	No	No	No	No
Estonia	Yes	No	No	Yes	Yes	No	No	No	No	No
Finland	Yes	No	No	No	Yes	No	No	No	No	No
France	Yes	No	No	No	No	No	No	No	Yes	No
Georgia	No	No	Yes	No	No	No	No	Yes	No	No
Germany	No	No	No	No	No	No	No	No	No	No
Greece	No	No	No	No	No	No	No	Yes	No	No
Hungary	No	No	No	Yes	No	No	No	Yes	Yes	No
Iceland	No	No	Yes	Yes	No	No	No	Yes	Yes	No
Ireland	No	No	No	No	No	No	No	No	No	No
Italy	Yes	No	Yes	No	No	No	No	No	No	No
Latvia	No	No	No	No	No	No	No	No	Yes	Yes
Lithuania	No	Yes	Yes	No	No	No	Yes	Yes	No	No
Luxembourg	No	No	No	No	No	No	No	No	No	No
Malta	No	No	No	No	No	No	No	No	No	No
Republic of Moldova	No	No	Yes	No	No	No	No	No	Yes	No
Monaco	No	No	No	Yes	No	No	No	No	No	No
Montenegro	Yes	No	No	No	No	Yes	No	No	No	No
Netherlands	No	No	No	No	Yes	No	No	No	No	No
Norway	No	Yes	No	Yes	No	No	No	No	No	No
Poland	Yes	Yes	No	Yes	No	No	No	No	Yes	No
Portugal	No	No	No	No	No	No	No	Yes	No	No
Romania	No	No	Yes	No	No	No	No	Yes	No	No
Russian Federation	No	No	No	No	No	No	No	No	No	No
Serbia	No	No	Yes	No	No	No	No	Yes	No	No
Slovakia	Yes	No	No	No	No	No	No	No	No	No
Slovenia	No	No	Yes	No	No	No	No	Yes	No	No
Spain	No	No	Yes	No	No	No	No	Yes	No	No
Sweden	Yes	No	No	Yes	Yes	No	No	No	No	No
Switzerland	No	No	No	No	Yes	No	No	No	No	No
The FYROMacedonia	No	No	Yes	No	No	No	No	Yes	No	No
Turkey	No	No	Yes	No	No	No	No	Yes	No	No
Ukraine	Yes	No	No	No	No	No	No	Yes	No	No
UK-England and Wales	Yes	No	No	No	No	No	No	No	No	Yes
UK-Northern Ireland	Yes	Yes	Yes	No	No	No	No	No	No	No
UK-Scotland	No	No	No	No	Yes	No	No	No	No	No
<b>Number of countries</b>	<b>13</b>	<b>5</b>	<b>18</b>	<b>8</b>	<b>7</b>	<b>3</b>	<b>3</b>	<b>16</b>	<b>6</b>	<b>3</b>
Israel	No	No	Yes	Yes	No	No	No	No	No	No

Yes  
No

## Comments:

**Albania:** the High Council of Justice has established the evaluation criteria for single judges and has issued a decision on the expected workload per judge per year according to the type of cases.

**Croatia:** the Minister of Justice adopts the framework criteria for judges on a proposal from the Supreme Court.

**Latvia:** judges set their own targets. By amendments to the Law on judicial power that entered into force in 2014, the president of the court in cooperation with the court judges determine for each year the aims of the courts according to the average length of case review.

**Denmark:** the courts and the Danish Court Administration cooperate on defining the targets for all courts (district courts and high courts). Within this framework, the individual courts are free to set up sub-targets.

**Estonia:** targets for the courts are set in cooperation with the president of the court, director of the court and the Ministry of Justice. The targets are set individually for each court in the form of an agreement between the court and the Ministry of Justice.

**Finland:** targets of the courts are defined during the annual negotiations between the courts and the Ministry of Justice.

**Italy:** at the beginning of every year, the Ministry of Justice provides new performance targets. For the first time in the Italian judiciary system, a law decree has provided for economic bonuses to courts and single magistrates when the number of pending cases is reduced by a certain percentage in a year (for the civil sector only).

**Monaco:** there is no performance goals set for the courts. However, the President of the court of first instance and the Justice of the Peace must inform the First President of the Appeal Court each month regarding civil matters. The latter supervise the statistical data.

**Netherlands:** courts targets are defined by the courts and the Council for the Judiciary who decides.

**Norway:** the Parliament sets the targets for the processing time in both civil and criminal cases.

**Poland:** the Ministry of Justice sets the statistical targets for the court system (e.g. timeframe for performing specific action). The President of the court sets the performance targets for courts and individual judges referring to the indicators of average performance.

**Russian Federation:** though performance indicators are defined to allow for the evaluation and comparison of the activity of judges, no targets are set for them. Court presidents distribute cases among judges taking into account the volume and complexity of the cases, the caseload and the level of qualification of the judges, as well as the procedural time limits.

**Sweden:** the Government sets the general targets for the courts every year. The detailed targets are set after a discussion between the court presidents and the National Courts Administration. The Supreme Court and the Supreme Administrative Court set their own targets.

**Switzerland:** most of the cantons do not set targets for courts and judges with the exception of 10 cantons that set performance objectives at the court level: in 2 cantons by the legislature; in 2 cantons by the High Judiciary Council; and in 6 cantons: others, i.e.: targets are set by the judges themselves and are then approved by a higher judicial authority or by a supervisory authority.

**Turkey:** the Supreme Council of Judges and Prosecutors is responsible for setting the performance targets of the courts and the judges.

**UK-England and Wales:** the targets for judges are set by Her Majesty's Courts and Tribunals Service (HMCTS).

**UK-Scotland:** the Scottish Court Service Board and collaborative working with criminal justice partners are responsible for setting the targets of the courts.

**Israel:** targets for the courts are set by the president of the court and the court manager.

It is mainly the judicial power itself that sets targets for individual judges (16 states or entities) and at the court level (18 states or entities). The executive power can also set targets for the courts (13 states or entities), but typically does not do so for individual judges to avoid the risk of interfering with the individual work of judges.

**Table 5.17 Authorities responsible for the evaluation of the performances of the courts (Q77)**

States/entities	High Council of judiciary	Ministry of Justice	Inspection authority	Supreme Court	External audit body	Other
Albania	Yes	No	No	No	No	No
Andorra	Yes	No	No	No	No	No
Armenia	Yes	No	No	No	No	No
Austria	No	Yes	Yes	No	No	No
Azerbaijan	Yes	No	No	No	No	No
Belgium	No	No	No	No	No	No
Bosnia and Herzegovina	Yes	No	No	No	No	Yes
Bulgaria	Yes	No	Yes	No	No	No
Croatia	Yes	Yes	No	Yes	No	No
Cyprus	No	No	No	Yes	No	No
Czech Republic	No	Yes	No	No	No	No
Denmark	No	No	No	No	No	Yes
Estonia	Yes	Yes	No	No	No	No
Finland	No	Yes	No	No	No	Yes
France	No	Yes	Yes	No	No	No
Georgia	Yes	No	No	No	No	No
Germany	No	Yes	No	No	No	No
Greece	No	No	Yes	No	No	No
Hungary	Yes	No	No	No	No	Yes
Iceland	Yes	Yes	No	Yes	Yes	No
Ireland	No	No	No	No	No	Yes
Italy	Yes	Yes	Yes	No	No	No
Latvia	No	No	No	Yes	No	No
Lithuania	Yes	No	No	No	No	No
Luxembourg	No	No	No	Yes	No	No
Malta	Yes	No	No	No	No	No
Republic of Moldova	Yes	No	No	No	No	No
Monaco	No	No	No	No	No	Yes
Montenegro	Yes	No	No	No	No	No
Netherlands	Yes	No	No	No	No	No
Norway	No	Yes	No	No	No	Yes
Poland	No	Yes	No	No	No	Yes
Portugal	Yes	No	No	No	No	No
Romania	Yes	No	No	No	No	No
Russian Federation	Yes	No	No	Yes	No	Yes
Serbia	Yes	No	No	Yes	No	No
Slovakia	Yes	Yes	No	No	No	No
Slovenia	Yes	No	No	Yes	Yes	No
Spain	Yes	No	No	No	No	Yes
Sweden	No	Yes	No	No	No	No
Switzerland	No	No	Yes	Yes	No	Yes
The FYROMacedonia	No	No	No	Yes	No	No
Turkey	Yes	No	No	No	No	No
Ukraine	No	No	No	No	No	Yes
UK-England and Wales	No	Yes	Yes	No	Yes	No
UK-Northern Ireland	No	No	Yes	No	Yes	Yes
UK-Scotland	No	No	No	No	No	Yes
<b>Number of countries</b>	<b>25</b>	<b>15</b>	<b>8</b>	<b>10</b>	<b>4</b>	<b>14</b>
Israel	No	No	No	No	No	Yes

Yes	Yes
No	No

## Comments:

**Bosnia and Herzegovina:** the High Judicial and Prosecutorial Council evaluates the performance of the courts. Also, the presidents of second instance courts evaluate the performance of lower instance courts.

**Denmark:** the Danish Court Administration evaluates the performance of the courts.

**Finland:** Courts of Law are organisationally under the administration of the Ministry of Justice. Courts are also supervised by the Chancellor of Justice and the Parliamentary Ombudsman. In matters of law, courts are independent. The Ministry does not supervise court decisions.

**France:** the Inspectorate-General of Judicial Services draws up an annual inspection programme that requires the approval of the Ministry of Justice. No provision provides periodicity to those visits that give recommendations and for which the monitoring is done in collaboration with the Directorate of Judicial Services.

**Ireland:** the Courts Service Board has overall authority in the management and administration of the Courts Service.

**Luxembourg:** the Superior Court of Justice takes measure in respect of the underperforming magistrates. In the administrative jurisdictions, the Administrative Court acts as the Superior Court.

**Monaco:** the Heads of Jurisdiction are in charge of evaluating the courts' performance.

**Norway:** the Norwegian Courts Administration is responsible for the well-functioning of the courts. The Government may instruct the Norwegian Courts Administration in singular cases, and the Ministry of Justice may issue general regulation related to the judiciary.

**Poland:** the President of the Court and the President of Higher Court in respect of lower courts within its jurisdiction are responsible for the evaluation of the performance of the courts using the statistical indicators and / or visits performed by judges.

**Russian Federation:** the High Council of Judiciary, the Supreme Courts and the Judicial Department of the Supreme Court are responsible for the evaluation of the performance of the Courts.

**Slovenia:** the Judicial Council monitors and evaluates the performance of courts and issues a yearly report on the execution of judicial power. With the amendment of the Courts Act that enters into force in 2014, this responsibility is entrusted to the Supreme Court.

The external audit body meant is the Court of Audit. The Ministry of Justice has no formal role in evaluating the performance of courts but it has a significant influence by allocating the budget for investments in courts and preparing the legislation on the judicial system.

**Spain:** the President of the High Court of Justice of the Autonomous Region is responsible for evaluating the performance of every court in its area.

**Switzerland:** the competent bodies vary according to the cantons. Generally, the Cantonal Supreme Court (as well as the Federal Court) supervises the first instance courts in the cantons (and in the Confederation) and the Parliament exercises the ultimate supervision of the cantonal and federal jurisdictions.

**Ukraine:** High specialised courts analyse court statistics.

**UK-Northern Ireland:** the Analytical Services Group (NICTS) provides quality assured statistical reports. All management grades are also responsible for evaluating the performance of their business area / teams on a periodic basis to ensure targets are on track to be met.

**UK-Scotland:** the Lord President and the Sheriff Principal are responsible for overseeing the efficient operation of courts. The Scottish Court Service Board is responsible for the day to day monitoring and evaluation of the administrative performance of the Court Service.

**Israel:** the President of the Supreme Court and the Courts' Director are responsible for evaluating the performance of the courts.

## 5.4 Trends and conclusions

The shift in 2008-2012 clearly highlights the trend of reducing the number of courts in the Council of Europe member states. The largest decline in the number of courts (geographic locations) (over 10%) between 2008 and 2012 can be observed in **Bulgaria, Croatia, Finland, France, Georgia, Ireland, Serbia and Sweden**. Overall, the number of courts (geographic locations) decreased in 22 states or entities and increased in 8. The dominant trend in the reduction in the number of court continued after 2012 through plans of reforms of the judiciary (see chapter 17).

The difference in procedures and systems implemented in Member States for the recovery of small debts illustrates the diversity of judicial organizations.

A significant evolution as concerns ICT in courts may be noted through globally measured elements as well as through the data provided by the Member States. The development of e-justice and of e-courts is a significant European trend. A large number of states mention recent or on-going reforms in fields such as electronic files, electronic databases of jurisprudence, electronic registers, electronic signature or case management systems. The results of these reforms are clearly visible in the improvement of computer facilities for direct assistance to judges and court clerks, as well as for communication between courts and the parties. Several States have now developed and implemented ICT systems in order to support simplified procedures like payment orders or small claims. In some cases, the creation of a single national electronic jurisdiction for the management of such claims has resulted in reduced complexity and more efficient use of resources.

The use of video-conferencing is increasing in European judicial systems mainly for criminal cases. It ensures a better protection of the persons and sometimes reduce their movements. However, it is necessary to develop norms in order to define the range of application of these new video tools and govern their use. There are no European standards on this issue at this stage.

With respect to the functioning of courts, there is a trend towards rationalisation and an increased use of performance and quality indicators, in order to make justice more efficient. This in turn suggests a need to improve indicators and standards for delays, to avoid waiting times for court proceedings, to reduce backlogs, etc.

At the same time, quality policies are developed regarding the services provided to court users, along with the transparency of the functioning of courts (information from the internet, activity reports, etc.)

## Chapter 6. Alternative Dispute Resolution (ADR)

Recourse to alternative measures to the settlement of disputes (ADR – *Alternative Dispute Resolution*) continues to develop in the member states. These alternative mechanisms have a strong influence on the number of cases which the courts will have to determine, but also on the way in which the dispute can be resolved between the parties. A specific chapter is therefore devoted to this question, before the activity of the courts is analysed (chapter 9). Thus ADR, depending on the way in which it is conducted, can improve the efficiency of justice by reducing the courts' workload, as well as improving the quality of the response to the citizens by offering them an opportunity to resolve a dispute and limiting its prejudicial consequences and cost or (and) attenuating the contentious situation brought before the court.

The Committee of Ministers of the Council of Europe has adopted several specific Recommendations on **mediation**. Recommendation Rec(98)1 concerns mediation in family matters, particularly in the area of divorce (and custody cases of children). The aim of this Recommendation is not only to reduce the workload of the courts, but also to create a more acceptable solution for the parties and (in the case of children) to better protect the welfare of children. Recommendation Rec(99)19 concerning mediation in criminal matters aims to enhance the active participation of the victim and the offender in criminal proceedings. The recommendation seeks, on the one hand, to recognise the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimisation and to communicate with the offender, and on the other hand, to encourage the offenders' sense of responsibility by offering possibilities of reintegration and rehabilitation. Mediation in civil matters is addressed in Recommendation Rec (2002)10, where a definition is given: "*a dispute resolution process whereby parties negotiate over the issues in dispute in order to reach an agreement with the assistance of one or more mediators*". This definition is used for the purposes of this report. Guidelines have been adopted by the CEPEJ in 2007 to facilitate the proper implementation of these recommendations in the member states<sup>25</sup>.

The different forms of ADR will therefore be presented in succession (6.1), before analysing mediation ordered in a judicial framework (6.2) then the procedures forming alternatives to actual trying of the case (arbitration and other types of ADR, 6.3).

### 6.1 Different forms of ADR

The use of ADR has gained widespread acceptance in various European countries both among the general public and the legal profession. It helps improve efficiency and effectiveness of the justice system by providing users alternatives to regular judicial proceedings.

Different kinds of ADR exist in the member states of the Council of Europe:

- *Mediation*: this is a voluntary, non-binding private dispute resolution process in which a neutral and independent person assists the parties in facilitating the discussion between the parties in order to help them resolve their difficulties and reach an agreement. It exists in civil, administrative and criminal matters.
- *Conciliation*: the conciliator's main goal is to conciliate, most of the time by seeking concessions. She/he can suggest to the parties proposals for the settlement of a dispute. Compared to a mediator, a conciliator has more power and is more proactive.
- *Arbitration*: parties select an impartial third party, known as an arbitrator, whose (final) decision is binding. Parties can present evidence and testimonies before the arbitrators. Sometimes there are several arbitrators selected who work as a court. Arbitration is most commonly used for the resolution of commercial disputes as it offers greater confidentiality.

Several member states reported offering also other forms of ADR.

The scope of the different forms of ADR may differ. Plus, the distinction between mediation and conciliation is not always evident. For these reasons the following data and figures concerning mediation other than judicial one must be interpreted with care.

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<sup>25</sup> See [www.coe.int/cepej](http://www.coe.int/cepej)

**Table 6.1 Types of Alternative Dispute Resolution applied in European states or entities in 2012 (Q168)**

States/entities	Mediation other than judicial mediation	Arbitration	Conciliation	Other alternative dispute resolution	Total
Albania					3
Andorra					1
Armenia					1
Austria					2
Azerbaijan					0
Belgium					3
Bosnia and Herzegovina					3
Bulgaria					2
Croatia					3
Cyprus					2
Czech Republic					2
Denmark					3
Estonia					4
Finland					4
France					4
Georgia					3
Germany					4
Greece					4
Hungary					4
Iceland					2
Ireland					4
Italy					4
Latvia					3
Lithuania					3
Luxembourg					3
Malta					3
Republic of Moldova					3
Monaco					3
Montenegro					3
Netherlands					3
Norway					4
Poland					3
Portugal					3
Romania					3
Russian Federation					3
Serbia					3
Slovakia					3
Slovenia					4
Spain					3
Sweden					3
Switzerland					4
The FYROMacedonia					3
Turkey					3
Ukraine					2
UK-England and Wales					4
UK-Northern Ireland					3
UK-Scotland					4
<b>Nb of countries</b>	<b>42</b>	<b>44</b>	<b>35</b>	<b>20</b>	
Israel					4

	Yes
	No

In a majority of states or entities there are at least 3 forms of ADR. Arbitration and mediation are the forms of ADR which are used by the highest number of European states or entities (44 and 42 states or entities respectively). **Andorra** applies only *mediation*. **Armenia** applies only *arbitration*.

Only **Azerbaijan** said not to propose any alternative dispute resolution. However, the introduction of a form of ADR is under discussion.

Compared to 2010, it can be noted that the number of ADR applied is increasing in all different forms.

## 6.2 Judicial mediation

This chapter concerns *judicial mediation*. The question put to states recalled that the type of mediation studied by the CEPEJ, the only really measurable one, solely concerned the instances where the judge or the prosecutor intervened in any way in the process.

In this type of mediation, there is always the intervention of a judge or a public prosecutor who advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose alternatives to prosecution, that is he/she may mediate a case between an offender and a victim, for example to establish a compensation agreement.

41 states or entities provide for a system of judicial mediation. All of them provided information.

6 states do not provide judicial mediation: **Armenia, Azerbaijan, UK-Scotland, Latvia, Switzerland and Ukraine.**

## 6.2.1 Authorities responsible for mediation

Table 6.2 Authorities responsible for judicial mediation procedures in 2012 (Q164)

States/entities	Court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Public prosecutor
Albania	No	Yes	No	Yes	No
Andorra	No	No	Yes	Yes	No
Armenia	No	No	No	No	No
Austria	No	Yes	Yes	Yes	Yes
Azerbaijan	No	No	No	No	No
Belgium	Yes	No	Yes	No	Yes
Bosnia and Herzegovina	No	Yes	No	No	No
Bulgaria	No	Yes	No	No	No
Croatia	Yes	No	Yes	Yes	Yes
Cyprus	Yes	No	No	No	No
Czech Republic	Yes	No	Yes	No	No
Denmark	Yes	No	Yes	Yes	No
Estonia	No	Yes	No	Yes	No
Finland	Yes	No	No	Yes	No
France	Yes	No	No	No	Yes
Georgia	Yes	No	Yes	No	No
Germany	Yes	Yes	Yes	Yes	No
Greece	Yes	No	Yes	No	Yes
Hungary	Yes	Yes	Yes	No	No
Iceland	No	No	No	Yes	Yes
Ireland	Yes	Yes	Yes	No	No
Italy	No	No	Yes	Yes	No
Latvia	No	No	No	No	No
Lithuania	Yes	No	Yes	Yes	No
Luxembourg	Yes	Yes	No	No	No
Malta	Yes	No	No	No	No
Republic of Moldova	No	Yes	No	No	No
Monaco	Yes	No	Yes	No	No
Montenegro	No	No	Yes	No	No
Netherlands	Yes	No	No	No	No
Norway	Yes	No	Yes	Yes	No
Poland	No	Yes	No	No	No
Portugal	No	No	Yes	No	No
Romania	Yes	No	No	No	No
Russian Federation	Yes	No	Yes	Yes	Yes
Serbia	Yes	Yes	Yes	Yes	No
Slovakia	No	Yes	No	No	No
Slovenia	Yes	No	No	No	Yes
Spain	Yes	No	Yes	No	Yes
Sweden	Yes	No	Yes	Yes	No
Switzerland	No	No	No	No	No
The FYROMacedonia	No	Yes	Yes	No	No
Turkey	Yes	No	Yes	No	Yes
Ukraine	No	No	No	No	No
UK-England and Wales	Yes	No	Yes	Yes	No
UK-Northern Ireland	Yes	No	Yes	No	No
UK-Scotland	No	No	No	No	No
<b>Number of countries</b>	<b>27</b>	<b>35</b>	<b>30</b>	<b>17</b>	<b>10</b>
Israel	Yes	Yes	No	Yes	No

	Yes
	No

Private mediation is currently the main system of mediation in European states or entities (35 states or entities). Private mediators can be specially trained professionals, certified lawyers or other private (legal) professionals hired by the parties. Private mediation proposed by a judge or a court annexed mediation is

present in 30 states or entities. The third most important type of mediation is the one performed by a public authority other than the court (27). Mediation by judges or court staff nominated as mediator ("*in-house*" service - the "*multi-door courthouse principle*") exists in a smaller group of states or entities (17). In 9 states, prosecutors can perform mediation duties such as arranging (financial) compensation for the victim of a crime.

### 6.2.2 Types of mediation proceedings

Table 6.3 Types of cases concerned by judicial mediation in 2012 (Q164)

States/entities	Civil and commercial cases					Family law cases (ex. divorce)					Administrative cases					Employment dismissals					Criminal cases					Total	
	①	②	③	④	⑤	①	②	③	④	⑤	①	②	③	④	⑤	①	②	③	④	⑤	①	②	③	④	⑤		
Albania																										9	
Andorra																											2
Armenia																											0
Austria																											6
Azerbaijan																											0
Belgium																											8
Bosnia and Herzegovina																											8
Bulgaria																											4
Croatia																											13
Cyprus																											2
Czech Republic																											11
Denmark																											5
Estonia																											8
Finland																											13
France																											8
Georgia																											3
Germany																											17
Greece																											9
Hungary																											12
Iceland																											6
Ireland																											5
Italy																											5
Latvia																											0
Lithuania																											10
Luxembourg																											8
Malta																											4
Republic of Moldova																											5
Monaco																											2
Montenegro																											4
Netherlands																											8
Norway																											10
Poland																											5
Portugal																											9
Romania																											8
Russian Federation																											15
Serbia																											13
Slovakia																											3
Slovenia																											8
Spain																											11
Sweden																											10
Switzerland																											0
The FYROMacedonia																											4
Turkey																											7
Ukraine																											0
UK-England and Wales																											9
UK-Northern Ireland																											6
UK-Scotland																											0
Number of countries	23	34	11	13	1	22	32	18	13	1	6	13	0	6	0	16	27	15	13	2	11	11	13	3	9		
Israel																											10

Average number of country per type of authority	
①	Court annexed mediation 16
②	Private mediator 23
③	Public authority (other than the court) 11
④	Judge 10
⑤	Public prosecutor 3

On average, mediation is applied for 4 types of disputes. However, there are big differences among States and entities; indeed, **Cyprus** provides mediation only in criminal cases, **Monaco** only in family law cases, whereas mediation is available in all types of cases in **Albania, Croatia, Estonia, France, Czech Republic, Germany, Iceland, Poland, Portugal, Republic of Moldova, Spain, Turkey** and **Israel**.

Most of the states (40) have judicial mediation in family law cases. Private mediation is provided by a private mediator on the proposal of a judge (32), or by a court annexed mediation (22).

Mediation within a judicial process is also largely provided in civil and commercial matters and in employment dismissal (39 and 35 states or entities respectively). The highest number of states or entities apply these mediations through a private mediator (32 and 27).

26 states or entities apply mediation procedures in criminal cases. Private mediation (proposed by a judge or court annexed mediation), direct private mediation and mediation by a public authority (other than the court) are performed in a rather equal number of states or entities. However, it must be underlined that judicial mediation in criminal matters is the only kind of mediation where court annexed mediation is more used by Member states than private mediators acting on the proposal of a judge.

Mediation in administrative cases is only applied in 18 member states or entities.

### 6.2.3 Number of accredited mediators

Table 6.4 Number of accredited mediators in absolute values between 2006 and 2012 (Q166)

States/entities	2006	2008	2010	2012
Albania		NAP	NA	143
Andorra			NAP	NAP
Armenia			NAP	NAP
Austria	3500	3400	NAP	2400
Azerbaijan		NA	NA	NAP
Belgium	1800	1082	1099	1134
Bosnia and Herzegovina	33	53	105	132
Bulgaria	465	720	NA	NA
Croatia	672	1000	388	406
Cyprus			NAP	NA
Czech Republic		188	281	388
Denmark		NA	NA	127
Estonia			79	NAP
Finland		NA	NAP	NAP
France	395	NA	NAP	NAP
Georgia			NA	17
Germany			NAP	NAP
Greece		NA	NA	NA
Hungary	1207	1162	1185	1606
Iceland		NA	NAP	NAP
Ireland		25	25	35
Italy		NA	NA	NA
Latvia		NA	NAP	NAP
Lithuania	8	NA	43	47
Luxembourg	45	48	NA	110
Malta	35	50	50	69
Republic of Moldova		56	104	288
Monaco	1	1	1	1
Montenegro	33	73	91	95
Netherlands	3917	4296	4015	2949
Norway		NA	NA	NA
Poland		NA	2470	NA
Portugal	208	148	255	255
Romania	440	589	661	4136
Russian Federation			NA	NA
Serbia	202	NA	NA	NA
Slovakia	151	247	491	633
Slovenia	115	NA*	344	347
Spain		NA	NA	NA
Sweden		NAP	NAP	NAP
Switzerland		106	116	174
The FYROMacedonia	98	98	131	167
Turkey		NA	NA	NA
Ukraine			NA	21
UK-England and Wales	2000		NA	NA
UK-Northern Ireland		NA	NA	NA
UK-Scotland		NA	NAP	NAP
Average	766	702	624	653
Median	205	148	255	171
Minimum	1	1	1	1
Maximum	3917	4296	4015	4136
Israel				NA

## Comments:

**Bulgaria:** the figure provided includes the total number of mediators (judicial and non-judicial). The number of accredited mediators in 2013 is 1198.

**Estonia:** there are no accredited or registered mediators. The number could be given only regarding to some categories, for example the number of social support workers or the number of registered family mediators. But in all civil cases (family and employment cases include) the private mediator can be any person whom the parties have entrusted the task of carrying out the mediation according to the Conciliation Act.

**Monaco:** the Department of Social Affairs and Health has delegated the exercise as mediator to an official of that administration.

**Netherlands:** the number of mediators decreased in 2012 because of the new Netherlands Mediation Institute (NMI) registration directives.

**Romania:** due to a reform of ADR, the number of mediators in 2012 is particularly high comparing to 2010.

Accreditation may be granted by the courts, a national authority or an NGO. Member states were asked to provide an official figure. Out of 41 states or entities, no more than 24 were able to indicate a number of court accredited mediators which limit the analysis and comparability of data.

The accessibility of mediation services is one of the aspects of access to Justice. Regarding the number of accredited mediators per 100.000 inhabitants, it is noticeable that there is a European trend to increase this number. Except for **the Netherlands**, between 2010 and 2012, the average of the variation is positive. Most of the responding member states and entities have a number of accredited mediators which is less or equal to 10 mediators per 100.000 inhabitants. 2 states (**Austria** and **Luxembourg**) have a relatively high number of mediators (over 20 per 100.000 inhabitants). The number of 2,7 mediators per 100.000 inhabitants for **Monaco** is not significant (only one mediator).

### 6.2.4 Mediation proceedings and legal aid (Q165)

31 states or entities grant legal aid for mediation in judicial proceedings. Compare to 2010, 2 more member states provide legal aid for mediation procedures (**Andorra** and **Greece**). In **Lithuania** a new rule which foresees legal aid in the framework of a mediation procedure enters into force in 2014.

### 6.3 Arbitration, conciliation and other forms of ADR (Q168)

Almost every states or entities have indicated that *arbitration* is offered in their system. Only **Albania**, **Andorra**, **Azerbaijan** and **Czech Republic** do not provide it. Arbitration concerns especially commercial and (intellectual) property disputes. In **UK-England and Wales** and **Croatia**, arbitration may also cover cases concerning family law, in **Hungary**, sport disputes and in **Turkey** consumer protection. The organisation of arbitration can be very different from one country to another. Permanent arbitration tribunals are often attached to Commercial Chambers ("**the former Yugoslav Republic of Macedonia**" and **Hungary**). In **Slovakia**, a permanent arbitration court may be established by legal persons with the authorisation of the Ministry of Justice. Arbitration is mostly regulated through special arbitration laws, but may also be introduced in the civil procedure codes (**Monaco**, **Romania**, **Turkey** and "**the former Yugoslav Republic of Macedonia**"). It may be based under the UNCITRAL model-Law on International Commercial Arbitration (**Ireland**). Furthermore, some states have specified that the decision pronounced by an arbitrator is generally final and enforceable (**Bosnia and Herzegovina**). The decision can be challenged before the court on special grounds in **Slovakia**.

*Conciliation* is available in 35 states or entities. This procedure is performed in various areas, such as family law (i.e. **Finland**), labour disputes (i.e. **Hungary** and **Romania**), consumer protection (i.e. **Hungary**). In **Monaco**, the conciliation is common and binding in the field of labour law, occupational accidents and before the competent arbitration commissions in terms of commercial leases and residential leases and also before the justice of the peace.

20 states or entities also reported offering *other types of ADR*:

- alternatives to prosecution (e.g. *composition pénale* in **France** that is reserved for first time offenders and may lead to a fine, a specific obligation to do or not to do, or a requirement to attend a course),
- extrajudicial settlement certified by a public notary (**Croatia**),
- quasi-judicial administrative proceedings in Tax Matters (**Greece**),
- a consumer may choose to bring a case before the Consumer Complaints Board or another relevant complaints body approved by the Minister of Business and Growth instead of, or before, bringing it before the courts (**Denmark**),
- financial and debtor's advices (**Finland**),

- ombudsman at local, cantonal and federal level which can be consulted by individuals regarding dispute with the administration (**Switzerland**),
- consumers (**Denmark**), including binding advice in consumer and insurance cases by the national Ombudsman (**Netherlands**).

#### 6.4 Trends and conclusions

ADR continue to be developed in Europe.

Between 2012 and 2014, new laws to reform the mediation were adopted in **Spain** and **Latvia**; in **Hungary**, new rules of court mediation in cases of divorce, child custody and guardianship authority has been adopted; in **Italy**, a new law reintroduced mandatory mediation in civil and commercial matters particularly in the context of disputes over inheritance, family law, medical malpractice. In the **Netherlands** a register of mediators has been created; in **Greece**, the first mediators have been authorised in civil and commercial cases. in **Albania**, a mediators licensing commission and the National Chamber of Mediators has also been created.

Several states are considering legislative reforms in terms of ADR: for example, in **UK-England and Wales** a bill is currently being discussed on the obligation of a mediation attempt in family law disputes and in **Norway** on "restorative justice". In **Azerbaijan**, **Bosnia and Herzegovina**, **Hungary** and **Montenegro** plans to strengthen the implementation of existing forms of ADR are underway.

The arbitration procedure exists in several member states. A law on arbitration in **Georgia**, **Latvia** and **Slovakia**.

Interesting and attractive forms of ADR have been described by several countries which show how initiatives assessed as successful may be adopted by and inspire other member states or entities.

To ensure access to justice in judicial mediation proceedings, 31 states or entities grant legal aid for mediation in judicial proceedings, that is, 11 more than in 2006.

It is still difficult to obtain valuable information about the number of mediators and the number of performed mediations, due to the significant extent of the extrajudicial field in the matter.

## Chapter 7. Judges

### 7.1 Introduction

A judge is a person entrusted with giving, or taking part in, a judicial decision opposing parties who can be either natural or physical persons, during a trial. This definition should be viewed in the light of the European Convention on Human Rights and the case law of the European Court of Human Rights. More specifically, *"the judge decides, according to the law and following organised proceedings, on any issue within his/her jurisdiction"*.

To better take into account the diversity in the status and functions which can be linked to the word *"judge"*, three types of judges have been defined in the CEPEJ's scheme:

- *professional judges* are described in the explanatory note of the evaluation scheme (Q46) as "those who have been trained and who are paid as such", and whose main function is to work as a judge and not as a prosecutor (see chapter 10). The fact of working full-time or part-time has no consequence on their status.
- *professional judges practicing on an occasional basis* and are paid as such (Q48)
- *non-professional judges* are *volunteers who are compensated* for their expenses and who give binding decisions in courts (Q49).

Prosecutors are therefore excluded from this chapter. They are dealt with in chapter 10.

This chapter will also examine in a separate part, mechanisms for the appointment of members of the public (mainly drawn at random) to participate in a jury entrusted with deciding on criminal cases.

For these three categories, and in order to better assess the actual activity, member States have been requested to specify in full time equivalents (FTE) the number of professional judges' positions effectively occupied, whether they are practicing full time or on an occasional basis.

**Table 7.1 Types and number of judges in 2012 (Q46, Q48 and Q49)**

States/entities	Professional judges (FTE)		Professional judges sitting in courts occasionally (gross figures)		Non professional judges (lay judges) (gross figures)	
	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.
Albania	380	13,5	NAP	NC	NAP	NC
Andorra	24	31,5	2	2,6	NAP	NC
Armenia	219	7,2	NAP	NC	NAP	NC
Austria	1 547	18,3	NAP	NC	NA	NC
Azerbaijan	600	6,5	NAP	NC	NAP	NC
Belgium	1 598	14,3	NAP	NC	2601	23,3
Bosnia and Herzegovina	962	25,1	114	3,0	322	8,4
Bulgaria	2 239	30,7	NAP	NC	NAP	NC
Croatia	1 932	45,3	NAP	NC	NAP	NC
Cyprus	103	11,9	NAP	NC	NAP	NC
Czech Republic	3 055	29,1	NAP	NC	5923	56,4
Denmark	372	6,6	NAP	NC	12103	216,0
Estonia	228	17,7	NAP	NC	802	62,3
Finland	981	18,1	NAP	NC	2202	40,6
France	7 032	10,7	428	0,7	24932	38,0
Georgia	242	5,4	NAP	NC	NAP	NC
Germany	19 832	24,7	NA	NC	98107	122,3
Greece	2 574	23,3	NAP	NC	NAP	NC
Hungary	2 767	27,9	NAP	NC	4563	46,0
Iceland	55	17,1	NA	NC	NAP	NC
Ireland	144	3,1	NAP	NC	NAP	NC
Italy	6 347	10,6	NAP	NC	3275	5,5
Latvia	439	21,5	NAP	NC	NAP	NC
Lithuania	768	25,6	NAP	NC	NAP	NC
Luxembourg	212	40,4	NAP	NC	NA	NC
Malta	40	9,5	19	4,5	NAP	NC
Republic of Moldova	441	12,4	NAP	NC	NAP	NC
Monaco	37	102,4	16	44,3	127	351,5
Montenegro	263	42,4	11	1,8	NAP	NC
Netherlands	2 410	14,4	1100	6,6	NAP	NC
Norway	557	11,0	43	0,9	43000	851,3
Poland	10 114	26,2	NAP	NC	NA	NC
Portugal	2 009	19,2	NAP	NC	NAP	NC
Romania	4 310	20,2	NAP	NC	NAP	NC
Russian Federation	33 232	23,2	NAP	NC	538	0,4
Serbia	2 916	40,5	NAP	NC	NA	NC
Slovakia	1 307	24,2	NAP	NC	NA	NC
Slovenia	970	47,1	NAP	NC	3445	167,3
Spain	5 155	11,2	NA	NC	7685	16,7
Sweden	1 123	11,8	247	2,6	8600	90,0
Switzerland	1 271	15,8	NA	NC	2873	35,7
The FYROMacedonia	668	32,4	NAP	NC	1750	84,9
Turkey	8 126	10,7	NAP	NC	NAP	NC
Ukraine	7 754	17,1	NAP	NC	NAP	NC
UK-England and Wales	2 016	3,6	8858	15,7	23270	41,1
UK-Northern Ireland	70	3,8	563	30,9	NA	NC
UK-Scotland	185	3,5	95	1,8	440	8,3
Average	2 971	21,0	958	9,6	12328	113,3
Median	981	17,7	105	2,8	3360	43,6
Minimum	24	3,1	2	0,7	127	0,4
Maximum	33 232	102,4	8858	44,3	98107	851,3
Israel	651	8,2	58	0,7	583	7,3

The table above reflects information about the number of professional judges sitting in court on a permanent basis, professional judges sitting in court on an occasional basis and non-professional judges. With regard to the two last categories, the lack of quantified data should be construed as meaning that these particular types of judges do not exist within the concerned states or that the latter were not able to identify the respective number of judges belonging to the named categories. **Spain**, for example, has pointed out that there is no data base at the national level in respect of professional judges sitting in courts on an occasional basis, as the nomination of this type of judges is made by the High Court of each Autonomous Community.

With regard to the category of “professional judges sitting in courts on an occasional basis”, **Albania, Hungary, Ireland, Italy, Republic of Moldova, Slovenia, "the former Yugoslav Republic of Macedonia"**

and **Ukraine** have explicitly highlighted that this type of judges does not exist in their judicial system. **Iceland** and **Switzerland** have indicated that data in this respect are not available (“NA”) without providing any specific explanation. Conversely, it has been clarified that in **Germany** the number of professional judges sitting in court on an occasional basis cannot be identified because they are comprised within the general category of professional judges. The **Netherlands** have specified that their data are relevant for 2011, all further data being not available. As regards **France**, the answer should also be qualified because administrative judges – who are not allowed to sit on an occasional basis – are consequently not included in the figure. Finally, it can be noted that in **Malta**, the rule is still the absence of professional judges exercising occasionally. Basically, the quantified data communicated by this country refers to the 9 Commissioners for Justice and the 10 Small Claim Tribunal adjudicators sitting on an occasional basis within a strictly determined frame as an exception to the rule.

With regard to the same category, the scheme asked states to specify, if possible, besides the raw data, the full-time equivalent data: among the 12 states that reported having in their system judges sitting occasionally, only **France** (214 FTE) and **Sweden** (46 FTE) were in a position to do so.

With regard to the category of “non-professional judges”, **Austria, Luxembourg, Poland, Serbia, Slovakia** and **UK-Northern Ireland** were not in a position to provide quantified data. It is important to point out that the data of **UK-England and Wales** are approximate, whereas the data of **Switzerland** – where this type of judges does not exist at the level of the Confederation – have been extrapolated from the answers of the 19 cantons. In **Denmark**, the peculiarity of the judicial system makes it impossible to determine the number of non-professional judges which necessarily includes the number of jurors. Essentially, a single nomination confers the right to sit as a lay judge (non-professional judge) and/or as a member of a jury. As concerns **Slovenia**, the number (3445) represents a pool of lay judges, but data on actual sitting days and the number of lay judges who have effectively exercised the judicial function are not available. In “**the former Yugoslav Republic of Macedonia**”, among the 1750 nominated non-professional judges, only 879 were concretely affected.

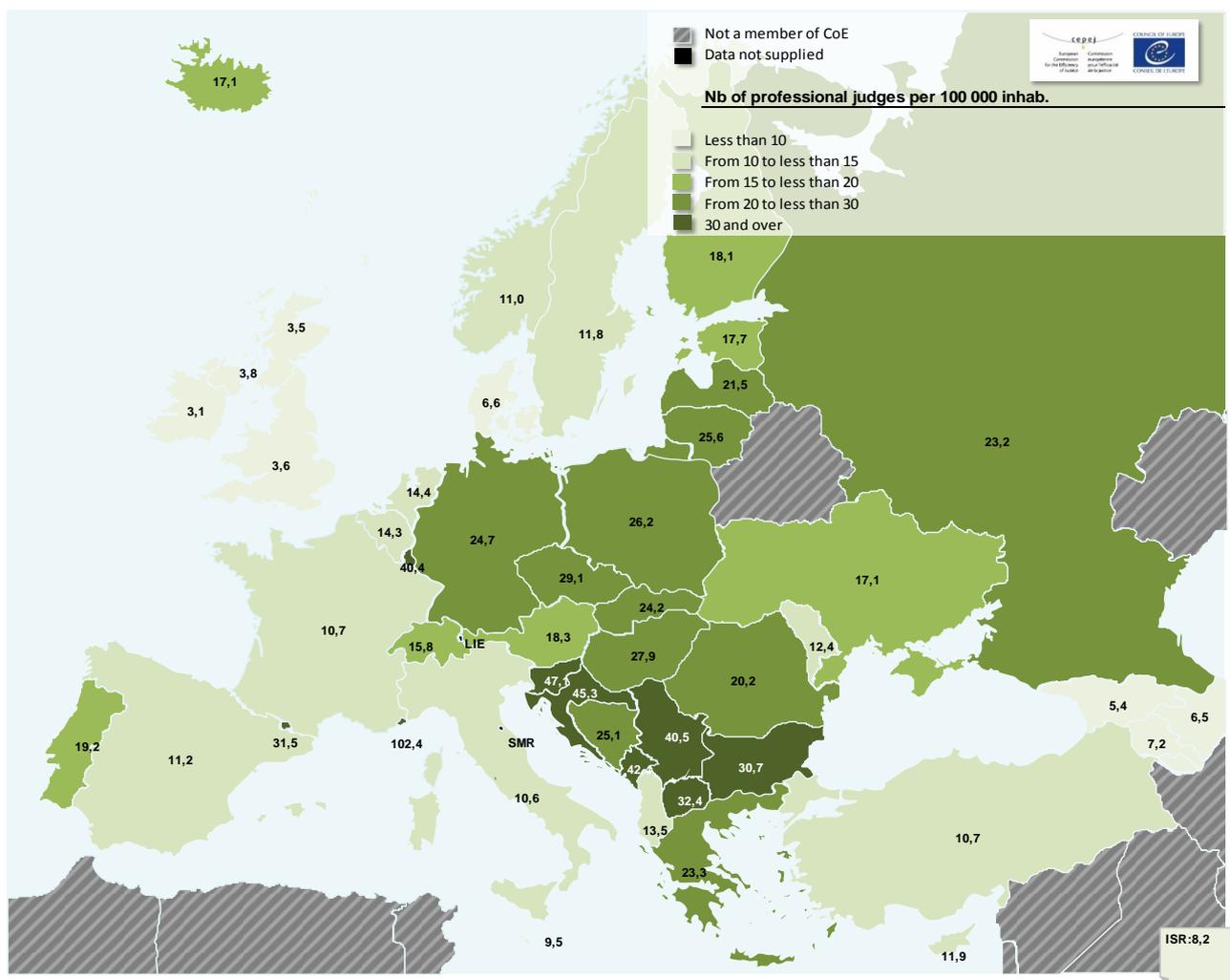
## 7.2 Professional judges

Professional judges may be defined as judges who have been recruited and are paid to practice solely as a judge. This chapter does not deal with professional judges sitting on an occasional basis (see chapter 7.3).

Data provided should include only the judges who are currently discharging judicial functions (explanatory note – question 46). However, the **UK-England and Wales** could not resort to this methodology because if the total number of salaried office holders includes a number that work on a salaried part time basis, this number has not been yet recorded in the Judicial Office database to enable the numbers to be reflected on a FTE basis. In addition, the **Netherlands** preferred to present their data in terms of persons (2410), given that the number in full time equivalent excludes the Supreme Court (2194). Only some states have indicated details (judges seconded to the ministries, judges on maternity leave, for instance), namely **Slovakia** and **Slovenia**.

It is common that some positions of judges remain temporarily vacant, especially during the maternity leave of female judges; the profession being highly feminised (see chapter 11, part 11.6.2.).

**Figure 7.2 Number of professional judges sitting in courts (FTE) for 100 000 inhabitants in 2012 (Q1, Q46)**



**Comments:**

**Albania:** in the total number of judges are included trainee judges who have performed in this period.

**Austria:** the numbers differ from the last periods because this year it was possible to assign more exactly the different tasks to the number of full time equivalents - dealing with first and second instance court proceedings on the one hand and the administrative tasks ('on behalf of the president') on the other hand.

**Denmark:** the total encompasses only permanently appointed judges, not deputy judges. In 2010, the reported number included 'legal assessors' who carry out some of the same tasks that judges do. However, given that they are not appointed judges and since deputy judges are not counted in the total (neither in 2010 nor in 2012), it was deemed best to leave out legal assessors, too.

**France:** as to the administrative courts, data in FTE concerning the distribution male/female are not available. It should be noticed that among the 1377 judges of first and second instances, there were 816 men and 561 women; data could not be distinguished according to the different instances. With regard to the Supreme Courts, data related to the distribution male/female in respect of the *Conseil d'État* are not available in FTE: on 31 December 2012 there were 105 men and 47 women.

With regard to the civil courts, there were on 31 December 2012 in FTE, 5771 professional judges (2 066 men and 3 705 women): 1. 1 326 men // 2 804 women; 2. 622 men// 795 women; 3. 118 men// 106 women.

The considerable increase observed in 2010 and 2012 could be explained by the fact that the data communicated for 2006 and 2008 did not include the number of administrative judges.

**Germany:** the number of professional judges includes the number of part-time occasional judges.

**Greece:** the total number given refers to the judicial officials of the civil-penal and administrative courts; 688 Magistrates as well as Court of Auditors' Judges are not included.

**Iceland:** from 1<sup>st</sup> March 2011, the number of judges was temporarily increased by law, due to workload.

**Netherlands:** all numbers include court presidents.

**Lithuania:** the number of working judges provided in the table reflects the situation. Numbers increase because not all judicial positions were occupied (there are 787 judicial positions in all courts in Lithuania and this number has not changed at least since 2007).

**Portugal:** the total number includes judges of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> instance courts, except the Constitutional Court.

**Russian Federation:** the total of 33 232 professional judges includes: 29 306 professional judges (including magistrates) according to the Judicial Department of the Supreme Court of the Russian Federation; 3 818 professional judges according to the Supreme Commercial Court of the Russian Federation; 108 professional judges according to the Supreme Court of the Russian Federation. The information on males and females is not available as there is a lack of relevant data concerning magistrates. Magistrates (or justices of peace) are judges of general jurisdiction of the sub-federal entities and are included in the unified judicial system of the Russian Federation.

**Slovakia:** the number 1307 represents judges actually performing their function on 31 December 2012. The total number of judges in the records of the Ministry of Justice is 1344 (497 males, 847 females) and includes also all of the judges not performing the function of a judge, e.g. judges temporarily assigned to other institutions (the Ministry of Justice, the Judicial Academy, other judicial institutions including international), judges on maternity leave etc.

**Slovenia:** on 31 December 2012, there were 983 judicial posts. This number represents all the posts, which are formally occupied although some posts are de facto vacant, since the judge is actually absent due to e.g. maternity leave. The number of actual presence of the judges (907) excludes the ones that were on maternity leave or sick leave, but includes those on annual leave.

From the number of all the judicial posts (983), 13 judges are subtracted, since they do not perform judicial functions (they do not sit in courts), but they are assigned to other duties (1 general secretary of the Supreme Court, 8 are appointed to the Supreme Court, 2 are appointed to the Judicial Council and 2 are appointed to the Ministry of Justice).

**UK-England and Wales:** the total number includes all levels of salaried judicial office holders from the Lord Chief Justice to the District Judges/Tribunal Judges.

**UK-Northern Ireland:** group 1 includes Masters, County Court Judges, District Judges, Coroners, Commissioners, President and Legal Member of Appeals Tribunal, Member of Lands Tribunal, Official Solicitor.

The European average of 20,92 judges per 100 000 inhabitants reveals itself stable over three exercises. Similarly to the previous cycle, it is possible to notice that the number of professional judges sitting in courts varies considerably between countries and judicial systems. Generally speaking, a contrast can be observed between the Western European States and the Central and Eastern European States, the latter being characterized by a higher number of judges per inhabitant.

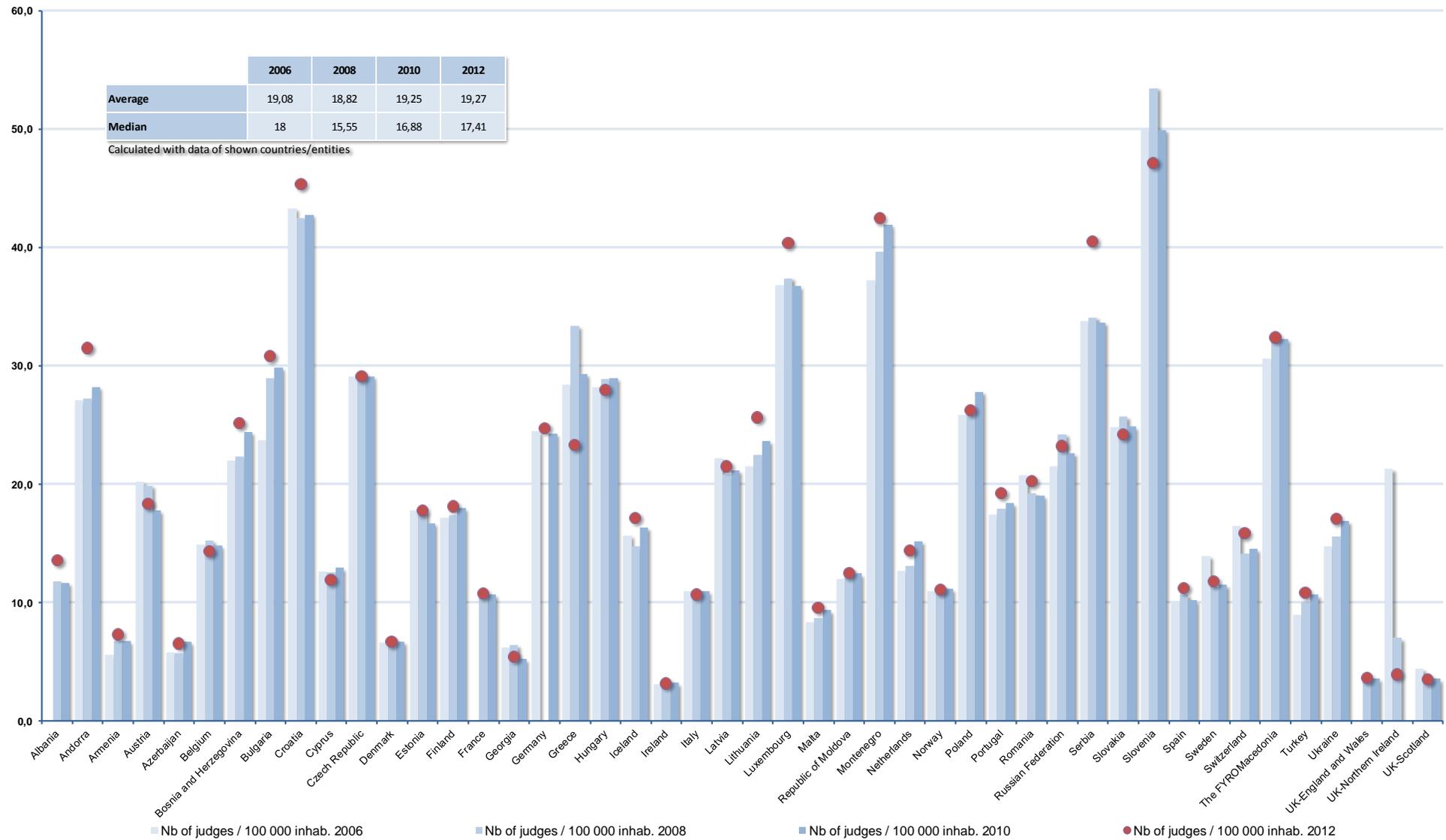
This difference can partly be explained because some systems rely completely on professional judges (**Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Cyprus, Croatia, Georgia, Greece, Ireland, Iceland, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands, Portugal, Romania, Turkey, Ukraine**), whereas other systems, such as in **Norway, Denmark, Sweden, Germany** or **UK-England and Wales**, give a significant and even pre-eminent role to lay judges / magistrates. In **France**, non-professional judges sit in the labour courts and the commercial courts of first instance. The judicial systems of **Slovenia, "the former Yugoslav Republic of Macedonia"** and, to a lesser extent, of **Germany**, are characterized at the same time by both their significant level of professionalization and the important place conferred to non-professional judges.

The imbalance observed can also be due to some extent to the fact that – as pointed out by the Consultative Council of European Judges – “the East European countries that are emerging from authoritarian regimes see law and justice as providing the legitimacy essential for the reconstruction of democracy” (Opinion N°3(2002) of the CCEJ, para. 11).

The European states which have the highest number of professional judges (more than 30 judges per 100 000 inhabitants) can be found essentially among the states coming from the former Yugoslavia (**Croatia, Montenegro, Serbia, Slovenia, "the former Yugoslav Republic of Macedonia"**), to which we can add **Bulgaria**.

Data in respect of **Luxembourg** and **Monaco** must be related to the small number of inhabitants, which has an impact on the indicator given per 100.000 inhabitants, and to the cases concerned with economic activity. Among the systems where professional judges sitting on a permanent basis have a pre-eminent position, a low number of judges (less than 8 per 100.000 inhabitants) can be found in the Caucasus countries (**Armenia, Azerbaijan** and **Georgia**) and **Ireland**. The comparison with **UK-England and Wales** and **UK-Scotland**, which also have a low number of professional judges (less than 4 per 100.000 inhabitants), is irrelevant insofar as they have a justice system using many lay judges (magistrates) who deal with more than 90 % of the cases.

Figure 7.3 Number of professional judges per 100.000 inhabitants between 2006 and 2012 (Q1, Q46)



This figure has been established on the basis of states or entities having provided figures for the four exercises. Only the data of **Albania, Germany, France** and **UK-Northern Ireland** do not appear complete and are based on three exercises.

In 18 states or entities out of 47, the number of professional judges per 100.000 inhabitants has decreased between 2006 and 2012. Contrary to the previous exercise, this observation has a general character and does not any more concern essentially countries of Western Europe. The above established trend must be construed in the light of the comments made by the member states which follow table 7.2. The analysis of the gross number of judges between 2006 and 2012 explains this trend as resulting essentially from demographic effects: in 72% of the concerned states, the general population has increased between 2006 and 2012, which constitutes the main reason for the variation in the ratio, calculated on a common base of the number of inhabitants on 1<sup>st</sup> January 2012.

In fact, among those states where the number of professional judges per 100 000 inhabitants is decreasing, the number of judges in 2012 has decreased significantly (in absolute figures) only in **Greece** and **UK-Northern Ireland (RU)**, in this latter country - which counts more than 70 lay judges - on a law absolute value. As far as the others, over the years, the precisions have been refined. The evolution in **UK-Northern Ireland** appears as the most contrasted but it has to be qualified by the circumstance that the figure communicated for the 2006 exercise includes also the number of lay judges (243) and seems to be presented, akin to data for 2008, in terms of persons and not in full time equivalents. The decrease noticed in **Austria, Georgia, Sweden, UK-England and Wales** and **UK-Scotland** is older and the number of professional judges has actually increased since 2010 (it remained stable in **UK-Scotland**). Some other states or entities may have modified their methods of calculation or of data collection (**UK-England and Wales** between 2006 and 2008; the **Russian Federation** between 2010 and 2012). As concerns **Denmark**, a more restrictive interpretation of the category of professional judges has been adopted as a result of which some types of posts were excluded from the total.

By contrast, some states continue their reforms by increasing human resources devoted to the judicial function (**Azerbaijan, Bosnia and Herzegovina, Montenegro** and **Ukraine**). The influence of the recent membership of, or the application to, the European Union may be an explanation for this trend of increasing numbers of judges (**Bulgaria, Turkey**). In **Spain**, the number of professional judges has increased significantly since the last exercise, whereas the evolution observed in **Portugal** appears as a general trend. The increase seems to be even more noticeable in **Albania, Andorra, Armenia** and **Lithuania**, which basically is the result of the decrease in their populations. In addition, concerning more specifically **Lithuania**, the figure communicated for 2012 reflects the actual situation and the necessity of ensuring replacements, whereas the official number of budgetary posts of judges did not change since at least 2007 (787 posts). With regard to **France, Malta, Monaco** and the **Netherlands**, the evolution is old and currently aims at the stabilization, even at the reversal of the trend as in the **Netherlands**. **Serbia** constitutes a special case in the framework of this cycle. In fact, the high number of professional judges in 2012 is the consequence of the decision of the Constitutional Court ordering the reinstatement of all judges and prosecutors removed from office following the enforcement of the so called law of "lustration" of 2010. This measure, dictated by the imperatives of the European standards, would certainly require – as suggested by the European Commission on the occasion of the accession negotiations – a new strategy for judicial reform.

Figure 7.4 Evolution of the number of professional judges per 100.000 inhabitants between 2006 and 2012 (in %) (Q1, Q46)

States/entities	Nb of judges / 100 000 inhab. 2006	Nb of judges / 100 000 inhab. 2008	Nb of judges / 100 000 inhab. 2010	Nb of judges / 100 000 inhab. 2012	Evolution 2006-2012 (%)	
Albania		11,8	11,7	13,5	NC	
Andorra	27,1	27,2	28,2	31,5	16,2%	
Armenia	5,6	6,8	6,7	7,2	30,3%	
Austria	20,2	19,9	17,8	18,3	-9,5%	
Azerbaijan	5,8	5,7	6,7	6,5	12,2%	
Belgium	14,9	15,2	14,8	14,3	-4,0%	
Bosnia and Herzegovina	22,0	22,3	24,4	25,1	14,0%	
Bulgaria	23,7	29,0	29,8	30,7	29,6%	
Croatia	43,3	42,5	42,8	45,3	4,7%	
Cyprus	12,6	12,5	12,9	11,9	-5,5%	
Czech Republic	29,1	29,2	29,1	29,1	-0,2%	
Denmark	6,6	6,9	6,7	6,6	0,4%	
Estonia	17,8	17,7	16,7	17,7	-0,5%	
Finland	17,1	17,4	18,0	18,1	5,4%	
France		10,8	10,7	10,7	NC	
Georgia	6,2	6,4	5,2	5,4	-12,8%	
Germany	24,5	NC	24,3	24,7	1,1%	
Greece	28,4	33,3	29,3	23,3	-18,2%	
Hungary	28,2	28,9	29,0	27,9	-1,0%	
Iceland	15,7	14,7	16,3	17,1	9,0%	
Ireland	3,1	3,3	3,2	3,1	0,7%	
Italy	11,0	10,2	11,0	10,6	-3,1%	
Latvia	22,2	20,8	21,2	21,5	-3,4%	
Lithuania	21,5	22,5	23,6	25,6	18,9%	
Luxembourg	36,8	37,4	36,7	40,4	9,7%	
Malta	8,3	8,7	9,3	9,5	13,9%	
Republic of Moldova	12,0	12,9	12,4	12,4	3,2%	
Monaco	54,5	112,5	100,3	102,4	87,7%	
Montenegro	37,2	39,7	41,9	42,4	13,9%	
Netherlands	12,7	13,1	15,2	14,4	13,2%	
Norway	10,9	11,3	11,2	11,0	0,8%	
Poland	25,8	25,9	27,8	26,2	1,6%	
Portugal	17,4	18,0	18,4	19,2	10,0%	
Romania	20,7	19,2	19,0	20,2	-2,5%	
Russian Federation	21,5	24,2	22,6	23,2	7,8%	
Serbia	33,8	34,1	33,7	40,5	19,8%	
Slovakia	24,8	25,7	24,9	24,2	-2,6%	
Slovenia	50,0	53,5	49,9	47,1	-5,8%	
Spain	10,1	10,7	10,2	11,2	10,5%	
Sweden	13,9	11,3	11,5	11,8	-15,7%	
Switzerland	16,5	14,1	14,5	15,8	-4,0%	
The FYROMacedonia	30,6	32,2	32,3	32,4	5,8%	
Turkey	9,0	10,0	10,6	10,7	19,7%	
Ukraine	14,8	15,5	16,9	17,1	15,4%	
UK-England and Wales		3,5	3,6	3,6	NC	
UK-Northern Ireland	21,3	7,0		3,8	-81,9%	
UK-Scotland	4,4	3,5	3,5	3,5	-21,5%	
<b>Average</b>	20,3	20,9	21,0	21,0	4,2%	
<b>Median</b>	19,0	16,5	17,3	17,7	2,4%	
<b>Minimum</b>	3,1	3,3	3,2	3,1	-81,9%	
<b>Maximum</b>	54,5	112,5	100,3	102,4	87,7%	

**Figure 7.5 Distribution (in %) of professional judges between first instance courts, second instance courts and supreme courts (Q46)**

States/entities	Total of professional judges (FTE)	1st instance professional judges	2nd instance professional judges	Supreme court professional judges
Albania	380	78,9%	16,8%	4,2%
Andorra	24	50,0%	50,0%	0,0%
Armenia	219	74,9%	17,4%	7,8%
Austria	1547	85,6%	10,2%	4,2%
Azerbaijan	600	NC	NC	NC
Belgium	1598	80,9%	19,1%	1,9%
Bosnia and Herzegovina	962	69,1%	21,0%	9,9%
Bulgaria	2239	53,1%	38,4%	8,6%
Croatia	1932	71,3%	26,6%	2,1%
Cyprus	103	87,4%	NC	12,6%
Czech Republic	3055	60,8%	31,6%	7,7%
Denmark	372	69,6%	25,3%	5,1%
Estonia	228	73,2%	18,4%	8,3%
Finland	981	75,8%	19,8%	4,4%
France	7032	70,6%	24,1%	5,3%
Georgia	242	69,4%	24,0%	6,6%
Germany	19832	74,9%	20,5%	4,6%
Greece	2574	59,0%	31,5%	9,5%
Hungary	2767	60,4%	36,9%	2,7%
Iceland	55	78,2%	NC	21,8%
Ireland	144	94,4%	NC	5,6%
Italy	6347	77,7%	17,6%	4,7%
Latvia	439	59,9%	28,7%	11,4%
Lithuania	768	89,1%	6,6%	4,3%
Luxembourg	212	87,7%	NC	19,3%
Malta	40	85,0%	15,0%	NC
Republic of Moldova	441	73,0%	19,5%	7,5%
Monaco	37	43,2%	13,5%	43,2%
Montenegro	263	68,4%	24,7%	6,8%
Netherlands	2410	77,0%	21,5%	1,5%
Norway	557	66,2%	30,2%	3,6%
Poland	10114	93,3%	4,9%	1,7%
Portugal	2009	73,7%	22,2%	4,2%
Romania	4310	46,4%	51,4%	2,2%
Russian Federation	33232	NC	NC	0,4%
Serbia	2916	76,4%	22,4%	1,2%
Slovakia	1307	66,6%	26,9%	6,4%
Slovenia	970	81,0%	15,5%	3,5%
Spain	5155	70,7%	27,8%	1,5%
Sweden	1123	68,2%	28,9%	2,9%
Switzerland	1271	68,7%	28,3%	3,0%
The FYROMacedonia	668	79,6%	17,4%	3,0%
Turkey	8126	93,5%	NC	6,5%
Ukraine	7754	79,5%	19,9%	0,6%
UK-England and Wales	2016	NC	NC	NC
UK-Northern Ireland	70	81,5%	4,3%	14,2%
UK-Scotland	185	90,8%	9,2%	NC
<b>Average</b>	<b>2971</b>	<b>73,5%</b>	<b>22,8%</b>	<b>6,7%</b>
<b>Median</b>	<b>981</b>	<b>74,3%</b>	<b>21,5%</b>	<b>4,6%</b>
<b>Minimum</b>	<b>24</b>	<b>43,2%</b>	<b>4,3%</b>	<b>0,0%</b>
<b>Maximum</b>	<b>33232</b>	<b>94,4%</b>	<b>51,4%</b>	<b>43,2%</b>
Israel	651	70,5%	27,2%	2,3%

## Comments:

**Andorra:** Andorra does not have a Supreme Court. The High Court (*Tribunal Supérieur*) which is the last judicial instance has competence to deal with appeals against decisions adopted at first instance by the *Batllia* of Andorra in civil and administrative matters and by the *Tribunal de Corts* in criminal matters. It comprises one president and eight magistrates. The *Tribunal de Corts* (court of appeal and tribunal in respect of serious offences) intervenes at first instance with regard to serious offences or in order to ensure the enforcement of its own decisions or other judgements. It also acts through its president as a jurisdiction of prison surveillance and enforcement of sentences. It deals with appeals against judgments adopted by the *Tribunal de Batlles* (minor offences) and by judges (contraventions). It is currently composed of a president, a vice-president, one magistrate and two deputy magistrates sitting part-time. The *Batllia* of Andorra is a court of first instance and investigation in all matters. The *Batllia* and the *Batlles* (judges) intervene at first instance in respect of all matters, except major offences. The *Batllia* which comprises all *Batlles* (at least 8 and one president) can sit in a panel of one or more members. In 2012, it encompassed 12 *Batlles* including the president.

**Bosnia and Herzegovina:** the Supreme Court category encompasses 3 courts of general jurisdiction. Firstly, at entity level, there are the Federation of Bosnia and Herzegovina Supreme Court and the Republika Srpska Supreme Court. Both courts are acting as the highest instance in the respective entity deciding on legal remedies with regard to decisions of the immediately lower courts. Secondly, there is the Court of Bosnia and Herzegovina endowed with criminal, administrative and appellate jurisdiction. However, it has no jurisdiction over the decisions adopted by the entity level Supreme Courts. Within its criminal jurisdiction, the Court of BiH tries cases related to crimes laid down by the laws of BiH, which include war crimes, organized crimes, economic crimes and corruption cases. Administrative jurisdiction means that the Court of BiH adjudicates cases concerning decisions issued by BiH institutions and other organizations in charge of public functions, such as property disputes related to the performance of public functions between the State and the entities, breaches of the election law, etc. Its Appellate Division only decides appeals against decisions of the Court's first instance divisions.

**Cyprus:** Cyprus has a two tier system. The Supreme Court is the second and final instance court.

**Czech Republic:** the Czech Republic has a four-tier system. The number of judges of the high courts is included in the number of the second instance judges.

**Lithuania:** the regional courts of Lithuania have both the functions of first instance courts and courts of appeal. Therefore the number of judges in these courts (159) was put in the first section. The Supreme Administrative Court sits as the instance for appeal; therefore its judges (18) were included in the number of judges of the courts of appeal. Also this court has a right to renew case hearings under circumstances provided by law.

**Luxembourg:** the indicated total of professional judges (212) does not correspond to the sum of judges acting in each instance given that some judges are sitting on two different levels. For example, the Constitutional Court is composed of judges of the High Court of cassation and the Administrative Court.

**Malta:** there is no Supreme Court; the Court of Appeal is the Court of second instance. The Constitutional Court, then, is presided over by the 3 Judges who make up the Court of second instance also known as the Court of Appeal in its Superior Jurisdiction.

**Monaco:** two jurisdictions can be considered as Supreme Courts in Monaco:

- The *Tribunal Suprême* which intervenes in the field of administrative law and constitutional law, is composed of 5 permanent members and 2 deputy members, nominated by the Prince for a four year term of office.

- The *Cour de révision* which is situated at the top of the judicial system of Monaco was composed in 2012 of a first president, a vice-president and 7 *conseillers* nominated by the Prince and sitting according to the order of their appointment.

Neither of these jurisdictions sit on a permanent basis but in the framework of specific sessions.

**Montenegro:** for 2012 the number of second instance professional judges includes both the number of judges in High courts and Appellate courts. High courts adjudicate at first but also at second instance, and Appellate courts are courts of second instance.

**Netherlands:** 1. excludes the Trade and Industry Appeals Tribunal (CBb), the Supreme Court (Hoge Raad) and the Council of State (Raad van State); 2. includes the Trade and Industry Appeals Tribunal (CBb) and the Administrative High Court (CRvB), and excludes the Supreme Court (Hoge Raad) and the Council of State (Raad van State).

**Poland:** the Polish court structure contains three levels of courts but only two instances. Therefore some judges are working both at first and second instances. The difference is a result of aggregating district and regional courts judges in one group and appellate courts judges in the other.

**Romania:** it has to be mentioned that, as valid in 2012 (the competence will change with the entry into force of the New Criminal Procedure Code, in February 2014), the Romanian judicial system was organized as follows: 1) Courts of first instance, called "judecatorii", having full competence for judging at first instance); 2) Tribunals, which are generally courts of appeal on the merits (judge in appeal), but also rule in some cases at first instance and at second appeal level (appeal on the law/"recurs"); 3) Courts of appeal, which are second level appeal courts (appeal on the law /"recurs"), but also rule in some cases at first instance and at appeals level on the merits; 4) High Court of Cassation and Justice, unique and Supreme Court, mainly ruling the appeals declared against the judgments of the courts of appeal and of other judgments, in the cases stipulated by law. In these conditions, at question 46.1 have been mentioned the judges within the courts of first instance, and at question 46.2 have been mentioned the judges within tribunals and courts of appeal.

**Russian Federation:** when nominating a judge it is not determined whether it is a first or a second instance judge. In this regard, the data concerning the number of second instance judges in the courts of general jurisdiction system is not available. The number of Supreme Court professional judges includes 55 judges of the Supreme Commercial Court of the Russian Federation and 90 judges of the Supreme Court of the Russian Federation.

**Serbia:** data were provided on 15 October 2013. The number of judges at 1<sup>st</sup> instance courts includes judges of the basic courts (1 499), the offences courts (523), the commercial courts (169) and the Administrative Court (37). The number of judges at 2<sup>nd</sup> instance courts includes judges of the higher courts (206), the appellate courts (206), the High Minor Offences Court (60) and the Commercial Appellate Court (31). The number of judges of the Supreme Court of

Cassation is 34. The increase in the number of Supreme Court professional judges compared to data for 2010 stems from the fact that following Constitutional court rulings, previously non appointed judges and prosecutors were reappointed.

**Slovenia:** in the previous evaluation cycle, the judges of the Administrative Court were counted in the number of second instance judges, since they have the position of higher judges. Regarding the fact they try administrative cases at first instance, and to ensure compatibility with the answer for question 42 where the Administrative Court is classified as a first instance court, for 2012 they have been counted as first instance judges. The structure of judges according to the different levels and jurisdictions of the courts on 31 December 2012 is the following:

1) First instance courts:

- Local courts (44): 458 judges (78 male, 380 female)
- District courts (11): 265 judges (62 male, 203 female)
- Labour and social disputes courts (4): 41 judges (10 male, 31 female)
- Administrative court (1): 33 judges (6 male, 27 female)

2) Second instance courts:

- Higher courts (4): 139 judges (38 male, 101 female)
- Higher labour and social disputes court (1): 13 judges (5 male, 8 female)

3) Supreme Court: 34 judges (21 male, 13 female)

**Switzerland:** the extended competence of appeal of the supreme courts of the cantons and the enhanced judicial protection granted to citizens, have resulted in an increase in the number of judges at second instance.

**"the former Yugoslav Republic of Macedonia":** the number of first instance professional judges includes judges of all the 27 basic courts and judges of the Administrative court. The number of second instance professional judges includes judges of all the 4 appellate courts and judges of the High Administrative court.

**Turkey:** the increase in the number of Supreme Court professional judges between 2010 and 2012 is justified by the fact that, in order to reduce the massive workload, amendments regarding the Law No: 6110 adopted by the General Assembly of Turkish Great National Assembly and the laws regulating the establishment of the Supreme Court and the Presidency of the Council of State have been passed on 2 September 2011. According to articles 1 and 7 of the Law N° 6110, the number of chambers and, in relation with that, the number of court members, have been increased.

**Ukraine:** the mentioned number of Supreme Court professional judges concerns the judges of the High Specialized Court on Civil and Criminal Cases, the High Administrative Court, the High Commercial Court, as well as the judges of the Supreme Court.

**UK-England and Wales:** it has not been possible to provide the number of judges that sit in the first instance and second instance courts because it is possible for proceedings to be issued in a number of different courts, it is also possible for judges to be appointed to sit across courts that can be considered first instance and second instance courts, for example, Circuit Judges that are appointed to sit in the Crown and County Courts; both of these courts can have matters issued within them or can deal with appeals. It is for this reason that it has only been possible to provide with the overall totals and a gender breakdown on this.

**UK-Scotland:** the number of first instance judges includes 21 Outer House Judges; 1 Chairman of Land Court; 142 Sheriffs and 4 Stipendiary Magistrates. The number of appeal judges includes 11 Inner House Judges and 6 Sheriffs Principal. Inner House and Outer House Judges are Judges in the Court of Session (civil cases) and the High Court of Justiciary (criminal cases), which are both the supreme Courts which hear first instance cases and appeals.

38 states or entities provided data specifying the distribution of professional judges from different jurisdictions. The diversity of the judicial organisation within states has led them to support their replies with detailed comments (see above), specifying what should be included in each of the categories. It should be noted when reading these comments that such a distribution is not always obvious, some courts of second instance for example being competent to adjudicate some cases of first instance, and some courts belonging to the highest level of the judicial hierarchy acting as court of appeal in certain cases. **Azerbaijan** and **UK-England and Wales** were not able to provide information in respect of this distribution. **Andorra, Cyprus** and **Malta** are endowed with a judicial system organized on two levels and where the high courts of appeal are also the last instance. **Luxembourg** and **UK-Scotland** were not in a position to communicate quantified data with regard to judges sitting respectively in second and third instances that is why the reading of their ratio must be put into perspective.

This first analysis will allow to better understand how states adapt their number of judges among the different levels of the courts. Those data will be linked to the appeal rate of first instance cases and to the workload at each level of court. A high appeal rate and the appeals in cassation demonstrate a procedural system which reflects a more contentious society, thus a less accepted and more crowded justice.

In 20 states or entities, 70% to 85% of all professional judges are judges of first instance, judges of the second instance representing then 15% to 30% of the total, except **UK-Northern Ireland** where judges of second instance constitute 4%. Only **Romania** has reported having more judges of second instance (51%) than judges of first instance (46%). This ratio should be qualified by the specific competence of the courts of appeal to deal with some cases at first instance. In **Hungary** and **Bulgaria**, the number of judges of appeal remains significant (respectively 37% and 38%), even if it is decreasing since the last exercise. The noticeable difference noticed in **Lithuania, Poland** and the **Russian Federation** between the number of judges of first instance and the number of judges of second instance to the detriment of the latter should be construed in the light of the comments provided by these states.

Logically, in most states or entities, judges of Supreme Courts represent less than 10% of all judges. With the exception of the very small states such as **Monaco** and **Andorra**, which cannot be compared to other states because of their size and consequently, the specific organization of their judicial systems, **Bosnia and Herzegovina**, **Greece**, **Latvia** and **UK-Northern Ireland** are the states which have the highest proportion of judges of Supreme Courts. The data of **Iceland** can be explained by the absence of judges intervening at second instance, whereas those of **Luxembourg** are justified by the specific status of judges sitting at third instance who, very often, originally belong to other tribunals. Finally, the data of **Cyprus** should be interpreted in the light of the peculiarity of its judicial system which is organised on two levels and where the second instance judges are basically sitting as last instance.

### 7.3 Professional judges sitting occasionally

In order to tackle a legitimate demand from their public for “*neighbourhood*” and “*rapid*” justice, some states or entities have reinforced the number of judges by bringing in judges who preside over a case only occasionally.

These professional judges are sometimes called *non presiding judges* or *deputy judges*. This option is available in particular in *Common-Law* states or entities to lawyers who are to become full-time judges. They are therefore experienced legal professionals who have a solid basis of legal training and who have already benefited from specific training for judicial functions. In **Malta**, for example, as an exception to the rule, the Small Claims Tribunal is presided by a lawyer, not being a judge, acting on a part-time basis and who has security of tenure for a period over five years. In other countries such as in **Norway**, court judges and lawyers who have reached the retirement age can hear some cases when the court is in need of extra judges.

Practicing as an occasional judge usually means a limited number of court sessions throughout the month: maximum 6 sessions of 4 days per month for the neighbourhood judges (“*juges de proximité*”) in **France** and between 15 and 50 days per year for **UK-England and Wales**.

These judges are working part-time, occasionally and generally paid according to the number of sessions they have undertaken during the month.

12 states or entities (**Andorra**, **Bosnia and Herzegovina**, **France**, **Malta**, **Monaco**, **Montenegro**, **Netherlands**, **Norway**, **Sweden**, **UK-England and Wales**, **UK-Northern Ireland** and **UK-Scotland**) provided data concerning professional judges sitting occasionally.

Among occasional judges, a distinction must be made between those judges who act when there is a need, to support permanent judges (**Bosnia and Herzegovina**, **Montenegro**, **Norway**) and those who sit in a specific court which does not operate permanently (**Andorra**, **Monaco**). The purpose of the evaluation exercise is more to examine the number of judges acting “if needed” because this illustrates the state's efforts to find specific, smooth and accurate solutions in particular to reduce court backlogs by seconding permanent professional judges. Within this subcategory, it is possible to distinguish between judges nominated specifically with this aim and on a temporary basis (**Bosnia and Herzegovina**) and judges transferred from one tribunal to another, temporarily or permanently (**Montenegro**). In the first assumption, the state reacts by increasing the number of the judicial staff. In the second assumption, the state adopts a dynamic strategy of effectiveness without changing the number of the judicial staff. It is possible to refer to a third hypothesis and **Lithuania** constitutes an example of this by taking the initiative to nominate as presidents within 8 private courts some of their respective members in order to exercise temporarily the functions of president.

In the **Netherlands**, occasional judges contribute in a way to the resolution of disputes. In **UK-England and Wales** as well as in **UK-Northern Ireland**, there are more occasional judges than professional judges (respectively roughly 4 for 1 and 7 for 1), which is one of the specificities of the *Common-Law* systems.

Ten states have explicitly indicated that they had no occasional judges: **Albania**, **Hungary**, **Ireland**, **Italy**, **Lithuania**, **Malta**, **Republic of Moldova**, **Slovenia**, “**the former Yugoslav Republic of Macedonia**” and **Ukraine**. It may be deduced from the answers provided by the 22 other states that this arrangement does not exist in those states either.

## Comments:

**Andorra:** the *Tribunal de Corts* is currently composed by of president, a vice-president, one magistrate and two deputy magistrates working part-time.

**Bosnia and Herzegovina:** the number of reserve judges is not included in the number of professional judges sitting in courts. Reserve judges are appointed by the High Judicial and Prosecutorial Council following a court president's request, on a temporary basis (up to 2 years). They are acting in courts of general jurisdiction. Their role is to assist courts in reducing case backlogs, or to replace temporarily judges who are absent for a prolonged period of time. The reserve judges perform their duties on a full-time basis.

**France:** the status of "*juges de proximité*" does not exist within the administrative jurisdictions.

**Germany:** the number of part-time occasional judges is included in the number of professional judges.

**Lithuania:** 8 courts did not have court presidents and judges of these courts temporarily served as court presidents according to the Law on Courts.

**Malta:** there are no part time professional judges who sit in the Courts, as all the Courts are presided over by a Judge or a Magistrate, depending on the competency. Nevertheless, there is the Small Claims Tribunal, over presided by a lawyer, not being a judge, acting on a part-time basis and who has a security of tenure for a period of five years, and which decide all money claims up to 3 494 €. Furthermore, we also have Commissioners for Justice, acting on a part-time basis, who hear and decide upon depenalised contraventions, such as traffic contraventions and petty offences. The figures indicated as professional judges on an occasional basis reflect these two Tribunals, there being 9 Commissioners for Justice and 10 Small Claim Tribunal adjudicators.

**Monaco:** the *Cour de révision* and the *Tribunal Suprême* do not act on a permanent basis and their judges sit in the framework of specific sessions and are compensated for the tasks and the outlays. If the majority of members of the *Cour de révision* are professional judges according to the CEPEJ's definition, the members of the *Tribunal Suprême* are selected among "lawyers who are particularly competent" (article 2 of the regulation n. 2.984 of 16 April 1963 on the organisation and the functioning of the *Tribunal Suprême*) which implies that its members are not always judges who are "trained and paid as such".

**Montenegro:** in accordance with Article 42 of the Law on Judicial Council, the Judicial Council may permanently or temporarily send a judge with his/her consent to another court of the same, lower or higher level. During 2012, the Judicial Council adopted 7 decisions on sending judges to other courts, and earnings have been paid to the judges who meet the norm in the Court in which they were elected, as in the court to which they were sent.

**Norway:** the indicated number consists of first and second instance court judges and lawyers, who have reached the retirement age, but who are willing to sit in court of appeal cases when the court is in need of extra judges. The number of cases handled per year varies from judge to judge but in general the amount of work per year done by these judges does not constitute more than a few months – in full time equivalent.

**Netherlands:** the figure includes judges in both first and second instance courts. Figure is for 2011, no newer data is available.

**UK-England and Wales:** this is the total (8 858) of fee paid judicial office holders (some of whom will hold more than one fee paid post, and some who will also have had a mix of fee paid and salaried work).

**UK-Northern Ireland:** the total (563) includes 375 Judicial Officers and 188 Lay Magistrates. This figure also includes Appeal Tribunal members who the Northern Ireland Court and Tribunal Service (NICTS) has administrative responsibility for (the Department for Social Development has statutory responsibility).

**UK-Scotland:** the total (95) includes 17 Temporary Judges, 72 part time sheriffs, and 6 part time Stipendiary Magistrates (these figures include re-employed retired judges and sheriffs).

## 7.4 Non-professional judges

According to the constant case-law of the European Court of Human Rights, there is no objection on the ground of article 6§1 *per se* to non professional judges participating in the decision-making in a court (*Le Compte, Van Leuven et De Meyere v. Belgique*, app. n° 6878/75; 7238/75, 23/06/1981, §§ 57 et 58 and more recently *Ibrahim Gürkan v. Turkey*, app. n°10987/10, 3/07/2012). Basically, the guarantee of a justice of quality complying with the European standards is placed within the function of judging which, conferred in a derogatory way to non professional judges, endows the latter with the same rights and duties as those of the professional judges. Therefore, all of the principles established on the basis of the fundamental requirement of impartiality apply to non professional judges in the same way as to professional judges (*Langborger v. Suède*, app. n° 11179/84, 22/06/1989, §§ 34-35 ; *Cooper v. Royaume-Uni* [GC], app. n° 48843/99, 16/12/2003, § 123).

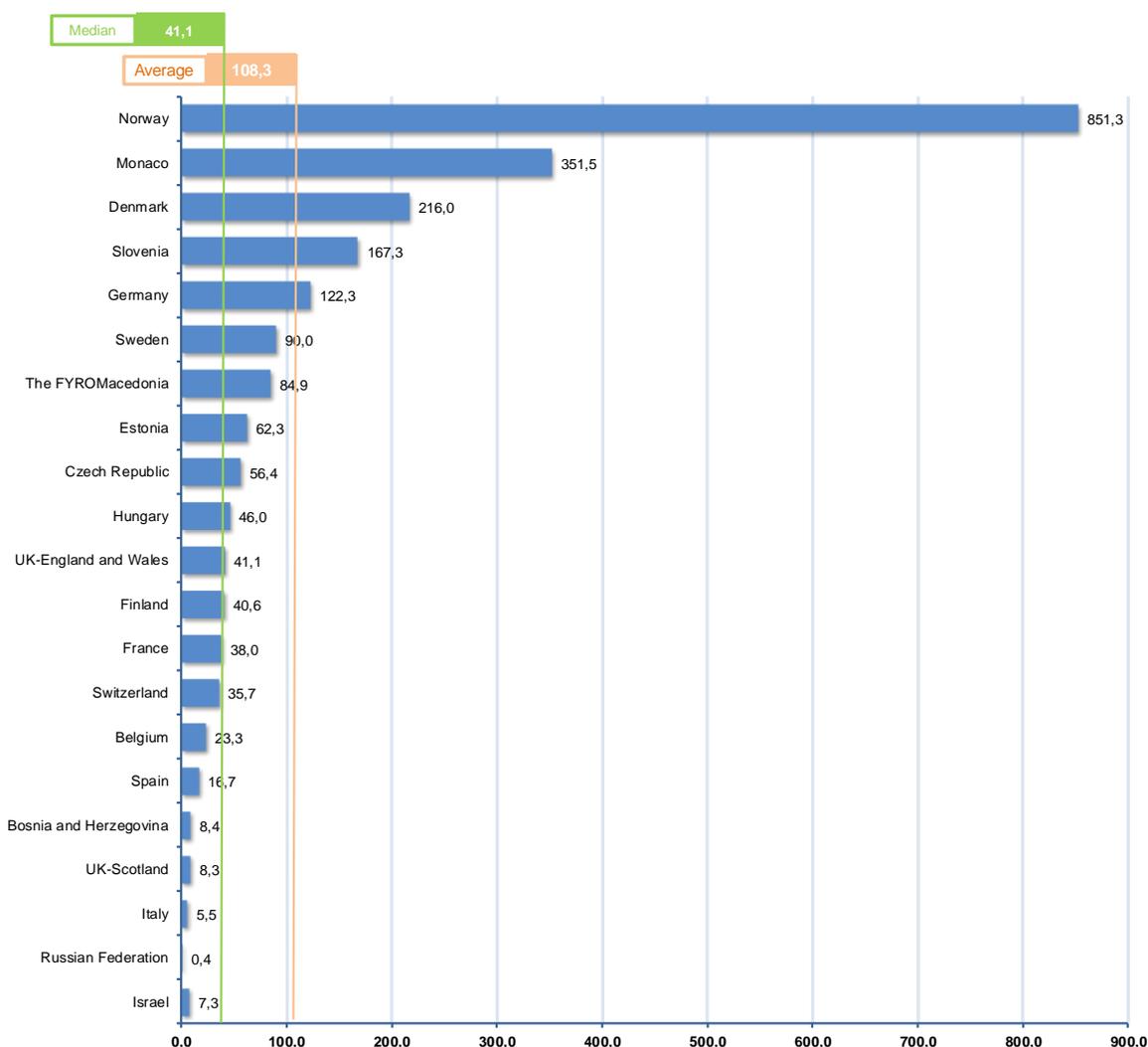
Non-professional judges can be *lay judges* without any legal training. *Lay judges* can be recruited (usually on a case-by-case basis) for their specific expertise or to ensure the public's participation in legal activities. *Lay judges* often sit in panels. In UK-England and Wales for example, in the *Criminal courts*, a panel of 3 *lay judges* (*magistrates*) has the power to rule on offences, for which the penalty is no more than 6 months imprisonment and/or a 500 € fine. It is estimated that 95% of criminal offences are handled by non-professional judges. The latter also have competence to deal with some civil and family matters. But there are cases when a *lay judge* sits as a single judge. Contrary to the *common law* countries, almost all other European states having the category of *lay judges* resort to mixed panels composed of a majority of non-professional judges and at least one professional judge. In this case, non-professional judges sit as associate judges (Austria, Czech Republic, France, Hungary, Germany, Luxembourg, Monaco, Norway,

Slovakia, Slovenia, Switzerland). The role of *lay judges* could be limited to the first instance (Estonia, Luxembourg, Slovakia), or be extended to the second instance (Austria, Norway, Sweden, Switzerland), but never to the level of the Supreme Courts. Most of the time, their competence is restricted. In Norway, for example, they are allowed two interventions per year, whereas in Czech Republic they can sit maximum 20 days within a year.

Another type of non-professional judge is the justice of the peace. These judges deal principally with the treatment of civil complaints of minor importance (or minor offences). In certain countries, the justice of the peace is a professional judge (even if he/she can be paid on an occasional basis), whereas, in other countries, he/she is considered to be a non-professional judge, as they are not paid but only their expenses are covered. In order to compare the courts' capacity to render judicial decisions, this element must be taken into consideration, as well as the number of court hearings and the number of cases they handle. This level of detail cannot be given in such a general study but deserves a specific study. The States or entities could not provide for each category the requested effective number of working days per month.

Non-professional judges are primarily concerned with dealing with non-criminal cases. They intervene in cases related to labour law (**Austria, France, Luxembourg, Monaco, Slovenia**) and commercial law (**Austria, France, Monaco, Russian Federation**). However, in some States, they sit only for criminal cases and not (**Estonia, Germany, Norway, Slovakia**), or no more (**Slovenia**) for civil cases. In **Czech Republic**, *lay judges* are endowed with the right to sit both in civil cases and in criminal cases. *Lay judges* are sometimes elected by local or regional councils (**Estonia, Hungary, Slovakia, Spain** – for a four year term of office, or **Czech Republic**) or by the members of their own sector of activity (courts specialised in labour law in **France, Luxembourg and Monaco** and in commercial matters in **France and Monaco**).

**Figure 7.6 Number of non professional judges per 100.000 inhabitants in 2012 (Q49)**



## Comments:

**Austria:** lay judges are intended by the law for offences, which are punishable at least five years of imprisonment.

Civil Procedure: labour-law cases: panels of judges comprising in all instances one or more professional judges and one lay judge from the body of employers and one lay judge from the body of employees decide on labour-law cases. Commercial cases: in case of commercial cases on which panels of judges (and not a single judge alone) decide, a lay judge from the commercial field participates in the courts of first and second instance (but not in the Supreme Court).

**Bosnia and Herzegovina:** lay judges are citizens who hear and decide criminal cases together with professional judges. Lay judges play a role in the BiH judicial system, due to the application of previous criminal procedural laws that required their participation. The procedural laws have been changed in a way that participation of lay judges is not required any longer, but due to a backlog of cases, their participation is still needed.

**Czech Republic:** lay judges are engaged in District Courts and Regional Courts. They are elected by Local Councils of their respective community or region. The panel consists of one professional judge and two lay judges. At a District Court civil proceedings, such a panel may decide, for example, employment cases; in criminal proceedings at a Regional Court as the court of first instance, such a panel may decide criminal cases where the law provides that the minimum term of imprisonment exceeds five years. Individual lay judges usually sit 20 calendar days in one calendar year.

**Denmark:** The number of non-professional judges reported counts both lay judges and expert judges. However, it is important to note that it is not possible to give a number excluding jurors. In Denmark you are nominated to serve both as a lay judge and a juror - so the same person may be a lay judge in one case and a juror in the next. In 2010 the number reflected the number of times a lay judge/juror appeared in court while the 2012 number reflects the actual number of lay judges/jurors nominated.

**Estonia:** lay judges can participate in the administration of justice in criminal cases (only matters concerning criminal offences in the first degree) in the courts of first instance. The local government councils present the candidates for lay judges. An Estonian citizen with active legal capacity from 25 to 70 years of age who resides in Estonia, has proficiency of the Estonian language at the level C1 and is of suitable moral character for the activity of a lay judge may be appointed as a lay judge. Lay judges are appointed for four years. The regulation of the Minister of Justice determines the number of lay judges for each court.

**Finland:** The number of lay judges has decreased and the number of lay judges will decrease even more during 2014.**France:** the indicated data (24 932) encompass: 1. *Justice consulaire* (3 199 *juges consulaires* members of the commercial courts ; 177 associated judges of the commercial chambers of the *tribunaux de grande instance* ; 44 elected judges of the mixed commercial tribunals of the overseas departments and territories ; 10 elected judges of the mixed commercial tribunal of Noumea); 2. Associated judges of the *tribunaux des baux ruraux* (1 608 associated judges (data provided by the Ministry of the Agriculture following the elections of 2010 and the additional elections of 2011); 3. Associated judges of the *tribunaux des affaires de sécurité sociale* (3 500); 4. Associated judges of the youth courts (1 942); 5. *Conseillers prud'hommes* (14 512).

**Germany:** lay judges participate in a large share of the trial courts (court with lay judges in the Local Courts, grand and small criminal chambers, as well as youth chambers in the Regional Courts). They exercise their honorary judicial office (section 31 of the Courts Constitution Act) in the main hearing in full and with the same voting rights as professional judges (section 30 subs.1 of the Courts Constitution Act). Professional judges and honorary judges rule together on the guilt of the defendant and the length of the sentence. In accordance with section 240 (2) of the Code of Criminal Procedure, they have the right to directly question defendants, witnesses and experts in the main hearing. They deliberate on the judgment together with the professional judges (section 260 of the Code of Criminal Procedure).

**Hungary:** The court of first instance usually consists of one professional judge, but the law may specify lawsuits where the court is made up of one professional judge and two lay judges appointed by representatives of the local government. In the proceedings, the lay judges have the same rights and obligations as the professional judge. According to constitutional rules lay judges/assises may also participate in judicial proceedings. They are elected for four years. Candidates must have no prior criminal record, the right to vote, be Hungarian citizens and be over the age of 30. In addition to these requirements military associate judges must serve in the professional staff of the Hungarian armed forces or the law enforcement agencies. In criminal proceedings local courts comprise one professional judge and two associate judges in circumstances where the criminal offence under consideration is punishable by a term of imprisonment of eight or more years. The county court acting as a court of first instance may conduct its procedure by means of a panel consisting of one professional judge and two assises. In civil proceedings a panel consisting of a professional judge and two associate judges may sit in cases defined by law.

**Latvia:** lay judges do not exist anymore – they participate only in cases that have started before 1 July 2009. In 2012 no lay judges have participated in the court hearings.

**Luxembourg:** lay judges can be found only at the first instance labour courts (*tribunaux du travail*). These courts are composed of three judges, one professional judge as president, one representative from the labour unions and one representative from the employers' union.

**Monaco:** data refers to the members of the labour court (48 associated judges employers and employees); the police officer representing the public prosecution services within the *Tribunal de simple police*; the 30 associated judges of the *Commission arbitrale des loyers commerciaux* and the 49 associated judges of the *Commission arbitrale des loyers d'habitation*. The functions of *juge de paix* and president of the *Bureau de jugement* of the labour court are exercised by one and the same judge – *juge de paix*. The functions of president of the *Commission arbitrale des loyers commerciaux* and the *Commission arbitrale des loyers d'habitation* are also conferred to the same judge.

**Norway:** with the exception of summary guilty plea trials in the first instance courts, which are handled by a single judge, all criminal cases are dealt with by a composite court where lay judges as a matter of principle forming majority. First instance criminal cases are dealt with by 1 professional judge and 2 lay judges, all with equal vote. Second instance criminal cases are dealt with by 3 professional judges and 4 lay judges. Hence – the Criminal Procedure Act presupposes a large number of lay judges. The lay judges serve on a case to case basis, and are selected randomly through the case management system. In order to maintain the lay factor, these lay judges are not remunerated with the

exception of a per diem fee of 250 NOK, and most important, they only serve in 1 to 2 cases on an annual basis. **Russian Federation:** according to the Federal Law on "Commercial Court Assessor of the Commercial Courts of Sub-Federal Units of the Russian Federation" commercial court assessors of commercial courts of sub-federal units of the Russian Federation are citizens of the Russian Federation authorized to administer justice when commercial courts of sub-federal units of the Russian Federation hear cases arising from civil matters at the first instance. Commercial court assessors may be citizens who have reached the age requirement of 25 years old, but not older than 70 years old, having faultless reputation, higher education and work experience in the economic, financial, legal, managerial or business field for at least five years. When hearing a case they enjoy the rights and owe duties of a judge.

**Slovakia:** the president of each district court determines the required number of lay judges per district. The lay judges are elected by the local/municipal council for a term of 4 years. The lay judges perform their function only in criminal proceedings as members of a panel consisting of one professional judge and two lay judges. These panels decide in the first instance the cases specified by the Code of the criminal procedure (the misdemeanors and the crimes where the law stipulates a maximum sentence over 8 years of imprisonment).

**Slovenia:** the number (3 445) represents a pool of lay-judges, but data on actual sitting days are not available (1 969 lay judges at the district courts; 1 476 lay judges at the labour and social courts). Although lay-judges are in full capacity of a judge as a member of a panel of judges, they cannot hear cases on their own, without the presence of the professional judge, who also takes care of all the procedures, writing the judgment etc.

According to the Criminal Procedure Act, the district courts try cases involving criminal offences punishable by fifteen or more years of imprisonment before panels of five judges (two professional and three lay judges), and cases of criminal offences punishable by three to fifteen years of imprisonment before panels of three judges (one professional or presiding judge and two lay judges).

Since the change in the law in 2008 lay judges are not involved in civil trials anymore. In labour cases on termination of employment contracts and in labour and social cases with a disputed value over 40 000 € labour and social court(s) try in a panel of three judges (one professional judge and two lay judges).

**Spain:** There are 7 685 so called 'Peace Judges', non-professional judges, placed in each village where there are neither professional courts nor professional judges. They are competent for civil matters under 90 €, are in charge of birth and death registrations in the Civil Register and to judge several misdemeanours. They are elected by the Municipal Councils and appointed by the Higher Courts of Justice for a period of four years, do not have a salary, but occasionally receive a compensation for certain activities.

**Sweden:** lay judges participate in both general courts and general administrative courts, but only in some of the cases. For the time being they participate at both first and second instance but not in the supreme courts.

**Switzerland:** the 2 873 figure is extrapolated on the basis of the replies of 19 cantons. Such judges do not exist at the level of the Confederation.

**"the former Yugoslav Republic of Macedonia":** the total of appointed lay judges is 1 750 (1 656 in basic courts), but only 879 are engaged (819 in basic courts).

**UK-England and Wales:** there were 23 270 serving magistrates as at 31 December 2012. JPs are lay persons and voluntary. They can claim travel and subsistence costs. The decline in the overall number of magistrates in recent years reflects falling workload in the magistrates' courts.

20 states or entities out of the 47 which indicated the number of professional judges, also indicated the number of *lay judges*. **Poland** and **Serbia**, which had provided data for the previous exercises, as well as **Austria, Luxembourg, Slovakia** and **UK-Northern Ireland**, have not been able to indicate the number of *lay judges*. In raw data, 6 States have not changed this number since 2010, or with very minor changes (**Bosnia and Herzegovina, Germany, Monaco, Norway, Slovenia, Spain**), 6 States have decreased this number (**Belgium, Czech Republic, Finland, France, "the former Yugoslav Republic of Macedonia"** and **UK-England and Wales**) and 5 States have increased it in a considerable way (**Hungary, Italy, Sweden, Switzerland** and **UK-Scotland**). **Denmark** has modified since 2010 its methodology of representing data which deprives the comparison of relevance. **Estonia** and the **Russian Federation** did not provide any data for the previous evaluation cycles.

Following **Latvia** where the judicial system was reformed in 2009 in order to abolish the status of *lay judges*, **Bosnia and Herzegovina** proceeded to a similar modification of its penal legislation. However, it was decided to allow *lay judges* to work as long as their intervention remains useful in respect of the judicial backlog. The important decrease in the number of *lay judges* in **Finland** reveals a trend which is likely to be persistent. In **UK-England and Wales**, the same trend is explained by the significant decrease in the workload of the *Magistrates' Courts*.

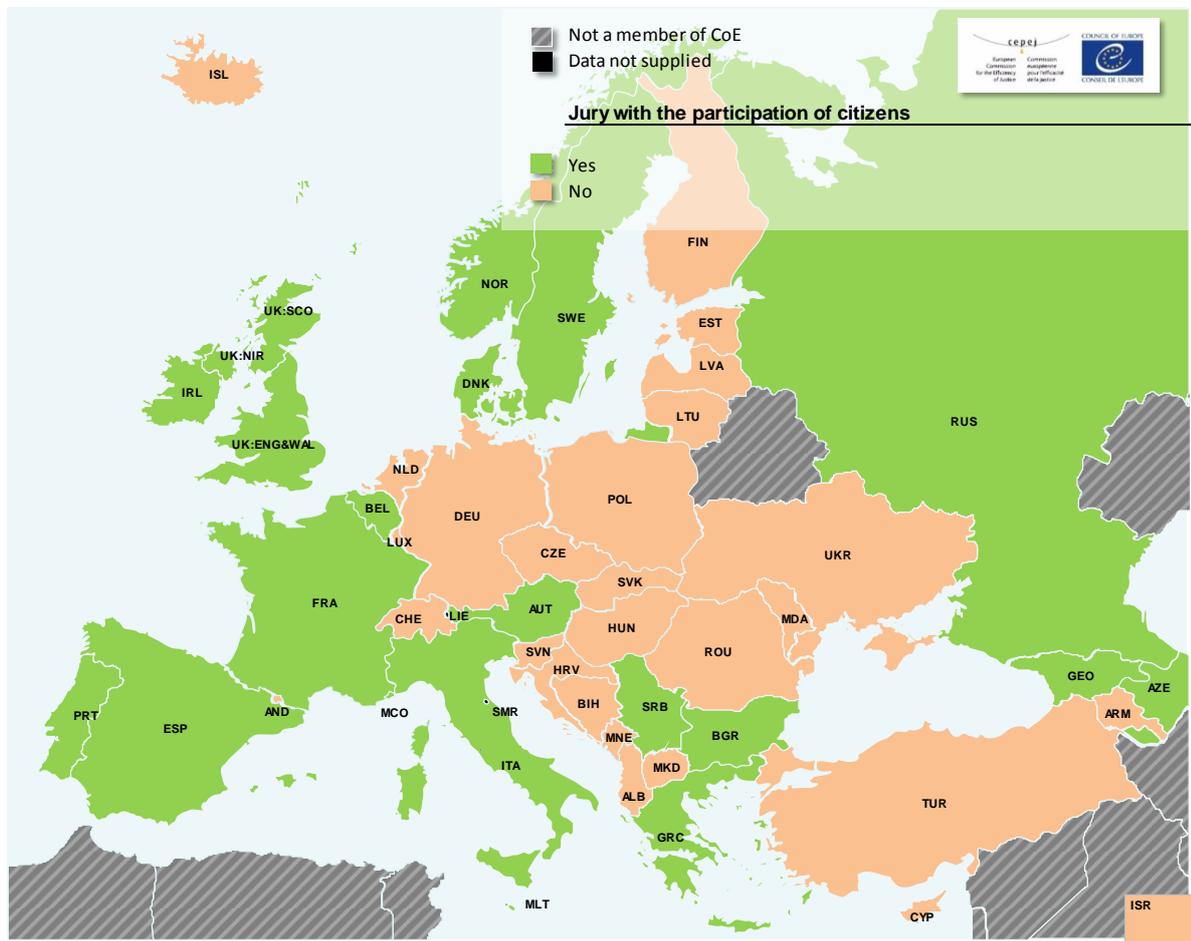
The reader must be very cautious when interpreting the ratio of the number of non-professional judges per 100.000 inhabitants. Indeed, non-professional judges are indicated in gross numbers and not in full time equivalent. It might happen that a non-professional judge works only a few hours per year, whereas others can sit very regularly.

Actually, the aim of this figure is not to establish a relevant comparison between States as regards the number of non-professional judges; it simply provides data concerning the number of persons who, for a variable time, participate in the administration of justice.

This ratio especially reveals some states such as **Germany**, **Norway**, **Slovenia** and **Denmark** where the judiciary is composed of a high number of non-professional judges, compared to states which have an entirely professionalised system.

## 7.5 Trial by jury and participation of the public

Figure 7.7 Jury and participation of the public (Q50 and Q51)



This part examines mechanisms for the appointment of members of the public (mainly drawn at random) to participate in a jury entrusted with deciding on criminal cases. Currently this system is applied only in some countries (especially in Western Europe) and essentially with regard to the most serious offences. According to the case-law of the European Court of Human Rights, the personal impartiality of jurors must be presumed until there is proof to the contrary (*Sander v. the United-Kingdom*, app. n° 34129/96, 09/08/2000, § 25; *Szypusz v. the United-Kingdom*, app. n° 8400/07, 21/02/2011, § 80). The peculiarity of the juries composed of members of the public designated to participate in trials, as well as the absence of motivation of their decisions, raise no problem with regard to article 6 of the ECHR, provided that directions or guidance have been provided by the presiding judge to the jurors on the legal issues arising or the evidence adduced, and precise, unequivocal questions have been put to the jury by the judge, forming a framework on which the verdict is based or sufficiently offsetting the fact that no reasons are given for the jury's answers (see *Legillon v. France*, app. n° 53406/10, 10/04/2013, §§ 53 et s.).

It is, however, difficult for the States to provide data related to jurors because the distinction is not always clear between *lay judges* who sit occasionally and jurors. In **Denmark** for example, as it has been already highlighted, a single nomination confers the right to sit as a *lay judge* (non-professional judge) and/or as a member of a jury. In **Bulgaria** and **Serbia** jurors, whose number is restricted to 2 or 3, sit within a mixed panel with one or two professional judges. Conversely, **Germany** and **Slovenia** which seem to have a similar system of mixed panels answered negatively in respect of jurors, preferring to count the concerned persons within the category “non-professional judges”.

## Comments:

**Azerbaijan:** according to article 359 of the Criminal Procedural Code of 2000, a judge may appoint a court investigation with participation of a jury in case of a crime punishable by imprisonment for life or if the person accused for committing a very grave crime demands a trial by jury. This provision of the Code will be in effect after adoption of the relevant law regulating the activity of a jury.

**Belgium:** the trial by jury within the *Cour d'assises* is organised in all criminal matters as well as in respect of political offences and offences related to media, unless the latter are inspired by racism or xenophobia.

**Bulgaria:** the Criminal Procedure Code provides for the role of court assessors (jurors) who have the same rights as judges. According to this code, the court tries criminal cases at first instance in a panel composed of:

1. A single judge, where the criminal offence entails up to five years of deprivation of liberty or a less heavy punishment;
2. A judge and two court assessors, where the criminal offence entails more than five years of deprivation of liberty as punishment;
3. Two judges and three court assessors, where the criminal offence entails no less than 15 years of deprivation of liberty or another, more severe punishment.

**Denmark:** at the district courts, penal cases include trial by jury if the district attorney claims as a minimum a sentence of four years of prison; at the high courts, appeal cases include trial by jury if the district court trial included such. The number provided (345) includes lay judges and jurors because in Denmark you are nominated to serve both as a lay judge and a juror - so the same person may be a lay judge in one case and a juror in the next.

**France:** with regard to the category "offences": the law has introduced on an experimental basis a system within which citizens drawn randomly from the electoral rolls act as associated judges in respect of some serious offences and judgments of release on parole.

- with regard to the category "crimes": the juries of the *cours d'assises* are composed of citizens selected after several drawing of lots from three types of lists – preparatory municipal lists, annual departmental lists and lists of judgment sessions (art. 254 and the following dispositions of the Code of criminal procedure).

**Georgia:** if a person is accused of a crime for which the law determines imprisonment, then such a case falls under the jurisdiction of jury trial, unless the defendant files a petition that his/her case be heard without participation of jurors.

Since trial by jury is a novelty for the Georgian legal system, till October 1, 2012, only Tbilisi City Court is entitled to conduct jury trial hearings on the alleged violations of the Criminal Code (premeditated murder under aggravating circumstance). From 1 October 2012, Kutaisi City Court is also entitled on the same terms. Additionally, starting from 1 October 2012, the range of crimes as to be heard at the jury trial has been enlarged at the Tbilisi City Court and now covers Articles 110-114 of the CCG.

**Greece:** there is a mixed jury of judges and jurors which tries certain felonies.

**Ireland:** the trial by jury concerns cases classed as non-minor offences in accordance with the Constitution or in which either the accused or the prosecution has exercised an entitlement to have the case tried before a jury; certain types of civil case in the High Court may be tried before a judge and jury (e.g. defamation). The figure 8 200 is approximate. Approximately 90 000 were summonsed for jury duty.

**Italy:** only for serious criminal offences such as murder.

**Malta:** this applies to cases involving crimes punishable by imprisonment for more than 10 years or, in the case of cases punishable by imprisonment for more than four years, should the accused choose to avail him/herself of the trial by jury. The jury is composed of 12 members. As to the number of citizens involved in 2012 in a jury (69), it includes also members requested to abstain from hearing the case, but still indicated in the statistics as having served on the jury. Furthermore, the number of jurors in one year varies in accordance with the number of juries actually heard in one calendar year. Finally, criminal cases may also be heard without a jury, upon the request of the accused. The number of juries being heard at present has significantly decreased due to legal issues being debated before the Constitutional Court and limitations in the of number of judges available to hear juries.

**Monaco:** the *Tribunal criminel* presents itself as the equivalent of the *Cour d'assises* in France. Jurors are drawn at random from the electoral rolls of the Principality of Monaco.

**Montenegro:** the new Criminal Procedure Code adopted in 2009 entered into force in 2010. It does not foresee the possibility of trial by jury with the participation of citizens.

**Norway:** all criminal cases in Norway start in the first instance courts. The jury system is attached to the second instance appellate proceedings. The jury decides on the question of guilt in appeals where the indictment concerns penal provisions with a sentencing framework exceeding six years.

**Portugal:** whenever a trial by jury is required by the Public Prosecution, the plaintiff or the defendant, it is up to a jury panel court to judge cases that refer to crimes against cultural identity and personal integrity and crimes against the State security or to those crimes in which the sanction, abstractedly applied, is greater than 8 years of imprisonment and which are not or cannot be judged by a singular court.

**Russian Federation:** according to the Criminal Procedure Code, upon a request of the accused person, the criminal case in respect of him or her can be examined by a professional judge and 12 jurors.

Trial by jury is an option in cases initiated in respect of the more serious crimes that fall within the cognizance of the courts of general jurisdiction of the federal entity level and are listed in Article 31 (3) of the Russian Criminal Procedure Code (this list was amended throughout the year 2010). Article 30 (2) of the same Code enumerates crimes which are not subject to trial by jury. The status of jurors is defined in the Federal Law 'On the jury in the federal courts of general jurisdiction in the Russian Federation' (20 August 2004, no. 113-FZ).

**Serbia:** in certain criminal and civil proceedings, the trial is conducted by a professional judge and a jury which consists of 2-3 citizens who are not professionals.

**Slovenia:** there is no trial by jury. However, in some cases the panel of judges is composed of lay judges.

**Spain:** the Spanish Constitution introduced the jury system in Spain. According to the Organic Law, a jury tries the following offences: against the person; committed by public officials in the exercise of their duties; against liberty and security; arson.

**Sweden:** only freedom of press/speech cases include trial by jury. There was only one trial of this kind in 2012 (District court of Stockholm, case nr B 10692-11, 14/09/ 2012).

**UK-England and Wales:** UK-England and Wales criminal, civil and coroner cases.

**UK-Northern Ireland:** Crown Court, Coroners Court and some High Court civil cases.

**UK-Scotland:** criminal 'solemn' cases account for about 5 % of all criminal cases in Scotland with trial by jury of 15 people. About 1 % of civil cases are heard in the Court of Session in front of a jury of 12.

21 states or entities have explicitly mentioned the existence of juries as defined above, that is to say with juries made up of members of the public. Only 12 of them were able to indicate the number of persons who participated in a jury in 2012.

The map shows the distribution in Europe between states with and without the mechanism providing for the participation of jurors appointed among the public. It shows a core of states or entities of Central and Eastern Europe in which the jury system is unknown. This system is currently a characteristic of the Western European States or entities (to which should be added **Bulgaria, Russian Federation, Serbia** and more recently **Georgia**, whereas **Montenegro** has abandoned it). In **Azerbaijan**, the entry into force of the part of the Code of criminal proceedings related to the jury remains conditional upon the adoption of a specific law which is still in preparation.

Within this latter category, the extent of the use of citizen-jurors is not the same from state to state. The example of the Scandinavian countries shows the degree of dispersion of this practice. In **Sweden**, 0,1 per 100 000 inhabitants are called to be jurors, 6 in **Denmark** and 133 in **Norway**. **Georgia** is gradually introducing the mechanism of jurors with 0,3 persons per 100 000 inhabitants, **Spain** with 7, **Monaco** with 11, **Malta** with 16, the **Russian Federation** with 22 and **France** with 26 fall within the middle range. Naturally, the countries of the *common law* are ranked at the top. The figure rises to 179 citizens per 100 000 inhabitants for **Ireland**, to 299 for **UK-England and Wales** and to 1 371 for **UK-Northern Ireland**.

In the light of the comments provided, it is possible to distinguish between the systems where jurors intervene only in first instance (**Bulgaria**), those where they sit only in appeal (**Norway**) and those where they are entitled to deal with cases at first and second instances (**Denmark, France**). In addition, according to the legislation of some countries, the competence of the jury is limited to the most serious offences (**Bulgaria, Georgia, Greece, Italy, Malta, Monaco, Norway**) or to certain types of crimes explicitly enumerated (**Portugal, Russian Federation, Sweden**). In other states, jurors have competence with regard to smaller offences (**France** for "délits") or even with regard to some kinds of small offences (**Belgium**). The law of the **Russian Federation** also enumerates the offences which cannot be dealt with by jury. **Ireland, UK-England and Wales** and **Serbia** (subject to the preliminary remark) have indicated that jurors are also empowered to intervene in civil matters. Finally, in some systems, the trial by jury is an option which can be chosen by the accused person (**Azerbaijan, Russian Federation**), but also by the prosecutor (**Ireland**) and/or by the plaintiff (**Portugal**). The trial by jury can in some circumstances be refused by the defence (**Georgia, Malta**).

## 7.6 Trends and conclusions

In general, the judicial systems of the member states of Central and Eastern Europe operate with a ratio of judges to inhabitants higher than in the states or entities of Western Europe.

There is a trend in the majority of European States or entities towards stability in the number of judges in the period 2006-2010, although some states continue their reforms by increasing the human resources devoted to the judicial function (**Azerbaijan, Bosnia and Herzegovina, Bulgaria, Lithuania, Montenegro, Turkey** and **Ukraine**).

The composition of the judiciary as between professional judges, occasional judges and lay judges reflects strongly the different types of judicial systems. Some systems are fully professionalised, or rarely use lay judges, while other systems (Northern Europe and the countries of the *common law*) rely widely on lay judges who can either intervene in autonomy or as members of panels chaired by professional judges. For states experiencing the coexistence of professional and lay judges, the evolution tends mainly towards an emphasis of the professionalization of the judiciary. Sometimes occasional judges may assist permanent judges in order to cope with an increase in caseload.

Some member States (**Bosnia and Herzegovina, Montenegro**) use occasional judges to overcome specific (vacancies) or structural (judicial backlogs difficult to eliminate) difficulties, but this does not constitute a strong trend.

Europe is divided on the use of juries. Even if this mechanism remains essentially a characteristic of Western Europe and even noting that the majority of the countries of Eastern and Central Europe did not introduce trial by jury – or have abandoned it in a symbolic way following extensive reforms during the transition to democracy – the division is no longer so clear (**Azerbaijan, Bulgaria, Georgia, Greece, Russian Federation** and **Serbia** resort to the jury mechanism).

The composition of the judiciary, more or less professionalised, affects strongly the budgets dedicated to courts, including the allocation of budget items, largely spent on salaries in systems focusing on professional judges and relatively limited in the States or entities relying on *Magistrates* such as in the **UK-England and Wales** (see Chapter 2).

## Chapter 8. Non-judge staff in courts

Having competent staff with defined roles and a recognised status alongside judges is an essential precondition for the efficient functioning of the judicial system.

A distinction is made between five types of non-judge staff:

- The “*Rechtspfleger*” function, which is inspired by the German and Austrian systems. The *European Union of Rechtspfleger* (EUR) defines the *Rechtspfleger* as an independent judicial body, anchored in the constitution and performing the tasks assigned to it by law. In its “*Green Paper for a European Rechtspflege*” published in 2008, the EUR stated that “*judicial tasks as well as tasks concerning the judicature, which are allocated to other institutions than the courts, are assigned to the European Rechtspfleger for independent and self-dependent handling and completion. He is an objective independent organ of the judicature. In his decisions he is subject only to law and justice.*” The *Rechtspfleger* does not assist the judge, but works alongside the latter and may carry out various legal tasks, for example in the areas of family and guardianship law, the law of succession, the law of land registry and commercial registers. He/she also has the competence to making judicial decisions independently on granting nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, the enforcement of judgments in criminal cases (including issuing arrest warrants), orders enforcing non-custodial sentences or community service orders, prosecution in district courts, decisions concerning legal aid, etc.; the *Rechtspfleger*, to a certain extent, falls between judges and non-judge staff, but does not have the status of judge; Germany, which has the largest number of *Rechtspfleger*, defines them as the “second pillar of the judiciary”.
- non-judge staff whose task is to assist judges directly. They may be referred to as judicial advisors or registrars. For the most part, they play a role in hearings, assisting judges or panels of judges; they assist with the drafting of judgments or carry out case-law research;
- staff responsible for various administrative matters and for court management. For example, heads of courts’ administrative units, financial departments or information technology departments would fall into this category. Administrative staff responsible for the registration or filing of cases are also included in this category;
- technical staff. For example, staff responsible for IT equipment, security and cleaning;
- other types of non-judge staff, including all staff who may not be included in the four categories above.

The European Union of *Rechtspfleger* (EUR) has been consulted for the drafting of this chapter.

### 8.1 Non-judge staff: number and distribution

45 member states or entities plus **Israel** indicated the total number of non-judge staff working in the courts compared with 40 in the previous exercise. Only **Denmark** and **Spain** did not provide this information. Neither **France** nor **Turkey** were able to give separate figures for staff working for judges and those working for prosecutors. With regard to **Luxembourg**, with the exception of the categories of “*Rechtspfleger*” and “staff directly assisting judges”, non-judge staff work for both judges and prosecutors. For these three countries, the figure indicated includes two categories of staff and has not been included in the calculation of the European averages and medians.

Only 34 states were able to provide detailed figures on non-judge staff classified by category. **Spain**, for example, reported that it was not possible to divide staff among the proposed categories as they do not fully correspond to the description given, and in some cases, their court staff perform functions corresponding to several categories. The same is true for **Finland** and **Slovenia**. In addition, not all states interpreted the various categories in the same way (e.g. **Belgium**, **Lithuania** and **Italy** regarding “staff in charge of administrative tasks and management”, “technical staff” and “other non-judge staff”). Several states classified under “other non-judge staff” categories of staff that came under other categories in previous exercises or modified the distribution of staff between 2010 and 2012 (**Bulgaria**, **Estonia**, **France**, **Netherlands**, **Serbia**). A variation in absolute numbers by category would therefore be difficult to analyse.

In addition, certain tasks performed by court officials in some states are carried out by private companies on a contractual basis (hardware maintenance, security and building maintenance, etc.). This should be reflected in the budget allocated to the courts, between staff and outsourcing costs (see section 8.2 below).

The 5<sup>th</sup> category “Other non-judge staff” was understood in different ways, including: administrative staff working in the judicial budget directorate (**Albania**), interneers and staff responsible for serving documents on parties (**Czech Republic, Finland**), enforcement agents (**Cyprus**), staff responsible for security at hearings (“**the former Yugoslav Republic of Macedonia**”), assistants, receptionists and porters (**Italy**), court typists (**Israel**), interpreters (**Estonia**), those responsible for compiling case-law, in particular of the Supreme Court (**Latvia**), the head of the legal library (**Andorra**) and psychologists, educators and social workers of some courts (**Turkey**). In view of the diversity of tasks assigned to these individuals, it is clear that other states have classified them under other categories which makes it difficult to carry out a category-by-category comparison.

All these factors should be taken into account when analysing the data provided in this chapter.

**Table 8.1 Distribution of non-judge staff in courts in 2012 (Q1, Q52)**

States/entities	Total of non-judge staff working in courts	Total of non-judge staff per 100 000 inhab.	Non-judge staff (Rechtspfleger or similar body)			Non-judge staff whose task is to assist the judge such as registrars			Staff in charge of administrative tasks and management of the courts			Technical staff			Other non-judge staff		
			Absolute number (FTE)	%	Per 100 000 inhab.	Absolute number (FTE)	%	Per 100 000 inhab.	Absolute number (FTE)	%	Per 100 000 inhab.	Absolute number (FTE)	%	Per 100 000 inhab.	Absolute number (FTE)	%	Per 100 000 inhab.
Albania	807	28,7	NAP	NC	NC	425	52,7%	15,1	99	12,3%	3,5	163	20,2%	5,8	120	14,9%	4,3
Andorra	106	139,0	17	16,0%	22,3	78	73,6%	102,3	7	6,6%	9,2	4	3,8%	5,2	1	0,9%	1,3
Armenia	618	20,4	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC
Austria	4631	54,8	760	16,4%	9,0	20	0,4%	0,2	3818	82,4%	45,2	33	0,7%	0,4	NAP	NC	NC
Azerbaijan	2310	25,0	NAP	NC	NC	945	40,9%	10,2	NA	NC	NC	343	14,8%	3,7	NAP	NC	NC
Belgium	5458	48,9	NAP	NC	NC	1708	31,3%	15,3	2766	50,7%	24,8	984	18,0%	8,8	NAP	NC	NC
Bosnia and Herzegovina	3082	80,4	98	3,2%	2,6	1154	37,4%	30,1	1503	48,8%	39,2	327	10,6%	8,5	Yes	NC	NC
Bulgaria	6014	82,6	NAP	NC	NC	4479	74,5%	61,5	1480	24,6%	20,3	NA	NC	NC	55	0,9%	0,8
Croatia	6932	162,6	590	8,5%	13,8	5089	73,4%	119,4	395	5,7%	9,3	753	10,9%	17,7	NA	NC	NC
Cyprus	424	49,0	NAP	NC	NC	133	31,4%	15,4	124	29,2%	14,3	129	30,4%	14,9	38	9,0%	4,4
Czech Republic	9135	86,9	1950	21,3%	18,6	4463	48,9%	42,5	2038	22,3%	19,4	636	7,0%	6,1	48	0,5%	0,5
Denmark	1823	32,5	319	17,5%	5,7	1072	58,8%	19,1	201	11,0%	3,6	67	3,7%	1,2	164	9,0%	2,9
Estonia	957	74,4	63	6,6%	4,9	220	23,0%	17,1	489	51,1%	38,0	138	14,4%	10,7	47	4,9%	3,7
Finland	2214	40,8	NAP	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC
France	21758	33,2	NAP	NC	NC	17663	81,2%	26,9	1352	6,2%	2,1	964	4,4%	1,5	1779	8,2%	2,7
Georgia	1151	25,7	2	0,2%	0,0	398	34,6%	8,9	574	49,9%	12,8	177	15,4%	3,9	NAP	NC	NC
Germany	53649	66,9	8461	15,8%	10,5	29144	54,3%	36,3	7478	13,9%	9,3	1281	2,4%	1,6	7285	13,6%	9,1
Greece	5327	48,2	NAP	NC	NC	NAP	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC
Hungary	8142	82,2	767	9,4%	7,7	2406	29,6%	24,3	NA	NC	NC	NA	NC	NC	4969	61,0%	50,1
Iceland	43	13,4	11	25,6%	3,4	23	53,5%	7,1	2	4,7%	0,6	NAP	NC	NC	5	11,6%	1,6
Ireland	945	20,6	31	3,3%	0,7	787	83,3%	17,1	125	13,2%	2,7	2	0,2%	0,0	NAP	NC	NC
Italy	24163	40,5	NAP	NC	NC	8843	36,6%	14,8	132	0,5%	0,2	676	2,8%	1,1	14512	60,1%	24,3
Latvia	1608	78,6	NAP	NC	NC	1090	67,8%	53,3	351	21,8%	17,2	160	10,0%	7,8	7	0,4%	0,3
Lithuania	2619	87,2	NAP	NC	NC	1348	51,5%	44,9	776	29,6%	25,8	425	16,2%	14,1	70	2,7%	2,3
Luxembourg	355	67,6	NAP	NC	NC	191	53,8%	36,4	117	33,0%	22,3	7	2,0%	1,3	40	11,3%	7,6
Malta	360	85,4	NAP	NC	NC	213	59,2%	50,6	111	30,8%	26,3	8	2,2%	1,9	28	7,8%	6,6
Republic of Moldova	1512	42,5	NAP	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC	NAP	NC	NC
Monaco	42	116,2	NAP	NC	NC	18	42,9%	49,8	15	35,7%	41,5	7	16,7%	19,4	2	4,8%	5,5
Montenegro	1051	169,5	NAP	NC	NC	138	13,1%	22,3	62	5,9%	10,0	677	64,4%	109,2	174	16,6%	28,1
Netherlands	6252	37,3	NAP	NC	NC	4847	77,5%	28,9	NA	NC	NC	NA	NC	NC	1405	22,5%	8,4
Norway	821	16,3	NAP	NC	NC	20	2,4%	0,4	NA	NC	NC	NA	NC	NC	NA	NC	NC
Poland	40844	106,0	1810	4,4%	4,7	23110	56,6%	60,0	7239	17,7%	18,8	3487	8,5%	9,0	5198	12,7%	13,5
Portugal	6110	58,3	NAP	NC	NC	5601	91,7%	53,4	256	4,2%	2,4	251	4,1%	2,4	2	0,0%	0,0
Romania	9283	43,6	NAP	NC	NC	5489	59,1%	25,8	1486	16,0%	7,0	1762	19,0%	8,3	546	5,9%	2,6
Russian Federation	74854	52,2	NAP	NC	NC	47382	63,3%	33,1	27472	36,7%	19,2	NA	NC	NC	NA	NC	NC
Serbia	10345	143,7	NAP	NC	NC	4558	44,1%	63,3	3533	34,2%	49,1	2254	21,8%	31,3	NAP	NC	NC
Slovakia	4482	82,8	1046	23,3%	19,3	2079	46,4%	38,4	1357	30,3%	25,1	NA	NC	NC	NA	NC	NC
Slovenia	3330	161,7	346	10,4%	16,8	481	14,4%	23,4	NA	NC	NC	NA	NC	NC	NA	NC	NC
Spain	NAP	NC	3559	NC	7,7	NAP	NC	NC	NAP	NC	NC	NAP	NC	NC	NAP	NC	NC
Sweden	5173	54,1	NAP	NC	NC	3500	67,7%	36,6	1054	20,4%	11,0	119	2,3%	1,2	500	9,7%	5,2
Switzerland	4306	53,6	NAP	NC	NC	1983	46,1%	24,7	2174	50,5%	27,0	42	1,0%	0,5	107	2,5%	1,3
The FYROMacedonia	2333	113,1	NAP	NC	NC	410	17,6%	19,9	1587	68,0%	77,0	158	6,8%	7,7	178	7,6%	8,6
Turkey	24362	32,2	NAP	NC	NC	21962	90,1%	29,0	424	1,7%	0,6	1008	4,1%	1,3	968	4,0%	1,3
Ukraine	32800	72,1	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC
UK-England and Wales	17311	30,6	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC	NA	NC	NC
UK-Northern Ireland	739	40,5	NAP	NC	NC	489	66,2%	26,8	116	15,7%	6,4	6	0,8%	0,3	128	17,3%	7,0
UK-Scotland	1360	25,6	NAP	NC	NC	1230	90,4%	23,1	130	9,6%	2,4	NA	NC	NC	NAP	NC	NC
Average	8955	65,8	1239	12,1%	9,2	5130	51,0%	33,2	2024	25,6%	18,4	550	11,0%	9,9	1421	11,9%	7,8
Median	3206	53,8	468	10,4%	7,7	1192	53,1%	26,9	489	21,8%	14,3	177	7,0%	5,2	120	8,2%	4,3
Minimum	42	13,4	2	0,2%	0,0	18	0,4%	0,2	2	0,5%	0,2	2	0,2%	0,0	1	0,0%	0,0
Maximum	74854	169,5	8461	25,6%	22,3	47382	91,7%	119,4	27472	82,4%	77,0	3487	64,4%	109,2	14512	61,0%	50,1
Israel	3759	47,1	68	1,8%	0,9	755	20,1%	9,5	1892	50,3%	23,7	350	9,3%	4,4	694	18,5%	8,7

**Note:** for **France** and **Turkey** there is no differentiation between non-judge staff attached to judges and prosecutors. For **Luxembourg**, the differentiation concerns only staff assisting judges directly.

## Comments:

**Albania:** other non-judge staff means the administrative staff working for the High Court (101 persons) and the administrative staff working for the Office of Judicial Budget (19 persons).

**Andorra:** In the first category we have included all registrars of the three courts. In the second category we have included all staff assisting the registrars, and the bailiffs whose responsibilities in Andorra are to serve summonses or documents on the parties to the proceedings. They are officially sworn in. In the third category has been included the staff of the Judicial Services Council which deals with general services. Under technical staff we have included IT and maintenance technicians. Other non-judge staff: the head of the legal library has been included.

**Bulgaria:** as regards non-judge staff assisting judges, the 2012 data is much higher than the 2010 data because in 2010 only the court secretaries were indicated, while in 2012 the number of all court staff from the so-called specialized administration supporting the magistrates were given.

**Cyprus:** the category "other non-judge staff" includes the 38 court bailiffs.

**Czech Republic:** the category "other non-judge staff" includes judicial trainees, people in charge of serving court documents (on the parties), press centre and the telephone exchange.

**Estonia:** the category "other non-judge staff" includes court interpreters.

**Finland:** Office staff 1447, summoners 264, trainee district judges 129, junior district judges 9, referendaries 365.

**France:** in the category "other non-judge staff" the difference between 2010 and 2012 is due to the great variety of tasks performed by the administrative justice staff who cannot therefore be placed into just one category. As at 31 December 2012, 1.039 A and B grade staff were following initial training in the National College of Court Registrars, most of whom were in practical placements in the courts. This very large number of staff were deployed to the courts in 2013 or were to be in 2014, which would increase the number of staff actually in post in the regional administrative departments and courts. The figures for the administrative courts are classified under "other": because of the great variety of tasks performed by non-judge staff in the administrative courts and administrative courts of appeal, non-judge staff cannot be assigned to any of the above categories (2, 3, or 4): 1505.5 FTE. The same is true for the *Conseil d'Etat*; the number of FTE for these non-judge staff members is: 274 FTE (151 women / 130 men, FTE figures not available for the male/female breakdown).

**Georgia:** It should be noted that since 2010 the process of reorganization in the common courts of Georgia was underway. The process was finished at the end of 2012 and, as a result the courts were merged and the number of courts has decreased considerably. There is the same explanation for decrease of non-judge staff in common courts. The process of reorganisation made it clear that there was no need for a large number of non-judge staff and a new rule was adopted on the number of staff of common courts of Georgia

**Hungary:** those persons may be appointed to court secretaries who have passed the professional legal examination. In cases defined by law, the court secretaries shall perform the duties of the judge. The functions which belong to the competence of the court secretaries are for example in criminal procedures to search for unknown persons or persons and objects with unknown locations, to determine the cost of criminal proceedings, to assign an expert ; in civil procedures, in cases delegated under the jurisdiction of courts of the first instance, court secretaries shall have powers to act without a formal hearing. In such cases the provisions of the Code on Civil Procedure governing court proceedings shall apply to the court secretaries. In bankruptcy and liquidation non-litigious proceedings – with exceptions prescribed by law – they shall make decisions on the substance of the case of the first instance. The same applies to registration procedures. In judicial execution procedures they shall make any procedural acts delegated under the jurisdiction of courts of the first instance. In misdemeanour procedures delegated under the jurisdiction of local courts they can proceed comprehensively.

**Italy:** the category "other non-judge staff" includes assistants, receptionists, porters and other judicial staff. The high percentage of "other non-judge staff" is due to a very strict interpretation of the definition of the main categories.

**Latvia:** the Division of Case-law is a unit of the Supreme Court that is responsible for the compilation, analysis and publication of court opinions, as well as summarizes, selects, processes and publishes in the case-law database court rulings which are important for the promotion of coordination, research and development of court practice – staff – 5. Division of Provision of Regime of Secrecy – staff – 2.

**Lithuania:** the category "other non-judge staff" includes translators.

**Luxembourg:** with the exception of points 1 (NAP), and 2, all the other persons are executing their work in the interest of the whole judiciary, i.e. both for judges and prosecutors, and therefore answer directly to the Public Prosecutor General as administrative head of the judiciary administration.

**Malta:** as to Question 2, the numbers in more detail are as follows: Deputy registrars-65, Court messengers-19, Judicial assistants-30, Clerical staff-59, Ushers-25, Senior court recorders-12, Court recorder in charge-1, Children's advocate-2. As to Question 3, the numbers in more details are as follows: Directorate Support Services-83, Directors and staff-13, Asset Management unit-3, Archives-3, One stop shop-4, Subasti-2, Library-1, Publications-2. As to Question 4, the numbers on more detail are as follows: Tradesmen-7, Bookbinder-1.

As to Question 5, the numbers are as follows: Cleaners-7, Chief Marshal-1, Marshals-20.

**Republic of Moldova:** in application of a 2012 Law there has been a change to the structure of the court secretariats with the introduction of new public functions, namely "head of the court secretariat" and "judicial assistant". As a result, the structure of the court secretariats includes the registry and the administrative department. Bearing in mind the fact that implementation of the provisions of the law in question occurred in a period which also covered 2013, it was deemed advisable to indicate only the total number of non-judge staff working in the courts.

**Monaco:** category 2. includes 15 registrars, the two deputy chief registrars and the chief registrar. Category 3 includes 1 secretary at the Court of Appeal, 1 judicial assistant, 1 attaché, 11 secretaries and/or shorthand typists, 1 accountant. Category 4 includes 1 IT technician, 1 senior usher, 3 ushers, 1 general maintenance worker, 1 cleaner. Category 5 includes 1 archivist, 1 social worker (also responsible for the duties of the probation officer). It should be noted that the staff assigned to the Prosecutor's Office and staff other than the technical staff, the archivist and the social worker, coming under the authority of the Judicial Services Directorate have not been included. They are managerial staff and secretaries.

**Netherlands:** the figures cannot be given separately for 2 and 5. Only the total is available.

**Norway:** the Supreme Court is set up with 18 judges' legal assistants. Borgarting and Gulating Court of Appeal is set up with one judges' legal assistant each.

**Romania:** the category "other non-judge staff" includes assistance magistrates (only within the High Court of Cassation and Justice; they are part of the panels with a consultative voice and draft hearing notes and decisions), judicial assistants (who participate in the panels together with judges, in first instance, for cases regarding labour and social insurances) and probation counselors.

**Russian Federation:** these data do not include data concerning non-judge staff of magistrates of the sub-federal units of the Russian Federation.

**Serbia:** the data submitted for 2012 represents permanent employees. The 2010 total number of non-judicial staff included both temporary and permanent employees, thus the number is higher than in 2012. However the 2010 figures excluded the typists, contrary to the 2012 data.

**Slovakia:** the category 'Rechtspfleger' includes 982 judicial officers and 64 mediation and probation officers.

The records of the Ministry of Justice sort all non-judge staff to the various categories which differ from the categories listed in this questionnaire. For the purpose of this questionnaire the numbers available for the various categories of the staff have been joined according to their characteristic. Due to the different categorization it is not possible to exclude the number of the technical staff and the other non-judge staff from the complete number of the non-judge staff in the category No. 3 In this category are included all the non-judge staff different from the Rechtspfleger and the staff directly assisting the judges.

**Slovenia:** in the first category are included court clerks, whose status is close to the status of Rechtspfleger as they have autonomous powers and their decisions can be challenged in appeal. Generally they do not have a law degree. They work at local courts (land register and enforcement cases) and at district courts (commercial register). In the second category have been put judicial advisers, who are non-judge staff whose task is to assist the judges, since they in particular matters outside the main proceedings they perform the work connected with the hearings of parties, witnesses and experts, perform more complex preparatory work for the main trial proceedings, report at the panel sessions, draft decisions, conduct the main trial proceedings under the guidance of the judge and perform other work under the order of the judge. These are lawyers with a law degree and the Legal State Examination. The data that concern other court staff is not differentiated between administrative staff and technical staff.

**Spain:** the main tasks of the Spanish non-judge staff do not coincide with the description given in the categories 2-5, for this reason it is not possible to give an answer. Nevertheless, the Spanish justice administration is provided with three categories of non-judicial staff: *Gestor Procesal*, *Tramitador Procesal* and *Auxilio Judicial*. Spanish non-judge staff performs tasks that may be included in different categories or do not exactly coincide with the given description. For this reason, it is not possible to distribute them into these categories. Furthermore, since 2010 new types of judicial entities have been put in place in several regions, Procedural Court Services (Servicios Comunes Procesales), these joint services implement judicial competences working for several courts (such as preliminary appraisal of lawsuits or supervision of judgment enforcement). Spanish Court Secretaries lead the Procedural Court Service on an autonomous basis and can issue procedural orders to the proceedings. The Court Procedural Services were implemented taking into account the Council of Europe Recommendation and applying principles of economies of scales and scope.

**Sweden:** the Swedish National Courts Administration (SNCA) is a government agency, which acts as a service organization to the courts in the country. The Court Administration has no authority over the courts judicial business of their verdict. SNCA's role is to be responsible for the overall coordination and common issues by the courts. The work also involves giving support to the courts, rental and tenancy tribunals and Legal Aid. It can be about issues such as staff development, training and information, development of regulations, instructions and guidance and to ensure that operations are conducted in an effective and accessible way for citizens. There are about 330 employees with diverse professional backgrounds.

**Switzerland:** included in the "other non-judge staff" category are the security, reception, cleaning and mail office staff, ushers, etc.

**"the former Yugoslav Republic of Macedonia":** under "other non-judge staff" are presented data about members of the court police. In 2011, 140 new persons (non-judge staff) were employed in the courts.

**Turkey:** the category "other non-judge staff" includes the staff working as psychologist, pedagogue, and social worker at family courts, juvenile courts, and juvenile high criminal courts. There is no "court staff" or "prosecution office staff". According to the needs, the places of appointment can be changed by the justice commission within its jurisdiction. For that reason, no distinction is made as regards "court staff" and "prosecution office staff". Since the military judicial system is organised as a separate branch of the judiciary in our country, the figures related to the military judicial system have not been included in the general total. The total number of such staff working in the military is 135. Concerning the increase for the "Technical staff" and the "Other non-judge staff", the Turkish government is planning to establish second instance courts this year. Therefore, there is a dramatic increase in the number of personnel. Also the government pays attention to family courts, juvenile courts, and juvenile high criminal courts and increased the number of psychologists, pedagogues, and social workers working for these courts.

**UK-England and Wales:** Breakdowns of staff numbers in the specific areas of work as requested cannot be provided (although we do have staff that work in these areas). HMCTS staff do not work for the Judiciary, they work for the Government. Numbers provided are FTE snapshot at 31 March 2013.

Several countries have undergone significant reforms to their judicial system since last year. Depending on the country, these reforms have resulted in either an increase (+10% in **Turkey**) or a decline in enrollment (-30% in **Georgia**). On overall, the figures remain unchanged from the previous year.

For the first time, the CEPEJ is able to provide some information on the gender distribution within the non-judge court staff. In general, it is clear from the information available that non-judge staff in Europe is heavily female.

**Table 8.2 Breakdown of non-judge staff in courts by gender in 2012 (Q52)**

States/entities	Total of non-judge staff working in courts			Non-judge staff (Rechtsplleger or similar body)			Non-judge staff whose task is to assist the judge such as registrars			Staff in charge of administrative tasks & management of the courts			Technical staff			Other non-judge staff		
	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women
Albania	807			NAP			425			99			163			120		
Andorra	106			17			78			7			4			1		
Armenia	618			NA			NA			NA			NA			NA		
Austria	4631	1375	3256	760	320	441	20	1	19	3818	1046	2772	33	9	24	NAP		
Azerbaijan	2310			NAP			945			NA			343			NAP		
Belgium	5458	1528	3930	NAP			1708	541	1167	2766	691	2076	984	296	688	NAP		
Bosnia and Herzegovina	3082	742	2340	98	32	66	1154	72	1082	1503	471	1032	327	167	160	Yes		
Bulgaria	6014			NAP			4479			1480			NA			55		
Croatia	6932	854	5973	590	134	456	5089	346	4743	395	86	309	753	288	465	NA		
Cyprus	424			NAP			133			124			129			38		
Czech Republic	9135	1146	7989	1950	350	1600	4463	181	4282	2038	329	1709	636	268	368	48	18	30
Denmark	1823			319			1072			201			67			164		
Estonia	957	129	828	63	5	58	220	34	186	489	23	466	138	63	75	47	4	43
Finland	2214			NAP			NA			NA			NA			NA		
France	21758	3212	16767	NAP			17663	2146	15517	1352	292	1060	964	774	190	1779		
Georgia	1151	523	628	2	0	2	398	76	322	574	367	207	177	80	97	NAP		
Germany	53649			8461			29144			7478			1281			7285		
Greece	5327			NAP			NAP			NA			NA			NA		
Hungary	8142			767			2406			NA			NA			4969		
Iceland	43			11			23			2			NAP			5		
Ireland	945			31			787			125			2			NAP		
Italy	24163			NAP			8843			132			676			14512		
Latvia	1608			NAP			1090			351			160			7		
Lithuania	2619	376	2243	NAP			1348	105	1243	776	111	665	425	157	268	70	3	67
Luxembourg	355			NAP			191			117			7			40		
Malta	360			NAP			213			111			8			28		
Republic of Moldova	1512			NAP			NA			NA			NA			NAP		
Monaco	42			NAP			18			15			7			2		
Montenegro	1051	178	873	NAP			138	37	101	62	20	42	677	101	576	174	20	154
Netherlands	6252			NAP			4847			NA			NA			1405		
Norway	821	9	11	NAP			20	9	11	NA			NA			NA		
Poland	40844			1810			23110			7239			3487			5198		
Portugal	6110	2198	3910	NAP			5601	1966	3635	256	160	96	251	72	179	2		
Romania	9283			NAP			5489			1486			1762			546		
Russian Federation	74854			NAP			47382			27472			NA			NA		
Serbia	10345			NAP			4558			3533			2254			NAP		
Slovakia	4482			1046			2079			1357			NA			NA		
Slovenia	3330			346			481			NA			NA			NA		
Spain	NAP	1236	2323	3559	1236	2323	NAP			NAP			NAP			NAP		
Sweden	5173			NAP			3500			1054			119			500		
Switzerland	4306			NAP			1983			2174			42			107		
The FYROMacedonia	2333			NAP			410			1587			158			178		
Turkey	24362			NAP			21962			424			1008			968		
Ukraine	32800			NA			NA			NA			NA			NA		
UK-England and Wales	17311			NA			NA			NA			NA			NA		
UK-Northern Ireland	739			NAP			489			116			6			128		
UK-Scotland	1360	510	850	NAP			1230	430	800	130	80	50	NA			NAP		
Average	8955	1001	3709	1239	297	707	5130	457	2547	2024	306	874	550	207	281	1421	11	74
Median	3206	798	2332	468	134	441	1192	105	1082	489	226	566	177	157	190	120	11	55
Minimum	42	9	11	2	0	2	18	1	11	2	20	42	2	9	24	1	3	30
Maximum	74854	3212	16767	8461	1236	2323	47382	2146	15517	27472	1046	2772	3487	774	688	14512	20	154
Israel	3759	968	2791	68	34	34	755	166	589	1892	438	1454	350	301	49	694	29	665

**Table 8.3 Distribution of non-judge staff per category, in % (Q52)**

States/entities	Non-judge staff (Rechtspfleger or similar body)	Non-judge staff whose task is to assist the judge such as registrars	Staff in charge of administrative tasks & management of the courts	Technical staff	Other non-judge staff
Albania		52,66%	12,27%	20,20%	14,87%
Andorra	16,04%	73,58%	6,60%	3,77%	0,94%
Armenia					
Austria	16,42%	0,43%	82,43%	0,72%	
Azerbaijan		40,91%		14,85%	
Belgium		31,29%	50,68%	18,03%	
Bosnia and Herzegovina	3,18%	37,44%	48,77%	10,61%	
Bulgaria		74,48%	24,61%		0,91%
Croatia	8,51%	73,41%	5,70%	10,86%	
Cyprus		31,37%	29,25%	30,42%	8,96%
Czech Republic	21,35%	48,86%	22,31%	6,96%	0,53%
Denmark	17,49%	58,79%	11,02%	3,68%	9,02%
Estonia	6,58%	22,99%	51,10%	14,42%	4,91%
Finland					
France		81,18%	6,21%	4,43%	8,18%
Georgia	0,17%	34,58%	49,87%	15,38%	
Germany	15,77%	54,32%	13,94%	2,39%	13,58%
Greece					
Hungary	9,42%	29,55%			61,03%
Iceland	25,58%	53,49%	4,65%		11,63%
Ireland	3,28%	83,28%	13,23%	0,21%	
Italy		36,60%	0,55%	2,80%	60,06%
Latvia		67,79%	21,83%	9,95%	0,44%
Lithuania		51,47%	29,63%	16,23%	2,67%
Luxembourg		53,80%	32,96%	1,97%	11,27%
Malta		59,17%	30,83%	2,22%	7,78%
Republic of Moldova					
Monaco		42,86%	35,71%	16,67%	4,76%
Montenegro		13,13%	5,90%	64,41%	16,56%
Netherlands		77,53%			22,47%
Norway		2,44%			
Poland	4,43%	56,58%	17,72%	8,54%	12,73%
Portugal		91,67%	4,19%	4,11%	0,03%
Romania		59,13%	16,01%	18,98%	5,88%
Russian Federation		63,30%	36,70%		
Serbia		44,06%	34,15%	21,79%	
Slovakia	23,34%	46,39%	30,28%		
Slovenia	10,39%	14,44%			
Spain					
Sweden		67,66%	20,38%	2,30%	9,67%
Switzerland		46,05%	50,49%	0,98%	2,48%
The FYROMacedonia		17,57%	68,02%	6,77%	7,63%
Turkey		90,15%	1,74%	4,14%	3,97%
Ukraine					
UK-England and Wales					
UK-Northern Ireland		66,17%	15,70%	0,81%	17,32%
UK-Scotland		90,44%	9,56%		
Average	12,13%	51,03%	25,57%	10,95%	11,86%
Median	10,39%	53,08%	21,83%	6,96%	8,18%
Minimum	0,17%	0,43%	0,55%	0,21%	0,03%
Maximum	25,58%	91,67%	82,43%	64,41%	61,03%
Israel	1,81%	20,09%	50,33%	9,31%	18,46%

Armenia, Finland, Greece, Republic of Moldova, Ukraine and UK-England and Wales reported the total number of non-judge staff in courts, without being able to specify the distribution between the different categories available, often different from those used at national level. Denmark and Spain have provided only data on the Rechtspfleger or equivalent.

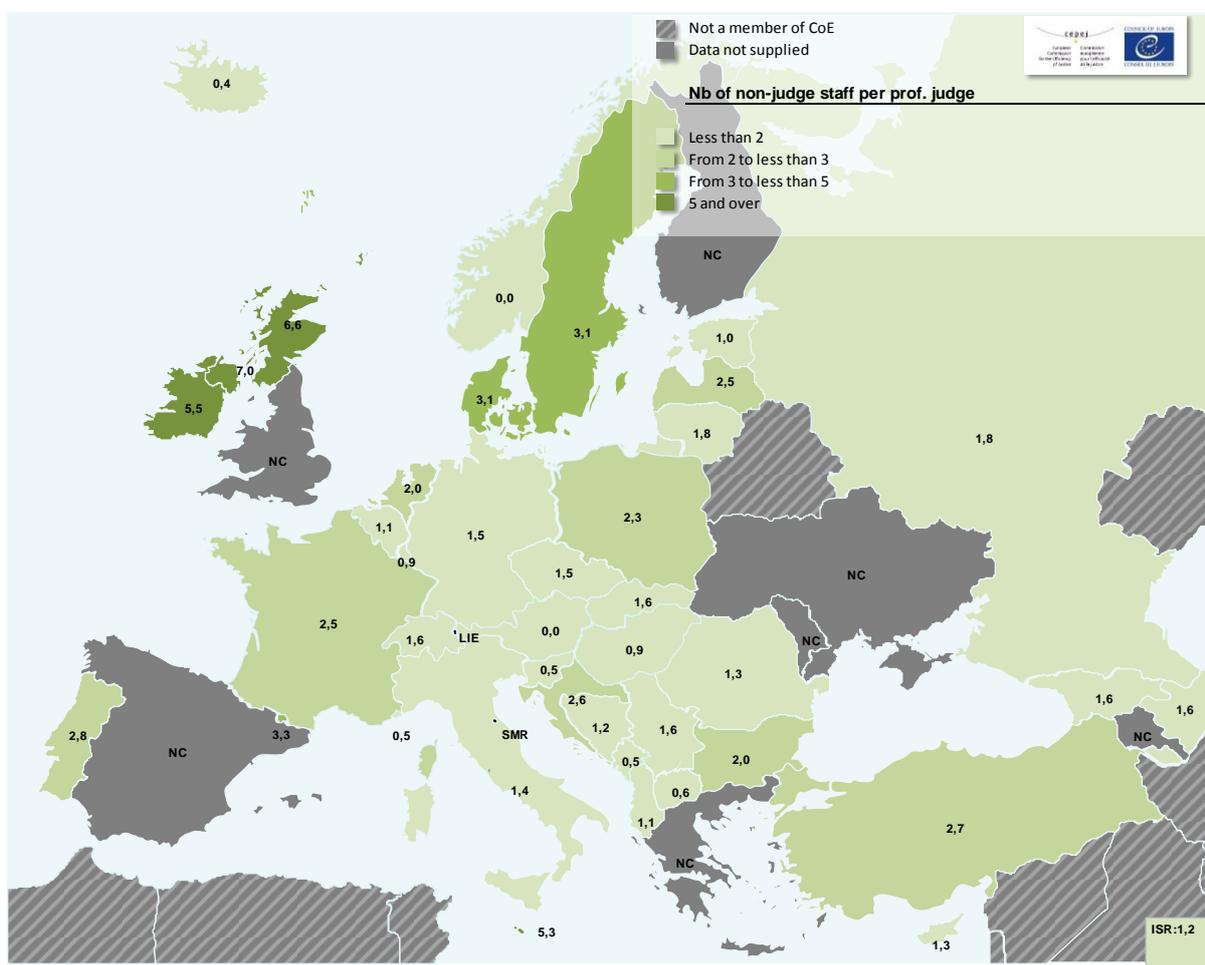
Significant disparities between states can be highlighted regarding non-judge staff other than Rechtspfleger. Such differences come from the varying interpretations of the different categories of staff (including "other non-judge staff") and the concept of court administration among states. But this does not allow the CEPEJ to draw conclusions about the efficiency of judicial systems.

In most member states or entities, the majority of non-judge staff working in courts assist judges directly. In **Portugal**, this category represents almost 927% of non-judge staff. It represents 90% in **UK-Scotland** and **Turkey**. However, in some states the opposite situation can be observed, as in **Montenegro** (13 %) or in "the former Yugoslav Republic of Macedonia" (17.5%). The very low level of **Austria** (0,4 %) must be qualified in light of the number of staff included in the category of staff responsible for administrative or court management tasks.

Similar disparities are common for staff in charge of administrative and management tasks but also for the technical staff. In **Estonia**, 51 % of non-judge staff is in charge of administrative and management tasks and 14 % of non-judge staff falls within the category of technical staff. Conversely, **Montenegro** allocates 6 % of its non-judge staff to court administration and management of courts and 64% to technical operations.

Figure 8.4 below shows the number of non-judge staff who assist the judges per professional judge. For **France**, it indicates the number of non-judge and non-prosecutor staff who assist the judges and the prosecutors as these states have not been able to differentiate between the staff working with judges and with prosecutors.

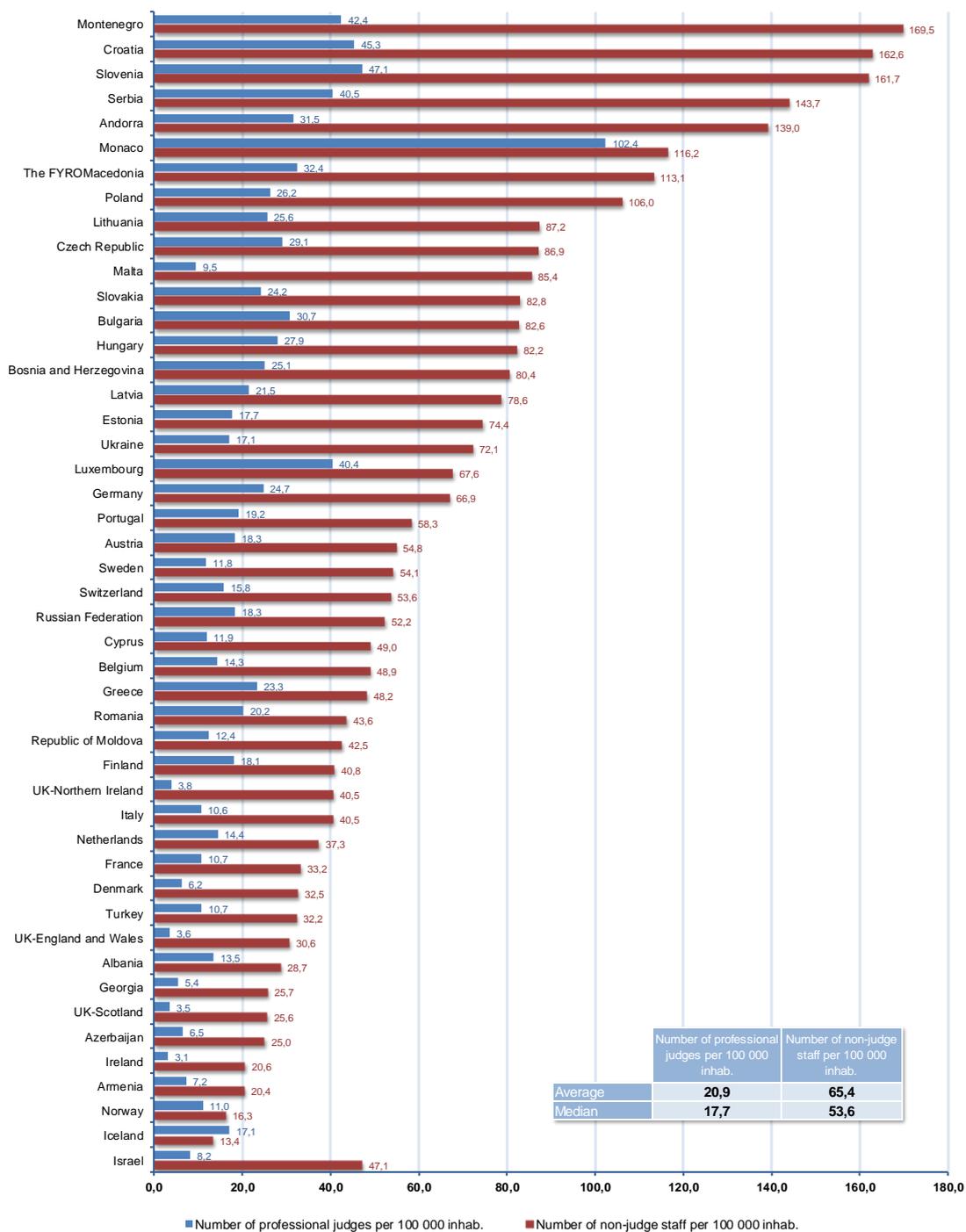
**Figure 8.4 Number of non-judge staff whose task is to assist the judge per one professional judge (Q46, Q52)**



In the majority of states or entities (24 out of 47 as well as **Israel**), a professional judge is assisted by less than two non-judge staff. In **Portugal**, **Croatia** and **Turkey** the non-judge staff who assist judges personnel are slightly more numerous (2,6 to 2,8 per professional judge). The highest ratio (5 and more) can be found in **UK-Northern Ireland**, **UK-Scotland**, **Ireland** and **Malta**. The fact that the ratio applies only to professional judges overestimates the percentage in Common Law countries where a large proportion of non-judge staff responsible for assisting judges actually work with non-professional judges.

This ratio provides general guidance on human resources that states spend on assistance to the judge. Figure 8.5 below makes it possible to compare the absolute number of professional judges with the absolute number of non-judge staff in all categories.

**Figure 8.5 Number of professional judges vs. number of non-judge staff in 2012 per 100 000 inhabitants (Q46, Q52)**



**France, Luxembourg:** number of professional judges vs. number of non-judge staff and non-prosecutor staff.

As the European median is 65,4 non-judge staff per 100 000 inhabitants for 20,9 judges per 100 000 inhabitants (3,1 non-judge staff per judge) it can be noticed that **Norway** and **Iceland** on the one hand, and the **Montenegro**, **Croatia** and **Slovenia** on the other hand, have extreme positions.

These three countries also have a large number of judges and there seems to be a correlation: a large number of judges working with a large number of personnel. The opposite is also true.

## 8.2 Rechtspfleger

Figure 8.6 Absolute number of Rechtspfleger in 2008, 2010 and 2012 (Q52)

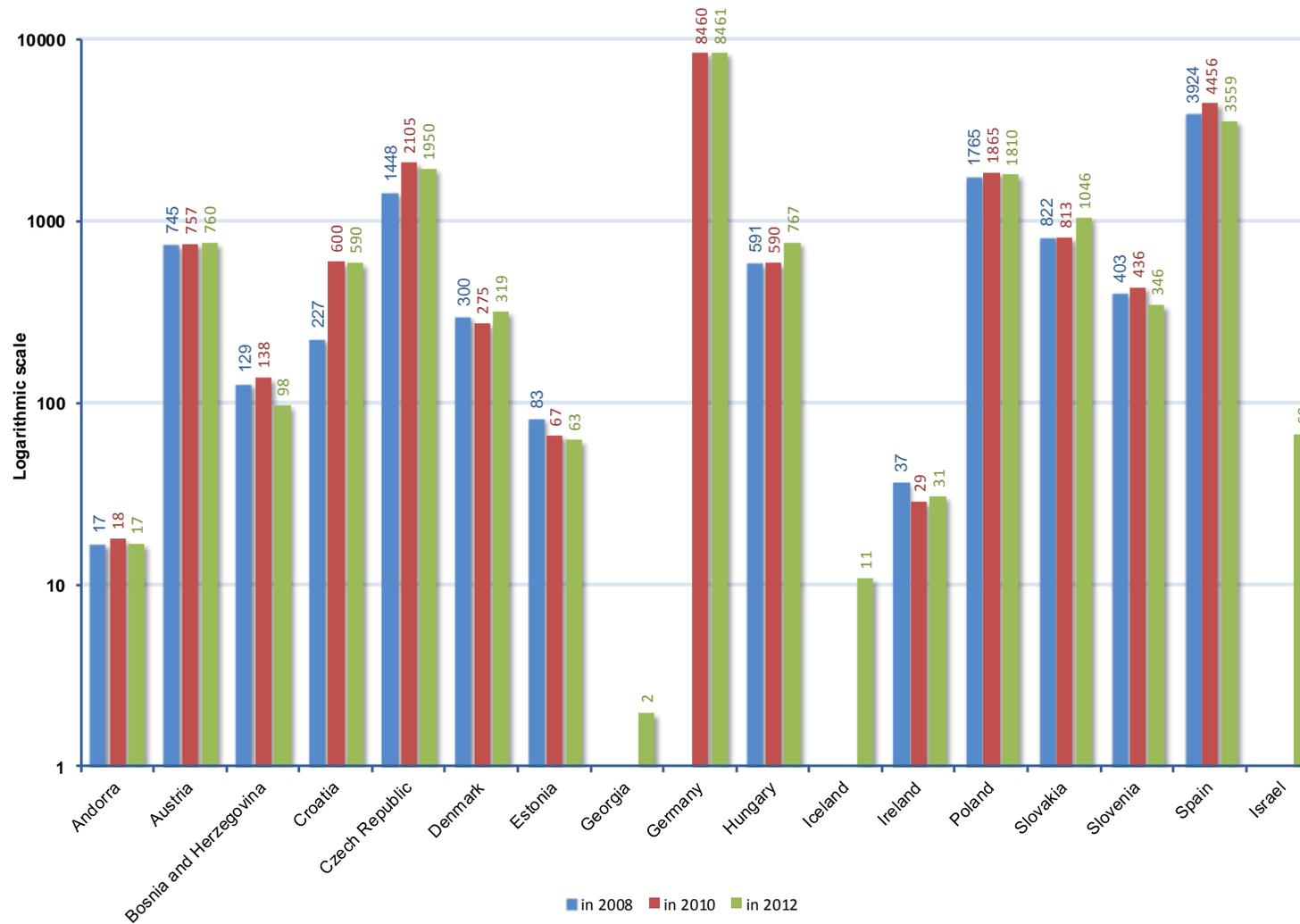


Figure 8.7 Absolute number of Rechtspfleger and professional judges in 2012 (Q52, Q46)



16 European states indicated that they had a *Rechtspfleger* system (or a system operating with staff having powers close to those of the *Rechtspfleger*): **Andorra, Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Estonia, Georgia, Germany, Hungary, Iceland, Ireland, Poland, Slovakia, Slovenia** and **Spain**.

Both **Georgia** and **Iceland** reported the existence of *Rechtspfleger* or professions close to them, although they did not appear in 2010 and 2012. However, the number of staff in this category would appear to be very small in both countries. In **Georgia** (2 members of staff), a reform of the Code of Civil Procedure which took effect on 1 January 2012 instituted the function of “magister” with independent powers. In **Iceland** (43 members of staff), these officials had responsibility for dealing with non-contentious civil and criminal cases.

**Switzerland** which had mentioned the function of *Rechtspfleger* in 2012, made no mention of this in the present exercise.

In **Romania**, a bill tabled in parliament in 2011 provides for the introduction of specialist staff in the courts and prosecution services along the lines of the *Rechtspfleger*, with powers transferred from the administrative judges.

The number of countries which have a *Rechtspfleger* system has remained relatively stable in comparison with previous exercises (15 in 2010 and 2012, 16 in 2014). While the total number of *Rechtspfleger* or very similar professions has increased slightly (+ 0.95%), for some countries there are considerable variations over the three exercises. There was a decrease of 24% for **Bosnia and Herzegovina**, accounted for by the fact that in December 2008, the Constitutional Court of the Republika Srpska declared unconstitutional the provisions giving judicial associates (similar to *Rechtspfleger*) authority to decide cases themselves. Their role is now to assist judges in the drafting of decisions and to conduct certain proceedings under the supervision of the judge. They would therefore appear to come under category 2 (non-judge staff whose task is to assist judges directly). Trends in **Denmark**, **Estonia**, **Ireland** and **Slovenia** show a decrease of 26%, 24%, 16% and 14% respectively. In the case of **Estonia**, these officials have certain responsibilities in cases dealing with registers (land register, commercial register, associations register, shipping register) and non-contentious civil cases. In **Ireland**, they have responsibilities in property cases, the setting of judicial fees and insolvency proceedings. In **Slovenia**, they have duties similar to those of the *Rechtspfleger* in matters concerning land and commercial registers and debt-recovery.

The number indicated by **Croatia** shows a very high increase of 160% of staff responsible for taking independent decisions in land registry cases. There was also a significant increase of 35% in the **Czech Republic** for this function responsible for non-contentious civil and criminal proceedings. There was an increase of 30% in **Hungary** where such staff were responsible for tasks provided for by law which they decide independently, under the supervision of a judge. There was also a significant increase (+27%) in **Slovakia** for this category of staff to whom judges delegate the handling of certain civil and criminal cases.

Figure 8.6 shows 16 states or entities which provided the ratio between *Rechtspfleger* (or staff performing similar functions) and professional judges in 2012.

It is important to stress the fairly linear correlation between the number of *Rechtspfleger* and judges in this group of states. In the states or entities where the number of professional judges is low, the number of *Rechtspfleger* is also low. The opposite is also true. This would appear to indicate that *Rechtspfleger* in these states or entities are correctly employed as a support to the work of judges. No specific disproportion in absolute numbers can be observed, with the exception of Georgia which, however, reported only two *Rechtspfleger*-equivalent officials.

### 8.3 Delegations of services

Figure 8.7 shows, in the current general context of outsourcing certain services to private companies for reasons of economy and efficiency, the extent to which states have decided to delegate in their courts some of their functions, such as computer maintenance, staff training, security, archives and cleaning. This is the second time that such information has been requested; the CEPEJ always tries to observe emerging trends in judicial systems as closely as possible.

**Table 8.8 Delegation of certain services to private providers (Q54)**

States/entities	Yes	No
Albania	Yes	No
Andorra	Yes	No
Armenia	No	Yes
Austria	Yes	No
Azerbaijan	Yes	No
Belgium	No	Yes
Bosnia and Herzegovina	No	Yes
Bulgaria	Yes	No
Croatia	Yes	No
Cyprus	No	Yes
Czech Republic	Yes	No
Denmark	Yes	No
Estonia	Yes	No
Finland	Yes	No
France	Yes	No
Georgia	Yes	No
Germany	Yes	No
Greece	Yes	No
Hungary	Yes	No
Iceland	Yes	No
Ireland	Yes	No
Italy	Yes	No
Latvia	Yes	No
Lithuania	Yes	No
Luxembourg	Yes	No
Malta	Yes	No
Republic of Moldova	Yes	No
Monaco	No	Yes
Montenegro	No	Yes
Netherlands	Yes	No
Norway	Yes	No
Poland	Yes	No
Portugal	Yes	No
Romania	Yes	No
Russian Federation	Yes	No
Serbia	No	Yes
Slovakia	Yes	No
Slovenia	Yes	No
Spain	Yes	No
Sweden	Yes	No
Switzerland	Yes	No
The FYROMacedonia	No	Yes
Turkey	Yes	No
Ukraine	No	Yes
UK-England and Wales	Yes	No
UK-Northern Ireland	Yes	No
UK-Scotland	Yes	No
<b>Number of countries</b>	<b>38</b>	<b>9</b>
Israel	Yes	No

Yes	Yes
No	No

Out of 47 states or entities which replied to this question, a large majority (38) said that the courts delegated some services, while 9 continued to carry out the various services concerned themselves. Over two exercises, there is clearly a sharp upward trend.

The comments referred primarily to tasks relating to computer maintenance, court security, cleaning, staff training and, to a lesser degree for certain countries, transport, removals, archives, caretaking, postal services, transcription of judgment minutes, interpreting and typing, equipment maintenance, rental of premises, forced sale of property, catering. For **UK-England and Wales** – the number of services outsourced to private contractors was significant and covered all the areas referred to above plus case management, video technology, recovery of fines for the magistrate courts and waste disposal.

#### 8.4 Trends and conclusions

Two types of duties for non-judge staff can be seen in the courts. The first type, the most significant in absolute numbers, are judicial duties, consisting either of assisting the judge in procedural actions or the decision-making process, or of carrying out quasi-judicial tasks at the staff member's own initiative (*Rechtspfleger*). The second type of duties are mainly administrative and technical and the staff to whom such tasks are assigned work only indirectly with judges.

The distribution of non-judge staff among the five categories proposed continues to be problematic insofar as certain states or entities are unable to classify their non-judge staff in any of the given categories or because some staff carry out functions corresponding to several categories. Greater precision is called for in the distribution of staff among the third category (staff responsible for various administrative matters and for court management) and the fourth category (technical staff). However, the comments made did provide further clarification.

Generally speaking, the data on non-judge staff in courts were fairly stable between 2006 and 2012. This is true both for the absolute number of staff and for the distribution among the different categories, and the ratio between the number of staff and the number of judges. Further analysis of a possible relationship between the organisation of the courts and the number of courts may be of interest.

For *Rechtspfleger*-type staff, there are significant variations in certain countries, particularly in Eastern Europe, resulting in either an increase in staff responsible for such tasks, or a reduction which could be due to budgetary restrictions although this was not specified by the countries in question.

In the vast majority of member states, certain non-judicial activities in courts are privatised. There is a clear upward trend in this regard and in some countries a shift from the courts of tasks which traditionally have been the responsibility of the public justice system can be observed.

## Chapter 9. Court efficiency

### 9.1 Court efficiency and the principles of a fair trial

One of the essential elements for a smooth functioning of courts is the safeguarding of the fundamental principle of a fair trial within a reasonable time (Article 6 of the European Convention on Human Rights). This principle must be fully taken into account when managing the workload of a court, the duration of proceedings and specific measures to reduce their length and improve their efficiency and effectiveness. The Council of Europe and its European Court of Human Rights pay specific attention to the "reasonable time" of judicial proceedings and the effective execution of judicial decisions.

The European Court of Human Rights has on several occasions held that one of the ways of guaranteeing the effectiveness and credibility of judicial systems is to ensure that a case is dealt with in a reasonable time (*H. v. France*, No. 10073/82, of 24 October 1989). More recently, the Court held that the significant and recurring delays in the administration of justice were a matter of particular concern and likely to undermine public confidence in the effectiveness of the judicial system, and that in exceptional cases, the unjustified absence of a decision by the courts for a particularly prolonged period could in practice be regarded as a denial of justice (*Glykantzis v. Greece*, No. 40150/09, of 30 October 2012). With regard to the right to the implementation of justice, the Court asserted that guaranteeing the "right to a court" would be "illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party." Accordingly, the execution of a judgment given by any court "must be regarded as an integral part of the "trial" for the purposes of Article 6 [of the Convention]" (*Hornsby v. Greece*, 19 March 1997).

As part of the survey, states and entities were asked to provide information concerning cases brought before the European Court of Human Rights under Article 6, cases brought before national courts, and measures designed to promote effective court proceedings.

It is important that member states are able to provide data on the cases related to Article 6 ECHR before the Court in Strasbourg. Such developments in the statistical systems have been continuously encouraged by the CEPEJ in the previous reports, as they are an essential tool for remedying the dysfunctions highlighted by the Court and preventing further violations of the Convention.

#### **Cases related to Article 6 of the European Convention on Human Rights**

The number of pending cases relating to length of proceedings accounts for more than 10% of all cases pending before the Court (99.900 cases as at 31 December 2013). If we also take into account cases concerning the non-execution of court decisions, the two combined represent 25% of all pending cases.

Those states with the largest number of **pending cases** (with roughly 500 or more cases) are **Italy** (with approximately 10.000 cases linked to the dysfunctioning of domestic remedies), **Ukraine** (with approximately 10.000 cases relating primarily to the problem of non-execution, see the "Ivanov" lead case), **Turkey** (which recently introduced a domestic remedy regarded as effective by the Court), **Russia**, **Greece** and **Romania**. 90% of these cases have been assigned to a chamber or, more frequently, a panel of three judges given the responsibility of dealing with repetitive cases which means, in principle, that they have not been deemed to be manifestly inadmissible. It should be pointed out that the picture emerging from these figures of dysfunctions within the judicial systems represents only part of the phenomenon, as most states have adopted domestic remedies to address at national level the problems of unreasonable length of proceedings and non-execution. Despite this, as of 31 December 2013, the number of applications lodged each year is generally stable (with some exceptions: over 7.000 applications against **Ukraine** were lodged in 2013) and remains rather high (approximately 7.000 for 2011 and 2012, and 11.000 for 2013). It can therefore be deduced that effective domestic remedies have not yet been introduced or that, where such remedies exist, they are not yet fully effective.

Although these cases do not necessarily lead to the finding of a violation, these figures show that the length of proceedings and the non-execution of judgments remain one of the principal concerns of individuals, as well as being a major problem for the smooth functioning of the Court itself.

The figures relating to **violations** of the reasonable time criterion found by the Court show that several states have difficulties vis-à-vis excessive length of proceedings: between 2011 and 2013, 5 states were found against 50 times in this connection: **Ukraine**, **Greece**, **Turkey**, **Hungary** and the **Russian Federation**. In 2013, 3 states were found against in at least 20 cases: **Turkey**, **Hungary** and **Slovenia**. However, these figures must be interpreted with caution, bearing in mind that they relate to cases which ended well before

2013. Generally speaking, more than one year elapses between the time that the application is lodged and the time when a decision or judgment is adopted.

With regard to violations concerning non-execution, particular emphasis should be placed on the serious structural problems to be found in **Ukraine** (the Court found more than 2.000 violations in 2013) and **Italy**. There has been a fall in the number of violations found against the **Russian Federation**, thanks also to the introduction of a new domestic remedy, but it remains high (more than 30 violations in 2013).

To these figures should be added the number of applications concluded by being struck off the list as a result of a **friendly settlement** or a **unilateral declaration**. Increasingly, in order to relieve the Court of repetitive cases, states are urged to make the most extensive use possible of such approaches which, on the one hand help ensure a rapid resolution of cases for applicants and, on the other, remove a considerable workload from the Court. In the years 2010-2013, the Court struck off the list of cases regarding length of proceedings at least 100 applications against the following states as a result of a friendly settlement or unilateral declaration: **Bulgaria**, **“the former Yugoslav Republic of Macedonia”**, **Hungary**, **Poland**, **Romania**, **Slovenia**, **Turkey** and **Ukraine**. Regarding non-execution, at least 100 applications against 4 states were struck off the list: **Ukraine** (with almost 1.000 cases), **Russian Federation**, **Italy** and **Moldova**.

In some cases, the above-mentioned violations or applications struck off the list do not relate to the length of proceedings or non-execution of judgments but to problems with the domestic remedies which are supposed to rectify any violations in this field. Italy provides the most striking example. Now, most pending cases (more than 8.500 representing roughly 85% of all cases) concern exclusively the length of the domestic remedy or delay in implementation of the latter. As stated in the CEPEJ framework programme “A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe” (CEPEJ(2004)19Rev2): “the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process and provide only one element a posteriori in the event of violation proven instead of trying to find a solution for the fundamental problem of excessive delays”. Accordingly, a compensation remedy alone may be counter-productive, in the short term enabling the state to escape condemnation at international level, but in the long-term adding further to the workload of the courts; this constitutes a significant cost for the state budget and fails to solve the underlying structural problems.

It should be emphasised from the outset that the statistics must be interpreted with considerable caution, as they cannot by themselves reflect the reality in each country. There are states for which the Court has found relatively few cases of excessive length of proceedings, but it cannot necessarily be concluded that their courts are particularly diligent.

In some cases problems may arise at an earlier stage and concern access to the courts. Individuals may make only limited use of the courts because of the costs incurred, or because alternative remedies are encouraged or are more effective. Equally, in some countries there may be little awareness of the right to apply to the European Court of Human Rights whereas others will have legal practices specialising in this type of application, leading to a very significant number of cases and a proportionally higher number of adverse judgments.

Moreover, very rapid proceedings do not always translate into good justice. Certain expedited procedures where speed takes priority over the rights of the defence may be detrimental to the quality of justice. The Court has always held that the principle of good administration of justice goes well beyond the notion of reasonable time and may justify recourse to lengthier but fairer proceedings.

For all these reasons, in order to obtain a more detailed and accurate picture of the situation in each member states, these considerations must be combined with a more comprehensive analysis of the data regarding the performance of the domestic courts (in particular the Clearance Rate and the Disposition Time).

## 9.2 Court efficiency to serve the citizens

Basic facts and figures on the performance of courts are given in this chapter. Most of the figures provided are related primarily to first instance courts. For the other courts (appeal and supreme courts), the relevant tables can be found in the Appendix. In the last part of the chapter, examples are given of possible measures that may increase the efficiency and quality of justice. These vary from the introduction of simplified procedures, through procedures for urgent cases, to specific procedural arrangements between judges and lawyers.

Detailed case information is also given in this chapter on the court activity related to land register cases, business register cases, administrative law cases and enforcement cases. The definition of civil cases and the calculation of their number remain difficult. However, a distinction has been made between litigious cases on the one hand, and non-litigious and registers' cases, on the other hand. This distinction makes it possible to separate categories which can be easily identified in each system.

The same applies to the distinction between severe criminal cases and minor criminal offences. Again, given the different legal categories of offences depending on the state, the CEPEJ has chosen to rely on the Anglo-Saxon distinction between *petty offences* and *crimes* which makes it possible to have common reference in a majority of states or entities. Nevertheless, the problem of comparability of data remains. In fact, the data is used here in an identical manner to that of the *European Sourcebook* of the Council of Europe which was the methodological reference point for the report regarding the categories of criminal cases.

The CEPEJ has chosen to develop *performance indicators* of courts at the European level. The GOJUST Guidelines<sup>26</sup> invite the member states to organise their data collection system so as to be able to provide the relevant information for calculating such indicators. The first indicator is the *Clearance Rate*. This allows a useful comparison even though the parameters of the cases concerned are not identical in every respect. This indicator can be used to see if the courts are keeping up with the number of incoming cases without increasing their backlog. The second indicator is the *calculated Disposition Time*. By making use of a specific calculation method, it is possible to generate data concerning the estimated time that is needed to bring a case to an end. This method can provide relevant information on the overall functioning of the courts of a state or entity. Gradually, the report of the CEPEJ will enable a comparative evaluation of the functioning of judicial systems in dealing with case-flows coming in and going out of the courts.

### **Clearance Rate (CR)**

The Clearance Rate, expressed as a percentage, is obtained when the number of resolved cases is divided by the number of incoming cases and the result is multiplied by 100:

$$\text{Clearance Rate (\%)} = \frac{\text{Resolved cases in a period}}{\text{Incoming cases in a period}} \times 100$$

A Clearance Rate close to 100 % indicates the ability of the court or of a judicial system to resolve more or less as many cases as the number of incoming cases within the given time period. A Clearance Rate above 100 % indicates the ability of the system to resolve more cases than received, thus reducing any potential backlog. Finally, if the number of incoming cases is higher than the number of resolved cases, the Clearance Rate will fall below 100 %. When a Clearance Rate goes below 100 %, the number of unresolved cases at the end of a reporting period (backlog) will rise.

Essentially, a Clearance Rate shows how the court or judicial system is coping with the in-flow of cases.

### **Disposition Time (DT)**

Apart from the Clearance Rate indicator, a case turnover ratio and a Disposition Time indicator provide further insight into how a judicial system manages its flow of cases. Generally, a case turnover ratio and Disposition Time compares the number of resolved cases during the observed period and the number of unresolved cases at the end of the observed period. The ratios measure how quickly a judicial system (or a court) turns over the received cases – that is, how long it takes for a type of case to be resolved.

The relationship between the number of cases that are resolved during an observed period and the number of unresolved cases at the end of the period can be expressed in two ways. The first measures the share of resolved cases from the same category in the remaining backlog. The case turnover ratio is calculated as follows:

$$\text{Case Turnover Ratio} = \frac{\text{Number of resolved cases in a period}}{\text{Number of unresolved cases at the end of a period}}$$

The second possibility, which relies on the first data, determines the number of days necessary for a pending case to be solved in court. This prospective indicator, which is of direct interest for the users, is an indicator

<sup>26</sup> CEPEJ(2008)11

of timeframe, more precisely of Disposition Time, which is calculated by dividing 365 days in a year by the case turnover ratio as follows:

$$\textit{Calculated Disposition Time} = \frac{365}{\textit{Case Turnover Ratio}}$$

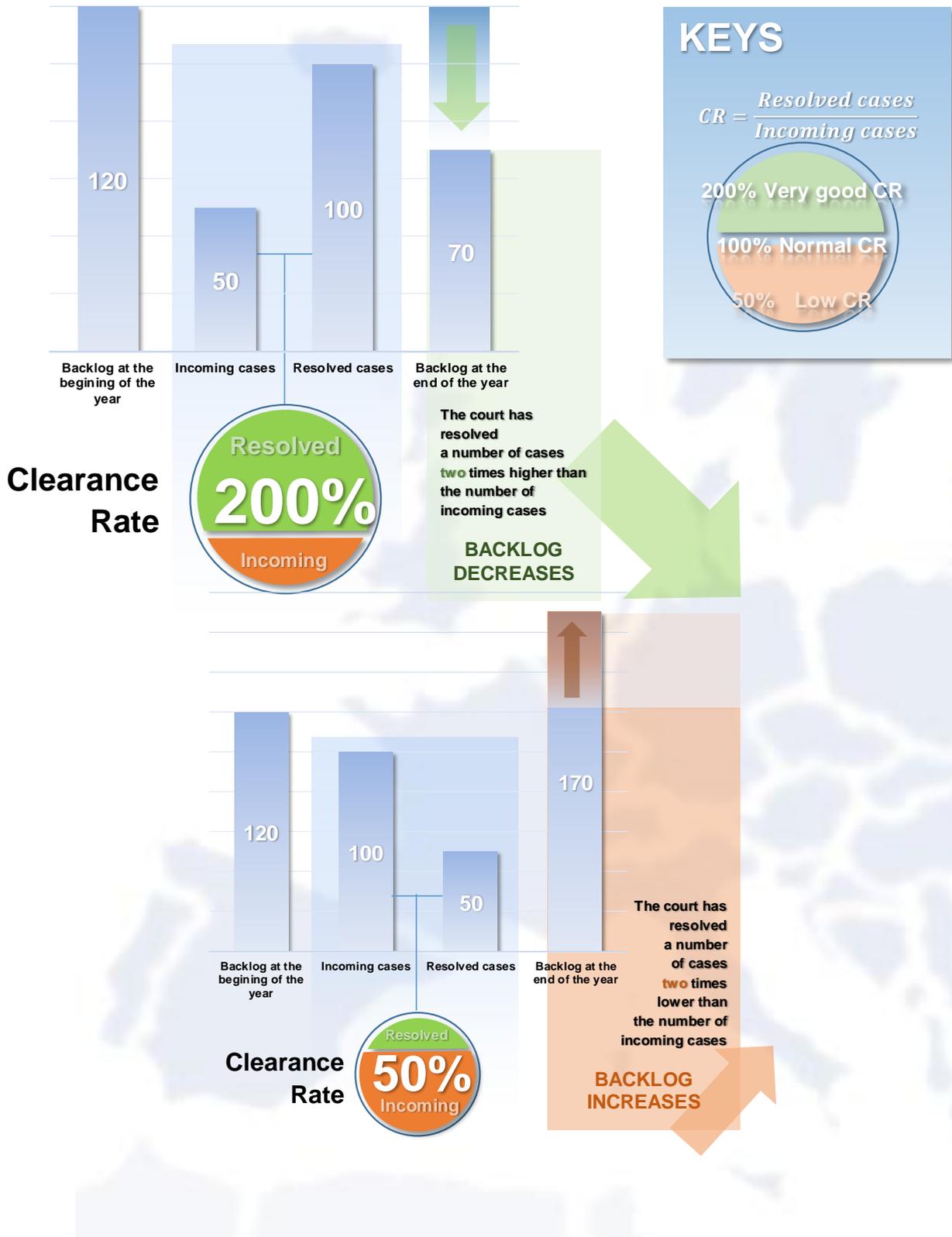
The translation of the result into days simplifies the understanding of what this relationship entails. For example, a lengthening of a judicial Disposition Time from 57 days to 72 days is much easier to grasp than a decline in case turnover ratio from 6.4 to 5.1. This conversion into days also makes it more relevant for comparing a judicial system's turnover with the projected overall length of proceedings or established standards for the duration of proceedings.

It needs to be mentioned that this ratio does not provide a clear estimate of the average time needed to process each case. For example, if the ratio indicates that two cases will be processed within 600 days, one case might be resolved on the 30<sup>th</sup> day and the second on the 600<sup>th</sup> day. The ratio fails to indicate the mix, concentration, or validity of the cases. Case level data from functional (and cost-intensive) ICT systems are needed in order to review these details and make a full analysis. In the meantime, this formula offers valuable information on the estimated length of proceedings. A shorter version of calculated Disposition Time formula can be also used:

$$\textit{Calculated Disposition Time} = \frac{\textit{Number of unresolved cases at the end of a period}}{\textit{Number of resolved cases in a period}} \times 365$$

# Clearance Rate (CR)

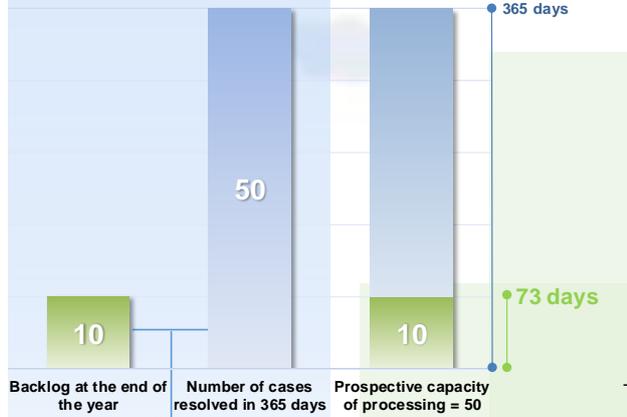
in %, indicates the ability of a court to resolve more or less as many cases as the number of incoming cases within a given time period.



# Disposition Time (DT)

in days, determines the maximum estimated number of days necessary for a pending case to be solved in a court.

## 1<sup>st</sup> example



## KEYS

$$DT = \frac{\text{Backlog at the end of the year}}{\text{Resolved cases during a year}} \times 365$$

Backlog < Resolved ► DT ≤ 365 days

Backlog = Resolved ► DT = 365 days

Backlog > Resolved ► DT ≥ 365 days

The prospective capacity of processing of a court is the number of cases resolved in a year.

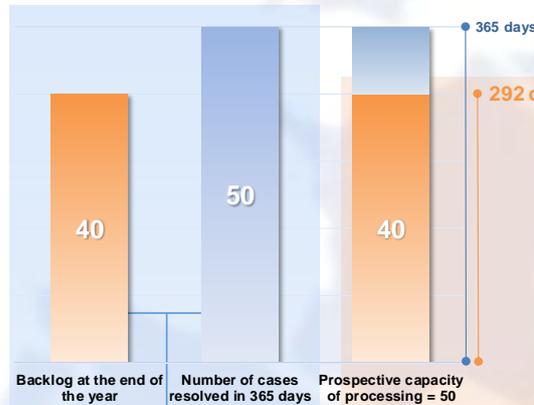
The Disposition Time (DT) is the proportional part of the backlog with regard to this prospective capacity.

For example, if a court is able to resolve 50 cases in 365 days, the whole 10 cases in backlog should be resolved proportionately in 20% of these 365 days [(10/50) x 100]. A case will be solved within 0 and 73 days.

DT indicates within which estimated timeframe the entire backlog will be replaced. Consequently, it also shows the maximum estimated timeframe for solving a case.

Disposition Time

73 d.



## 2<sup>nd</sup> example

If a court is only be able to resolves 50 cases in one year, the 40 cases in the backlog will be resolved in 80% of 365 days [(40/50) x 100].

More simply mathematically, this ratio should also be calculated with the formula: (40/50) x 365 = 292

In a forward-looking manner, a case in the backlog will be resolved within 0 and 292 days.

Disposition Time

292 d.

**Note:** the CEPEJ has developed the "GOJUST Guidelines" and the "SATURN Guidelines on judicial time management" (see [www.coe.int/cepej](http://www.coe.int/cepej)) as tools for internal use by its stakeholders. The purpose is to help justice systems collect appropriate information and analyse relevant aspects of the duration of judicial proceedings with a view to reducing undue delays, ensuring effectiveness of proceedings and providing the necessary transparency and foreseeability to the users of the justice systems.

An inability of courts or the judiciary to produce data needed for calculation of the Clearance Rate could clearly be a result of an insufficient development of the tools described in these documents, which would help assess the overall length of proceedings, to establish sufficiently specified typology of cases, to monitor the course of proceedings, and to develop means to promptly diagnose delays and mitigate their consequences.

### Keys for the following tables

-  Favourable situation : the more the back color of a cell is close to this color, the more the situation is favorable among the group of countries
-  Unfavourable situation : the more the back color of a cell is close to this color, the more the situation is unfavorable among the group of countries
-  Deterioration of the 2012 value compared to the previous situation (2010 generally)
-  Low deterioration of the 2012 value compared to the previous situation
-  Stability of the 2012 value compared to the previous situation
-  Low improvement of the 2012 value compared to the previous situation
-  Improvement of the 2012 value compared to the previous situation

#### 9.2.1 *Civil (and commercial) litigious and non-litigious cases in first instance courts*

Member states have been invited to provide information on civil litigious and non-litigious cases. For each of the main types of cases, the number of pending cases at the beginning of the year (1 January 2012), the number of incoming cases, the number of judgments and pending cases at the end of the year (31 December 2012) have been requested. This makes it possible to calculate the indicators of court efficiency (Clearance Rate and Disposition Time).

Table 9.1 First instance court : other than criminal cases (Q91) (part 1/2)

States/entities	Pending cases on 1 Jan. 2012								Incoming cases							
	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases
Albania	16 472	9 104	4 062	NAP	NAP	NAP	3 306	NAP	87 504	19 170	62 980	NAP	NAP	NAP	5 354	NAP
Andorra	6 751	2 800	59	3 811	NA	NA	81	NA	7 299	4 383	459	2 377	NA	NA	80	NA
Armenia	23 151	12 458	721	NAP	NAP	NAP	8 207	1 765	41 889	24 480	4 446	NAP	NAP	NAP	11 775	1 188
Austria	504 481	39 530	134 086	263 862	17 205	na	nap	49 798	3 489 286	104 365	756 585	1 018 450	689 005	335 857	nap	585 024
Azerbaijan	17 436	15 207	76	NAP	NAP	NAP	2 153	NAP	139 985	105 200	25 733	NAP	NAP	NAP	9 052	NAP
Belgium	NA	NA	NAP	NA	NA	NAP	NA	NAP	NA	762 164	NAP	NA	NA	NAP	NA	NAP
Bosnia and Herzegovina	1 957 551	322 366	48 960	1 555 408	26 289	4 416	112	0	1 024 596	143 775	62 665	386 466	380 061	51 503	126	0
Bulgaria	74 505	NA	NA	NA	NA	NA	8 622	65 883	392 320	NA	NA	NA	NA	NA	28 726	363 594
Croatia	430 500	208 520	34 596	125 949	57 484	NA	NA	3 951	1 097 909	182 693	232 155	191 514	476 543	NA	12 011	2 993
Cyprus	42 179	NA	NA	NA	NA	NA	4 851	NA	36 868	NA	NA	NA	NA	NA	2 094	NA
Czech Republic	522 186	166 919	31 337	12 482	NAP	NAP	NAP	311 448	1 046 760	363 080	105 052	185 663	NAP	NAP	NAP	392 965
Denmark	143 328	26 505	2 781	73 920	1 333	7 136	NAP	28 748	2 628 863	46 213	4 436	367 464	2 071 492	14 694	NAP	124 021
Estonia	66 242	10 418	13 554	NA	3 782	37 335	1 153	NAP	265 301	16 336	44 136	NA	91 218	110 756	2 855	NAP
Finland	111 788	9 829	75 099	347	NAP	NAP	19 203	7 310	524 352	10 320	475 607	1 157	NAP	NAP	27 579	9 689
France	1 654 187	1 415 720	10 829	58 279	NAP	NA	169 359	NAP	2 185 753	1 688 929	91 935	226 398	NAP	NA	178 491	NAP
Georgia	12 162	4 640	708	NA	NA	NA	6 814	0	60 155	23 986	9 109	NA	NA	NA	8 623	18 437
Germany	4 966 112	798 265	NA	NA	NA	NA	689 031	1 957 181	3 897 169	1 573 220	NA	3 193 022	NA	5 604 653	686 985	1 518 404
Greece	616 391	205 198	NA	NA	NA	NA	411 193	NA	709 644	645 339	NA	NA	NA	NA	64 305	NA
Hungary	NA	142 113	12 263	39 522	NAP	NA	6 483	56 882	1 129 126	432 443	69 781	177 075	NAP	385 241	12 595	51 991
Iceland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ireland	NA	NA	NA	NAP	NAP	NAP	NAP	NA	NA	180 287	NA	NAP	NAP	NAP	NAP	NA
Italy	4 986 193	3 796 202	642 544	547 447	NAP	NAP	NAP	NAP	4 010 588	1 559 779	1 929 572	521 237	NAP	NAP	NAP	NAP
Latvia	39 466	30 954	2 961	NAP	NAP	NAP	5 551	NAP	70 540	35 097	31 472	NAP	NAP	NAP	3 971	NAP
Lithuania	35 363	26 545	1 285	176	NA	NA	2 974	4 383	280 708	107 559	73 362	4 307	NA	NA	8 068	87 412
Luxembourg	NA	5 072	NA	NA	NA	NA	NA	NA	NA	4 718	937	NA	NA	NA	1 615	NA
Malta	9 805	9 457	NA	NA	NA	NA	348	NA	4 507	4 161	NA	NA	NA	NA	346	NA
Republic of Moldova	28 048	24 117	55	548	NAP	NAP	2 778	550	115 273	81 908	12 891	11 310	NAP	NAP	6 799	2 365
Monaco	NA	1 050	NA	NA	NA	32	NA	NA	NA	672	NA	NA	NA	128	NA	NA
Montenegro	183 840	14 817	2 586	165 168	NA	NA	1 264	5	107 679	20 514	7 310	76 453	NA	NA	3 400	2
Netherlands	279 460	NA	NA	NAP	NAP	NAP	48 010	NA	1 258 187	NA	NA	NAP	NAP	NAP	114 930	NA
Norway	26 640	7 920	6 582	10 138	NAP	NAP	NAP	NAP	53 127	18 123	11 121	23 883	NAP	NAP	NAP	NAP
Poland	1 431 356	382 664	577 465	140 844	204 376	20 595	21 837	83 575	10 045 514	1 066 935	3 899 687	900 397	3 194 947	610 397	72 160	300 631
Portugal	1 595 259	355 821	NA	1 239 438	NAP	NAP	NA	NA	718 369	369 178	NA	349 191	NAP	NAP	NA	NA
Romania	700 844	566 796	4 234	40 578	1 454	4 619	83 163	NA	1 841 892	1 106 770	23 380	479 214	2 099	810	229 619	NA
Russian Federation	928 957	665 622	26 000	NA	10 000	NA	214 176	13 159	18 661 559	6 467 576	4 295 000	447 000	112 000	NA	6 295 452	1 044 531
Serbia	2 678 163	215 242	57 221	2 384 044	NAP	NAP	17 713	3 943	991 710	231 356	176 378	551 415	NAP	NAP	19 603	12 958
Slovakia	289 064	128 073	67 553	1 520	NAP	6 224	7 883	77 811	638 571	161 645	139 125	659	NAP	96 186	18 797	222 159
Slovenia	344 760	45 417	18 370	181 744	43 587	839	2 416	52 387	910 717	37 637	31 711	218 961	303 965	50 144	3 174	265 125
Spain	NA	1 299 099	59 995	NA	NAP	NAP	335 512	NAP	NA	1 761 051	183 225	NA	NAP	NAP	196 995	NAP
Sweden	85 228	30 917	8 505	NAP	NAP	NAP	42 654	3 152	197 441	65 418	22 800	NAP	NAP	NAP	103 745	5 478
Switzerland	314 983	79 220	201 801	NA	NA	NA	16 911	17 051	418 089	228 731	85 101	NA	NA	NA	23 788	80 468
The FYROMacedonia	56 085	32 300	6 752	NAP	NAP	NAP	15 980	1 053	69 331	34 403	17 721	NAP	NAP	NAP	14 611	2 596
Turkey	1 028 222	917 136	NA	NA	NA	NA	111 086	NA	1 768 983	1 617 015	NA	NA	NA	NA	151 968	NA
Ukraine	428 901	216 942	33 178	NAP	8 196	NA	158 067	20 714	2 348 065	836 878	84 507	NAP	15 947	NA	383 571	1 043 109
UK-England and Wales	NA	NA	NA	NA	NA	NA	761 611	NA	1 760 793	232 934	1 210 857	17 815	NA	NA	864 399	299 187
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	NA	NA	NA	NAP	NA	NAP	NA	NA	102 427	98 773	NA	NAP	NA	NAP	NA	3 654
Average	719 893	322 131	67 297	342 261	37 371	10 150	96 379	120 033	1 628 462	535 124	429 734	406 584	733 728	660 034	273 362	257 519
Median	279 460	42 474	12 263	66 100	13 603	5 422	8 622	13 159	674 108	125 667	62 980	218 961	342 013	96 186	14 611	80 468
Minimum	6 751	1 050	55	176	1 333	32	81	0	4 507	672	459	659	2 099	128	80	0
Maximum	4 986 193	3 796 202	642 544	2 384 044	204 376	37 335	761 611	1 957 181	18 661 559	6 467 576	4 295 000	3 193 022	3 194 947	5 604 653	6 295 452	1 518 404
Israel	343 627	340 135	NAP	NAP	NAP	NAP	3 492	NAP	369 385	358 501	NAP	NAP	NAP	NAP	10 884	NAP

Next page : part 2 of this table (resolved cases and pending cases on 31 Dec. 2012)

Table 9.1 First instance court : other than criminal cases (Q91) (part 2/2)

States/entities	Resolved cases								Pending cases on 31 Dec.2012							
	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases
Albania	86 327	18 533	62 945	NAP	NAP	NAP	4 849	NAP	17 649	9 741	4 097	NAP	NAP	NAP	3 811	NAP
Andorra	6 699	4 168	437	2 020	NA	NA	74	NA	7 351	3 015	81	4 168	NA	NA	87	NA
Armenia	41 633	25 294	4 473	NAP	NAP	NAP	11 070	796	23 407	11 644	694	NAP	NAP	NAP	8 912	2 157
Austria	3 476 472	104 977	753 118	1 033 529	664 726	335 857	nap	584 265	517 295	38 918	137 553	248 783	41 484	na	nap	50 557
Azerbaijan	139 735	105 369	25 632	NAP	NAP	NAP	8 734	NAP	17 686	15 038	177	NAP	NAP	NAP	2 471	NAP
Belgium	NA	NA	NAP	NA	NA	NAP	NA	NAP	NA	NA	NAP	NA	NA	NAP	NA	NAP
Bosnia and Herzegovina	967 379	166 675	69 510	287 221	390 097	53 733	143	0	2 014 768	299 466	42 115	1 654 653	16 253	2 186	95	0
Bulgaria	387 832	NA	NA	NA	NA	NA	26 462	361 370	78 993	NA	NA	NA	NA	NA	10 886	68 107
Croatia	1 119 696	173 631	247 217	211 643	479 099	NA	4 936	4 170	408 713	217 582	20 534	105 820	54 928	NA	7 075	2 774
Cyprus	32 092	NA	NA	NA	NA	NA	1 550	NA	46 955	NA	NA	NA	NA	NA	5 395	NA
Czech Republic	1 190 182	358 886	104 934	193 150	NAP	NAP	NAP	533 212	378 764	171 113	31 455	4 995	NAP	NAP	NAP	171 201
Denmark	2 656 912	50 361	4 591	390 159	2 070 365	15 366	NAP	125 486	120 108	22 804	2 662	54 886	2 460	6 852	NAP	27 580
Estonia	295 674	18 370	46 041	NA	92 043	136 207	3 013	NAP	35 558	8 393	11 434	NA	2 957	11 884	890	NAP
Finland	497 063	10 653	447 961	1 140	NAP	NAP	27 852	9 457	139 077	9 496	102 745	364	NAP	NAP	18 930	7 542
France	2 189 186	1 675 838	93 417	229 551	NAP	NA	190 380	NAP	1 650 754	1 428 811	9 347	55 126	NAP	NA	157 470	NAP
Georgia	62 102	24 445	9 488	NA	NA	NA	9 744	18 425	10 215	4 181	329	NA	NA	NA	5 693	12
Germany	3 888 915	1 578 891	NA	NA	NA	NA	698 569	1 519 898	4 974 366	792 594	NA	NA	NA	NA	677 447	1 955 687
Greece	464 392	372 296	NA	NA	NA	NA	92 096	NA	861 643	478 241	NA	NA	NA	NA	383 402	NA
Hungary	1 176 429	454 369	69 946	192 368	NAP	394 348	13 599	51 799	NA	120 187	12 098	24 229	NAP	NA	5 479	57 074
Iceland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ireland	NA	NA	NA	NAP	NAP	NAP	NAP	NA	NA	NA	NA	NAP	NAP	NAP	NAP	NA
Italy	4 346 215	2 047 289	1 787 697	511 229	NAP	NAP	NAP	NAP	4 650 566	3 308 692	784 419	557 455	NAP	NAP	NAP	NAP
Latvia	75 540	39 044	31 288	NAP	NAP	NAP	5 208	NAP	34 466	27 007	3 145	NAP	NAP	NAP	4 314	NAP
Lithuania	282 163	108 099	73 778	4 273	NA	NA	7 914	88 099	33 908	26 005	869	210	NA	NA	3 128	3 696
Luxembourg	NA	8 155	937	NA	NA	NA	1 127	NA	NA	1 635	0	NA	NA	NA	NA	NA
Malta	4 875	4 736	NA	NA	NA	NA	139	NA	9 437	8 882	NA	NA	NA	NA	555	NA
Republic of Moldova	115 688	82 160	12 880	11 116	NAP	NAP	7 117	2 415	27 633	23 865	66	742	NAP	NAP	2 460	500
Monaco	NA	788	NA	NA	NA	25	NA	NA	NA	934	NA	NA	NA	134	NA	NA
Montenegro	108 449	20 828	7 545	77 110	NA	NA	2 963	3	183 070	14 503	2 351	164 511	NA	NA	1 701	4
Netherlands	1 243 457	159 165	972 185	NAP	NAP	NAP	112 107	NA	285 340	NA	NA	NAP	NAP	NAP	50 010	NA
Norway	53 044	18 053	11 636	23 355	NAP	NAP	NAP	NAP	24 636	7 937	6 043	10 656	NAP	NAP	NAP	NAP
Poland	10 100 564	944 559	4 054 364	890 032	3 240 327	603 887	71 865	295 530	1 375 396	505 040	422 221	151 229	158 992	27 106	22 132	88 676
Portugal	689 351	360 694	NA	328 657	NAP	NAP	NA	NA	1 624 277	364 305	NA	1 259 972	NAP	NAP	NA	NA
Romania	1 758 565	1 091 430	24 013	460 821	2 187	816	179 298	NA	780 893	578 043	3 601	58 971	1 366	5 428	133 484	NA
Russian Federation	18 632 909	6 420 913	4 294 000	447 000	103 000	NA	6 324 462	1 043 534	957 607	712 285	27 000	NA	19 000	NA	185 166	14 156
Serbia	1 123 926	268 369	181 608	643 750	NAP	NAP	15 807	14 392	2 545 947	178 229	51 991	2 291 709	NAP	NAP	21 509	2 509
Slovakia	580 653	131 856	136 360	779	NAP	95 900	8 865	206 893	346 982	157 862	70 318	1 400	NAP	6 510	17 815	93 077
Slovenia	963 652	39 379	32 809	229 120	334 006	50 506	3 667	274 165	291 825	43 675	17 272	171 585	13 546	477	1 923	43 347
Spain	NA	1 754 816	184 107	NA	NAP	NAP	243 718	NAP	NA	1 270 383	57 993	NA	NAP	NAP	285 005	NAP
Sweden	200 774	64 651	21 937	NAP	NAP	NAP	108 724	5 462	81 895	31 684	9 368	NAP	NAP	NAP	37 675	3 168
Switzerland	418 529	228 546	80 024	NA	NA	NA	25 509	84 450	314 543	79 405	206 878	NA	NA	NA	15 190	13 069
The FYROMacedonia	78 998	45 057	14 743	NAP	NAP	NAP	16 363	2 835	46 418	21 646	9 730	NAP	NAP	NAP	14 228	814
Turkey	2 046 349	1 852 995	NA	NA	NA	NA	193 354	NA	750 856	681 156	NA	NA	NA	NA	69 700	NA
Ukraine	2 516 393	884 919	87 186	NAP	17 720	NA	497 278	1 047 010	260 571	168 899	30 499	NAP	6 418	NA	44 360	16 813
UK-England and Wales	NA	NA	NA	419 367	NA	NA	731 646	380 466	NA	NA	NA	NA	NA	NA	894 364	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	87 249	83 961	NA	NAP	NA	NAP	NA	3 288	NA	NA	NA	NAP	NA	NAP	NA	NA
Average	1 643 745	545 080	422 691	299 427	739 357	168 665	275 720	266 297	700 799	311 666	64 971	341 073	31 740	7 572	90 964	114 023
Median	497 063	106 734	69 510	229 336	362 052	74 817	13 599	84 450	260 571	41 297	10 582	57 049	14 900	5 969	12 557	13 069
Minimum	4 875	788	437	779	2 187	25	74	0	7 351	934	0	210	1 366	134	87	0
Maximum	18 632 909	6 420 913	4 294 000	1 033 529	3 240 327	603 887	6 324 462	1 519 898	4 974 366	3 308 692	784 419	2 291 709	158 992	27 106	894 364	1 955 687
Israel	372 375	361 482	NAP	NAP	NAP	NAP	10 893	NAP	340 637	337 154	NAP	NAP	NAP	NAP	3 483	NAP

## Comments:

**Austria:** there is no overall distinction between litigious and non-litigious proceedings in the statistics, so the numbers are sums of certain kinds of proceedings mentioned in the corresponding comments. In the category "litigious" are counted all proceedings in the categories C, Cg, Cga, Cgs (civil matters, labour and social security cases at first instance courts) which are marked as being litigious in the court register (e.g. from the second court hearing on).

"Other cases" includes cases concerning the administration of justice, cancellation proceedings and proceedings in connection with [official] declaration of death, authentication of signatures, and proceedings to render legal assistance in civil matters for international courts.

**Bosnia and Herzegovina:** the majority of the non-litigious enforcement cases are initiated by utility companies for unpaid bills for utility services. (e.g. heating, water, electricity).

**Cyprus:** litigious and non-litigious cases are in the same category of civil cases.

**Czech Republic:** business register cases, administrative cases and insolvency registry cases are decided by the regional courts, e. g. the second instance courts, as the first instance courts - so these cases are included in the table concerning second instance courts.

"Other cases" includes electronic payment orders.

**Denmark:** "Other cases" includes estate of deceased persons.

**Finland:** "Other cases" includes land right law cases, temporary procedural remedy cases, adjustment of the debts of a private individual cases, restructuring of enterprises cases and bankruptcy cases dealt with by District Courts, as well as all the cases dealt with by the Labour Court.

**Georgia:** "Other cases" includes administrative infractions.

**Germany:** "Other cases" includes family-court jurisdiction, labour courts (proceedings leading to a judgment or a decision), as well as guardianship and custodianship courts. The figures do not include 1.426.805 new legal matters related to payment proceedings before labour courts, registry office cases, inheritance cases, custody, agriculture, legal aid, deposit cases and public notice proceedings. The figures also do not include 202.106 new legal cases related to insolvency proceedings with regard to which only resolution is recorded (292.821).

**Hungary:** "Other cases" includes insolvency registry cases, labour cases, misdemeanour cases.

**Netherlands:** it is not possible to say whether incoming or pending cases will be litigious or non-litigious, that is why this distinction is only made for the resolved cases.

**Lithuania:** "Other cases" includes administrative offences and administrative offences cases in the process of execution - the latter were not counted in the previous reports.

**Montenegro:** "Other cases" includes liquidation cases.

**Norway:** the courts also perform *notarius publicus* functions (weighted to 15 mn each) and marriages; the number of marriages in 2012 was 8398 (each marriage is weighted to 1h15mn). The number of such tasks can be estimated to approximately 25.000 per year (see the "Other cases" category).

**Poland:** "Other cases" includes social security cases and cases connected with an application of correctional and educational measures as required in juvenile cases and the execution of guardianship or tutoring.

**Russian Federation:** "Other cases" includes special proceedings cases concerning the determination of facts of legal significance, recourse against a private arbitration decision and issuing of writs of execution for the enforcement of a private arbitration decision, cross-border recognition and enforcement of judgments.

**Serbia:** "Other cases" includes insolvency proceedings.

**Slovakia:** "Other cases" includes bankruptcy and debt restructuring cases and payment orders in civil and commercial cases.

**Slovenia:** "Other cases" includes legal aid at local and district courts, international legal aid at district courts, various civil matters at local courts and district courts, various commercial matters at district courts, international attestations at district courts, -attestations according to the Hague convention at district courts, free legal aid at district courts and at the Administrative court, cases at the Central Department for Authentic Document which operates as a part of the Local Court of Ljubljana and has jurisdiction over all enforcement cases on the basis of authentic documents in the state, and various administrative cases.

**Sweden:** "Other cases" includes property cases, environmental cases and cases related to the Planning and Building Act.

**Switzerland:** The figures provided are derived from an extrapolation of the results obtained in certain cantons to the national level. "Other cases" includes cases from the Chamber of lawyers and registry cases.

**"the former Yugoslav Republic of Macedonia":** "Other cases" includes bankruptcy cases.

**UK-England and Wales:** "Other cases" includes cases derived from all petitions in dissolution and nullity of marriage and from decrees granted in Judicial separation, all applications from domestic violence, children act national, forced marriage protection and adoption.

**UK-Scotland:** "Other cases" includes liquidations and sequestrations.

The table below gives the possibility to check at a glance the court performance for all or part of the non-criminal law cases in all the member states and entities studied in this report.

The courts with a Clearance Rate higher than 100% are able to address more cases than the number of incoming cases and can therefore decrease their backlogs. On the contrary, the courts with a Clearance Rate below 90 %, and mainly below 80 %, can expect significant difficulties as regards the increase of their backlogs. This indicator can be studied together with the Disposition Time, in order to address at the same time the possible evolution of the backlogs and the time necessary to address pending cases.

**Table 9.2 Clearance Rate and Disposition Time in different types of non-criminal cases in first instance in 2012 (Q91)**

States/entities	Clearance Rate								Disposition Time							
	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases
Albania	98,7%	96,7%	99,9%	NC	NC	NC	90,6%	NC	75	192	24	NC	NC	NC	287	NC
Andorra	91,8%	95,1%	95,2%	85,0%	NC	NC	92,5%	NC	401	264	68	753	NC	NC	429	NC
Armenia	99,4%	103,3%	100,6%	NC	NC	NC	94,0%	67,0%	205	168	57	NC	NC	NC	294	989
Austria	99,6%	100,6%	99,5%	101,5%	96,5%	100,0%	NC	99,9%	54	135	67	88	23	NC	NC	32
Azerbaijan	99,8%	100,2%	99,6%	NC	NC	NC	96,5%	NC	46	52	3	NC	NC	NC	103	NC
Belgium	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Bosnia and Herzegovina	94,4%	115,9%	110,9%	74,3%	102,6%	104,3%	113,5%	NC	760	656	221	2 103	15	15	242	NC
Bulgaria	98,9%	NC	NC	NC	NC	NC	92,1%	99,4%	74	NC	NC	NC	NC	NC	150	69
Croatia	102,0%	95,0%	106,5%	110,5%	100,5%	NC	NC	139,3%	133	457	30	182	42	NC	523	243
Cyprus	87,0%	NC	NC	NC	NC	NC	74,0%	NC	534	NC	NC	NC	NC	NC	1 270	NC
Czech Republic	113,7%	98,8%	99,9%	104,0%	NC	NC	NC	135,7%	116	174	109	9	NC	NC	NC	117
Denmark	101,1%	109,0%	103,5%	106,2%	99,9%	104,6%	NC	101,2%	17	165	212	51	0	163	NC	80
Estonia	111,4%	112,5%	104,3%	NC	100,9%	123,0%	105,5%	NC	44	167	91	NC	12	32	108	NC
Finland	94,8%	103,2%	94,2%	98,5%	NC	NC	101,0%	97,6%	102	325	84	117	NC	NC	248	291
France	100,2%	99,2%	101,6%	101,4%	NC	NC	106,7%	NC	275	311	37	88	NC	NC	302	NC
Georgia	103,2%	101,9%	104,2%	NC	NC	NC	113,0%	99,9%	60	62	13	NC	NC	NC	213	0
Germany	99,8%	100,4%	NC	NC	NC	NC	101,7%	100,1%	467	183	NC	NC	NC	NC	354	470
Greece	65,4%	57,7%	NC	NC	NC	NC	143,2%	NC	677	469	NC	NC	NC	NC	1 520	NC
Hungary	104,2%	105,1%	100,2%	108,6%	NC	102,4%	108,0%	99,6%	NC	97	63	46	NC	NC	147	402
Iceland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Ireland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Italy	108,4%	131,3%	92,6%	98,1%	NC	NC	NC	NC	391	590	160	398	NC	NC	NC	NC
Latvia	107,1%	111,2%	99,4%	NC	NC	NC	131,2%	NC	167	252	37	NC	NC	NC	302	NC
Lithuania	100,5%	100,5%	100,6%	99,2%	NC	NC	98,1%	100,8%	44	88	4	18	NC	NC	144	15
Luxembourg	NC	172,8%	100,0%	NC	NC	NC	69,8%	NC	NC	73	0	NC	NC	NC	NC	NC
Malta	108,2%	113,8%	NC	NC	NC	NC	40,2%	NC	707	685	NC	NC	NC	NC	1 457	NC
Republic of Moldova	100,4%	100,3%	99,9%	98,3%	NC	NC	104,7%	102,1%	87	106	2	24	NC	NC	126	76
Monaco	NC	117,3%	NC	NC	NC	19,5%	NC	NC	NC	433	NC	NC	1 956	NC	NC	NC
Montenegro	100,7%	101,5%	103,2%	100,9%	NC	NC	87,1%	150,0%	616	254	114	779	NC	NC	210	487
Netherlands	98,8%	NC	NC	NC	NC	NC	97,5%	NC	84	NC	NC	NC	NC	NC	163	NC
Norway	99,8%	99,6%	104,6%	97,8%	NC	NC	NC	NC	170	160	190	167	NC	NC	NC	NC
Poland	100,6%	88,5%	104,0%	98,8%	101,4%	98,9%	99,6%	98,3%	50	195	38	62	18	16	112	110
Portugal	96,0%	97,7%	NC	94,1%	NC	NC	NC	NC	860	369	NC	1 399	NC	NC	NC	NC
Romania	95,5%	98,6%	102,7%	96,2%	104,2%	100,7%	78,1%	NC	162	193	55	47	228	2 428	272	NC
Russian Federation	99,8%	99,3%	100,0%	100,0%	92,0%	NC	100,5%	99,9%	19	40	2	NC	67	NC	11	5
Serbia	113,3%	116,0%	103,0%	116,7%	NC	NC	80,6%	111,1%	827	242	104	1 299	NC	NC	497	64
Slovakia	90,9%	81,6%	98,0%	118,2%	NC	99,7%	47,2%	93,1%	218	437	188	656	NC	25	733	164
Slovenia	105,8%	104,6%	103,5%	104,6%	109,9%	100,7%	115,5%	103,4%	111	405	192	273	15	3	191	58
Spain	NC	99,6%	100,5%	NC	NC	NC	123,7%	NC	NC	264	115	NC	NC	NC	427	NC
Sweden	101,7%	98,8%	96,2%	NC	NC	NC	104,8%	99,7%	149	179	156	NC	NC	NC	126	212
Switzerland	100,1%	99,9%	94,0%	NC	NC	NC	107,2%	104,9%	274	127	944	NC	NC	NC	217	56
The FYROMacedonia	113,9%	131,0%	83,2%	NC	NC	NC	112,0%	109,2%	214	175	241	NC	NC	NC	317	105
Turkey	115,7%	114,6%	NC	NC	NC	NC	127,2%	NC	134	134	NC	NC	NC	NC	132	NC
Ukraine	107,2%	105,7%	103,2%	NC	111,1%	NC	129,6%	100,4%	38	70	128	NC	132	NC	33	6
UK-England and Wales	NC	NC	NC	NC	NC	NC	84,6%	127,2%	NC	NC	NC	NC	NC	NC	446	NC
UK-Northern Ireland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
UK-Scotland	85,2%	85,0%	NC	NC	NC	NC	NC	90,0%	NC	NC	NC	NC	NC	NC	NC	NC
Average	100,4%	104,2%	100,3%	100,6%	101,9%	95,4%	99,2%	105,4%	253	246	117	428	55	580	356	184
Median	100,2%	100,5%	100,4%	100,0%	101,2%	100,7%	100,7%	100,2%	149	188	76	142	20	28	245	93
Minimum	65,4%	57,7%	83,2%	74,3%	92,0%	19,5%	40,2%	67,0%	17	40	0	9	0	3	11	0
Maximum	115,7%	172,8%	110,9%	118,2%	111,1%	123,0%	143,2%	150,0%	860	685	944	2 103	228	2 428	1 520	989
Israel	100,8%	100,8%	NC	NC	NC	NC	100,1%	NC	334	340	NC	NC	NC	NC	117	NC

In at least one third of the European states, the court productivity can be considered as satisfactory. Indeed both the Clearance Rate and the Disposition Time are positive for the main non-criminal case categories in **Austria, Azerbaijan, Czech Republic, Denmark, Estonia, Georgia, Hungary, Lithuania, Republic of Moldova, Norway, Russian Federation, Sweden, Turkey, Ukraine**. Should these results be confirmed in the coming years, the non-criminal courts in these countries should not expect major difficulties to cope with the volume of cases to be addressed.

The situation seems to remain manageable in **Albania**, but the trend needs to be monitored carefully and appropriate measures must be taken to keep the positive trend which can be noticed since 2010 (see table 9.3 below), as the Clearance Rate remains below 100 %.

A situation to be more seriously monitored can be noted for those states which keep an acceptable Clearance Rate, close to, but below 100 %, but with already quite a high Disposition Time. This is notably the case in **Andorra, Bosnia and Herzegovina, Croatia, Portugal or Slovakia**.

Other states have a (too) high Disposition Time, but could expect it to improve when considering their positive Clearance Rate, above 100 %, which might have a positive impact on the length of proceedings, should the Clearance Rate trend be confirmed in the coming years: **France, Germany, Slovenia, Switzerland, “the former Yugoslav Republic of Macedonia”**, as regards both litigious and non-litigious non-criminal law cases, **Armenia, Finland, Italy, Latvia, Malta, Montenegro, Serbia**, as regards non-criminal litigious cases, **Greece** and **Spain** for administrative law cases. When considering the evolution of the indicators for the main case categories since 2008, it seems that this is a confirmed trend over the past years for **France, Switzerland, Italy**. It seems to be a more recent potential evolution, then still more fragile so far in **Latvia, Malta, Serbia, Slovenia, “the former Yugoslav Republic of Macedonia”**. Measures should be pursued there for strengthening the court productivity.

The situation is much more critical in other states which have both a low Clearance Rate, and then cannot cope with the volume of incoming cases, and have already a high Disposition Time: backlogs and lengths of proceedings are likely to get worse in the future if no specific measures are taken. This is in particular topical for **Greece** and **Poland** as regards litigious cases, **Bosnia and Herzegovina** for non-litigious cases. This situation seems to be particularly critical as regards administrative law cases in **Cyprus** (Disposition Time: 1.270 days), **Malta** (Disposition Time: 1.457 days) and to a lesser extent in **Monaco, Serbia, Romania** and **Slovakia**.

Table 9.3 Changes in Clearance Rate and Disposition Time of the first instance court non-criminal cases (2012 vs. 2010) (Q91)

States/entities	Clearance Rate									Disposition Time								
	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases	Total of other than criminal cases	Civil and commercial litigious cases	Civil and commercial non litigious cases	Non litigious enforcement cases	Non litigious land registry cases	Non litigious business registry cases	Administrative law cases	Other cases		
Albania	→ 2,9%	→ 3,9%	→ 0,7%	NC	NC	NC	→ 8,8%	NC	→ -19,8%	→ 11,0%	→ -20,5%	NC	NC	NC	→ 8,6%	NC		
Andorra	→ 0,5%	→ -3,9%	→ -1,4%	→ 16,6%	NC	NC	→ -29,7%	NC	→ 19,3%	→ 39,3%	→ -14,3%	→ -7,9%	NC	NC	→ 93,0%	NC		
Armenia	→ 1,0%	→ 2,3%	→ 3,3%	NC	NC	NC	→ 5,2%	→ -31,6%	→ 18,0%	→ 3,3%	→ -2,7%	NC	NC	NC	→ 31,9%	→ 2,6%		
Austria	→ -0,6%	→ 0,5%	→ -2,5%	→ 2,1%	→ -3,3%	NC	NC	→ 0,0%	→ -0,3%	→ 5,2%	→ 1,1%	→ -2,2%	→ 135,0%	NC	NC	→ 5,1%		
Azerbaijan	→ 1,3%	→ 2,0%	→ -0,3%	NC	NC	NC	NC	NC	→ 32,4%	→ 20,7%	→ 58,1%	NC	NC	NC	NC	NC		
Belgium	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC		
Bosnia and Herzegovina	→ -8,7%	→ 23,2%	→ 11,7%	→ -31,8%	→ -0,7%	→ 3,7%	→ 36,5%	NC	→ 25,3%	→ -20,6%	→ -31,6%	→ 49,8%	→ -52,3%	→ -13,5%	→ -36,2%	NC		
Bulgaria	→ -0,2%	NC	NC	NC	NC	NC	→ -5,8%	→ 0,3%	→ 10,9%	NC	NC	NC	NC	NC	→ 32,8%	→ 8,0%		
Croatia	→ -8,5%	→ -6,7%	→ 10,4%	→ 17,7%	→ -4,6%	NC	NC	NC	→ 0,0%	→ -1,0%	→ -23,3%	→ -26,6%	→ -16,1%	NC	→ -36,6%	NC		
Cyprus	→ 3,4%	NC	NC	NC	NC	NC	→ -0,3%	NC	→ -2,0%	NC	NC	NC	NC	NC	→ -5,2%	NC		
Czech Republic	→ 19,8%	→ -4,3%	→ -1,0%	→ 4,0%	NC	NC	→ 56,4%	→ 1,0%	→ 36,3%	→ 3,8%	→ -44,4%	NC	NC	NC	NC	→ -23,3%		
Denmark	→ -5,3%	→ 6,9%	→ -5,9%	→ 3,7%	→ -1,9%	→ 10,3%	NC	→ 0,9%	→ -38,6%	→ -9,3%	→ -23,9%	→ -41,8%	→ -90,5%	→ -38,8%	NC	→ -8,4%		
Estonia	→ 0,5%	→ 15,2%	→ -10,1%	NC	→ 1,0%	NC	→ 15,7%	NC	→ -63,4%	→ -22,4%	→ 4,7%	NC	→ -26,6%	NC	→ -26,4%	NC		
Finland	→ -5,8%	→ 10,7%	→ -6,9%	→ -1,5%	NC	NC	→ 2,1%	→ 1,3%	→ 4,7%	→ 25,8%	→ 8,5%	→ -3,8%	NC	NC	→ 4,4%	→ 43,3%		
France	→ 1,3%	→ 0,9%	→ 1,9%	→ 5,0%	NC	NC	→ 0,0%	NC	→ 7,5%	→ 11,6%	→ 1,4%	→ -14,5%	NC	NC	→ -10,7%	NC		
Georgia	→ 3,5%	→ 5,9%	→ 4,1%	NC	NC	NC	→ 4,4%	→ 1,3%	→ 71,3%	→ -33,8%	→ -49,2%	NC	NC	NC	→ 499,9%	→ -95,2%		
Germany	NC	→ -1,8%	NC	NC	NC	NC	→ 5,5%	→ 6,7%	NC	→ -0,3%	NC	NC	NC	NC	→ -5,1%	→ 0,1%		
Greece	→ -17,3%	→ -26,9%	NC	NC	NC	NC	→ 78,6%	NC	→ 32,9%	→ 146,6%	NC	NC	NC	NC	→ -24,2%	NC		
Hungary	→ -2,9%	→ 3,3%	→ -13,0%	→ 12,6%	NC	→ -3,7%	→ 13,0%	→ 6,6%	NC	→ -39,7%	→ 1107,8%	→ -59,0%	NC	NC	→ -27,1%	→ 22,8%		
Iceland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC		
Ireland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC		
Italy	→ -0,5%	→ 11,1%	→ -4,9%	→ 4,6%	NC	NC	NC	NC	→ -1,1%	→ 19,7%	→ -1,0%	→ -3,6%	NC	NC	NC	NC		
Latvia	→ 11,5%	→ 29,7%	→ -3,0%	NC	NC	NC	→ 36,9%	NC	→ 19,9%	→ -23,5%	→ 98,0%	NC	NC	NC	→ -35,9%	NC		
Lithuania	→ -5,6%	→ -1,4%	NC	NC	NC	NC	→ 17,5%	→ 0,8%	→ 1,3%	→ 59,1%	NC	NC	NC	NC	→ -9,7%	→ -1,8%		
Luxembourg	NC	→ 24,8%	NC	NC	NC	NC	→ -25,1%	NC	NC	→ -63,4%	NC	NC	NC	NC	NC	NC		
Malta	→ 22,8%	→ 28,4%	NC	NC	NC	NC	→ 40,6%	NC	→ -18,4%	→ -19,3%	NC	NC	NC	NC	→ -47,2%	NC		
Republic of Moldova	→ 6,1%	→ 5,8%	NC	NC	NC	NC	→ 13,9%	NC	→ -23,7%	→ -4,0%	NC	NC	NC	NC	→ -23,5%	NC		
Monaco	NC	→ 54,9%	NC	NC	NC	NC	NC	NC	NC	→ -41,8%	NC	NC	NC	NC	NC	NC		
Montenegro	→ 1,5%	→ 10,5%	→ 1,7%	→ -3,1%	NC	NC	→ -12,2%	→ 62,0%	→ 364,1%	→ -6,2%	→ -10,8%	→ 503,1%	NC	NC	→ 75,8%	→ 703,1%		
Netherlands	→ -1,8%	NC	NC	NC	NC	NC	→ -8,5%	NC	→ 22,3%	NC	NC	NC	NC	NC	→ 2,1%	NC		
Norway	→ 0,2%	→ -0,9%	→ -0,1%	→ 1,8%	NC	NC	NC	NC	→ -4,0%	→ 1,7%	→ -5,1%	→ -6,7%	NC	NC	NC	NC		
Poland	→ 0,6%	→ -6,8%	→ 6,7%	→ 1,6%	→ -3,6%	→ -1,7%	→ 5,4%	→ 3,0%	→ 2,4%	→ 8,1%	→ 13,9%	→ 44,4%	→ -43,7%	→ 22,0%	→ -7,1%	→ -6,5%		
Portugal	→ 8,7%	→ -4,1%	NC	→ 29,5%	NC	NC	NC	NC	→ -21,6%	→ -11,7%	NC	→ -36,0%	NC	NC	NC	NC		
Romania	→ 4,5%	→ 9,9%	→ 3,3%	→ -1,8%	→ -3,9%	NC	→ 10,5%	NC	→ 3,9%	→ -10,8%	→ -6,8%	→ 27,7%	→ -2,9%	NC	→ 1,1%	NC		
Russian Federation	→ 0,0%	→ -0,6%	→ -0,3%	NC	NC	NC	NC	NC	→ 44,9%	→ 219,8%	→ -89,2%	NC	NC	NC	NC	NC		
Serbia	→ 32,6%	→ 26,6%	→ 20,5%	→ 39,6%	NC	NC	→ -6,5%	→ 29,1%	→ 267,6%	→ -23,3%	→ -28,5%	→ 521,0%	NC	NC	→ -7,2%	→ -24,6%		
Slovakia	→ -14,4%	→ -16,5%	→ -6,9%	→ -72,1%	NC	→ -21,1%	→ -53,8%	→ -9,9%	→ 28,3%	→ 20,0%	→ 5,8%	→ 19,1%	NC	→ -23,4%	→ 1005,4%	→ 11,9%		
Slovenia	→ 6,0%	→ 7,0%	→ 6,9%	→ 1,8%	→ 12,0%	→ 1,1%	→ -5,8%	→ 5,7%	→ -38,7%	→ -6,0%	→ -12,0%	→ -15,7%	→ -78,2%	→ -24,3%	→ -6,6%	→ 40,8%		
Spain	NC	→ 6,4%	→ -1,4%	NC	NC	NC	→ 20,9%	NC	NC	→ -8,6%	→ -13,4%	NC	NC	NC	→ -1,5%	NC		
Sweden	→ 9,0%	→ 0,9%	→ -5,2%	NC	NC	NC	→ 18,4%	→ -6,2%	→ -19,4%	→ -4,5%	→ 8,1%	NC	NC	NC	→ -33,4%	→ -22,0%		
Switzerland	→ -3,2%	→ 0,4%	→ -7,9%	NC	NC	NC	→ 2,6%	→ 9,3%	→ 185,5%	→ -3,9%	→ 1416,5%	NC	NC	NC	→ -5,2%	→ -31,4%		
The FYROMacedonia	→ -37,9%	→ 37,6%	→ -55,8%	NC	NC	NC	→ 73,5%	→ 7,6%	→ -36,7%	→ -32,3%	→ 710,6%	NC	NC	NC	→ -60,2%	→ -6,1%		
Turkey	→ 21,8%	NC	NC	NC	NC	NC	→ 39,7%	NC	→ -38,5%	NC	NC	NC	NC	NC	→ -29,7%	NC		
Ukraine	→ 7,0%	→ 1,4%	→ -2,1%	NC	→ 1,6%	NC	→ 35,5%	→ 0,4%	→ -11,8%	→ 35,0%	→ 17,1%	NC	→ -23,8%	NC	→ -49,8%	→ -0,7%		
UK-England and Wales	NC	NC	NC	NC	NC	NC	→ -0,9%	→ 18,6%	NC	NC	NC	NC	NC	NC	→ 16,1%	NC		
UK-Northern Ireland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC		
UK-Scotland	→ 31,7%	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC		
Average	2,3%	6,9%	-2,0%	1,7%	-0,4%	-1,9%	10,5%	7,8%	22,9%	7,5%	107,7%	50,2%	-22,1%	-15,6%	40,1%	32,5%		
Median	0,8%	3,3%	-1,0%	2,9%	-1,9%	-0,3%	5,4%	1,3%	1,8%	-3,9%	-1,0%	-5,2%	-26,6%	-23,4%	-6,9%	-0,7%		
Minimum	-37,9%	-26,9%	-55,8%	-72,1%	-4,8%	-21,1%	-53,8%	-31,6%	-63,4%	-63,4%	-89,2%	-59,0%	-90,5%	-38,8%	-60,2%	-95,2%		
Maximum	32,6%	54,9%	20,5%	39,6%	12,0%	10,3%	78,6%	62,0%	364,1%	219,8%	1416,5%	521,0%	135,0%	22,0%	1005,4%	703,1%		
Israel	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC		

## Comments:

**Austria:** as regards non-litigious register cases, there has been a change in legislation and therefore more obligations for the companies to register.

**Bosnia and Herzegovina:** data for non-litigious land registry cases is different compared to the previous evaluation cycle due to the reforms implemented in one part of the country (Republika Srpska), that transferred all land registry cases from the first instance courts to an administrative body outside the judicial system. In 2011 and 2012 the courts received more non litigious business registry cases due to a change in business registry legislation but were able to overcome the increased influx of cases by the end of 2012.

**Czech Republic:** as regards incoming and pending cases, in 2010 there was a high number of incoming cases of electronic payment order (817.491). It can be noted that more enforcement cases are handled by private executors.

**Denmark:** one of the factors that explain the decrease in the number of pending cases is that the Courts received an extraordinary appropriation in 2009 specifically to bring down backlogs. This effect can be seen in 2012, among other things in the lower number of pending cases.

**Finland:** when comparing the figures in 2010 and 2012, there is a significant difference in the total number of incoming cases, because of the 27 % increase in the number of uncontested payment orders (undisputed civil matters).

**Latvia:** a major decrease in civil cases can be noted since 2010 due to the recovery from the financial crisis. In addition, there have been major changes in the way civil and commercial non-litigious cases are handled and as of 1 January 2012 those are handed down to Land registry judges.

**Luxemburg:** the differences between 2010 and 2012 derive from the fact that 2012 data now include commercial cases.

**Serbia:** in May 2011, the new Law on Enforcement and Security came into force which considers a case as "resolved" only after its effective enforcement, instead of after the decision by a judge allowing the enforcement. This change has resulted in an increase in the total number of cases. In addition, this new Law stipulates that the proposal for execution shall be submitted to the agent on the territory where the headquarters of the enforcement creditor is; this has led to a reduced caseload in basic courts in executive matters in 2012.

**Slovakia:** as regards the number of incoming and resolved cases in the reference year 2012, were recorded at the end of the year a considerable number of incoming cases at a time when technically they could not be resolved by the end of the same year. This caused the inadequate Clearance Rate for the administrative cases which also impacted the Clearance Rate for all non-criminal cases in first instance.

**Slovenia:** the figures of pending cases on 1 January 2012 for non-litigious business registry cases are higher than in 2010 due to the postponed effect of the financial and economic crisis; nevertheless, courts managed to solve almost all incoming cases, so the number of pending cases is not high, compared to the number of incoming cases. The increase in the incoming and resolved cases is due to the fact that for the first time cases processed by the Central Department for Authentic Document which operates as a part of the Local Court of Ljubljana and has jurisdiction over all enforcement cases have been included. The area of land registry cases has been in constant improvement since a successful computerisation project in 2003 – the average Disposition Times have fallen from 18 months to 2 weeks. The lowering of the number of pending cases is the consequence of a better organisation of work and of the totally electronic procedure.

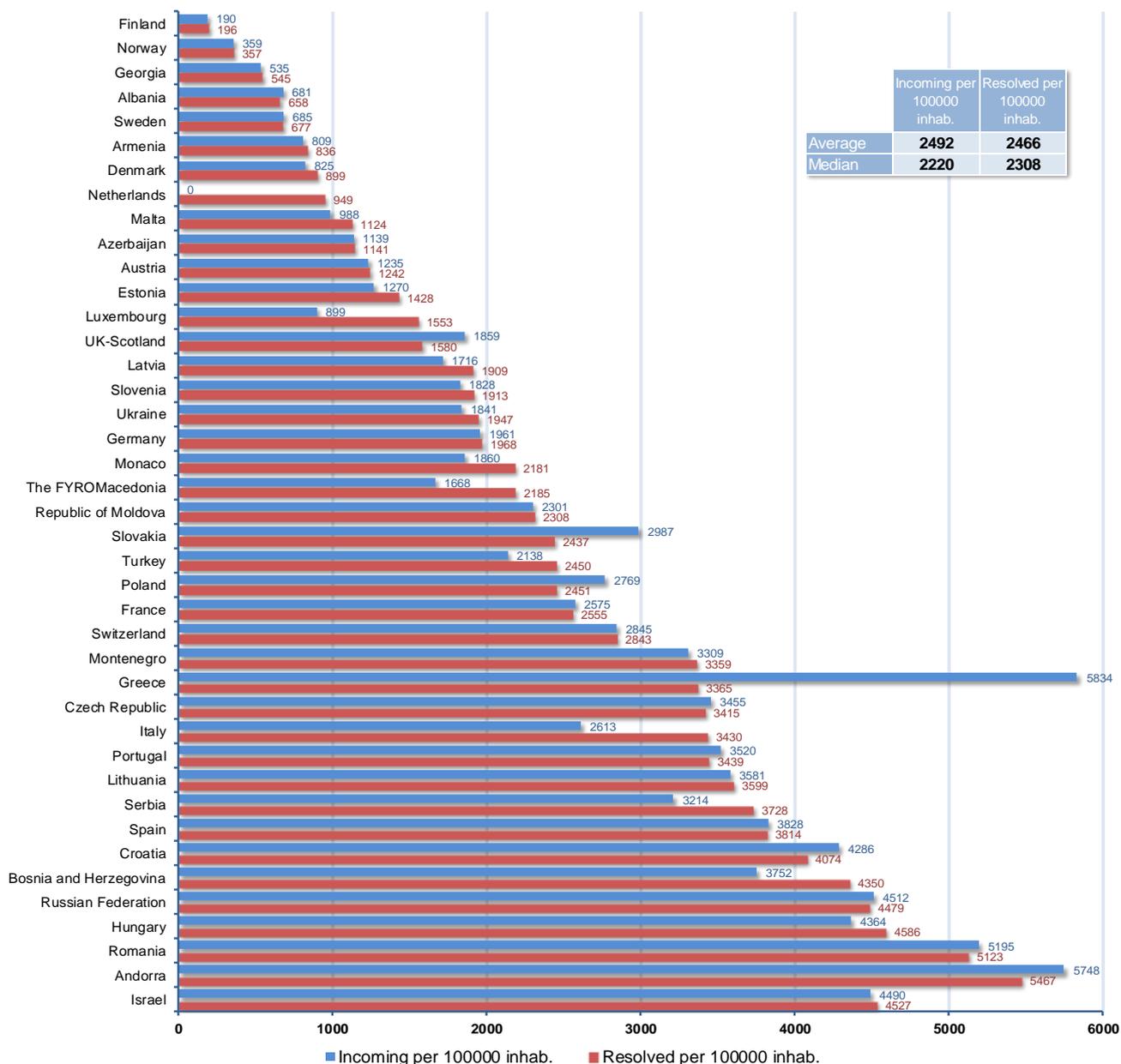
**Switzerland:** as regards non-litigious cases, the difference can be explained through the sealed will of a person living in the Canton of Argovia, which remains stored until the author of the will dies. These cases were not taken into account in previous years. They were included for 2012, because they are part of the activities of the courts concerned. This consideration explains the significant lengthening of the Disposition Time for non-litigious matters.

**"the former Yugoslav Republic of Macedonia":** the huge differences in some data compared to previous evaluation cycles is due to the fact that payment orders and all enforcement cases have now been transferred to the notaries and the bailiffs.

### 9.2.1.1 Litigious civil (and commercial) cases in first instance courts

To give a comparative view of the different judicial systems in Europe, separate tables are generated for civil litigious and civil non-litigious cases which are very different. In some states, non-litigious cases, for example land register cases or business register cases (which are mainly a formal verification, within a short timeframe, before a registration and the delivery of an attestation), form indeed a major part of the measured court activity, whilst in other states these tasks are dealt with by other instances.

**Figure 9.4 Number of 1<sup>st</sup> instance incoming and resolved civil (and commercial) litigious cases per 100 000 inhabitants in 2012 (Q1, Q91)**



In the above figure, significant elements can be noticed regarding the number of incoming and resolved cases by first instance courts in the judicial systems of 40 European states or entities.

On average, at the European level in 2012, the first instance courts were able to resolve more or less the same number of cases as the number of new incoming cases: around 2500 cases per 100 000 inhabitants. Nevertheless, at the state or entity level, key variations can be highlighted.

The number of incoming cases per 100 000 inhabitants is lower than the number of resolved cases in **Armenia, Denmark, Malta, Estonia, Luxembourg, Latvia, Slovenia, Ukraine, “the former Yugoslav**

**Republic of Macedonia”, Turkey, Italy, Serbia, Bosnia and Herzegovina, Hungary.** These states have been able to reduce their previous backlogs in 2012, at the state level.

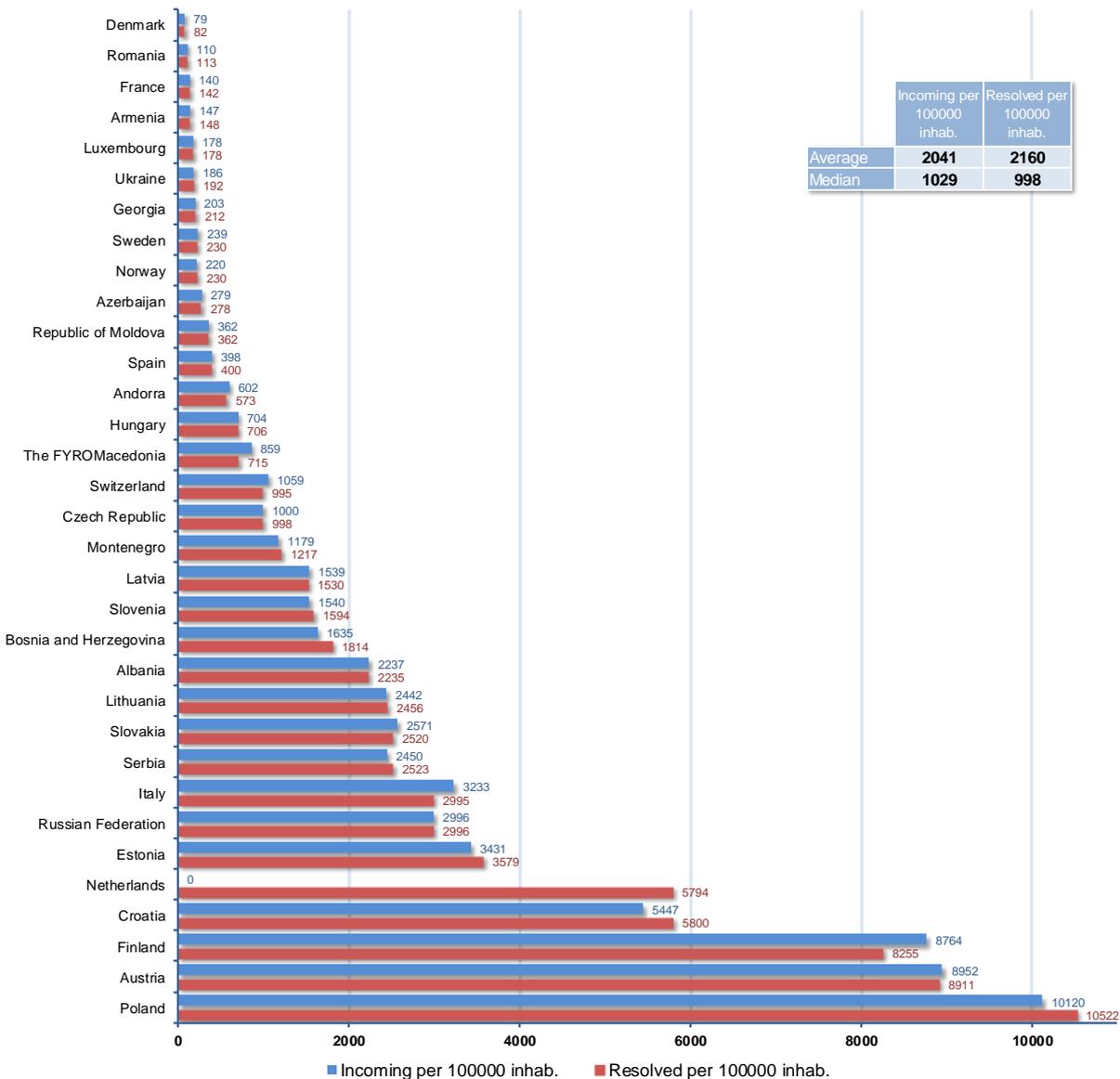
The opposite trends are also visible in this figure and highlight the states or entities which have increased the backlogs at the state (entity) level, in particular: **UK-Scotland, Slovakia, Poland, Greece** (which have confirmed the data without, however, being able to provide an explanation), **Croatia, Andorra.** Other states or entities are closer to a balance between incoming and resolved cases.

When considering the volume of civil (commercial) cases addressed by first instance courts, serious discrepancies can be noticed between the member states. Just as in the previous evaluation cycle, some patterns emerged. Individuals seem to be more prone to go to court to solve disputes (more than 3000 new cases per 100 000 inhabitants) in the Central and Eastern European states (**Russian Federation, Lithuania, Czech Republic, Croatia**), South-eastern European states (**Bosnia and Herzegovina, Romania, Serbia**) and in the countries of southern Europe (**Spain, Italy, Greece**) than in the countries of northern Europe (**Finland, Norway, Sweden, Denmark, Netherlands**) and the states of the South Caucasus (**Georgia, Azerbaijan, Armenia**) where less than 1000 new cases were filed per 100 000 inhabitants per year. **Albania** seems to be an exception in this classification. This report is not the place for a sociological analysis of these trends, but it might be useful to use this information for in-depth researches.

On the other hand, it would also be useful to do a comparative research of the typology and classification of civil (commercial) cases among these countries, in order to identify common subcategories. This would lead to a better understanding of the judicial systems and would provide additional insight and improve comparisons between the systems.

### 9.2.1.2 Non-litigious civil (and commercial) cases

Figure 9.5 Number of 1<sup>st</sup> instance incoming and resolved civil (and commercial) non-litigious cases per 100 000 inhabitants in 2012 (Q1, Q91)



The above figure presents the results for 33 states or entities. Only **Belgium** explicitly stated that the category of “non-litigious” civil cases did not apply. For the other states or entities, data was not available.

The strong differences between member states or entities in the number of non-litigious cases can be explained in particular by the presence or absence within courts of land and commercial registers, as it is necessary to pay to be registered. This generates significant financial resources for the judicial systems concerned (see Chapter 3 above).

On average, at the European level in 2012, the first instance courts were able to address more or less (slightly less) the same number of non-litigious civil cases as the number of new incoming non-litigious cases: around 2.100 cases per 100 000 inhabitants. Nevertheless, at the state or entity level, variations can be highlighted.

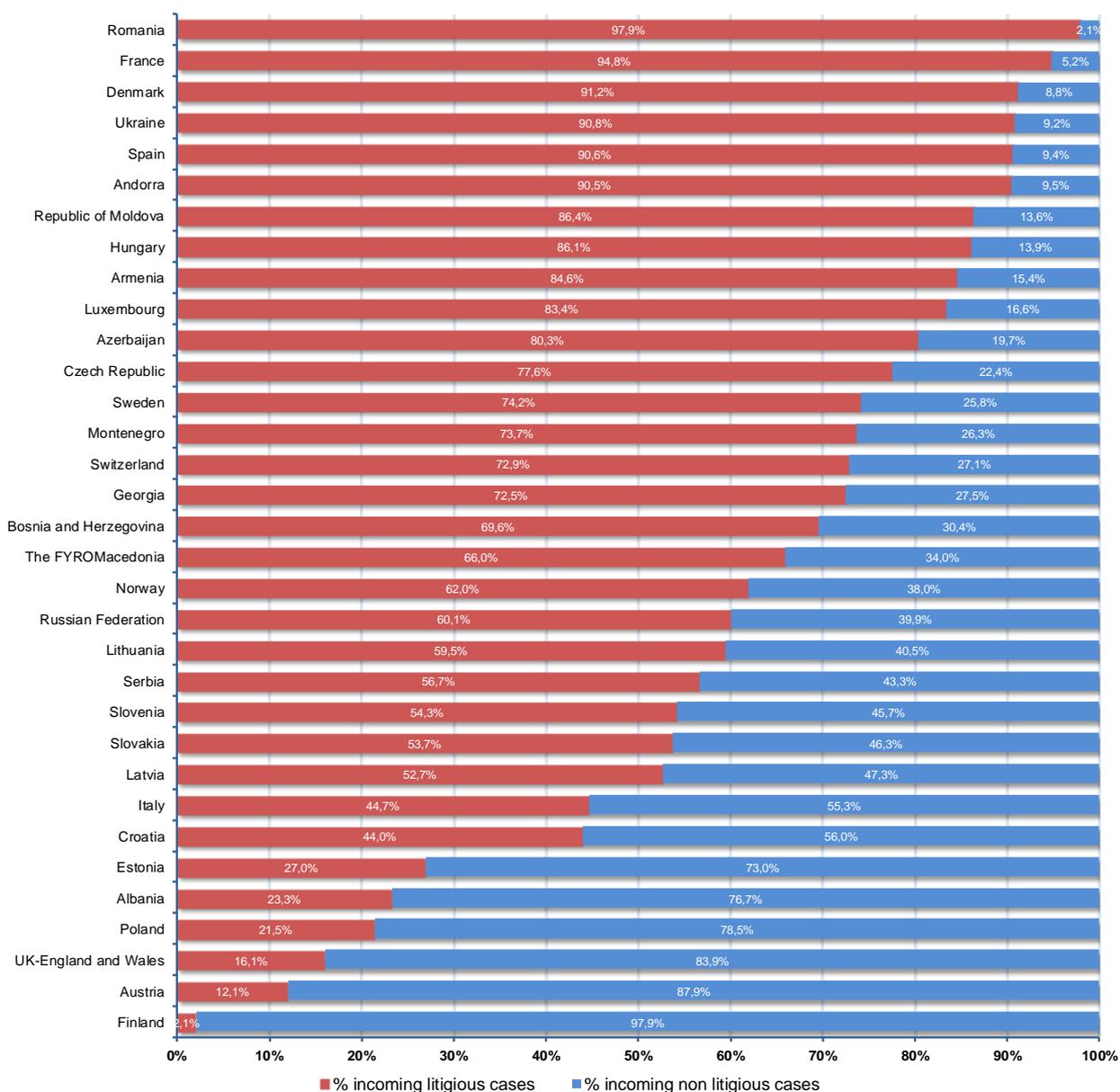
In several states, the number of incoming non-litigious cases is higher than the number of resolved cases, which in fact leads to a backlog: “**the former Yugoslav Republic of Macedonia**”, **Switzerland**, **Slovakia**, **Italy**, **Finland**. On the other hand, 7 states are reducing the already existing backlog from previous years: **Slovenia**, **Bosnia and Herzegovina**, **Lithuania**, **Serbia**, **Estonia**, **Croatia**, **Poland**. The other states or entities have reached a balance.

The states where courts perform tasks related to registers are confronted with large numbers of non-litigious civil cases. This is especially true for: **Poland, Austria, Finland, Croatia, Estonia**. The activity of registers might be a source of income for the courts (see Chapter 3 above).

### 9.2.1.3 Litigious and non-litigious civil (and commercial) cases compared

The figure below provides information for 33 states or entities for which data on litigious and non-litigious cases were available. It makes it possible to understand better the structure of the court activity per state or entity. When data on litigious and non-litigious civil cases are compared across states or entities, it appears that, at first instance, the court workload, in volume, is heavily influenced by non-litigious cases in some states (entities), whilst in other states (entities) litigious cases constitute the main activity of the first instance courts; in these latter states, the workload which is directly assigned to the judges – solving a dispute – is much higher.

**Figure 9.6 Part of 1<sup>st</sup> instance incoming civil (and commercial) litigious vs. non-litigious cases in 2012 (Q91)**

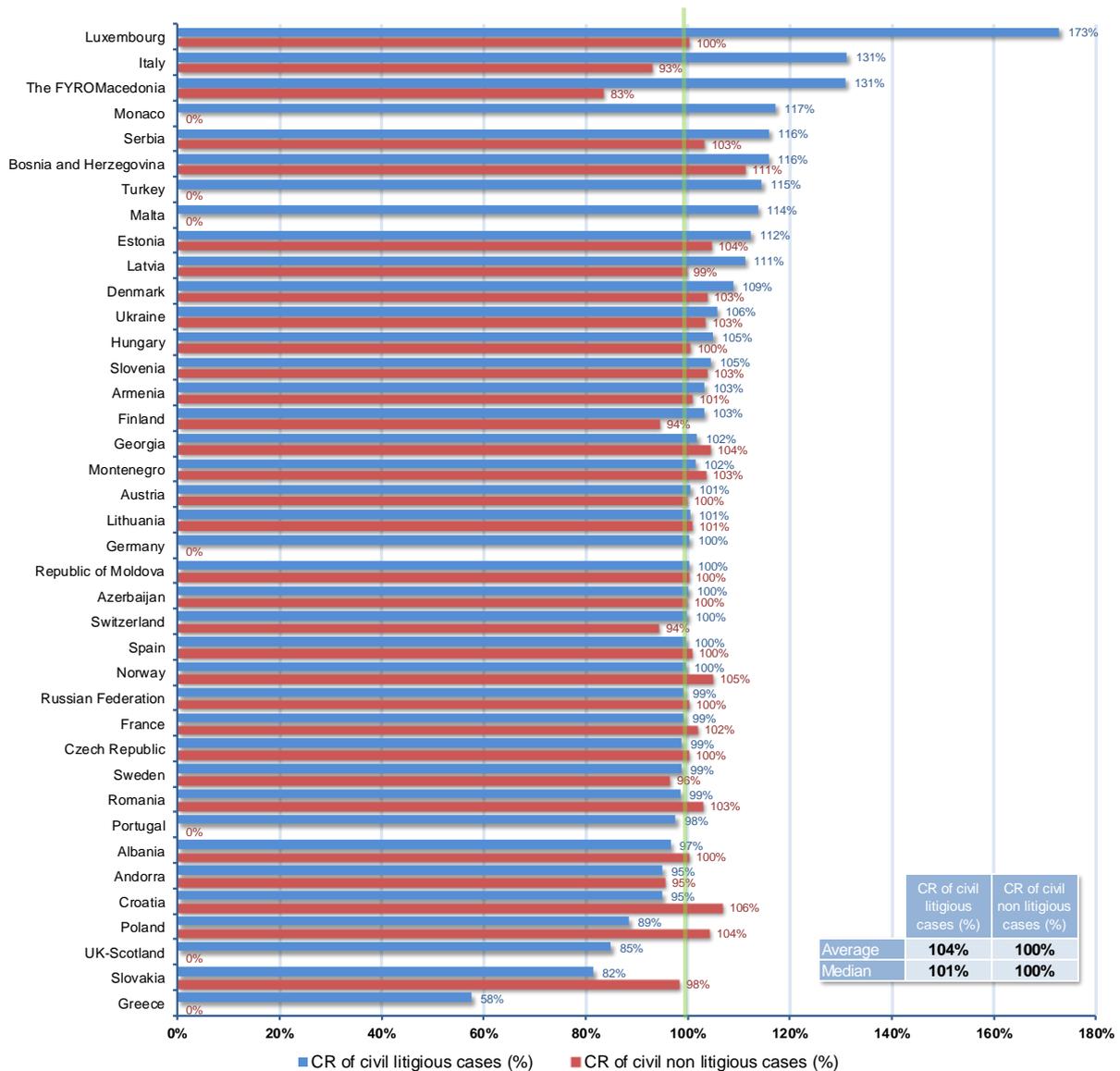


**Comment:**

**Italy** : a different classification of civil cases has been implemented, resulting in an improved classification and a better split between litigious and non-litigious cases. For this reason the comparison between 2010 and 2012 data might lead to misinterpretation.

For 8 states or entities, the activity of the first instance court, as regards the volume of cases, mainly comes from non-litigious civil (and commercial) cases: **Finland, Austria, UK-England and Wales, Poland, Albania, Estonia, Croatia, Italy**. In other states, the structure of the activity is very different and the significant volume of cases is mainly due to litigious cases (**Romania, France, Denmark, Ukraine, Spain, Andorra**).

**Figure 9.7 Clearance Rate (CR) of civil (and commercial) litigious and non litigious cases in 2012, in % (Q91)**



**Clearance Rate**

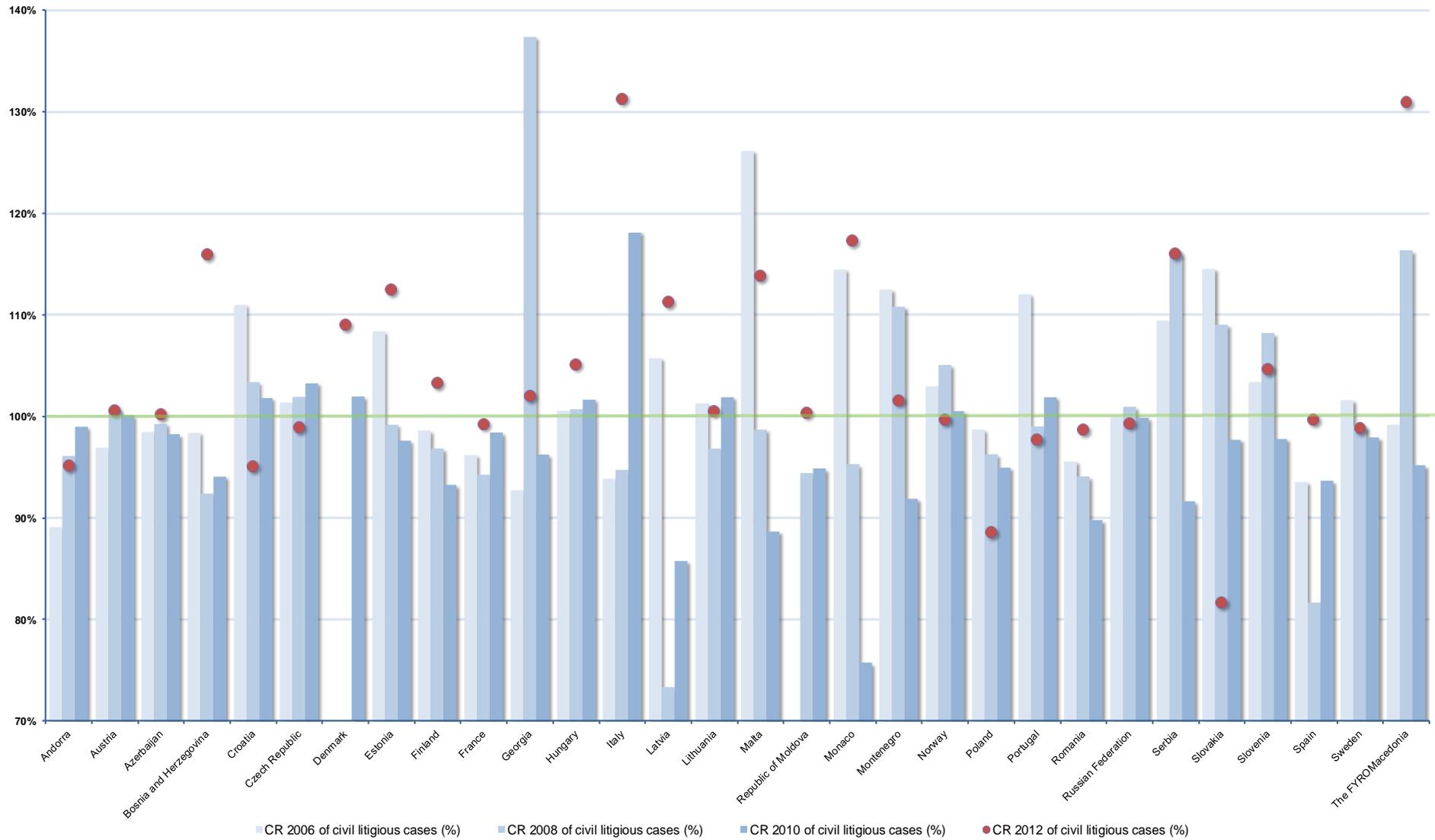
Calculating the Clearance Rate may make it possible to analyse the consequences of the volume and the allocation of civil (and commercial) cases for the court activity (see above).

The figure below has been produced on the basis of data from 39 states or entities.

The European average for the Clearance Rate is above 100% both for litigious and non-litigious cases. European courts are, taken all together, able to cope with the volume of cases to be addressed without increasing backlogs.

Difficulties can be identified in particular for litigious cases in **Poland, UK-Scotland, Slovakia, Greece**, and for non-litigious cases in **“the former Yugoslav Republic of Macedonia”**.

Figure 9.8 Evolution of the Clearance Rate (CR) of civil litigious cases between 2006 and 2012 (Q9)



## Comments:

**Georgia:** the low Clearance Rate in 2006 can be explained by the fact that that year was the second year of significant judicial reforms (including structural reorganisation) which caused certain delays in the finalization of cases.

**Italy:** in order to better comply with given definitions a slightly different classification of civil cases has been used. The result is an improved classification and a better split between litigious and non-litigious cases. On the other hand the comparison between data of 2010 and 2012 might lead to misinterpretation when looking at litigious and non-litigious cases individually.

Considering the data available, it is possible to highlight the evolution of the Clearance Rate for litigious civil (commercial) law cases between 2006 and 2012 in 30 states or entities. The analysis must be developed cautiously, as the quality of some data might have differed within the period observed, which can partly explain variations.

In 9 of the 30 states concerned, the Clearance Rate of civil litigious cases at first instance remained relatively stable ( $\pm 5\%$ ) when comparing data between 2006 and 2012.

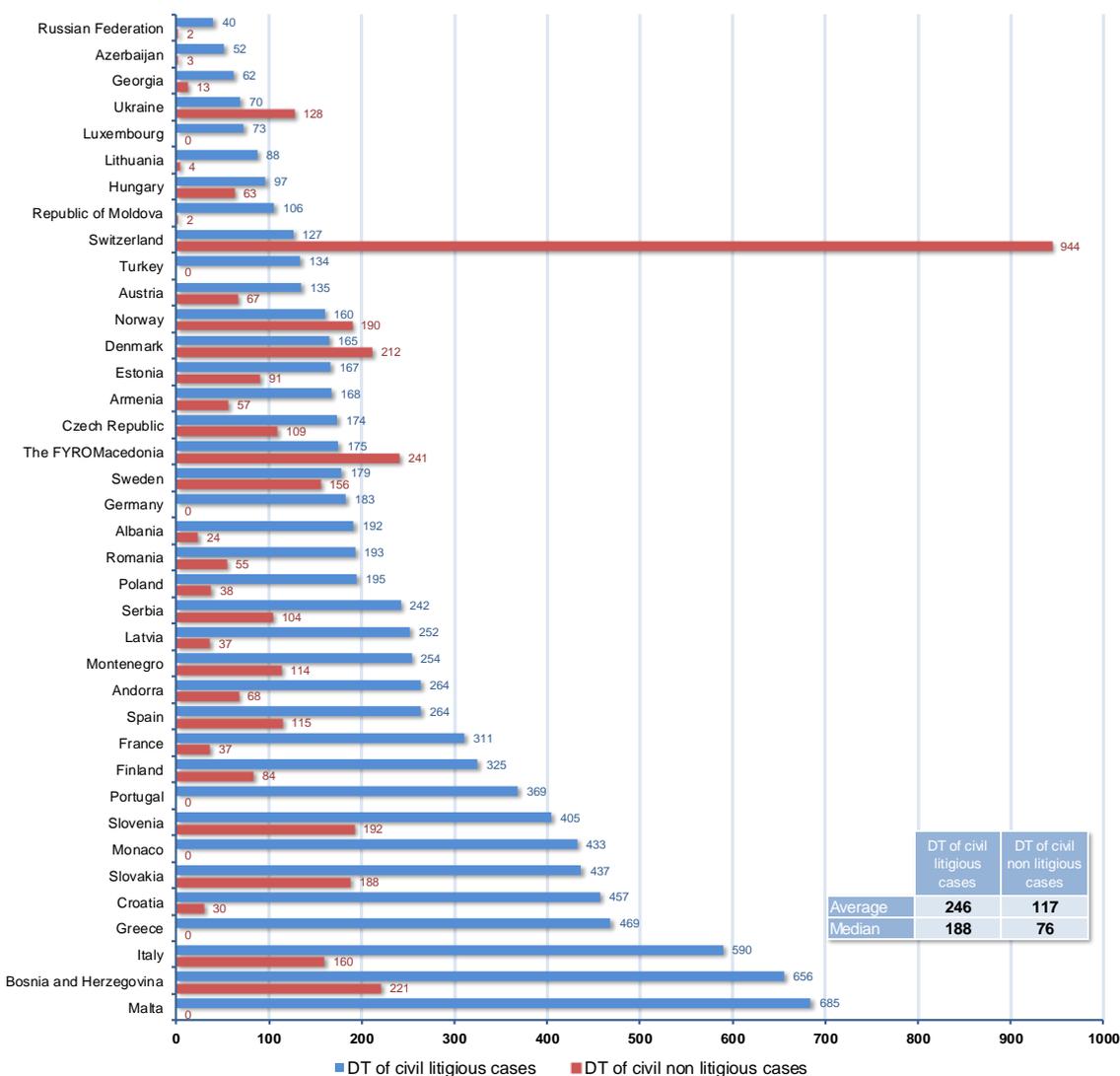
Other trends to be observed can be divided into two quite equal groups: negative trends can be noted in 10 states and positive trends are characteristic of 11 states. Major improvements in the Clearance Rate can be observed in particular in **Italy**, which can be explained rather by a decrease in the number of incoming cases (introduction of new court taxes that litigants are required to pay to initiate particular types of proceedings) than an increase in the number of solved cases. **Hungary** has experienced a regular improvement of its Clearance Rate. The same overall trend, though not linear throughout the years, can be observed for **Bosnia and Herzegovina, Estonia, Finland, Latvia, Romania, Spain**, and “**the former Yugoslav Republic of Macedonia**”.

On the contrary, the Clearance Rate has decreased sharply (though not always with a linear trend) in **Slovakia, Georgia, Croatia, Montenegro, Poland** and **Portugal**. The situation is mainly a concern for **Slovakia** and **Poland**, where the Clearance Rate is below 100%. It must be followed with care also in the other states, as the performance of the relevant bodies could be altered in the future should this trend be confirmed.

### Calculated Disposition Time in first instance courts

The calculated Disposition Time measures how quickly the judicial system (or a court) disposes of received cases. It determines the number of days that are necessary to resolve the cases pending in first instance courts (see the specific definition in the introduction to this chapter).

**Figure 9.9 Disposition Time (DT) of litigious and non-litigious civil (and commercial) cases in instance courts in 2012, in days (Q91)**

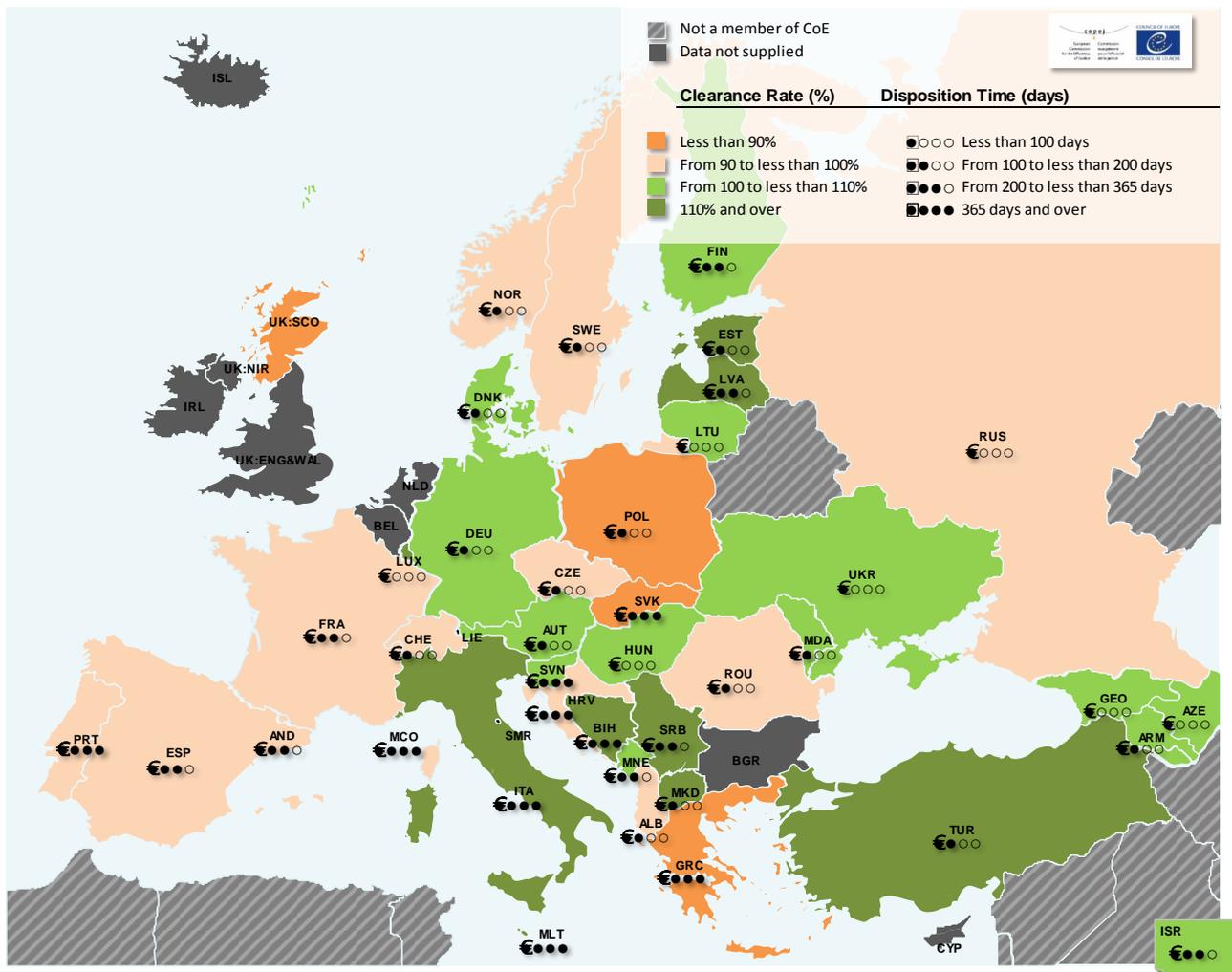


The figure above presents the Disposition Time (calculated in days) for 38 states or entities. On average in Europe, courts need 246 days to cope with the volume of non-criminal litigious cases and 117 days for non-litigious cases. However, significant differences can be observed between the states. The number of days needed for resolving the totality of the litigious cases in 1<sup>st</sup> instance courts in 2012 varies from 40 days in the **Russian Federation** to 685 days in **Malta**. The states which have the highest indicators of Disposition Time for litigious cases (more than a year) are: **Malta, Bosnia and Herzegovina, Italy, Greece, Croatia, Slovakia, Monaco, Slovenia** and **Portugal**. With the exception of **Luxembourg**, the lowest indicators of Disposition Time for litigious cases can be observed in Eastern European states.

Logically, non-litigious cases are usually quickly resolved (generally at least twice as quickly as litigious cases). Exceptions can be observed in **Switzerland, Ukraine, Norway, Denmark** and “**the former Yugoslav Republic of Macedonia**”, where the time required to resolve non-litigious cases is longer than for litigious cases.

The map below depicts the Clearance Rates and the Disposition Time for 36 member states (32 in the previous version).

**Figure 9.10 Clearance Rate (CR) and Disposition Time (DT) of litigious civil (and commercial) cases in first instance courts in 2012 (Q91)**



This analysis, focused on litigious civil (and commercial) cases completes and extends the analysis which can be made based on tables 9.2 and 9.3 above.

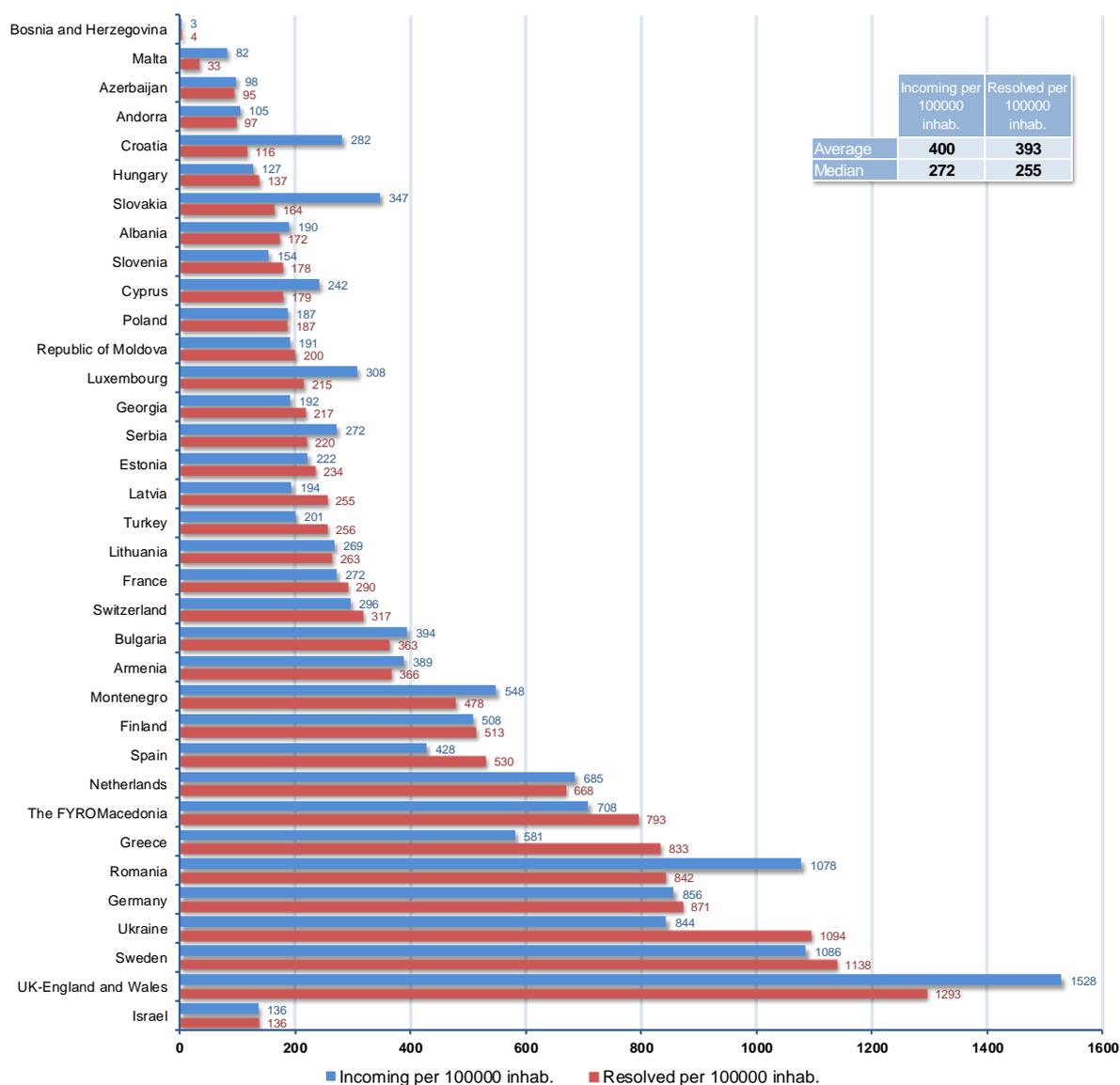
When reading the results presented in this map, the most productive civil (and commercial) first instance court systems which do not generate backlogs (Clearance Rate equal to or higher than 100 %) and can quickly resolve a filed case (less than 100 days) can be found in **Azerbaijan, Georgia, Hungary, Lithuania, Luxembourg and Ukraine**. The indicators also show that **Austria, Armenia, Denmark, Estonia, Germany, Russian Federation, “the former Yugoslav Republic of Macedonia”, and Turkey** had relatively productive first instance civil (commercial) courts in 2012. On the contrary, the first instance courts have serious difficulties in addressing the incoming cases in **Greece, Slovakia**, as well as in **Croatia, Poland, and Portugal**.

Of the 12 states which have the highest Disposition Time (more than 300 days), only 4 (**Italy, Bosnia and Herzegovina, Malta, Slovenia**) have Clearance Rates equal to or higher than 100%, which resulted in an improvement, even a limited one, of their situation in 2012. **Croatia, Portugal, and Monaco** have not reached a 100% Clearance Rate for civil litigious cases which means that the backlog of unresolved cases in these court systems is growing and their Disposition Time is deteriorating. To a lesser extent, the situation remains fragile in **Andorra, France, Montenegro, Spain**.

## 9.2.2 Administrative law cases

Disputes between an individual and a public authority can be settled as civil law proceedings. However, in a number of states, administrative law is a separate area of law. The settlement of these disputes can be within the competence of specialised administrative law tribunals or units within a court of general jurisdiction. Administrative law cases are addressed separately here in order to take into account the systems which have either a specific judicial order or specific ways of addressing administrative cases within ordinary courts.

**Figure 9.11 Number of 1<sup>st</sup> instance incoming and resolved administrative law cases per 100 000 inhabitants in 2012 (Q1, Q91)**



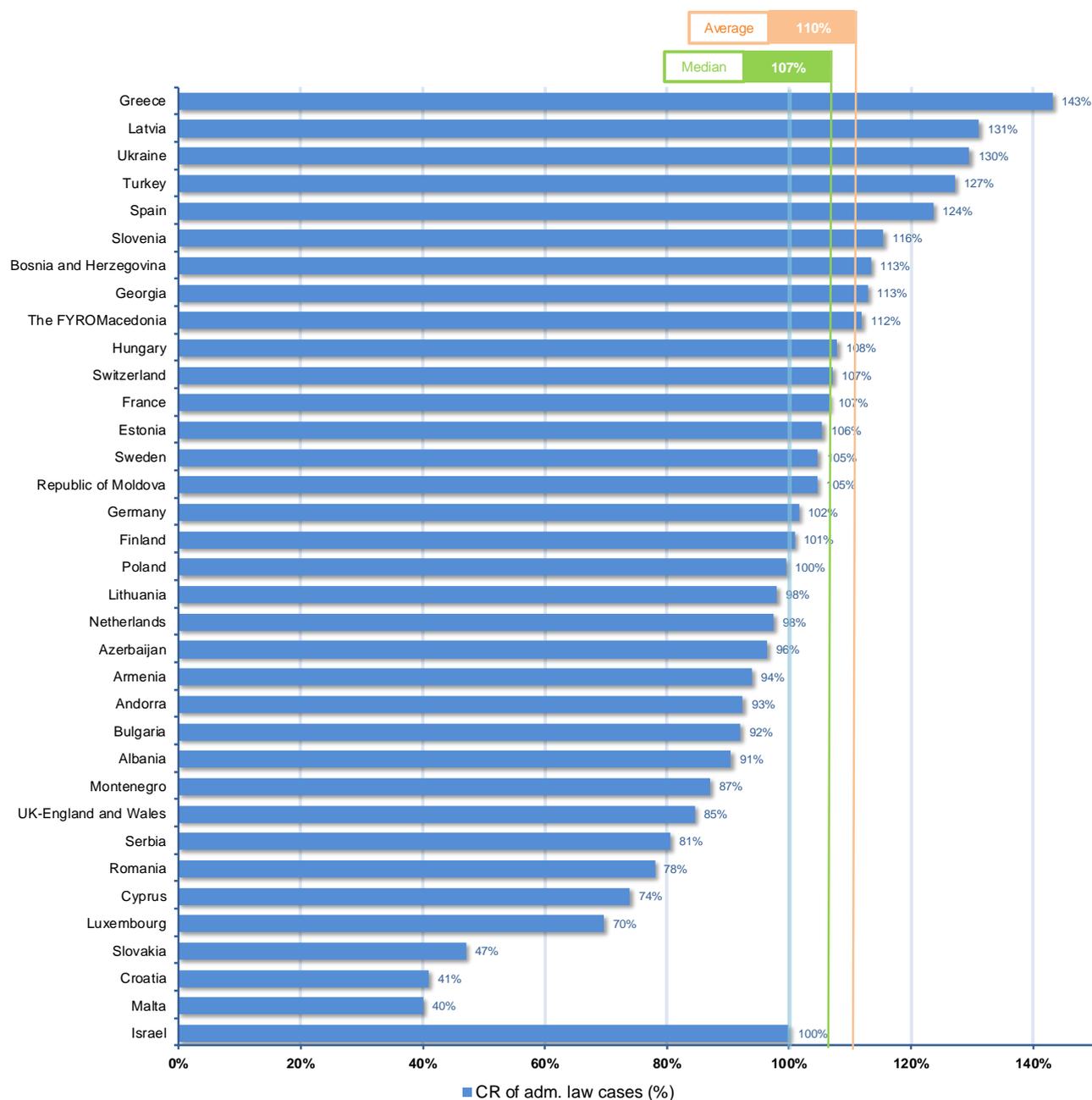
### Comment:

**Russian Federation:** according to the Russian legislation, an administrative offence is an unlawful guilty act (non-act) by a natural or legal person for which the Administrative Offences Code of the Russian Federation or sub-federal entities laws on administrative offences establish administrative responsibility. The Administrative Offences Code of the Russian Federation provides responsibility in various fields. This explains the huge number of administrative law cases.

Thirty-three states and **Israel** were able to specify data on administrative law cases; 8 states or entities stated that administrative law cases data were not gathered into a separate category: **Austria, Ireland, Italy, Norway, UK-Northern Ireland, UK-Scotland, UK-England and Wales.**

On average in Europe, courts are able to cope with the volume of administrative law cases, receiving the same number of incoming cases as the number of pending cases. However, significant differences can be observed between the states. In 2 states, the courts address around 1.000 or more cases per 100 000 inhabitants: **Ukraine, Sweden**. High rates (between around 500 and 1.000 cases per 100 000 inhabitants) can also be observed in **Germany, Romania, Greece, "the former Yugoslav Republic of Macedonia", Netherlands, Spain, Finland, and Montenegro**. The volume of administrative law cases is particularly limited (less than 100 cases per 100 000 inhabitants) in **Bosnia and Herzegovina, Malta and Azerbaijan**.

**Figure 9.12 Clearance Rate (CR) of administrative law cases in 2012 (Q91)**



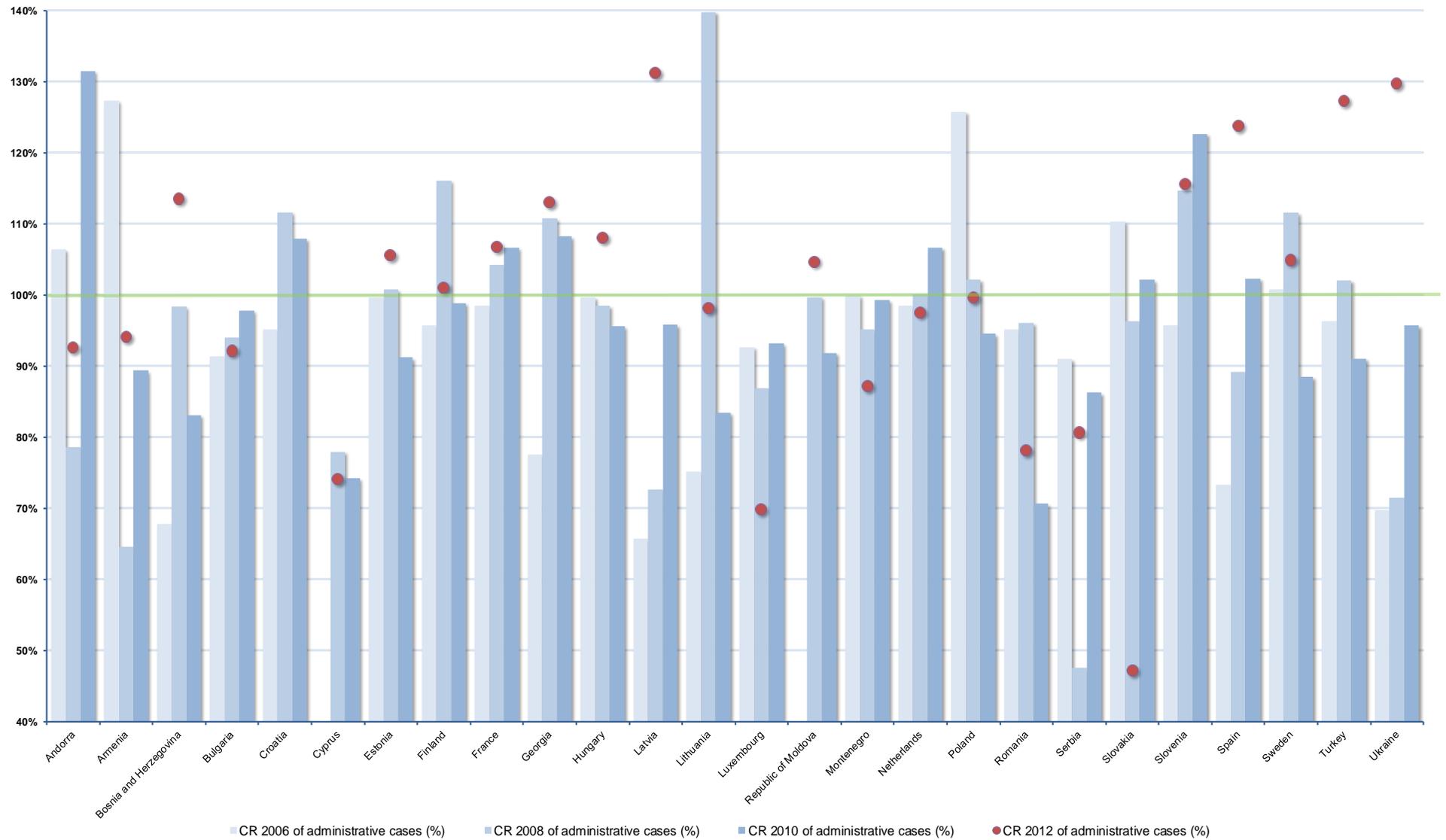
Here again, the analysis completes and extends the analysis made based on tables 9.2 and 9.3 above.

The management of administrative law cases at first instance is, or could become, a difficulty in terms of court productivity in 15 states. Backlogs of administrative law cases are increasing in a significant way in **Malta** (this very low data is not indicative considering the very low absolute number of cases concerned), **Croatia** and **Slovakia**, as well as, to a lesser extent, in **Luxembourg, Cyprus** and **Romania**: the first instance courts dealing with administrative law cases cannot cope with the volume of cases to be addressed.

Administrative law cases do not seem to be a court management problem in 19 states. The states with positive Clearance Rates are mainly those which experience significant volumes of cases addressed by the courts.

A more precise analysis should take into account the specificities of the judicial systems as regards administrative law, specifying those states which have distinct judicial orders for administrative law (namely **Armenia, Bulgaria, Croatia, Czech Republic, Finland, France, Lithuania, Luxembourg, Poland, Sweden, Switzerland, and Turkey**), and the other states where administrative law cases are addressed by ordinary courts. States that have difficulty in dealing with the volume of cases are mainly in the category of states that do not have a specific court order for administrative law. However, it cannot be concluded that one system is more productive than the other.

Figure 9.13 Evolution of the Clearance Rate (CR) of administrative law cases between 2006 and 2012 (Q91)



## Comments:

**Luxembourg:** the decrease in 2012 in the Clearance Rate in administrative cases is mainly due to the significant increase in cases of political refugees, measures of international protection and detention of asylum seekers who are definitively rejected, which are under the jurisdiction of administrative courts and which represent a large proportion of cases that these courts are called upon to treat. For the disposal of these files in an even more timely procedure, the staff of the service of refugees from the Ministry of Foreign Affairs and Immigration has been reinforced in 2011 and 2012, but the staff of the administrative courts could not be reinforced at the same time and to the same extent.

**Malta:** the Administrative Court was set up in late 2010, as a result of which the figures given in the previous report reflect the operation of the Court over a couple of months only. For the last period, data reflects the operation of the Court over the full year period.

**Slovakia:** there is a significant difference in the number of incoming and resolved administrative law cases in comparison with the year 2010, which can be explained by the situation in the year 2010, when a huge number of specific collective claims were filed and resolved. As regards the number of incoming and resolved cases in the reference year 2012, a considerable number of incoming cases were recorded at the end of the year which technically then could not be resolved by the end of the same year. This caused the inadequate Clearance Rate for the administrative cases which also affected the Clearance Rate for all non-criminal cases in first instance.

**Spain:** the number of incoming administrative cases shows a relevant decrease due to the reduction of files related to Public Administration; these cases had increased in the last period due to the reduction of the salaries of civil servants. The incoming cases have decreased in the recent period for two reasons: plaintiffs may be sentenced to pay the fees of the proceedings; plaintiffs now have to be assisted by a lawyer to file an administrative case.

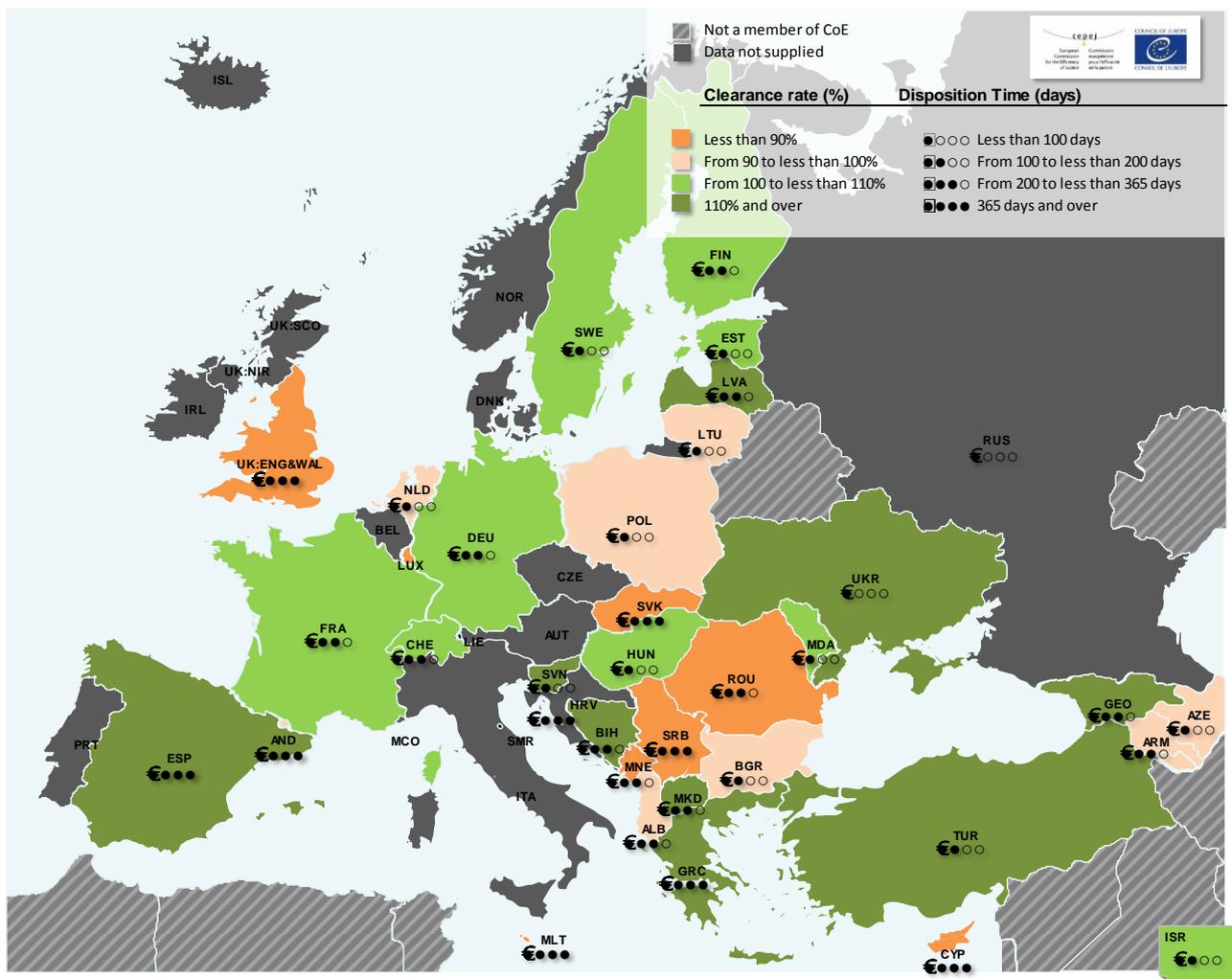
**“the former Yugoslav Republic of Macedonia”:** the increase in administrative cases results from the increased work of the misdemeanour commissions (on decision of an administrative commission, the party has the right to initiate an administrative dispute before the administrative court).

It was possible to measure the evolution of the Clearance Rate for administrative law cases between 2006 and 2012 in 26 states. Here again, the analysis must be developed cautiously, as the quality of some data might have differed within the period observed, which can partly explain variations.

**Netherlands, Poland, Finland** have more or less stabilised their Clearance Rate for administrative law cases around 100 % over the six year period observed. A rather regular increase of the Clearance Rate, now higher than 100 %, is encouraging for the court management in **France, Latvia, Spain** and **Ukraine**. Though quite drastic over the period observed, a general increase in the Clearance Rate, now higher than 100 %, can also be emphasised for **Bosnia and Herzegovina, Estonia, Finland, Georgia, Hungary, Lithuania, Republic of Moldova, Slovenia, Sweden** and **Turkey**.

A more drastic decrease of the Clearance Rate for administrative law cases over the six year period observed, reaching a problematic Clearance Rate below 100 % can be noticed in particular for **Slovakia, Luxembourg**, as well as for **Andorra, Armenia, Montenegro, Romania** and **Serbia**.

Figure 9.14 Clearance Rate (CR) and Disposition Time (DT) of administrative law cases in first instance courts in 2012 (Q91)



### 9.2.3 Criminal law cases (severe criminal offences) and misdemeanour cases (minor offences) in 1st instance courts

This chapter deals with the management of criminal cases by the courts. For the management of cases by prosecutors, please refer to chapter 10 below.

In the Evaluation scheme, states or entities were asked to submit information concerning criminal law cases. These cases are categorized by the CEPEJ into two types, corresponding, to the way they are classified in a majority of member states or entities: *severe criminal cases* and *minor offences (misdemeanours)*.

The CEPEJ has decided to use the same terminology and definitions as in the "European Sourcebook of Crimes and Criminal Justice". The total number of criminal offences includes all offences defined as criminal by any law, including traffic offences (mostly dangerous and drunk driving). Criminal offences include acts which are normally prosecuted by a public prosecutor, whereas offences which are prosecuted directly by the police, such as minor traffic offences and certain breaches of public order, are not included.

To understand better the main trends in Europe, a distinction between minor criminal offences and severe criminal cases, which corresponds to the differentiation within the common law countries, is necessary, since for minor criminal offences, shorter court proceedings and/or other details of the treatment of a case (the imposition of an administrative fine, a sanction imposed by a public prosecutor without the intervention of a judge, police sanctions, etc.) may be used, compared with severe criminal cases. Special tribunals, courts or judges can also be competent for small criminal offences (for example, misdemeanour courts, police courts or police judges, administrative tribunals). In addition, there may be a possibility to use mediation for minor criminal offences.

To differentiate between “misdemeanours / minor offenses” and “serious offenses” and ensure as much as possible the consistency of the responses between different systems, the CEPEJ has invited the member states to classify as “misdemeanours / minor” all offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, as “severe offenses” should be classified all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment). Examples of severe criminal cases are: murder, rape, organised crime, fraud, drug trafficking, trafficking of human beings, etc. Minor offences may be shoplifting, certain categories of driving offences, disturbance of the public order, etc.

However, it should be noted that for both types of cases there is a possibility that states classify criminal law cases in a different manner because there are different distinctions within their legal categories and their statistical systems. Details appear un Figure 9.15 in the comments per state/entity. Due to the high variation in the classifications used in criminal cases by the various states, the data presented should then be interpreted with care.

For several states, it was impossible to calculate the rate per 100 000 inhabitants because the categorisation into severe criminal offences and misdemeanour cases cannot be applied (this is the case for **Finland, Romania, Slovakia, Sweden, and Ukraine**).

**Table 9.15 First instance court : criminal cases (Q94)**

States/entities	Pending cases on 1 Jan. 2012			Incoming cases			Resolved cases			Pending cases on 31 Dec.2012		
	Total of criminal cases	Criminal cases	Misdemeanour cases	Total of criminal cases	Criminal cases	Misdemeanour cases	Total of criminal cases	Criminal cases	Misdemeanour cases	Total of criminal cases	Criminal cases	Misdemeanour cases
Albania	2 442	43	2 399	8 492	87	8 405	8 947	87	8 860	1 987	43	1 944
Andorra	711	105	606	1 150	119	1 031	1 068	120	948	793	104	689
Armenia	974	52	922	3 441	117	3 324	3 442	116	3 326	973	53	920
Austria	18 512	6 479	12 033	57 668	25 099	32 569	57 957	25 140	32 817	18 223	6 438	11 785
Azerbaijan	2 033	NA	NA	12 759	NA	NA	12 825	NA	NA	1 967	NA	NA
Belgium	NA	12 684	NA	NA	41 114	NA	310 720	42 863	267 857	NA	10 935	NA
Bosnia and Herzegovina	157 174	23 575	133 599	168 424	54 842	113 582	171 414	55 433	115 981	154 184	22 984	131 200
Bulgaria	24 400	NA	NA	157 079	NA	NA	155 201	NA	NA	26 278	NA	NA
Croatia	209 435	25 920	183 515	347 949	41 238	306 711	359 223	45 405	313 818	198 161	21 753	176 408
Cyprus	67 088	NA	67 088	118 410	NA	118 410	108 068	NA	108 068	77 430	NA	77 430
Czech Republic	19 037	NAP	19 037	97 868	NAP	97 868	98 384	NAP	98 384	18 521	NAP	18 521
Denmark	22 332	8 727	13 605	157 157	25 736	126 421	158 437	27 395	131 041	16 051	7 068	8 983
Estonia	2 122	1 390	732	16 046	9 129	6 917	15 086	9 183	5 903	2 109	1 083	1 026
Finland	17 270	NAP	NAP	60 072	NAP	NAP	58 904	NAP	NAP	18 438	NAP	NAP
France	NA	NA	NA	1 013 452	558 063	455 389	1 033 167	594 377	438 790	NA	NA	NA
Georgia	1 225	819	406	9 052	4 174	4 878	9 120	4 308	4 812	1 157	685	472
Germany	339 572	239 986	99 586	1 167 769	784 699	383 070	1 173 860	786 762	387 098	333 481	237 923	95 558
Greece	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	71 916	53 874	18 042	334 352	134 238	200 114	305 892	139 496	166 396	100 376	48 616	51 760
Iceland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ireland	NA	NA	NA	NA	NA	NA	377 051	4 345	372 706	NA	NA	NA
Italy	1 355 812	1 198 895	156 917	1 532 809	1 308 942	223 867	1 434 169	1 218 416	215 753	1 454 452	1 289 421	165 031
Latvia	5 164	4 480	684	17 290	8 670	8 620	16 565	8 557	8 008	5 889	4 593	1 296
Lithuania	5 488	NA	NA	29 208	NA	NA	29 010	NA	NA	5 686	NA	NA
Luxembourg	NAP	NAP	NAP	NAP	NAP	NAP	12 178	6 432	5 746	NAP	NAP	NAP
Malta	17 558	3 417	14 141	19 131	1 546	17 585	21 157	2 119	19 038	15 532	2 844	12 688
Republic of Moldova	3 458	NA	NA	11 808	NA	NA	10 703	NA	NA	4 563	NA	NA
Monaco	NA	181	NA	NA	650	NA	NA	688	NA	NA	160	NA
Montenegro	2 441	2 433	8	5 791	5 772	19	5 574	5 552	22	2 658	2 653	5
Netherlands	91 500	51 680	39 820	388 847	199 030	189 817	370 102	191 750	178 352	100 720	54 870	45 850
Norway	4 589	NA	NA	27 414	NA	NA	27 429	NA	NA	4 500	NA	NA
Poland	254 569	170 654	84 005	1 001 718	479 774	521 944	1 011 714	495 489	516 225	244 663	154 939	89 724
Portugal	94 371	86 190	8 181	112 482	104 473	8 009	117 703	107 328	10 375	89 150	83 335	5 815
Romania	35 403	NA	NA	192 489	NA	NA	190 468	NA	NA	37 424	NA	NA
Russian Federation	86 000	NAP	NAP	948 000	NAP	NAP	942 000	NAP	NAP	92 000	NAP	NAP
Serbia	74 015	NA	NA	63 285	NA	NA	66 648	NA	NA	70 655	NA	NA
Slovakia	18 378	NA	NA	44 167	NA	NA	44 732	NA	NA	17 813	NA	NA
Slovenia	52 493	19 953	32 540	72 124	16 817	55 307	87 069	19 058	68 011	37 548	17 712	19 836
Spain	548 390	321 800	226 590	1 368 823	336 216	1 032 607	1 405 987	353 311	1 052 676	524 857	319 643	205 214
Sweden	31 583	NAP	NAP	89 804	NAP	NAP	90 866	NAP	NAP	30 521	NAP	NAP
Switzerland	20 782	12 668	8 115	57 573	28 672	28 900	56 949	26 593	30 356	21 406	14 747	6 659
The FYROMacedonia	62 955	9 753	53 202	100 242	14 694	85 548	104 815	15 496	89 319	58 382	8 951	49 431
Turkey	1 458 389	78 204	1 380 185	1 937 716	100 581	1 837 135	2 098 097	99 912	1 998 185	1 298 008	78 873	1 219 135
Ukraine	48 380	NA	NA	187 133	NA	NA	193 518	NA	NA	41 995	NA	NA
UK-England and Wales	288 235	41 301	246 934	1 310 157	120 747	1 189 410	1 331 968	125 540	1 206 428	266 510	36 744	229 766
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	NA	NA	NA	130 820	5 984	124 836	NA	NA	NA	NA	NA	NA
Average	145 163	91 356	107 804	334 374	157 544	256 510	335 433	152 113	261 843	141 975	93 353	101 044
Median	27 992	12 676	18 540	99 055	27 204	105 725	101 600	26 593	103 226	28 400	12 841	19 179
Minimum	711	43	8	1 150	87	19	1 068	87	22	793	43	5
Maximum	1 458 389	1 198 895	1 380 185	1 937 716	1 308 942	1 837 135	2 098 097	1 218 416	1 998 185	1 454 452	1 289 421	1 219 135
Israel	160 802	NAP	NAP	330 392	NAP	NAP	353 460	NAP	NAP	137 734	NAP	NAP

**Comments:**

**Albania:** “severe criminal cases” are those involving the Serious Crimes Court. “Misdemeanours and / or minor criminal cases” includes all courts of first instance except the Serious Crimes Court.

**Austria:** “misdemeanours and/or minor criminal cases” include all offences fined or punished with a prison sentence up to one year and must not be decided by a jury.

**Azerbaijan:** “severe criminal offences” includes cases punishable by at least 8 years of imprisonment.

**Belgium:** “severe criminal offences” include cases dealt with by first instance ordinary criminal courts. “Misdemeanours/ minor criminal cases” include cases dealt with by the *Police Court* (w/o civil cases)

**Bosnia and Herzegovina:** “severe offences” includes unlawful acts which violate or jeopardize the protected values (criminal acts against the state, homicide, organized crime, criminal acts against official duty (i.e. corruption cases), theft and other crimes against property, rape and other crimes against sexual integrity, traffic accidents where a person suffered grievous bodily injury or significant damage and other crimes against public transportation etc.). “Minor offences” are violations of public order or of regulations on economic and financial operations punishable by a fine, suspended sentence, reprimand and protective measures (traffic offences, violations of public order, begging etc.).

**Bulgaria:** the offences could be divided into “common offences” and “offences subject to private prosecution” (offences with a lower degree of public danger and which affect less the rights of the person: minor bodily injury, insult, slander, etc.).

**Croatia:** “misdemeanours” harm the public order, social discipline or other social values not protected under the Penal Code and other acts where criminal offences are prescribed.

**Czech Republic:** the answer “NAP” means that 1st instance courts do not deal with severe criminal cases, which are decided by the regional courts as 1st instance courts. “Severe criminal cases” includes crimes for which the law provides a minimum term of imprisonment of 5 years.

**Denmark:** “severe criminal cases” are defined as those cases where a lay assessor participates or cases dealt with by a jury; no-contest plea cases (plea guilty) are included as severe criminal cases. “Misdemeanours and/or minor criminal cases” are typically cases where the maximum sentence is a fine.

**Estonia:** “severe criminal cases” include all criminal offences for which the principal punishment is a pecuniary punishment or imprisonment; “misdemeanours and / or minor criminal cases” includes offences for which the principal punishment is a fine or detention.

**Germany:** “severe criminal cases” includes criminal proceedings in accordance with the Criminal Code and ancillary criminal laws. “Misdemeanour and/or minor criminal cases” includes regulatory fine proceedings before criminal courts.

**Hungary:** in “misdemeanour cases” proceeds the misdemeanour authority (police, district office, National Tax and Customs Office). The person charged with a misdemeanour may apply to the court.

**Ireland:** “severe criminal cases” includes all cases required to be tried on indictment (e.g. robbery (i.e. stealing with force/threat of force), assault causing serious harm, rape, aggravated sexual assault, manslaughter, murder). “Misdemeanour and/or minor criminal cases” includes all cases triable summarily (e.g. common assault, public order offences, burglary or theft in other than aggravated circumstances).

**Italy:** “minor criminal cases” includes the proceedings dealt with by the Justice of Peace Offices.

**Latvia:** “severe criminal cases” are the other criminal cases. Misdemeanour cases are not criminal cases according to the Criminal Law.

**Luxembourg:** the courts do not really have pending cases, as the files are held by the public prosecutors office and are only transferred to the court a short time before the hearing is scheduled. The only pending cases are those that have been heard and for which the court is deliberating. Thus it could be considered that the data of incoming cases is quite close to the data of resolved cases.

The distinction “misdemeanour / minor offenses” and “serious offenses” corresponds in national law to the notions of “contraventions” and “crimes et délits”.

**Malta:** since the vast majority of the cases contemplate the possibility of imprisonment, barring a few contraventions, the cases indicated as “misdemeanours/minor offences”, are those cases which are heard by the Court of Magistrates having a maximum punishment of 6 months imprisonment, while the cases indicated as “severe criminal offences” are those having a punishment of over 6 months imprisonment.

**Monaco:** “severe criminal cases” are dealt with by the correctional courts (having a punishment going from 6 days to 5 years and fines from 750 to 90.000 €). “Misdemeanour / minor offenses” include offenses dealt with by the Police Court (maximum punishment going from 1 to 5 days, and fines from 15 to 600 €): non-public insult, driving while drunk, crimes against property, etc.

**Netherlands:** “minor offences” concerns mainly traffic offences (speeding tickets, running red lights), petty theft, vagrancy, littering etc. “Severe crimes” concerns mainly driving while drunk, grand theft, violent crimes, vice, drugs/narcotics, etc.

**Norway:** the number of criminal cases includes composite court cases (with 1 professional judge and 2 lay judges) and guilty plea cases (1 single professional judge). It is now possible to distinguish guilty plea cases from other single judge cases, and the increase in the number of criminal cases can be explained accordingly. The numbers only include cases where a criminal sanction is pronounced, i.e. not cases of coercive pretrial measures.

It is not possible to specify misdemeanour cases and severe cases, although the composite court cases usually concern more severe cases than what is adjudicated in the simplified procedure for guilty plea cases.

**Poland:** “misdemeanour cases” includes the offences punishable by a maximum penalty up to 1 month of detention or a fine (or both). All other criminal cases are “severe cases”. Statistics contain also the so called ‘organisation cases’ which do not deal directly with crimes.

**Portugal:** “severe criminal cases” includes all criminal proceedings. “Misdemeanour and minor criminal cases” includes civil and criminal transgressions.

**Russian Federation:** “misdemeanour” is an intentional and negligent act for the commitment of which the maximum punishment shall not exceed three years of imprisonment. According to the law, an illegal act of a physical or natural person for which the Federal Code of administrative offences or the legislation of the entities of the Federation establish an administrative responsibility are called administrative offences – however they are not litigations between a physical or natural person and a public body as examined in paragraph 9.2.2 above.

**Serbia:** minor offences courts shall adjudicate at first instance minor offence cases which are not under the competence of an administrative authority, decide on appeals against decisions passed by administrative authorities in minor offences proceedings, and perform other tasks set forth by law. The Higher Minor Offences Court shall decide on appeals against

decisions of minor offences courts, on conflicts and transfer of territorial jurisdiction of minor offences courts, and perform other tasks set forth by law.

**Slovenia:** "misdemeanour cases and minor offences cases" includes minor offences in regular court procedure – request for judicial protection, accusation proposals, minor offences at the transition from 2004 to 2005, minor offences introduced in the judicial jurisdiction after the 31.12.2004, cancellation of the validity of a driver's licence according to the legal limit of punitive points, compliance detention.

**Spain:** misdemeanours are those cases punished with a minor punishment. In most of the cases it is the length of the sentence that determines the class of severity: a prison sentence is considered to be of great severity if it exceeds five years, or lesser severity otherwise; a community service sentence is considered less serious if it exceeds thirty days but is minor of shorter duration; a fine is minor if it does not exceed two months and is otherwise considered less serious, etc.

**Switzerland:** the figures provided are derived from an extrapolation of the results obtained in certain cantons to the national level. In a majority of cantons, it is not possible to distinguish between "severe criminal cases" and "misdemeanour/minor criminal cases" – those who gave different numbers for each category distinguished them by the type of court concerned: a single judge for minor criminal cases, and multiple judges in a panel for serious criminal cases.

**the former Yugoslav Republic of Macedonia:** "severe criminal cases" are criminal acts defined in the Criminal Code, while "misdemeanours and minor criminal cases" are in the Law on misdemeanour and other substantive laws (for these misdemeanours imprisonment is not proscribed).

**UK-England and Wales:** data is available in the above table for completed proceedings only - there is no information available from magistrates' courts on pending or incoming cases.

"Severe criminal cases" will include the following: indictable offences such as murder and sexual assault and must be heard at the Crown Court. The involvement of the magistrates is usually brief before the case is passed to the Crown. Triable either way offences are more serious than summary offences, but less serious than indictable only offences. These cases can be dealt with either by magistrates or before a judge and jury at the Crown Court. Such offences include dangerous driving and theft and handling stolen goods.

"Misdemeanour and/or minor offences" will include the following: summary cases are offences which are less serious, such as motoring offences, minor assaults and criminal damage. These cases are usually dealt with entirely in magistrates' courts; adult breach proceedings are proceedings against a defendant (aged 18 or over) who has breached an order previously imposed against them.

**UK-Scotland:** Severe criminal cases are termed SOLEMN (serious assault, fraud, assault and robbery etc.).

Misdemeanour/minor cases are termed SUMMARY (theft, assault, road traffic offences etc).

**Israel:** the total of criminal cases refers to all cases for which a sanction may be imposed by a judge, including traffic offenses and infractions/ administrative offenses contested before a judge. This total also includes all arrests, both before and after the indictment.

As it has been done for civil, commercial and administrative law cases, the CEPEJ has tried for the first time in this report to have a general overview of the situation of court management as regards criminal law cases, using its two indicators of court efficiency: the Clearance Rate and the Disposition Time.

**Table 9.16 Clearance Rate and Disposition Time in different types of criminal cases at first instance in 2012 (Q94)**

States/entities	Clearance Rate			Disposition Time		
	Total of criminal cases	Criminal cases	Misdemeanour cases	Total of criminal cases	Criminal cases	Misdemeanour cases
Albania	105,4%	100,0%	105,4%	81	180	80
Andorra	92,9%	100,8%	91,9%	271	316	265
Armenia	100,0%	99,1%	100,1%	103	167	101
Austria	100,5%	100,2%	100,8%	115	93	131
Azerbaijan	100,5%	NC	NC	56	NC	NC
Belgium	NC	104,3%	NC	NC	93	NC
Bosnia and Herzegovina	101,8%	101,1%	102,1%	328	151	413
Bulgaria	98,8%	NC	NC	62	NC	NC
Croatia	103,2%	110,1%	102,3%	201	175	205
Cyprus	91,3%	NC	91,3%	262	NC	262
Czech Republic	NC	NC	100,5%	NC	NC	69
Denmark	104,1%	106,4%	103,7%	37	94	25
Estonia	94,0%	100,6%	85,3%	51	43	63
Finland	98,1%	NC	NC	114	NC	NC
France	101,9%	106,5%	96,4%	NC	NC	NC
Georgia	100,8%	103,2%	98,6%	46	58	36
Germany	100,5%	100,3%	101,1%	104	110	90
Greece	NC	NC	NC	NC	NC	NC
Hungary	91,5%	103,9%	83,2%	120	127	114
Iceland	NC	NC	NC	NC	NC	NC
Ireland	NC	NC	NC	NC	NC	NC
Italy	93,6%	93,1%	96,4%	370	386	279
Latvia	95,8%	98,7%	92,9%	130	196	59
Lithuania	99,3%	NC	NC	72	NC	NC
Luxembourg	NC	NC	NC	NC	NC	NC
Malta	110,6%	137,1%	108,3%	268	490	243
Republic of Moldova	90,6%	NC	NC	156	NC	NC
Monaco	NC	105,8%	NC	NC	85	NC
Montenegro	96,3%	96,2%	115,8%	174	174	83
Netherlands	95,2%	96,3%	94,0%	99	104	94
Norway	100,1%	NC	NC	60	NC	NC
Poland	101,0%	103,3%	98,9%	88	114	63
Portugal	104,6%	102,7%	129,5%	276	283	205
Romania	99,0%	NC	NC	72	NC	NC
Russian Federation	99,4%	NC	NC	36	NC	NC
Serbia	105,3%	NC	NC	387	NC	NC
Slovakia	101,3%	NC	NC	145	NC	NC
Slovenia	120,7%	113,3%	123,0%	157	339	106
Spain	102,7%	105,1%	101,9%	136	330	71
Sweden	101,2%	NC	NC	123	NC	NC
Switzerland	98,9%	92,7%	105,0%	137	202	80
The FYROMacedonia	104,6%	105,5%	104,4%	203	211	202
Turkey	108,3%	99,3%	108,8%	226	288	223
Ukraine	103,4%	NC	NC	79	NC	NC
UK-England and Wales	101,7%	104,0%	101,4%	73	107	70
UK-Northern Ireland	NC	NC	NC	NC	NC	NC
UK-Scotland	NC	NC	NC	NC	NC	NC
Average	100,5%	103,3%	101,6%	146	189	140
Median	100,5%	102,7%	101,1%	120	171	97
Minimum	90,6%	92,7%	83,2%	36	43	25
Maximum	120,7%	137,1%	129,5%	387	490	413
Israel	107,0%	NC	NC	142	NC	NC

**Comments:**

**Austria** : in the category “criminal cases” are only counted cases which are dealt with by a judge in a court hearing, not preliminary proceedings at the court dealt with by a judge and proceedings dealt with by the public prosecutor.

**Denmark:** the increase in the number of misdemeanour and/or minor criminal cases is due to the fact that a high number of cases concerning, especially, traffic fines were handled at court level.

**UK-England and Wales:** the rise in the numbers of severe criminal cases is due to an increase in the number of cases committed for trial, and sent to trial as a result of a change in legislation which resulted in an increased caseload at the Crown Court. As a result of further legislative change, this was followed by a decline in such numbers between 2010 and 2012 as this adjusted back and returned to a more acceptable volume of cases.

The efficiency of judicial procedures regarding criminal law cases are of particular importance as regards the safeguard of fundamental rights, in particular as regards severe criminal law cases where deprivation of liberty might be at stake.

On average in Europe, the Clearance Rate for criminal law cases are slightly higher than 100 %, which means that criminal court can address the volume of cases without raising backlogs, and the average Disposition Time is of 142 days for all criminal law cases and of 189 days for severe crimes.

For 13 states or entities, court efficiency does not seem to be a major concern in the criminal law field, as both the Clearance Rate and the Disposition Time can be considered as positive, which means that the backlogs are decreasing and that, at the same time, the cases to be addressed by the court can be resolved in an acceptable time: **Albania** (though the Disposition Time for serious crimes should further decrease), **Austria, Azerbaijan, Belgium, Czech Republic, Denmark, Germany, Monaco, Norway, Poland, Russian Federation, Ukraine, UK-England and Wales**. This is also the case, but for serious crimes only, in **Georgia**, and for misdemeanour cases only in **Montenegro** and **Switzerland**.

For 11 other states, a positive evolution of the case management timeframe could be envisaged as the Clearance Rate is higher than 100 % although the Disposition Time remains at this stage too high: **Bosnia and Herzegovina, Croatia, Malta** (a very high Disposition Time of 490 days for severe crimes can still be emphasised), **Portugal, Serbia, Slovakia, Slovenia, Spain, “the former Yugoslav Republic of Macedonia”**, and **Turkey**.

In other states, warning lights should be activated in the long-term, as the courts cannot cope with the volume of cases (Clearance Rates below 100 %) - **Estonia, Hungary, Netherlands**. However their Disposition Time can still be considered as highly acceptable at this stage.

The situation of court productivity for criminal law cases must be considered with care in **Andorra** taking into account the very low number of cases concerned. It appears more worrying in **Cyprus, Italy, Latvia**, and, to a lesser extent, **Montenegro** and **Switzerland** (for severe crimes) as both the Clearance Rate and the Disposition Time are negative.

**Table 9.17 Changes in Clearance Rate and Disposition Time of the first instance court criminal cases (2012 vs. 2010) (Q94)**

States/entities	Clearance Rate			Disposition Time		
	Total of criminal cases	Criminal cases	Misdemeanour cases	Total of criminal cases	Criminal cases	Misdemeanour cases
Albania	↗ 13,6%	↗ 5,1%	↗ 13,7%	↕ -39,8%	↕ -48,8%	↕ -39,8%
Andorra	↘ -7,1%	↘ -20,2%	↘ -7,0%	↕ 318,3%	↘ 38,6%	↕ 377,2%
Armenia	↗ 2,8%	↗ 58,6%	↗ 2,6%	↗ 32,2%	↕ -54,3%	↗ 31,4%
Austria	↗ 0,1%	↗ 1,2%	↘ -0,6%	↗ -1,2%	↗ -1,4%	↘ -0,6%
Azerbaijan	↗ 1,2%	NC	NC	↗ 11,8%	NC	NC
Belgium	NC	↗ 1,3%	NC	NC	↗ 6,0%	NC
Bosnia and Herzegovina	↘ -2,9%	↗ 0,2%	↘ -4,2%	↗ -4,9%	↗ -3,5%	↘ -3,2%
Bulgaria	↘ -0,9%	NC	NC	↘ 26,5%	NC	NC
Croatia	↘ -2,4%	↗ 2,3%	↘ -3,0%	↘ -8,8%	↕ -24,5%	↘ -6,5%
Cyprus	↗ 1,8%	NC	↗ 1,8%	↗ 3,2%	NC	↗ 3,2%
Czech Republic	NC	NC	NC	NC	NC	NC
Denmark	↘ -2,0%	↘ -1,6%	↘ -1,9%	NC	↕ -26,4%	NC
Estonia	↘ -34,6%	↗ 5,1%	↘ -64,0%	↗ -15,4%	↕ -48,6%	↕ 51,2%
Finland	↗ 1,4%	NC	NC	↗ 6,6%	NC	NC
France	↗ 7,2%	↗ 4,3%	↗ 11,5%	NC	NC	NC
Georgia	↘ -31,3%	NC	NC	↘ 27,7%	NC	NC
Germany	↘ -0,7%	↘ -1,4%	↗ 0,9%	↗ 0,1%	↗ 1,3%	↘ -2,8%
Greece	NC	NC	NC	NC	NC	NC
Hungary	↘ -7,7%	↗ 5,6%	↘ -16,9%	↗ 14,9%	↕ -12,3%	↕ 108,4%
Iceland	NC	NC	NC	NC	NC	NC
Ireland	NC	NC	NC	NC	NC	NC
Italy	↘ -1,0%	↘ -1,7%	↗ 3,2%	↗ 12,4%	↗ 11,8%	↗ 16,2%
Latvia	↘ -4,2%	↘ -0,9%	↘ -12,4%	↕ -31,4%	↗ 2,8%	NC
Lithuania	↗ 1,3%	NC	NC	↕ -30,9%	NC	NC
Luxembourg	NC	NC	NC	NC	NC	NC
Malta	↗ 15,4%	↗ 42,8%	↗ 13,0%	↘ -19,1%	↕ -40,9%	↘ -15,1%
Republic of Moldova	↘ -3,8%	NC	NC	↘ 50,6%	NC	NC
Monaco	NC	NC	NC	NC	NC	NC
Montenegro	↘ -12,5%	↘ -31,6%	↗ 7,6%	↗ 8,8%	↗ 16,9%	↕ -48,5%
Netherlands	↘ -3,1%	↘ -1,2%	↘ -4,9%	↗ 11,9%	↗ 20,5%	↗ 3,7%
Norway	↗ 3,0%	NC	NC	↕ -34,3%	NC	NC
Poland	↗ 11,2%	↗ 12,7%	↗ 9,8%	↘ -8,3%	↘ -11,8%	↘ -3,2%
Portugal	↘ -0,7%	↘ -1,9%	↗ 14,0%	↘ -8,4%	↘ -3,9%	↕ -46,7%
Romania	↘ -0,2%	NC	NC	↘ -16,1%	NC	NC
Russian Federation	NC	NC	NC	NC	NC	NC
Serbia	↗ 35,2%	NC	NC	↘ -23,3%	NC	NC
Slovakia	↘ -0,7%	NC	NC	↘ -13,7%	NC	NC
Slovenia	↗ 9,0%	↗ 11,6%	↗ 8,7%	↕ -30,2%	↘ -12,9%	↕ -43,2%
Spain	↗ 3,6%	↗ 6,7%	↗ 2,6%	↕ -29,4%	↕ -34,4%	↘ -17,2%
Sweden	↗ 3,0%	NC	NC	↘ -9,1%	NC	NC
Switzerland	↘ -6,6%	↘ -15,6%	↗ 2,5%	↘ 116,8%	↘ 140,1%	↘ 84,1%
The FYROMacedonia	↘ -11,8%	↗ 7,8%	↘ -14,3%	↘ -3,9%	↘ -20,9%	↘ -1,2%
Turkey	↗ 19,3%	↘ -9,4%	↗ 38,8%	↕ -28,2%	↘ -14,5%	↘ -24,1%
Ukraine	↗ 4,5%	NC	NC	↘ -16,7%	NC	NC
UK-England and Wales	NC	↗ 3,0%	NC	NC	↘ -5,0%	NC
UK-Northern Ireland	NC	NC	NC	NC	NC	NC
UK-Scotland	NC	NC	NC	NC	NC	NC
Average	0,0%	3,3%	0,1%	7,9%	-5,3%	20,1%
Median	-0,4%	1,3%	2,2%	-6,6%	-8,4%	-2,8%
Minimum	-34,6%	-31,6%	-64,0%	-39,8%	-54,3%	-48,5%
Maximum	35,2%	58,6%	38,8%	318,3%	140,1%	377,2%
Israel	NC	NC	NC	NC	NC	NC

**Comments:**

**Andorra:** for this evaluation exercise, all cases for which the investigation phase and the penalization have been completed, have been taken into account unlike the previous exercises where the cases filed for investigation were counted.

**Estonia:** the differences between 2010 and 2012 concerning “misdemeanour and/or minor criminal cases” can be explained by the fact that is a law amendment in 2011 gave to bailiffs the right to terminate enforcement proceedings in misdemeanour matters due to the expiry of the limitation period if the fine has not been collected within the term provided for by the Penal Code.

**Lithuania:** criminal cases in the execution process were not the case in the earlier years, which explains that the total number of cases may differ between two periods. Moreover, the increase in the number of incoming and resolved criminal cases can be explained by the Law on Domestic Violence which came into force in December 2011 and makes the start of criminal investigation obligatory regarding every single incident of domestic violence. In addition, the increased unemployment during the downturn and other negative social phenomena presumed larger number of all kinds of criminal cases.

**Republic of Moldova:** 2010 and 2012 data of criminal cases cannot be compared as the 2012 data includes all cases for which a sanction can be given by a judge, even according to an administrative code.

**Norway:** the number of criminal cases includes composite court cases (with 1 professional judge and 2 lay judges) and guilty plea cases (1 single professional judge). It is now possible to extract guilty plea cases from other single judge cases, and the increase in the number of criminal cases can be explained accordingly. The numbers only include cases where a criminal sanction is pronounced, i.e. not cases of coercive pre-trial measures. It is not possible to specify misdemeanour cases and severe cases, although the composite court cases usually concern more severe cases than what is adjudicated in the simplified procedure for guilty plea cases.

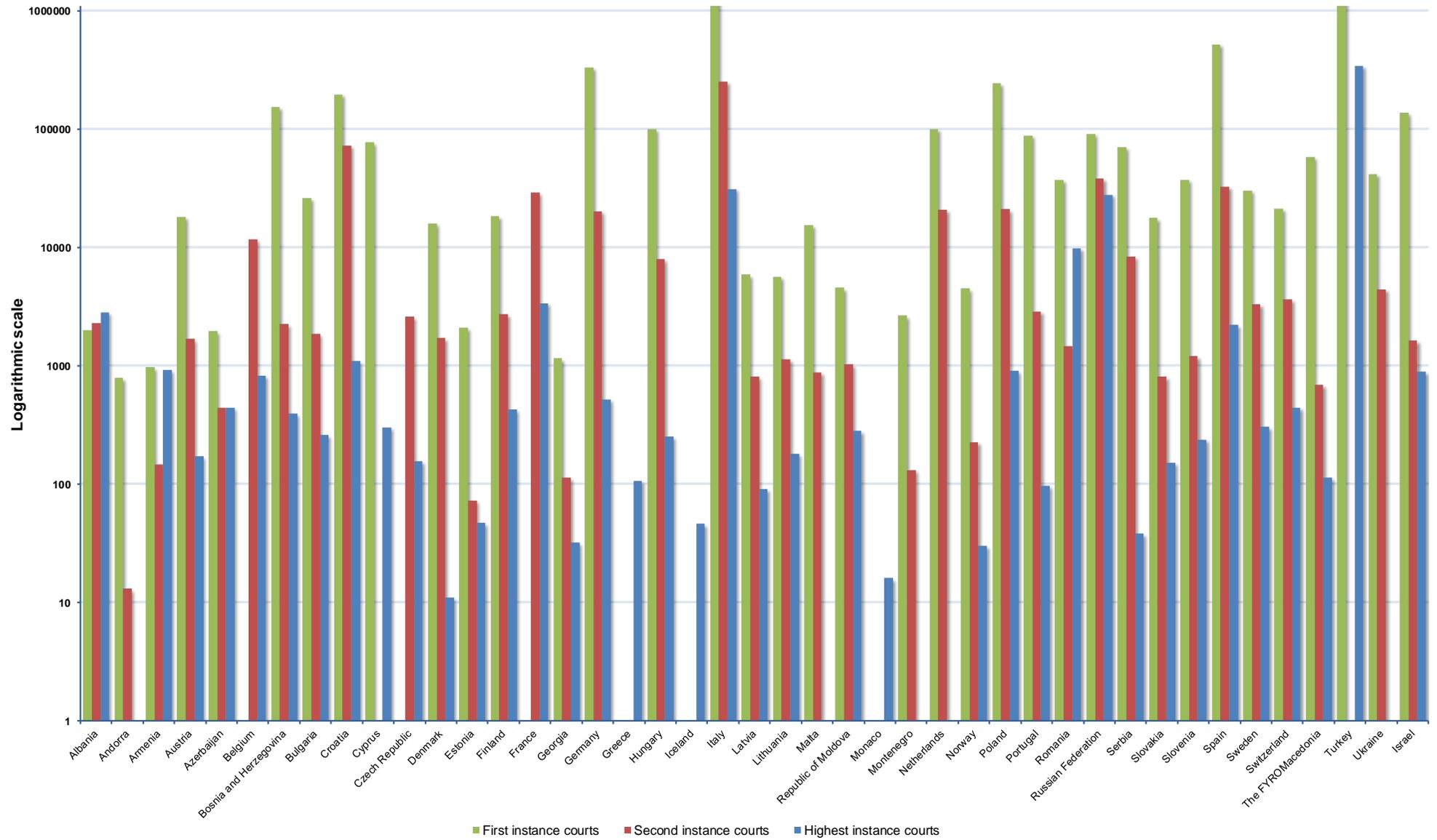
The reduced Disposition Time must be seen in relation to the fact that this year summary cases based on a guilty plea were also reported. The case management system makes it possible to generate average case processing time in composite court cases and guilty pleas cases. The average case processing time in guilty plea cases was 29 days, and 85 for composite court cases.

**Slovenia:** the decrease in the number of “misdemeanours and /or minor criminal cases” before courts is the result of the reform in the law on minor offenses which transferred some of the jurisdiction in cases previously tried by courts to other authorities.

**Switzerland:** there is a sharp decline in criminal cases, which is the result of the entry into force of the new Criminal Procedure. The new criminal procedure is heavier than some cantonal criminal procedures before, including the investigation phase. This resulted in a longer duration for investigating cases, so fewer cases were forwarded for trial to courts.

**“the former Yugoslav Republic of Macedonia”:** the difference between 2010 and 2012 in respect of misdemeanours and / or minor criminal cases data is due to the reform of the misdemeanour system: a lot of misdemeanours were moved from regular courts’ competence to misdemeanour commissions.

Figure 9.18 Total number of criminal law cases pending at December 31<sup>st</sup>, 2012 in first, second and highest instance courts (Q94, Q98, Q100)



## Comments:

**Czech Republic:** the total number of criminal cases includes severe criminal cases which are decided by second instance courts in first instance and number of appeals against decisions of the first instance courts in criminal cases. In 2010, the number of severe criminal cases was not included in the total of criminal cases (only number of appeals), which explains the differences in data provided respectively for 2010 and 2012. Courts of 2nd instance do not deal with misdemeanour or minor cases. They decide upon severe criminal cases in 1st level and as appellate courts against decisions of district courts.

**Denmark:** all criminal cases in 2nd instance and at the Supreme Court level are considered severe.

**Republic of Moldova:** data for 2010 and 2012 cannot be compared given the fact that the last evaluation exercise included the data on the total number of criminal affairs handled by the courts of appeal in both appeal proceedings and in review proceedings, whereas the 2010-2012 evaluation exercise included only the data on the total number of criminal affairs handled by the courts of appeal in appeal proceedings. It should be noted that the number of cases concerning administrative offenses handled by the appeal courts was not included. The same logic applies to cases handled by the Supreme Court.

**Norway:** contrary to the previous years the number of criminal cases does not include appeals concerning interlocutory decisions from the first instance courts (the main category being pre-trial detention cases), as it is now possible to separate guilty plea judgements in first instance courts from other single judge cases.

**Romania:** the decrease in the total number of criminal cases is due to the entry into force of Law of the so-called "small reform law" which has abolished the appeal on the merit in several criminal matters.

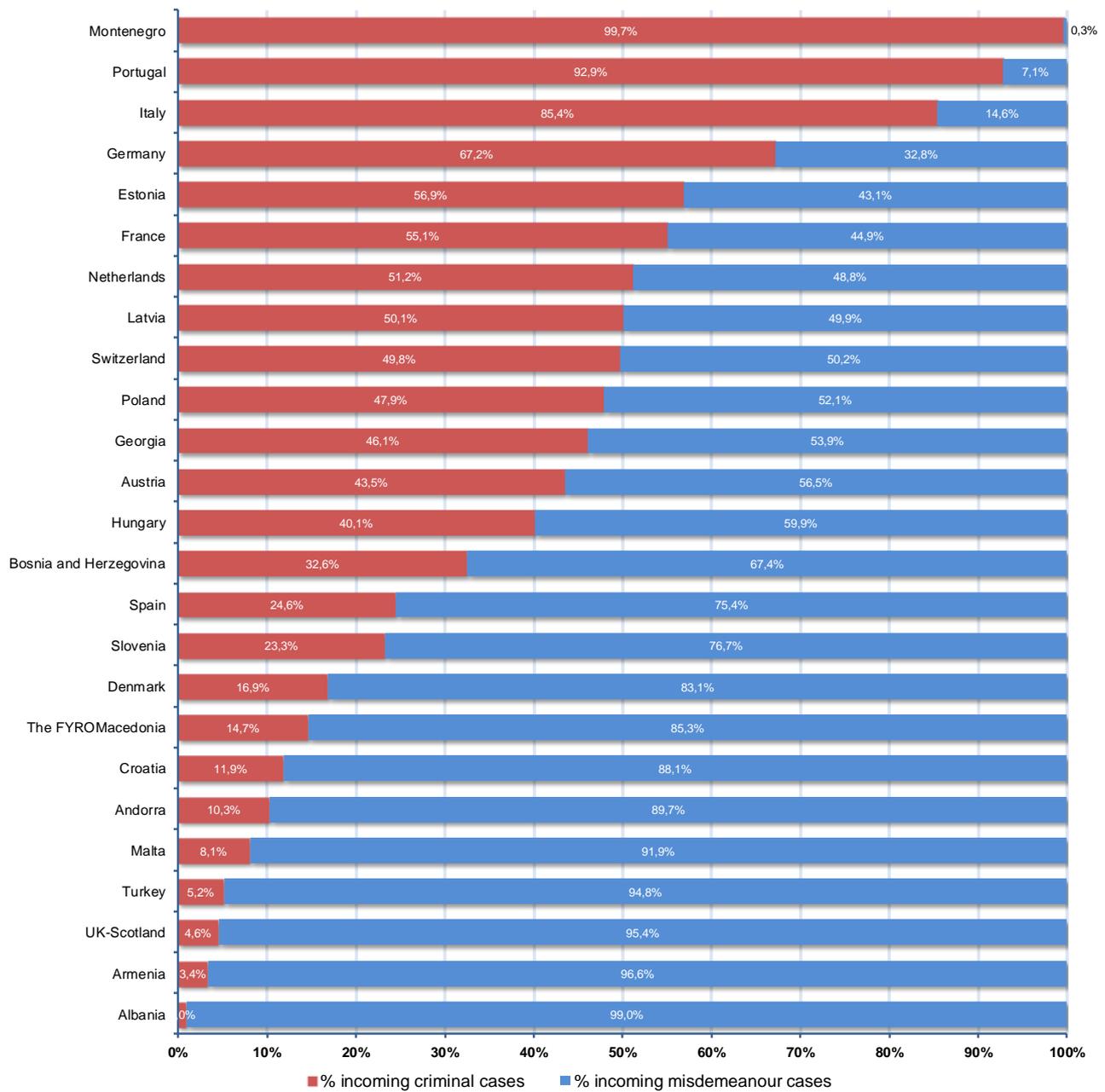
**Serbia:** in 2010, there was no backlog for criminal cases in second instance at the beginning of the period because the appellate courts had just begun their work, which took over the former cases of the district courts.

**Switzerland:** data is the result of extrapolation to the national level from certain cantons.

**Turkey:** second instance courts are not operational yet.

The data in the figure above presents the total number of pending criminal law cases at 31 December 2012 in first, second and highest instance courts of 42 states or entities that were able to provide the required data. Pending criminal law cases include both severe and misdemeanour (or minor offence) cases. The data follows the expected pattern, the largest number of pending cases being found in the first instance courts, their number declining in the second instance courts and finally, with the smallest number of pending cases found in the highest instance courts.

**Figure 9.19 Part of 1<sup>st</sup> instance incoming criminal cases (severe criminal offences) vs. misdemeanour cases (minor offences) in 2012 (Q94)**



The calculation of the proportion between the severe and misdemeanour incoming cases in 2012 in 25 states or entities shows the range of criminal court organisation types and legislative frameworks. This strengthens the importance of analysing such criminal data with care because of the variety in the systems, in order to avoid comparisons which would not be scientifically relevant.

**Figure 9.20 Clearance Rate of criminal cases (severe criminal offences) and misdemeanour cases (minor offences) in 2012, in % (Q94)**

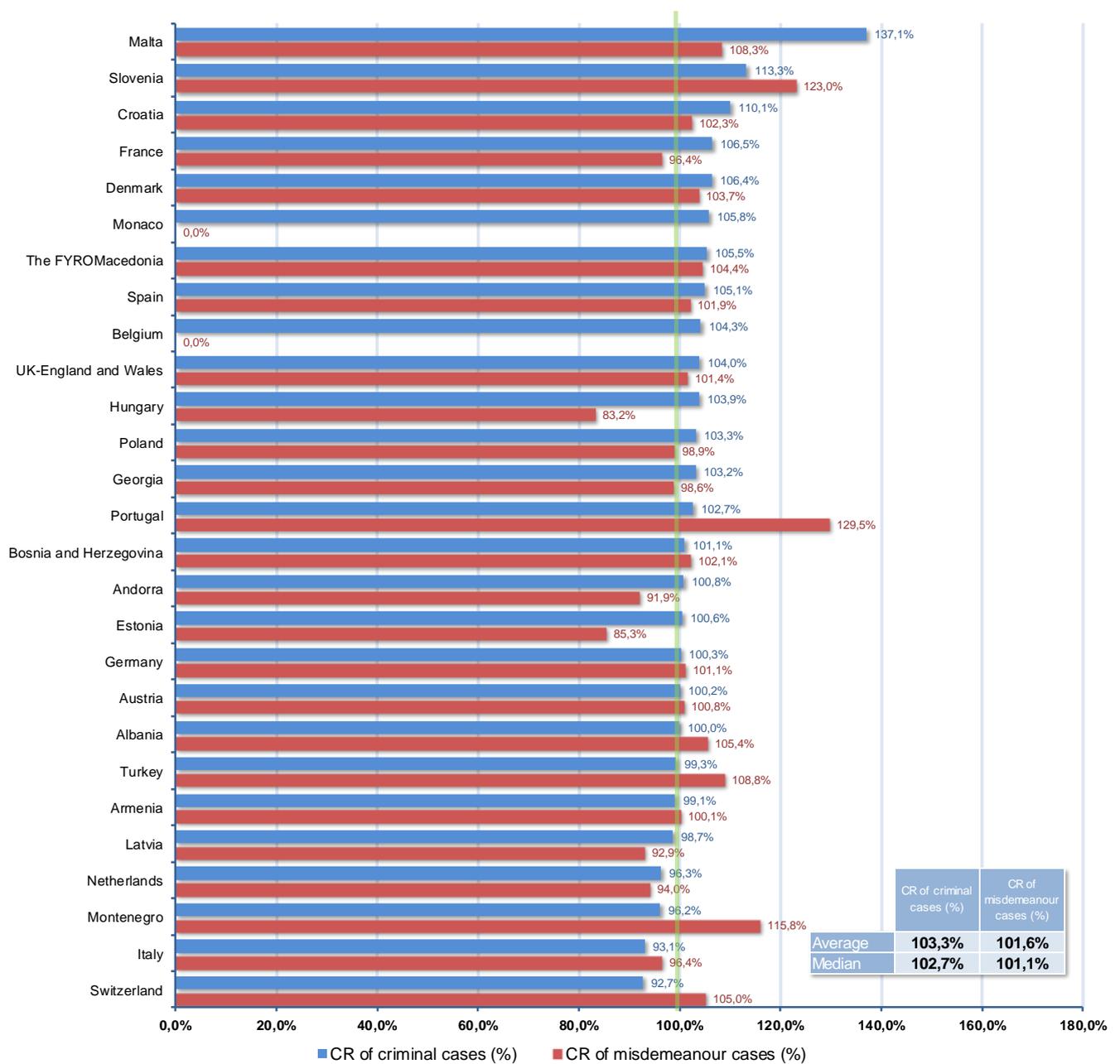
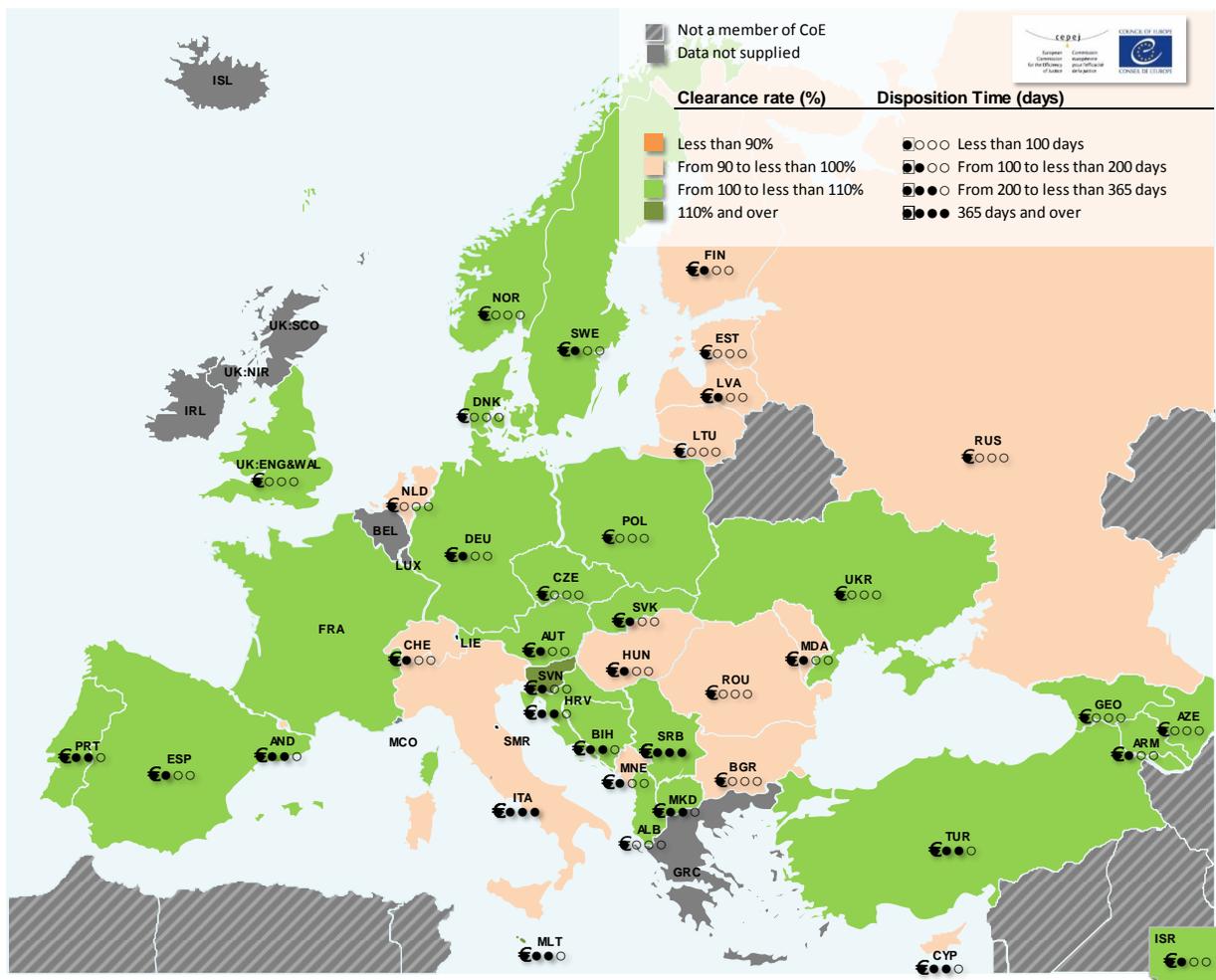


Figure 9.21 Clearance Rate (CR) and Disposition Time (DT) of criminal law cases in 1<sup>st</sup> instance courts (Q94)



**Note:** this figure takes into account all criminal cases, serious and minor offences.

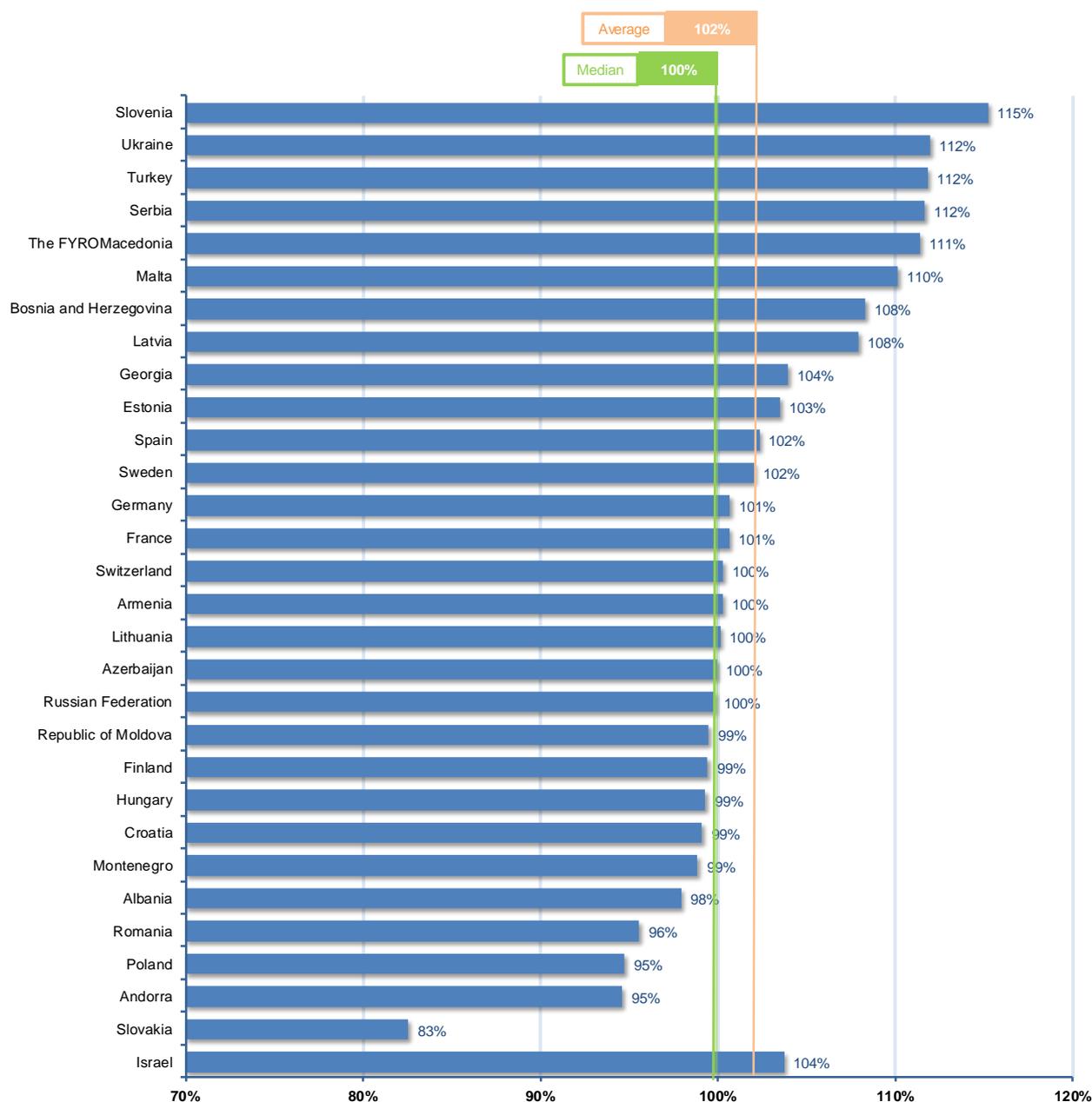
When reading the results presented in this map and in the table above, the most productive criminal court systems which do not generate backlogs (Clearance Rate equal to or higher than 100 %) and can quickly resolve a filed case (less than 100 days) can be found in **Azerbaijan, Czech Republic, Denmark, Georgia, Lithuania, Norway, Poland, Ukraine, UK-England and Wales**. The indicators also show that **Armenia, Austria, Germany, Slovakia, Sweden**, as well as **Israel** had relatively productive first instance criminal courts in 2012. On the contrary, the first instance courts have serious difficulties as regards their productivity in **Italy**.

Of the 9 states which have the highest Disposition Time (more than 200 days), 6 (**Malta, Portugal, Spain, Slovenia, “the former Yugoslav Republic of Macedonia”, Turkey**) have Clearance Rates very close to or higher than 100%. **Italy** and **Switzerland** have not reached a 100% Clearance Rate for civil litigious cases which means that the backlog of unresolved cases in these court systems is growing and their Disposition Time is deteriorating.

#### 9.2.4 Management of the overall court workload

In order to have an overall picture of case flow management by the courts, the figure below presents the Clearance Rate of non-criminal and criminal law cases taken all together.

**Figure 9.22 Clearance Rate of the total number of 1<sup>st</sup> instance civil, commercial, administrative law and all criminal cases in 2012, in % (Q91, Q94)**



When taking all the cases to be addressed by the courts, it can be noticed that in 2012, almost all the 29 member states studied in this figure have a Clearance Rate above or close to 100 %, with the notable exception of **Slovakia**. This means that the court system, taken as a whole, is able, in a majority of the member states of the Council of Europe, to cope with the incoming and pending cases without increasing court backlogs.

Variations have been underlined above according to the case categories concerned, which might encourage the member states that experience difficulties as regards case flow management by the courts to review their court organisation so as to re-balance the judicial treatment of the various case categories. Several elements can be at stake, in particular the re-allocation of financial and human resources among the various legal fields and the various courts to balance the case flow management according to the volume and the kinds of cases.

### 9.3 Comparing case categories: procedure and length

To get a better understanding of the workload of the courts in Europe, and to compare the figures in a more reliable manner, four case categories have been selected in the Evaluation Scheme for additional analysis,

according to the "GOJUST" Guidelines adopted by the CEPEJ in December 2008<sup>27</sup>. The case categories concerned are based on the assumption that, in all courts in Europe, these are dealt with in quite a similar way. The four categories, which concern justice on a daily basis, are defined in the explanatory note to the Evaluation Scheme as follows:

1. *Litigious divorce cases*: i.e. the dissolution of a marriage contract between two persons, by the judgment of a competent court. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedures by mutual consent, even if they are processed by the court) or ruled on through an administrative procedure.
2. *Employment dismissal cases*: cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). These do not include dismissals of public officials, following a disciplinary procedure for instance.
3. *Insolvency cases*: cases concerning all the procedures for monitoring the financial situation of an economic player (company, etc.) and possibly terminating its activity when it is not in a financial position to pursue it, in particular due to the impossibility to pay its debts (including in particular bankruptcy procedures).
4. *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should include: muggings (bag-snatching, armed theft, etc.) and *exclude* pick-pocketing, extortion and blackmail (according to the definition of the *European Sourcebook of Crime and Criminal Justice*). The data should not include attempts.
5. *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should include: assault leading to death, euthanasia (where this is forbidden by the law), infanticide and *exclude* suicide assistance (according to the definition of the *European Sourcebook of Crime and Criminal Justice*). The data should not include attempts.

**Note for the reader:** less than half of the 47 states or entities provided data, and in particular data on the length of proceedings, for litigious divorce cases, employment dismissal, robberies and intentional homicides.

The data collected shows, within this evaluation cycle, a progress compared to previous cycles. The CEPEJ welcomes the efforts made by these states to follow the "GOJUST guidelines" in this field and use essential tools for improving the efficiency of their judicial systems. The CEPEJ encourages the other member states to organise their judicial statistics systems in order to be able to provide such data for the next evaluation cycle.

It is expected that the work of the SATURN Centre of the CEPEJ will support the member states in improving the collection of relevant data on judicial timeframes, per type of cases, as a better knowledge of the situation on the length of proceedings is a prerequisite for the improvement of the system.

**Considering the limited number of responding states, the CEPEJ invites the reader to interpret the data below with care. Any attempt at ranking would be hampered by this consideration.**

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<sup>27</sup> CEPEJ(2008)11.

Table 9.23 Number of cases at first instance in 2012 per category (Q101)

States/entities	Pending cases on 1 Jan. 2012					Incoming cases					Resolved cases					Pending cases on 31 Dec.2012				
	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases
Albania	1782	921	NA	37	62	4955	1728	NA	125	93	5157	1817	NA	107	105	1580	832	NA	55	50
Andorra	63	248	67	NA	NA	93	236	40	NA	NA	97	205	13	NA	NA	59	279	94	NA	NA
Armenia	443	56	1765	24	31	1861	99	1188	48	64	1845	118	796	39	57	459	37	2157	31	38
Austria	2920	NA	11557	14	11	6354	NA	26152	5893	758	6444	NA	26344	5828	755	2830	NA	11365	79	14
Azerbaijan	2769	55	NA	29	82	15351	687	NA	73	305	14876	686	NA	77	289	3244	56	NA	25	98
Belgium	NA	NA	NA	NA	NA	37497	NA	NA	NA	NA	37635	NA	NA	NA	NA	NA	NA	NA	NA	NA
Bosnia and Herzegovina	2369	350	628	276	68	5121	353	522	294	106	5186	330	424	323	107	2304	373	726	247	67
Bulgaria	3009	1076	887	593	74	6221	2491	1583	1466	163	6632	2489	1311	1497	166	2598	1078	1159	562	71
Croatia	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Cyprus	3450	1382	NA	NA	NA	7195	1005	NA	NA	NA	7267	638	NA	NA	NA	3378	1749	NA	NA	NA
Czech Republic	13150	NA	30331	NA	NA	30025	NA	33083	NA	NA	30557	NA	11382	NA	NA	12965	NA	52032	NA	NA
Denmark	2257	NAP	6300	NA	NA	5219	NAP	8199	NA	NA	5497	NAP	9024	NA	NA	2000	NAP	5820	NA	NA
Estonia	263	283	289	65	4	652	331	1152	193	15	598	320	1099	212	17	316	277	312	39	2
Finland	11706	559	2135	106	18	17075	577	3359	498	60	17696	647	3261	359	61	11085	489	2233	224	17
France	NA	NA	NA	NA	NA	92864	124434	55561	NA	NA	92659	130478	47942	4224	400	NA	NA	NA	NA	NA
Georgia	312	25	49	24	23	2489	89	76	94	73	2523	99	76	89	64	278	15	49	29	32
Germany	NA	26968	NA	NA	NA	NA	101369	NA	NA	NA	190258	144293	NA	7170	734	NA	25360	NA	NA	NA
Greece	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Hungary	16.416	3389	62	1282	370	27394	5119	124	2184	491	30676	5364	135	2118	532	13134	3144	51	1348	329
Iceland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ireland	NA	NA	486	NA	NA	3482	NA	116	NA	31	2892	NA	78	NA	41	NA	NA	524	NA	NA
Italy	34114	NA	85736	2053	275	19287	NA	12577	4953	176	18174	NA	11909	4688	209	35227	NA	86404	2318	243
Latvia	1602	108	3493	249	37	2070	152	1921	243	50	2287	185	1454	248	61	1385	75	3960	244	36
Lithuania	946	146	4253	366	140	7831	394	3717	768	172	8275	477	3618	833	205	502	63	4352	301	107
Luxembourg	NA	NA	NA	NA	NA	NA	2343	NA	NA	NA	NA	1824	1029	NA	NA	NA	NA	NA	NA	NA
Malta	NA	NAP	NA	NA	NA	NA	NAP	NA	NA	NA	NA	NAP	NA	NA	NA	NA	NAP	NA	NA	NA
Republic of Moldova	2188	206	61	75	74	12335	461	567	195	169	12180	464	166	162	171	2343	203	462	108	72
Monaco	63	NA	NA	NAP	0	24	NA	21	NAP	0	49	NA	NA	NAP	0	39	NA	NA	NAP	0
Montenegro	366	25	226	0	0	1130	55	444	8	1	812	26	411	3	1	684	54	259	5	0
Netherlands	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	6118	4676	NA	3757	817	NA	NA	NA	NA	NA
Norway	NAP	NA	4786	NA	NA	NAP	NA	9345	NA	30	NAP	NA	9746	NA	NA	NAP	NA	4381	NA	NA
Poland	42786	11102	794	NA	NA	90933	22070	4589	NA	NA	89217	20924	4390	NA	NA	44750	12249	993	NA	NA
Portugal	7627	6448	3568	NA	NA	9638	7897	20776	NA	NA	9975	8659	19969	2850	131	7290	5686	4375	NA	NA
Romania	20926	3041	48643	640	349	42582	3274	57956	1929	925	44261	3581	55825	1961	667	19247	2734	50774	608	607
Russian Federation	45000	3000	32100	7000	2000	557000	22000	30418	58000	12000	558000	22000	30159	58000	12000	44000	3000	32359	7000	2000
Serbia	NA	42444	3943	NA	NA	NA	39894	12958	NA	NA	NA	42554	14392	NA	NA	NA	39784	2509	NA	NA
Slovakia	7181	NA	341	NA	NA	13749	1616	1505	NA	NA	13647	1317	1395	NA	NA	7283	NA	451	NA	NA
Slovenia	1.068	622	3.667	157	17	1.954	1.038	2.669	151	12	1.999	1.003	1.778	154	16	1.023	657	4.558	154	13
Spain	37586	38417	20306	NA	NA	49330	147404	10290	NA	NA	47572	108570	4763	NA	NA	37472	64705	25647	NA	NA
Sweden	5535	NA	NA	NAP	NAP	8972	NA	NA	NAP	NAP	8824	NA	NA	NAP	NAP	5683	NA	NA	NAP	NAP
Switzerland	8579	NA	3948	NA	NA	11567	NA	36873	NA	NA	11550	NA	35580	383	90	8596	NA	5241	NA	NA
The FYROMacedonia	1359	3881	1053	2775	100	3677	4386	2596	4164	88	3808	6204	2835	4174	90	1228	2063	814	2765	98
Turkey	46812	NA	956	3318	22730	64694	NA	575	3227	16599	82074	NA	731	3216	16117	27940	NA	800	2851	22439
Ukraine	19247	NA	NA	2733	1449	140199	NA	NA	9255	3031	143928	NA	NA	9674	3026	155188	NA	NA	2314	1454
UK-England and Wales	NA	NAP	NA	NA	NA	124449	49036	49561	12267	560	120702	43956	NA	8337	356	NA	NAP	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
UK-Scotland	NA	NAP	NA	NA	NA	NA	NAP	NA	NA	NA	NA	NAP	NA	NA	NA	NA	NAP	NA	NA	NA
Average	10880	6031	9599	1039	1269	40666	19981	12511	4819	1439	44323	19746	10009	4463	1286	14680	6873	10725	1015	1263
Median	2965	772	1950	249	71	9638	1728	3359	633	106	9975	1821	3048	1497	166	3244	745	2195	244	69
Minimum	63	25	49	0	0	24	55	21	8	0	49	26	13	3	0	39	15	49	5	0
Maximum	46812	42444	85736	7000	22730	557000	147404	57996	58000	16599	558000	144293	55825	58000	16117	155188	64705	86404	7000	22439
Israel	NAP	NA	14192	NA	NA	NAP	NA	12314	NA	NA	NAP	NA	9913	NA	NA	NAP	NA	16593	NA	NA

**Table 9.24 Number of cases at first instance in 2012 per 100 000 inhabitants (Q1, Q101)**

States/entities	Incoming cases					Incoming cases per 100 000 inhab.				
	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases
Albania	4955	1728	NA	125	93	176,0	61,4	NC	4,4	3,3
Andorra	93	236	40	NA	NA	122,0	309,5	52,5	NC	NC
Armenia	1861	99	1188	48	64	61,5	3,3	39,2	1,6	2,1
Austria	6354	NA	26152	5893	758	75,2	NC	309,4	69,7	9,0
Azerbaijan	15351	687	NA	73	305	166,2	7,4	NC	0,8	3,3
Belgium	37497	NA	NA	NA	NA	335,9	NC	NC	NC	NC
Bosnia and Herzegovina	5121	353	522	294	106	133,7	9,2	13,6	7,7	2,8
Bulgaria	6221	2491	1583	1466	163	85,4	34,2	21,7	20,1	2,2
Croatia	NA	NA	NA	NA	NA	NC	NC	NC	NC	NC
Cyprus	7195	1005	NA	NA	NA	830,9	116,1	NC	NC	NC
Czech Republic	30025	NA	33083	NA	NA	285,7	NC	314,8	NC	NC
Denmark	5219	NAP	8199	NA	NA	93,2	NC	146,3	NC	NC
Estonia	652	331	1152	193	15	50,7	25,7	89,5	15,0	1,2
Finland	17075	577	3359	498	60	314,6	10,6	61,9	9,2	1,1
France	92864	124434	55561	NA	NA	141,6	189,7	84,7	NC	NC
Georgia	2489	89	76	94	73	55,5	2,0	1,7	2,1	1,6
Germany	NA	101369	NA	NA	NA	NC	126,3	NC	NC	NC
Greece	NA	NA	NA	NA	NA	NC	NC	NC	NC	NC
Hungary	27394	5119	124	2184	491	276,5	51,7	1,3	22,0	5,0
Iceland	NA	NA	NA	NA	NA	NC	NC	NC	NC	NC
Ireland	3482	NA	116	NA	31	75,8	NC	2,5	NC	0,7
Italy	19287	NA	12577	4953	176	32,3	NC	21,1	8,3	0,3
Latvia	2070	152	1921	243	50	101,2	7,4	93,9	11,9	2,4
Lithuania	7831	394	3717	768	172	260,7	13,1	123,7	25,6	5,7
Luxembourg	NA	2343	NA	NA	NA	NC	446,3	NC	NC	NC
Malta	NA	NAP	NA	NA	NA	NC	NC	NC	NC	NC
Republic of Moldova	12335	461	567	195	169	346,5	13,0	15,9	5,5	4,7
Monaco	24	NA	21	NAP	0	66,4	NC	58,1	NC	0,0
Montenegro	1130	55	444	8	1	182,2	8,9	71,6	1,3	0,2
Netherlands	NA	NA	NA	NA	NA	NC	NC	NC	NC	NC
Norway	NAP	NA	9345	NA	30	NC	NC	185,0	NC	0,6
Poland	90933	22070	4589	NA	NA	236,0	57,3	11,9	NC	NC
Portugal	9638	7897	20776	NA	NA	91,9	75,3	198,1	NC	NC
Romania	42582	3274	57956	1929	925	199,9	15,4	272,0	9,1	4,3
Russian Federation	557000	22000	30418	58000	12000	388,6	15,3	21,2	40,5	8,4
Serbia	NA	39894	12958	NA	NA	NC	554,2	180,0	NC	NC
Slovakia	13749	1616	1505	NA	NA	254,1	29,9	27,8	NC	NC
Slovenia	1.954	1.038	2.669	151	12	NC	NC	NC	7,3	0,6
Spain	49330	147404	10290	NA	NA	107,2	320,4	22,4	NC	NC
Sweden	8972	NA	NA	NAP	NAP	93,9	NC	NC	NC	NC
Switzerland	11567	NA	36873	NA	NA	143,9	NC	458,7	NC	NC
The FYROMacedonia	3677	4386	2596	4164	88	178,3	212,7	125,9	201,9	4,3
Turkey	64694	NA	575	3227	16599	85,5	NC	0,8	4,3	21,9
Ukraine	140199	NA	NA	9255	3031	308,4	NC	NC	20,4	6,7
UK-England and Wales	124449	49036	49561	12267	560	220,0	86,7	87,6	21,7	1,0
UK-Northern Ireland	NA	NA	NA	NA	NA	NC	NC	NC	NC	NC
UK-Scotland	NA	NAP	NA	NA	NA	NC	NC	NC	NC	NC
<b>Average</b>	<b>40666</b>	<b>19981</b>	<b>12511</b>	<b>4819</b>	<b>1439</b>	<b>187,9</b>	<b>103,8</b>	<b>100,5</b>	<b>23,2</b>	<b>3,7</b>
<b>Median</b>	<b>9638</b>	<b>1728</b>	<b>3359</b>	<b>633</b>	<b>106</b>	<b>143,9</b>	<b>34,2</b>	<b>61,9</b>	<b>9,1</b>	<b>2,4</b>
<b>Minimum</b>	<b>24</b>	<b>55</b>	<b>21</b>	<b>8</b>	<b>0</b>	<b>32,3</b>	<b>2,0</b>	<b>0,8</b>	<b>0,8</b>	<b>0,0</b>
<b>Maximum</b>	<b>557000</b>	<b>147404</b>	<b>57956</b>	<b>58000</b>	<b>16599</b>	<b>830,9</b>	<b>554,2</b>	<b>458,7</b>	<b>201,9</b>	<b>21,9</b>
Israel	NAP	NA	12314	NA	NA	NC	NC	154,2	NC	NC

**Table 9.25 Clearance Rate and Disposition Time of different types of cases at first instance in 2012 (Q101)**

States/entities	Clearance Rate					Disposition Time					Number of incoming cases / 100 000 inhab.				
	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases
Albania	104,1%	105,2%	NC	85,6%	112,9%	112	167	NC	188	174	176	61	NC	4	3
Andorra	104,3%	86,9%	32,5%	NC	NC	222	497	2639	NC	NC	122	310	52	NC	NC
Armenia	99,1%	119,2%	67,0%	81,3%	89,1%	91	114	989	290	243	61	3	39	2	2
Austria	101,4%	NC	100,7%	98,9%	99,6%	160	NC	157	5	7	75	NC	309	70	9
Azerbaijan	96,9%	99,9%	NC	105,5%	94,8%	80	30	NC	119	124	166	7	NC	1	3
Belgium	100,4%	NC	NC	NC	NC	NC	NC	NC	NC	NC	336	NC	NC	NC	NC
Bosnia and Herzegovina	101,3%	93,5%	81,2%	109,9%	100,9%	162	413	625	279	229	134	9	14	8	3
Bulgaria	106,6%	99,9%	82,8%	102,1%	101,8%	143	158	323	137	156	85	34	22	20	2
Croatia	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Cyprus	101,0%	63,5%	NC	NC	NC	170	1001	NC	NC	NC	831	116	NC	NC	NC
Czech Republic	101,8%	NC	34,4%	NC	NC	155	NC	1669	NC	NC	286	NC	315	NC	NC
Denmark	105,3%	NC	110,1%	NC	NC	133	NC	235	NC	NC	93	NC	146	NC	NC
Estonia	91,7%	96,7%	95,4%	109,8%	113,3%	193	316	104	67	43	51	26	90	15	1
Finland	103,6%	112,1%	97,1%	76,3%	101,7%	229	276	250	215	102	315	11	62	9	1
France	99,8%	104,9%	NC	NC	NC	NC	NC	NC	NC	NC	142	190	85	NC	NC
Georgia	101,4%	111,2%	100,0%	94,7%	87,7%	40	55	235	119	183	56	2	2	2	2
Germany	NC	142,3%	NC	NC	NC	NC	64	NC	NC	NC	NC	126	NC	NC	NC
Greece	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Hungary	112,0%	104,8%	108,9%	97,0%	108,4%	156	214	138	232	226	276	52	1	22	5
Iceland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Ireland	83,1%	NC	67,2%	NC	132,3%	NC	NC	2452	NC	NC	76	NC	3	NC	1
Italy	94,2%	NC	94,7%	94,6%	118,8%	707	NC	2648	180	424	32	NC	21	8	0
Latvia	110,5%	121,7%	75,7%	102,1%	122,0%	221	148	994	359	215	101	7	94	12	2
Lithuania	105,7%	121,1%	97,3%	108,5%	119,2%	22	48	439	132	191	261	13	124	26	6
Luxembourg	NC	77,8%	NC	NC	NC	NC	NC	NC	NC	NC	NC	446	NC	NC	NC
Malta	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Republic of Moldova	98,7%	100,7%	29,3%	83,1%	101,2%	70	160	1016	243	154	347	13	16	5	5
Monaco	204,2%	NC	NC	NC	NC	291	NC	NC	NC	NC	66	NC	58	NC	0
Montenegro	71,9%	47,3%	92,6%	37,5%	100,0%	307	758	230	608	0	182	9	72	1	0
Netherlands	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Norway	NC	NC	104,3%	NC	NC	NC	NC	164	NC	NC	NC	NC	185	NC	1
Poland	98,1%	94,8%	95,7%	NC	NC	183	214	83	NC	NC	236	57	12	NC	NC
Portugal	103,5%	109,6%	96,1%	NC	NC	267	240	80	NC	NC	92	75	198	NC	NC
Romania	103,9%	109,4%	96,3%	101,7%	72,1%	159	279	332	113	332	200	15	272	9	4
Russian Federation	100,2%	100,0%	99,1%	100,0%	100,0%	29	50	392	44	61	389	15	21	40	8
Serbia	NC	106,7%	111,1%	NC	NC	NC	341	64	NC	NC	NC	554	180	NC	NC
Slovakia	99,3%	81,5%	92,7%	NC	NC	195	NC	118	NC	NC	254	30	28	NC	NC
Slovenia	NC	NC	NC	102,0%	133,3%	NC	NC	NC	365	297	NC	NC	NC	7	1
Spain	96,4%	73,7%	46,3%	NC	NC	288	218	1965	NC	NC	107	320	22	NC	NC
Sweden	98,4%	NC	NC	NC	NC	235	NC	NC	NC	NC	94	NC	NC	NC	NC
Switzerland	99,9%	NC	96,5%	NC	NC	272	NC	54	NC	NC	144	NC	459	NC	NC
The FYROMacedonia	103,6%	141,5%	109,2%	100,2%	102,3%	118	121	105	242	397	178	213	126	202	4
Turkey	126,9%	NC	127,1%	99,7%	97,1%	124	NC	399	324	508	86	NC	1	4	22
Ukraine	102,7%	NC	NC	104,5%	99,8%	394	NC	NC	87	175	308	NC	NC	20	7
UK-England and Wales	97,0%	89,6%	NC	68,0%	63,6%	NC	NC	NC	NC	NC	220	87	88	22	1
UK-Northern Ireland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
UK-Scotland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Average	103,7%	100,6%	87,2%	93,8%	103,1%	191	256	675	207	202	188	104	100	23	4
Median	101,3%	100,7%	95,7%	99,8%	101,2%	162	214	286	188	183	144	34	62	9	2
Minimum	71,9%	47,3%	29,3%	37,5%	63,6%	22	30	54	5	0	32	2	1	1	0
Maximum	204,2%	142,3%	127,1%	109,9%	133,3%	707	1001	2648	608	508	831	554	459	202	22
Israel	NC	NC	80,5%	NC	NC	NC	NC	611	NC	NC	NC	NC	154	NC	NC

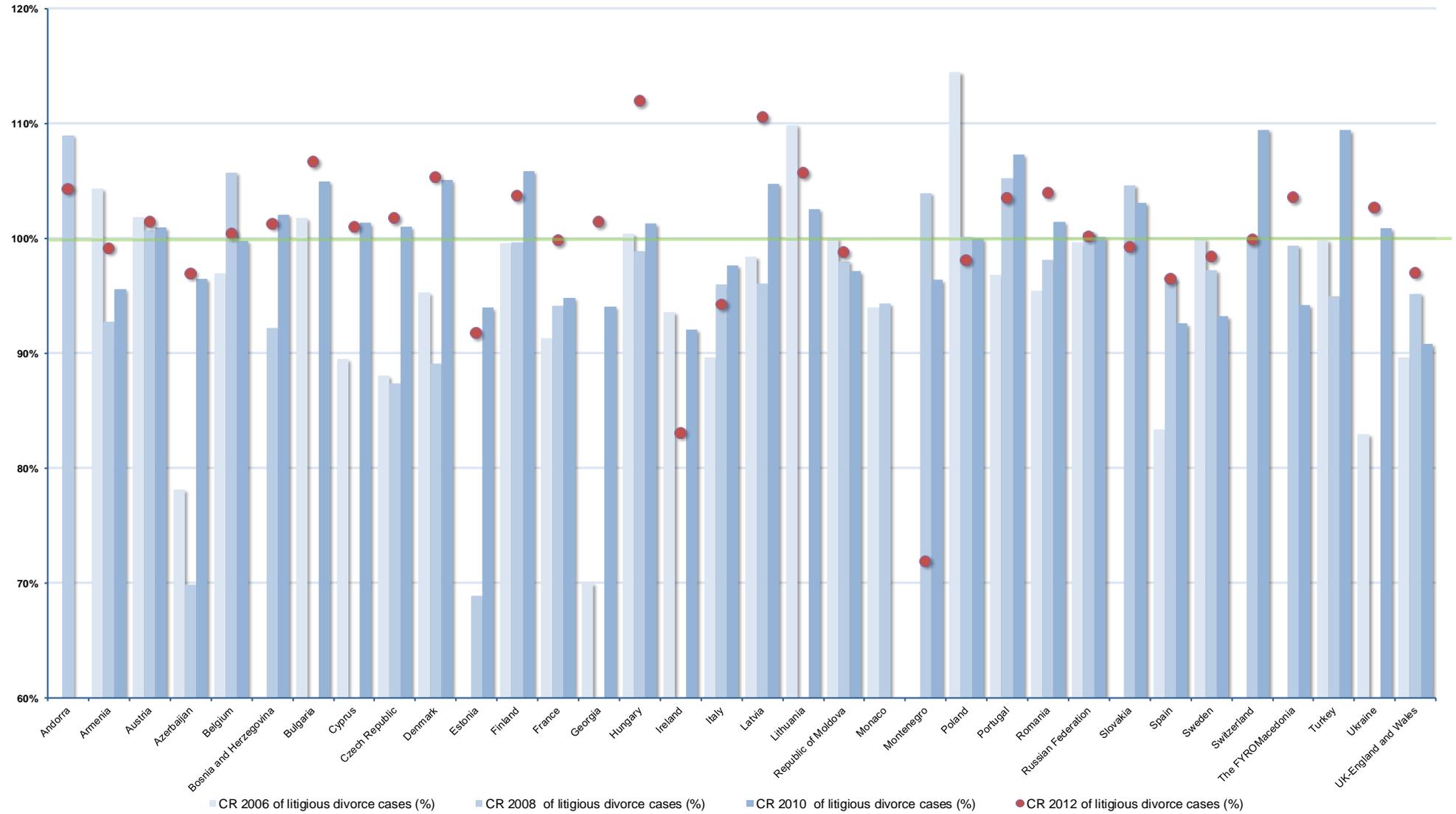
**Table 9.26 Changes in the Clearance Rate and the Disposition Time of different types of cases at first instance (2012 vs. 2010) (Q101)**

States/entities	Clearance Rate					Disposition Time				
	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases	Litigious divorce cases	Employment dismissal cases	Insolvency cases	Robbery cases	Intentional homicide cases
Albania	8,6%	26,1%	NC	-0,5%	NC	10,0%	5,9%	NC	-4,4%	NC
Andorra	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Armenia	3,7%	6,8%	NC	-16,2%	-23,3%	-7,7%	0,7%	NC	154,4%	108,7%
Austria	0,5%	NC	NC	NC	NC	1,6%	NC	NC	NC	NC
Azerbaijan	0,4%	-0,7%	NC	7,5%	-4,6%	4,2%	2,1%	NC	-8,0%	44,7%
Belgium	0,6%	NC	NC	NC	NC	NC	NC	NC	NC	NC
Bosnia and Herzegovina	-0,8%	-3,3%	NC	12,0%	-2,2%	-29,9%	-23,9%	NC	56,8%	-23,0%
Bulgaria	1,6%	0,0%	NC	0,0%	0,0%	9,4%	0,0%	NC	0,0%	0,0%
Croatia	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Cyprus	-0,4%	-35,7%	NC	NC	NC	-13,5%	65,5%	NC	NC	NC
Czech Republic	0,7%	NC	NC	NC	NC	0,7%	NC	NC	NC	NC
Denmark	0,2%	NC	NC	NC	NC	-12,7%	NC	NC	NC	NC
Estonia	-2,4%	-7,7%	NC	7,9%	-5,6%	-3,6%	27,4%	NC	-10,4%	-59,7%
Finland	-2,1%	16,4%	NC	-6,2%	19,7%	3,8%	-5,0%	NC	8,3%	-29,0%
France	5,2%	13,3%	NC	NC	NC	NC	NC	NC	NC	NC
Georgia	7,7%	9,9%	NC	-25,3%	-43,4%	-47,0%	-28,5%	NC	84,2%	75,6%
Germany	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Greece	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Hungary	10,5%	11,2%	NC	NC	NC	3,1%	-13,1%	NC	NC	NC
Iceland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Ireland	-9,8%	NC	NC	NC	16,1%	NC	NC	NC	NC	NC
Italy	-3,5%	NC	NC	NC	NC	29,3%	NC	NC	NC	NC
Latvia	5,4%	-2,9%	NC	-3,6%	13,4%	27,8%	11,1%	NC	25,3%	16,7%
Lithuania	3,0%	2,6%	NC	2,1%	22,2%	-46,4%	-62,5%	NC	-1,5%	-7,6%
Luxembourg	NC	-17,7%	NC	NC	NC	NC	NC	NC	NC	NC
Malta	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Republic of Moldova	1,7%	13,4%	NC	-9,6%	2,7%	16,8%	-5,6%	NC	71,9%	13,6%
Monaco	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Montenegro	-25,4%	-33,7%	NC	-68,6%	-3,2%	211,0%	116,0%	NC	566,7%	-100,0%
Netherlands	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Norway	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Poland	-1,9%	-2,7%	NC	NC	NC	12,8%	21,4%	NC	NC	NC
Portugal	-3,6%	19,4%	NC	NC	NC	-8,7%	-40,0%	NC	NC	NC
Romania	2,4%	36,1%	NC	5,0%	-20,8%	-4,0%	-12,2%	NC	-22,8%	34,5%
Russian Federation	0,0%	-2,4%	NC	-1,7%	-2,9%	-5,3%	29,1%	NC	18,9%	-6,6%
Serbia	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Slovakia	-3,7%	NC	NC	NC	NC	14,3%	NC	NC	NC	NC
Slovenia	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Spain	4,2%	-21,7%	NC	NC	NC	-4,8%	114,9%	NC	NC	NC
Sweden	5,5%	NC	NC	NC	NC	-6,3%	NC	NC	NC	NC
Switzerland	-8,8%	NC	NC	NC	NC	6,2%	NC	NC	NC	NC
The FYROMacedonia	9,9%	50,3%	NC	0,7%	19,6%	-9,1%	-32,6%	NC	-25,9%	-44,5%
Turkey	15,9%	NC	NC	-2,6%	-2,5%	-0,6%	NC	NC	-9,1%	50,4%
Ukraine	1,7%	NC	NC	2,3%	2,7%	752,9%	NC	NC	-13,4%	0,4%
UK-England and Wales	6,8%	-13,5%	NC	9,6%	15,9%	NC	NC	NC	NC	NC
UK-Northern Ireland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
UK-Scotland	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Average	1,0%	2,8%	NC	-4,8%	0,2%	31,2%	8,5%	NC	52,4%	4,6%
Median	0,7%	0,0%	NC	-0,2%	-1,1%	0,7%	0,4%	NC	0,0%	0,2%
Minimum	-25,4%	-35,7%	0,0%	-68,6%	-43,4%	-47,0%	-62,5%	0,0%	-25,9%	-100,0%
Maximum	15,9%	50,3%	0,0%	12,0%	22,2%	752,9%	116,0%	0,0%	566,7%	108,7%
Israel	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC

### 9.3.1 Litigious divorces

**Note for the reader:** these indicators should be used with caution. The ratio of divorce cases per inhabitant does not reflect the real scope of the divorce phenomenon. As with most demographical indicators, its meaning only extends to the reference population, which is, here, the number of married couples and the number of married people. Domestic legislations vary too, and the divorce by mutual consent, which is not considered here, can be very developed or cannot exist at all, according to the states. Therefore this indicator should not be used to describe the density of divorce within the population.

Figure 9.27 Evolution of Clearance Rate of the litigious divorce cases in first instance courts between 2006 and 2012 (Q101)



The figure above only takes into account litigious divorces, which explains partly the considerable differences which can be noted according to the states or entities. Indeed, in some systems (**Norway** for instance), divorces are mainly pronounced by non-judicial bodies and are only dealt with by the courts under specific (litigious) circumstances.

For most of the 35 member states and entities considered in the figure above, the Clearance Rate of divorce cases in first instance is close to or higher than 100 %, which means that there are no increasing backlogs in courts. High clearance can be underlined in particular for **Hungary, Latvia** (although the Disposition Time remains quite high in this state).

The situation of the Clearance Rate (and then potentially the situation of the backlogs) of litigious divorce cases is improving over the years in particular in **Bulgaria, France, Georgia, Lithuania, “the former Yugoslav Republic of Macedonia”, Romania, and Ukraine** (although the Disposition Time remains high), **UK-England and Wales**.

This positive evolution of the capacity of the courts to deal with divorce cases is mainly due to changes in the judicial procedures which are being simplified (see below).

Courts have difficulties to cope with the volume of divorce cases in **Montenegro, Ireland**, and to a lesser extent in **Estonia, Italy or Spain**. The situation in **Montenegro** should be considered carefully as a structural decreasing trend can be noted over the past six years for this indicator. In **Italy**, the Disposition Time is extremely high, which means that the durations of divorce proceedings are excessively long (see also table 9.32 below). In **Monaco, Switzerland, Portugal**, the Disposition Time remains above 250 days, but the Clearance Rate close to or above 100 % shows that the situation could be reversed in the coming years.

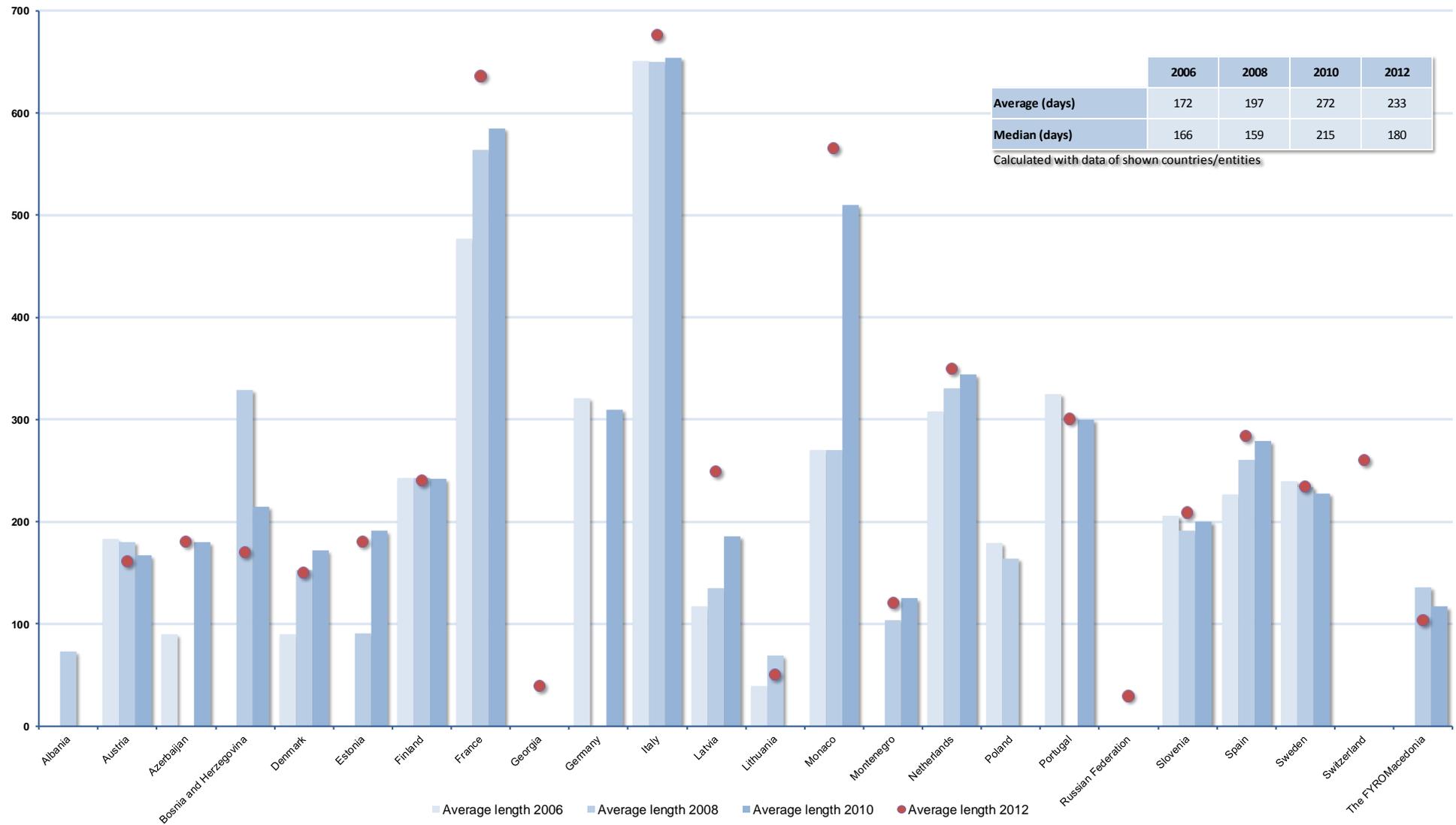
**Table 9.28 Appeal and highest instance percentage, long pending cases and average length of litigious divorce proceedings in 2012 (Q101, Q102)**

States/entities	% of decisions subject to appeal	% of cases pending more than 3 years	Length of proceedings at 1st instance courts (in days) PROVIDED	Disposition time at 1st instance courts (in days) CALCULATED	Length of proceedings at 2nd instance courts (in days) PROVIDED	Length of proceedings - 3rd instance courts (in days) PROVIDED	Length of proceedings - Total of procedure (in days) PROVIDED
Albania	NA	NA	NA	112	NA	NA	NA
Andorra	NA	NA	NA	222	NA	NA	NA
Armenia	NAP	NAP	NAP	91	NAP	NAP	NAP
Austria	NA	1,4%	161	160	NA	NA	NA
Azerbaijan	0,02%	NAP	180	80	90	60	330
Belgium	NA	NA	NA	NC	455	NA	NA
Bosnia and Herzegovina	5,3%	1,9%	170	162	102	NA	136
Bulgaria	8,0%	NA	NA	143	NA	NA	NA
Croatia	NA	NA	NA	NC	NA	NA	NA
Cyprus	NA	NA	NA	170	NA	NA	NA
Czech Republic	NA	NA	NA	155	NA	NA	NA
Denmark	21,0%	0%	150	133	270	NAP	176
Estonia	1,2%	0,9%	180	193	56	NA	NA
Finland	0,1%	0%	240	229	NA	NA	NA
France	10,6%	NA	636	NC	380	NAP	676
Georgia	1,1%	0%	39	40	63	70	172
Germany	2,1%	5,0%	10	NC	NA	NA	NA
Greece	NA	NA	NA	NC	NA	NA	NA
Hungary	3,2%	NA	NA	156	NA	NAP	NA
Iceland	NA	NA	NA	NC	NA	NA	NA
Ireland	NA	NA	NA	NC	NA	NA	NA
Italy	NA	NA	676	707	486	NA	NA
Latvia	NA	NA	249	221	112	NA	NA
Lithuania	NA	0,6%	50	22	NA	NA	NA
Luxembourg	NA	NA	NA	NC	NA	NA	NA
Malta	NA	NA	NA	NC	NA	NA	NA
Republic of Moldova	NA	NA	NA	70	NA	NA	NA
Monaco	35,6%	9,1%	565	291	283	203	NA
Montenegro	6,2%	0,1%	120	307	30	150	240
Netherlands	NA	NA	349	NC	227	NA	329
Norway	NAP	NAP	NAP	NC	NAP	NAP	NAP
Poland	NA	0,6%	NA	183	NA	NA	NA
Portugal	NA	NA	300	267	90	60	NA
Romania	4%	0%	NA	159	NA	NA	NA
Russian Federation	0,6%	NA	29	29	19	54	NA
Serbia	NA	NA	NA	NC	NA	NA	NA
Slovakia	NA	NA	NA	195	NA	NAP	150
Slovenia	4,8%	0,4%	208	NC	48	127	NA
Spain	NA	NA	283	288	301	NA	NA
Sweden	NA	0,2%	234	235	NA	NA	NA
Switzerland	8,0%	2,0%	260	272	162	122	296
The FYROMacedonia	12,0%	0,1%	103	118	NA	NA	NA
Turkey	NA	0,4%	171	124	NAP	NA	NA
Ukraine	NA	NA	NA	394	NA	NA	NA
UK-England and Wales	NA	3,5%	218	NC	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NC	NA	NA	NA
UK-Scotland	NA	NA	NA	NC	NA	NA	NA
Average	7,3%	1,5%	233	191	187	106	278
Median	4,8%	0,5%	194	162	112	96	240
Minimum	0,0%	0,0%	10	22	19	54	136
Maximum	35,6%	9,1%	676	707	486	203	676
Israel	NAP	NAP	NAP	NC	NAP	NAP	NAP

In addition to the number of incoming cases, information was requested regarding the percentage of decisions subject to appeal, the percentage of cases pending for more than 3 years and the average length of proceedings in days. Only a few countries were able to provide detailed information for the four case categories concerned.

Twenty one states or entities are able to give specific information on the lengths of judicial proceedings as regards divorce without mutual consent (whereas it is possible to calculate the Disposition Time for 31 states or entities, as shown in the table above; this also provides a good indication as regards the duration of the proceedings by showing the duration for which an incoming case remains in the court before being resolved at the level of this court).

Figure 9.29 Average length of proceedings for litigious divorce cases in first instance courts in 2006, 2008, 2010 and 2012, in days (Q102)



An increase in the length of proceedings does not necessarily mean that the courts' efficiency has decreased. The length of litigious divorce proceedings in first instance varies between the states and entities concerned according to the family law (civil law) procedure and the volume of cases filed in courts.

For instance in the **Netherlands**, in 1993 the percentage of litigious cases was 80%. Then the number of non-litigious divorce cases increased over twenty years from 20% till 90%. The litigious divorce cases that are brought to court are then the most complicated cases which take a long time, given the level of disagreement between the ex-spouses. This explains why the average length of proceedings of litigious divorce cases is increasing during the years. In the category litigious divorce cases there are no relatively "easy and simple" divorce cases left and cases become more and more complex.

Rapid procedures (less than 100 days) can be noted in **Georgia, Lithuania, Russian Federation** and longer procedures (more than 500 days) in **Italy, France, Monaco**.

Divergent trends are present in some of the states. Lengths of proceedings are decreasing consequently over the past six years in **Bosnia and Herzegovina** and to a lesser extent in **Denmark, Lithuania** and "**the former Yugoslav Republic of Macedonia**". On the contrary they are still increasing in **France, Italy, Latvia, Monaco** and **Spain**. However such duration must be studied against the number of cases addressed by the courts to measure the real situation of court efficiency in this field. **Latvia** or **Spain** are seeing the number of incoming divorce cases reduced since 2006, whereas their average length of proceedings for litigious divorce cases in first instance courts is increasing. It appears that in other states such as **Bosnia and Herzegovina**, a decrease in the number of incoming divorce cases is followed by a shorter average length of proceedings.

Therefore the Disposition Time can be considered as a better indicator to see to what extent the court system is able to cope with specific case categories.

In any case, a comparative analysis of the length of divorce litigation procedures cannot be made without taking into account the specific features of divorce proceedings in different states, briefly presented below, which can influence significantly the result of the proceedings.

#### Comments:

**Albania:** as regards non-litigious divorce cases, a draft agreement is presented to the court signed by both partners. The court may, after consultation with each partner alone and together, approve the agreement by decision. If the judge believes that the agreement does not provide enough security for the children or one of the partners, he or she shall suspend the procedure for three months. If, after the suspension of the procedure, the partners have not rectified the agreement accordingly, the judge shall refuse the approval for the non-litigious divorce.

**Armenia:** there are two possibilities of divorce procedure: if there is no dispute between the spouses, the divorce procedure can be made by the body of the registration of the civil acts. In case of dispute, the divorce procedure shall be solved by the court.

**Austria:** the procedure of a litigious divorce is almost identical to regular civil proceedings – a decision is only taken about the dissolution of the marriage (not about alimony, child custody etc.). For a non-litigious divorces, the couple has to agree on the dissolution of the marriage, but also on all legal consequences and effects of the divorce such as alimony for the dependent spouse and children, child custody and division of the joint property, and then the court issues an order about the dissolution of the marriage.

**Azerbaijan:** according to the Family Code, the length of consideration of the divorce case is 3 months (90 days) (but when one side does not agree, the judge has the right to give a term of no more than 3 months (90 days) for conciliation). So the maximum length of this type of cases is 6 months (180 days). One month is allowed for submitting an appeal and three months for the consideration of the case at the Appeal Court. Two months are allowed for submitting an appeal to the Supreme Court and two months for consideration of the case at the Supreme Court. Thus the total is 13 months (390 days) with a conciliation period and 12 months (360 days) without a conciliation period.

**Bosnia and Herzegovina:** the laws regulating family relations govern how courts conduct divorce proceedings, i.e. first instance courts adjudicate divorce cases. Divorce proceedings are initiated in one of the following ways: a spouse files a law suit requesting divorce; or both spouses file a joint request for the marriage to be dissolved. Prior to taking one of the above legal actions, the couple with underage children must try to reconcile through a legally prescribed procedure which is handled by municipal social workers. A court decision by which a marriage is dissolved may be appealed, in principle only on the ground of grave procedural mistakes. There is no mandatory timeframe for the divorce case to be decided upon.

**Bulgaria:** divorce by mutual consent is a non-contentious proceeding where the court permits the divorce without searching for the reasons for the termination of the marriage. Safeguard proceedings are applied to divorce through mutual consents while adversary proceedings are applied to divorce through claims procedure.

**Czech Republic:** if a marriage has existed for at least 1 year, the spouses have not lived together for more than 6 months and the petition for divorce by one spouse is joined by the other, the court does not establish the grounds for the breakdown of marriage and issues a judgment of divorce under several conditions. If there is a minor child (minor children) the court decides, before issuing the judgment of divorce, on the rights and duties of the parents with respect to

the child or children, in particular who of them will be entrusted with the custody of a child or children and what their duties to (financially) support and maintain the children are. Marriage may not be dissolved until the decision on the position of the children after the divorce becomes final and binding. The decision on parental responsibility may be replaced by an agreement of the parents which must be approved by a court in order to be valid.

**Estonia:** divorce cases are litigious cases. Upon granting a divorce, the court can settle disputes concerning a child and disputes concerning the support or the division of joint property. However, divorce can be granted by the civil status officials or by the notary when the spouses agree about the divorce and there is no dispute at all concerning the circumstances relating to the divorce.

**Finland:** a marriage may be dissolved by a court order after a reconsideration period of six months or after the spouses have lived separately for the past two years without interruption. The divorce is dealt with at the District Court by written application, which can be made by the spouses together or one spouse alone. When a divorce is handled at the District Court for the first time, the handling will be postponed until further notice. Thereafter the District Court shall grant the spouses a divorce when the six-month reconsideration period has expired and the spouses demand together or one of them demands that they be granted divorce. A divorce case shall lapse if the demand for the granting of divorce is not made within one year from the beginning of the reconsideration period. However, the spouses can be granted a divorce immediately without the otherwise obligatory six-month reconsideration period if they have lived separately for the past two years without interruption.

**France:** all divorces in France involve the intervention of a judge; there are a variety of procedures depending on whether or not divorce is consensual. In addition, some litigious divorces are procedurally divided into two periods. The time between the end of the conciliation phase and the beginning of the period where the divorce is pronounced does not depend on any judicial authority. Indeed, once the order of non-conciliation is made the judge, it is up to the parties to assign the other spouse in a divorce.

**Georgia:** if there is a property dispute between spouses, or if they have minor children, their divorce case is heard by the court which adopts a decision within 2 months after admission of the lawsuit, if the case is difficult, within a maximum period of 5 months. If there is no dispute between the spouses, or if they have no minor children, their divorce may take place in a territorial unit of the Civil Registry Agency.

**Germany:** the family court has exclusive jurisdiction over marriage cases and other family cases. The family court is a department of the Local Court. Anyone wishing to bring a marriage case to court, that is anyone wishing to divorce, must be represented by a solicitor. The respondent also needs to be represented by a lawyer if motions are to be fixed. As a rule, the spouses are to pay half the court costs of the divorce case and the ancillary cases; plus, each spouse pays their own legal costs. It is possible to apply for legal aid. Spouses wishing to divorce can reduce the costs of the proceedings by the respondent agreeing to the divorce for the record of the court registry or in the oral hearing without appointing a solicitor.

**Greece:** divorce cases are resolved under a special procedure as described in the code of civil procedure. This means that the procedure in the special court panels is faster and simplified compared to the ordinary civil procedure.

**Hungary:** the court may attempt at any time during the proceedings to steer the parties towards reconciliation. If during the first hearing in a divorce case the parties fail to settle their differences, the court shall postpone the hearing, and shall advise the parties of their right to request a continuation of the proceedings within three months in writing. The court shall set the date of the next hearing thirty days after the time of submission of the application. If dissolution of the marriage was requested jointly, or the parties have no child of minor age, the court shall proceed to hear the case on the merits during the first session. If the marriage is dissolved, the court shall decide concerning the placement and maintenance of the couple's minor children even in the absence of a claim.

**Ireland:** the applicant lodges an application for a divorce decree, specifying the grounds on which the decree is sought and the facts supporting the application and relevant to the issues of maintenance, custody, access etc. (as appropriate). If the respondent opposes the application, he/she must enter a defence/answer within a specified time from the service on him/her of the application. Even where the parties consent to a divorce decree, the court is required to enquire as to whether proper provision exists or will be made for a spouse or dependant.

**Lithuania:** divorce cases are dealt with in closed court sessions if at least one of the parties ask for it. When any question related to a child is dealt with, a child, who is capable to formulate his/her view, has to be heard directly, and, if not possible, through a representative. In the process of hearing a divorce case, the court undertakes measures to reconcile the spouses and has the right to establish the time limit for reconciliation. This time limit has to be not longer than 6 months. Until the judicial decision the court, considering the interests of spouses, children, also one of the spouses may establish the interim measures of protection.

**Malta:** till June 2011 there existed no divorce proceedings, whether litigious or non-litigious. On the other hand, there exist separation proceedings, which may be either litigious or non-litigious, as well as annulment proceedings, which are always litigious.

**Republic of Moldova:** The family Code states that if there is the agreement between the spouses who have no common minor children and, in the absence of any dispute regarding the sharing, or maintenance of the husband unable to work, marriage can be annulled by the registry office of the territorial division of a spouse, with the obligatory participation of both spouses. Similarly, at the request of either spouse, the marriage can be annulled by the registry office where the other spouse has been declared incompetent or declared missing or sentenced to imprisonment for a period longer than 3 years. In such cases, the annulment of the marriage and the certificate of divorce takes place one month after the period of one month from the date of the filing the divorce petition. In case of disputes between spouses concerning the children, sharing, or maintenance of the husband unable to work and that requires a material support; the annulment of marriage is through the courts. Similarly, if after the annulment by the registry office there are disputes between the spouses concerning the children, sharing, or maintenance of the husband unable to work and who requires material support, it shall be settled through the courts.

**Monaco:** there are two categories of divorce: litigious proceedings due to a fault, a break-up of the relationship, a criminal sentence over one of the spouses, illness of which the seriousness and nature can negatively affect the balance

of family life; and non-litigious proceedings in which divorce due to a fault can be judged with a joint request from the spouses.

**Norway:** with very few exceptions the dissolution of a marriage follows a non-judicial procedure.

**Poland:** the termination of marriage can take the form of divorce or separation. Separation is decided by the court when there is a complete (but not irreversible) disintegration of matrimonial life. The most significant difference is that separated spouses are not allowed to remarry. Dissolution cases are first instance litigation and examined by the Circuit Court. The dissolution petition can include requests for additional decisions such as property division, custody of minor children, child support or alimony. The petitioner must pay an interim court fee, unless he/she is granted legal aid. The service of a lawyer is not mandatory. The hearing of both parties is mandatory. If there is a prospect of restoring the marriage, the court may order a mediation proceeding with the consent of both parties. Judgment is pronounced orally. The party may request a written copy of the judgment within 7 days. An appeal can be filed within 14 days.

**Portugal:** separation and divorce by mutual consent (non-litigious) are applied for at the civil registry office for the area in which either of the spouses is resident or at another office chosen and expressly designated by both spouses. Other applications are submitted to courts. A contested divorce (litigious) involves an application known as an initial application, which sets out the facts deemed to point to the need for the dissolution of the marriage. The evidence may be submitted immediately.

**Romania:** two alternative divorce procedures were introduced by the new Civil Code (2011): the administrative divorce, at the civil status service, and the divorce in front of the public notary. These alternatives are available in the situation of a divorce by mutual consent. They are already contributing to a quicker dispute resolution and to relieving the burden on courts.

**Russian Federation:** according to the Family Code, spouses can apply for divorce either to civil status registration offices or to courts. The Code allows divorce in civil status registration offices when both spouses agree with to the divorce and they have no common minor children, when one of the spouses has been declared missing or legally incapable by a court, or when he/she has been sentenced to more than three years of imprisonment. Civil status registration offices declare the divorce no earlier than one month after the submission of the application. Other divorce cases are heard by the courts of general jurisdiction by way of civil proceedings. The courts can make use of conciliatory measures or postpone the hearing of the case for up to three months to allow the spouses to reconcile.

**Serbia:** there is a reconciliation procedure (it must be terminated within 2 months) and an agreement procedure (it must also be terminated within the 2 months).

**Slovakia:** there is no non-litigious divorce procedure.

**Slovenia:** litigious divorce cases include the following two types of divorce proceedings: divorces involving children and divorces without children. The data given exclude divorces as a result of mutual agreement between the parties (i.e. the non-litigious divorce).

**Spain:** divorce does not require a previous judicial separation nor the concurrence of causes legally determined. This means that it is possible to sue directly to get a divorce without an invocation of a cause (divorce needs always a judicial decision). The divorce procedure can be initiated at the request of one of the spouses, at the request of one of them with the consent of the other, or at the request of both spouses. When divorce is asked at the request of only one of the spouses, the claim must include a proposal for the measures that should regulate the effects derived from the divorce or the separation. These measures will be the object of debate during the process, with the judge deciding on them if there is no agreement between the spouses. If the divorce is asked at the request of one spouse with the consent of the other or by both spouses, then the claim must include an agreement reached between the spouses on the measures that are to be adopted.

**Sweden:** if neither of the spouses live together with their own children and they have jointly applied for a divorce, the district court may issue a judgment as soon as possible. If the spouses have children living at home (their own, the wife's/husband's or common children), or if one of the spouses does not agree to the divorce, there will always be a period of reconsideration. If the spouses have lived apart for more than two years they can have a divorce directly, even if they have children or if one of the spouses does not agree to the divorce. In that event the husband or wife should enclose a certificate of separate living.

**“the former Yugoslav Republic of Macedonia”:** the Law on civil procedure is applied in divorce cases. In addition, the Law on the Family includes for five articles dedicated to divorce, but it does not contain provisions regarding the court procedure.

**Turkey:** divorce cases are handled by family courts. According to the Law on the Establishment, Functions and Trial Procedure of Family Courts, before considering the merits of the case the family courts shall, if appropriate, by involving specialists, encourage the parties to resolve the problems peacefully. If the conflict is not resolved in this way, then the court is entitled to hear the case.

**Ukraine:** In case of non-litigious divorce, a marriage can be dissolved by the *Public Civil Status Act Registration Authority* upon joint application of the spouses without children or by court upon joint application of the spouses with children. The court dissolves a marriage if the application corresponds to the will of the spouses, within one month from the date of the application. In case of litigious divorce, the court ascertains the actual relationships of the spouses, the real reasons for taking legal action for marriage dissolution, take into consideration the existence of a minor child, disabled child and other circumstances relating to the life of the married couple.

**UK-England and Wales:** people seeking a divorce are required to apply to the court and provide evidence to support their application. If the court is satisfied on the evidence that the marriage has broken down irretrievably, a decree of divorce will be granted. The first stage of granting a decree of divorce is to issue a decree “nisi”. After a period of six weeks an application can be made to make the decree absolute.

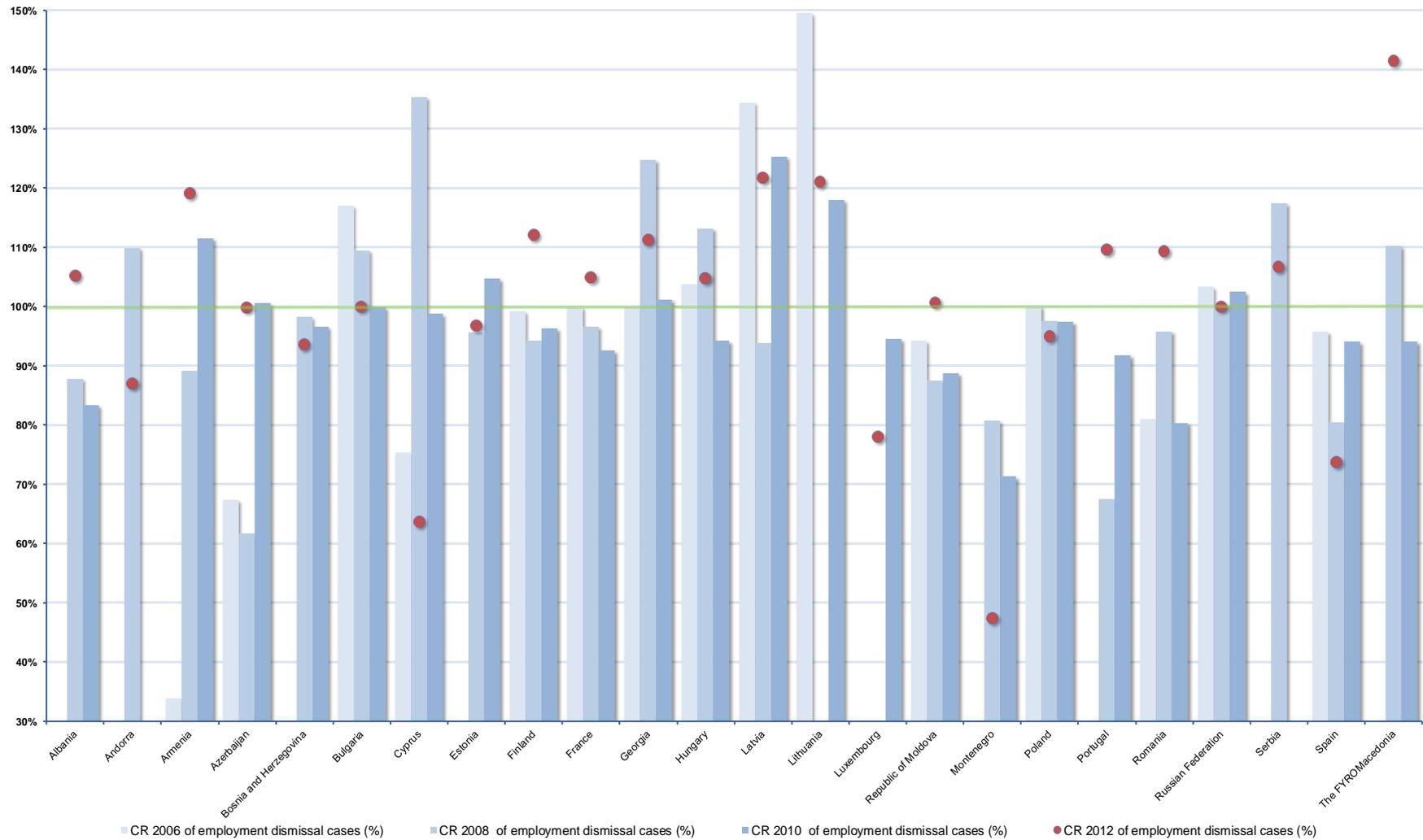
**UK-Northern Ireland:** marriage and Civil Partnership Agreements can be dissolved through divorce, nullity, and dissolution proceedings. All are litigious. Proceedings are commenced by way of petition. There is no time requirement for Nullity proceedings. Parties may also petition the court for judicial separation proceedings which if a decree is granted means that the petitioner is no longer obliged to cohabit with the respondent and effects how property is devolved on the death of an intestate party to the marriage.

**Israel:** the religious tribunals, which are outside of the management, administration and budget of the Courts' Management, have the authority to grant a divorce. These are the Rabbinical, Muslim and Druze religious tribunals, which operate under the Ministry of Justice, and the tribunals for the various Christian denominations, which operate independently. Decisions of the appellate tribunals of these courts are subject to a limited review by the Supreme Court. Apart from marriage and divorce, these issues have parallel jurisdiction in the regular magistrate courts, sitting as Family Courts. The exceptions are divorces for couples who belong to more than one religion – these dissolution procedures are handled solely in the civil court system, in the Family Courts.

### 9.3.2 Employment dismissals

24 states or entities were able to provide data allowing the calculation of a Clearance Rate for employment dismissals.

**Figure 9.30 Evolution of the Clearance Rate of employment dismissal cases in first instance courts between 2006 and 2012 (Q101)**



Although the average Clearance Rate for the 21 states concerned is a little bit above 100%, a number of courts in the states have difficulties in coping with the volume of cases, which leads to backlogs. **Montenegro** has a very low Clearance Rate and a high Disposition Time (758 days). **Cyprus, Spain, Luxembourg** and **Slovakia** also experience serious difficulties in this field, in particular when considering at the same time the very high Disposition Time for **Cyprus** (more than 1000 days). **Andorra, Bosnia and Herzegovina** must monitor the capacity of their courts to further cope with the volume of cases, in particular bearing in mind their already high Disposition Times. The same applies, to a lesser extent, to **Estonia** and **Poland**.

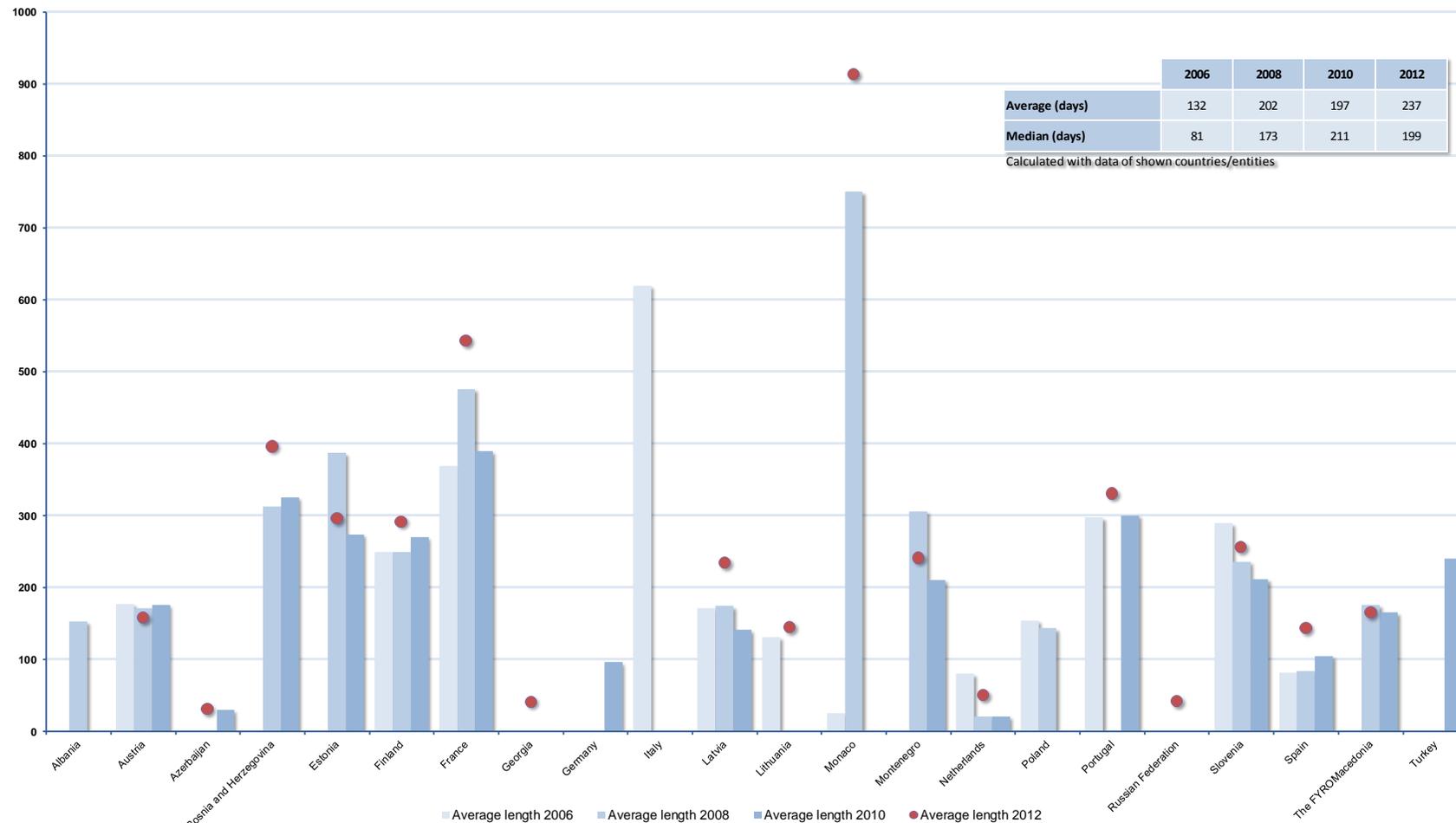
In 16 states, the Clearance Rate is around or higher than 100 %, with a clear increasing trend noted over the past six years in **Albania, Armenia, Finland, France, Republic of Moldova, Portugal, Romania** and “**the former Yugoslav Republic of Macedonia**”.

However, in such procedures, court efficiency cannot be the only issue at stake. States may wish to establish, through their judicial procedures, a proper balance between the functioning of the economic system and the individual protection of the employees. Then, as for divorce cases, there is in some states a preliminary system of attempt of conciliation or mediation, mandatory or not.

**Table 9.31 Appeal and highest instance percentage, long pending cases and average length of employment dismissal proceedings in 2012 (Q101, Q102)**

States/entities	% of decisions subject to appeal	% of cases pending more than 3 years	Length of proceedings at 1st instance courts (in days) PROVIDED	Disposition time at 1st instance courts (in days) CALCULATED	Length of proceedings at 2nd instance courts (in days) PROVIDED	Length of proceedings at 3rd instance courts (in days) PROVIDED	Length of proceedings - Total of procedure (in days) PROVIDED
Albania	NA	NA	NA	167	NA	NA	NA
Andorra	NA	NA	NA	497	NA	NA	NA
Armenia	NAP	NAP	NAP	114	NAP	NAP	NAP
Austria	NA	NA	158	NC	NA	NA	NA
Azerbaijan	0,3%	NAP	30	30	90	60	180
Belgium	NA	NA	NA	NC	NA	NA	NA
Bosnia and Herzegovina	3,0%	2,1%	396	413	196	NA	296
Bulgaria	68,0%	NA	NA	158	NA	NA	NA
Croatia	NA	NA	NA	NC	NA	NA	NA
Cyprus	NA	NA	NA	1001	NA	NA	NA
Czech Republic	NA	NA	NA	NC	NA	NA	NA
Denmark	NA	NA	NA	NC	NA	NA	NA
Estonia	19,6%	0,2%	295	316	143	NA	NA
Finland	51,7%	NA	291	276	NA	NA	NA
France	64,1%	NA	543	NC	466	NAP	838
Georgia	NA	0%	40	55	60	59	159
Germany	3,7%	1,8%	3	64	6	NA	NA
Greece	NA	NA	NA	NC	NA	NA	NA
Hungary	NA	NA	NA	214	NA	NAP	NA
Iceland	NA	NA	NA	NC	NA	NA	NA
Ireland	NA	NA	NA	NC	NA	NA	NA
Italy	NA	NA	NA	NC	NA	NA	NA
Latvia	NA	NA	234	148	144	NA	NA
Lithuania	NA	4,8%	144	48	NA	NA	NA
Luxembourg	NA	NA	NA	NC	NA	NA	NA
Malta	NAP	NAP	NAP	NC	NAP	NAP	NAP
Republic of Moldova	NA	NA	NA	160	NA	NA	NA
Monaco	44,6%	5,8%	913	NC	319	182	NA
Montenegro	50,0%	3,8%	240	758	120	0	420
Netherlands	NA	NA	49	NC	NAP	NA	NA
Norway	NA	NA	NA	NC	NA	NA	NA
Poland	NA	NA	NA	214	NA	NA	NA
Portugal	NA	NA	330	240	120	120	NA
Romania	34,0%	0%	NA	279	NA	NA	NA
Russian Federation	50, 4	NA	41	50	19	54	NA
Serbia	NA	NA	NA	341	NA	NA	NA
Slovakia	29,2%	NA	NA	NC	NA	NAP	NA
Slovenia	34,7%	3,9%	256	NC	99	329	NA
Spain	NA	NA	143	218	256	411	NA
Sweden	NA	NA	NA	NC	NA	NA	NA
Switzerland	NA	NA	NA	NC	NA	NA	NA
The FYROMacedonia	45,0%	0,1%	164	121	NA	NA	NA
Turkey	NA	NA	NA	NC	NAP	NA	NA
Ukraine	NA	NA	NA	NC	NA	NA	NA
UK-England and Wales	NAP	NAP	273	NC	NAP	NAP	NAP
UK-Northern Ireland	NA	NA	NA	NC	NA	NA	NA
UK-Scotland	NA	NA	NA	NC	NA	NA	NA
<b>Average</b>	34,5%	2,3%	239	256	157	152	379
<b>Median</b>	34,7%	2,0%	234	214	120	90	296
<b>Minimum</b>	0,3%	0,0%	3	30	6	0	159
<b>Maximum</b>	68,0%	5,8%	913	1001	466	411	838
Israel	NA	NA	NA	NC	NA	NA	NA

Figure 9.32 Average length for employment dismissal cases in first instance courts in 2006, 2008, 2010 and 2012, in days (Q102)



Too few states (only 16) are able to calculate the lengths of proceedings in first instance. These timeframes are long in **France** and **Monaco** while of very short durations in **Azerbaijan**, **Georgia**, **Netherlands** and the **Russian Federation**. And only 12 states can calculate the lengths of proceedings in case of an appeal.

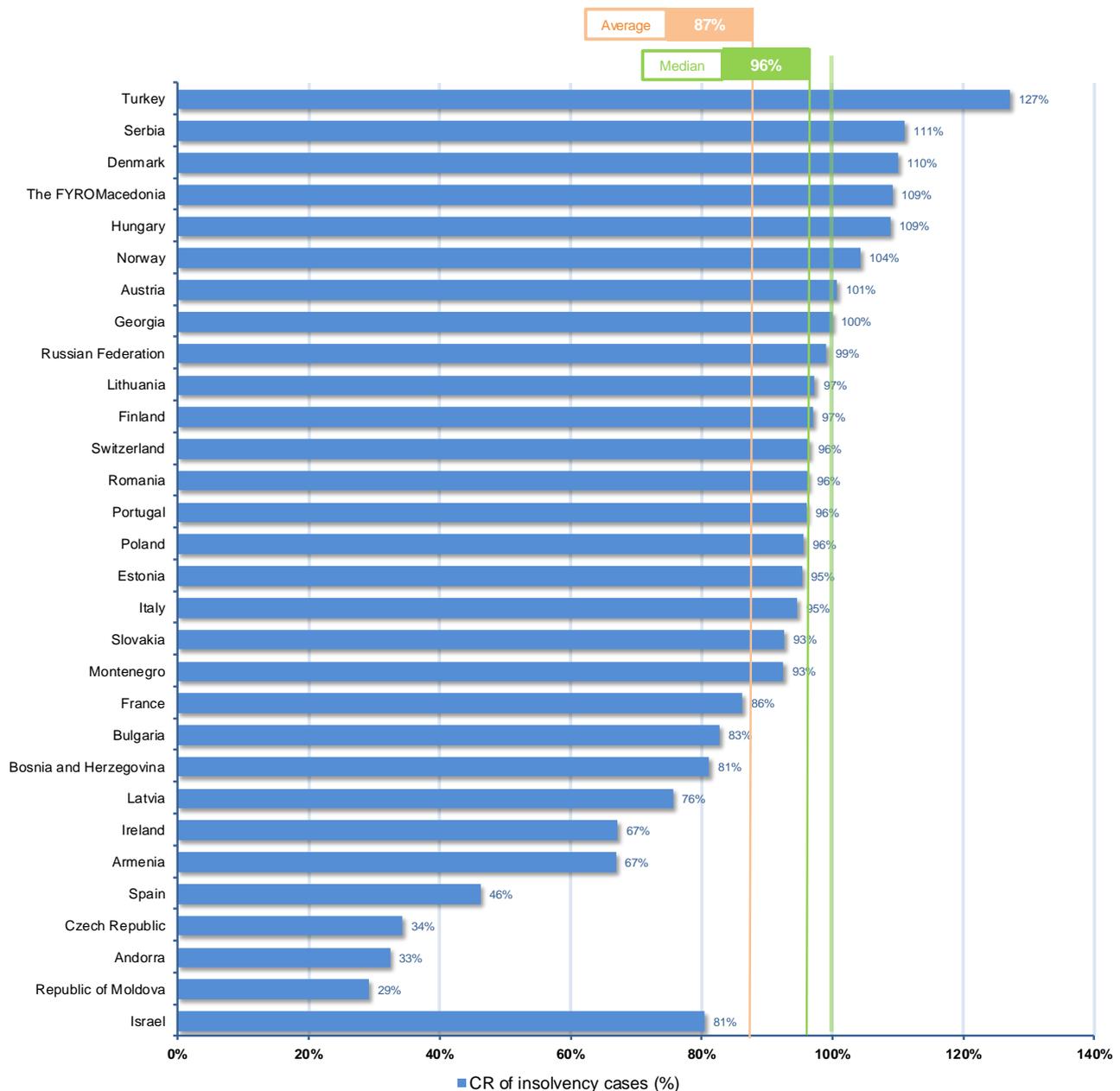
Once again the judicial procedures and the national choices to safeguard the individual rights of employees or to give priority to the flexibility of employment, as well as the social and economic situation (which has consequences for the volume of employment cases) might explain partly such durations. Lengths of proceedings must be considered together with the volume of cases concerned in order to draw in-depth conclusions.

The Disposition Time can then appear as a more accurate indicator when examining the capacity of the courts to cope with employment cases.

### 9.3.3 Insolvency cases

For the first time, the CEPEJ has tried to study court efficiency in the economic field, as regards insolvency cases. Twenty states can be studied in this report.

**Figure 9.33 Clearance Rate (CR) of insolvency cases in first instance courts in 2012, in % (Q91)**

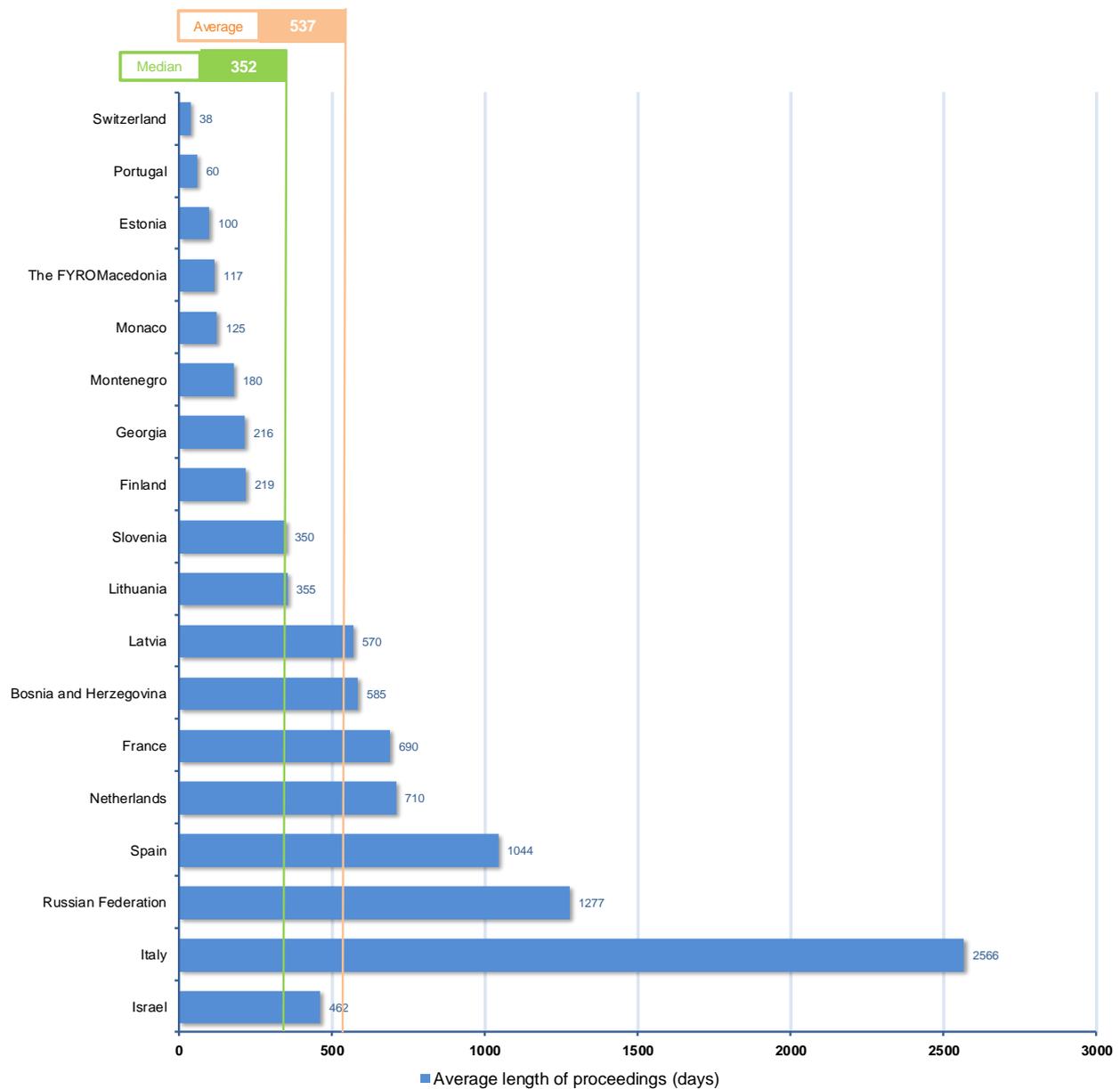


Only 8 states (**Turkey, Serbia, Denmark, “the former Yugoslav Republic of Macedonia”, Hungary, Norway, Austria, Georgia**) experience a positive Clearance Rate while several states indicate an extremely low rate of around 30 % (**Republic of Moldova, Andorra, Czech Republic**).

**Table 9.34 Appeal and highest instance percentage, long pending cases and average length of insolvency proceedings in 2012 (Q101, Q102)**

States/entities	% of decisions subject to appeal	% of cases pending more than 3 years	Length of proceedings at 1st instance courts (in days) PROVIDED	Disposition time at 1st instance courts (in days) CALCULATED	Length of proceedings at 2nd instance courts (in days) PROVIDED	Length of proceedings at 3rd instance courts (in days) PROVIDED	Length of proceedings - Total of procedure (in days) PROVIDED
Albania	NA	NA	NA	NC	NA	NA	NA
Andorra	NA	NA	NA	2639	NA	NA	NA
Armenia	NAP	NAP	NAP	989	NAP	NAP	NAP
Austria	NA	NA	NA	157	NA	NA	NA
Azerbaijan	NAP	NAP	NAP	NC	NAP	NAP	NAP
Belgium	NA	NA	NA	NC	529	NA	NA
Bosnia and Herzegovina	17,7%	29,3%	585	625	37	NA	311
Bulgaria	44%	NA	NA	323	NA	NA	NA
Croatia	NA	NA	NA	NC	NA	NA	NA
Cyprus	NA	NA	NA	NC	NA	NA	NA
Czech Republic	NA	NA	NA	1669	NA	NA	NA
Denmark	NA	NA	NA	235	NA	NA	NA
Estonia	13,6%	1,6%	100	104	48	NA	NA
Finland	1,1%	NA	219	250	NA	NA	NA
France	3%	NA	690	NC	358	NAP	701
Georgia	17,0%	0%	216	235	8	NA	224
Germany				NC			
Greece	NA	NA	NA	NC	NA	NA	NA
Hungary	NA	NA	NA	138	NA	NAP	NA
Iceland	NA	NA	NA	NC	NA	NA	NA
Ireland	NA	NA	NA	2452	NA	NA	NA
Italy	NA	NA	2566	2648	NA	1071	NA
Latvia	NA	NA	570	994	52	NA	NA
Lithuania	NA	20,1%	355	439	NA	NA	NA
Luxembourg	NA	NA	NA	NC	NA	NA	NA
Malta	NA	NA	NA	NC	NA	NA	NA
Republic of Moldova	NA	NA	NA	1016	NA	NA	NA
Monaco	0%	0%	125	NC	NA	NA	NA
Montenegro	15,1%	2,2%	180	230	30	0	540
Netherlands	NA	19,0%	710	NC	NAP	NAP	NA
Norway	NA	NA	NA	164	NA	NA	NA
Poland	NA	9,6%	NA	83	NA	NA	NA
Portugal	NA	NA	60	80	60	60	NA
Romania	8%	3%	NA	332	NA	NA	NA
Russian Federation	8,5%	NA	1277	392	60	30	1365
Serbia	NA	NA	NA	64	NA	NA	NA
Slovakia	NA	NA	NA	118	NA	NAP	217
Slovenia	28,5%	16,4%	350	NC	24	373	NA
Spain	NA	NA	1044	1965	NA	NA	NA
Sweden	NA	NA	NA	NC	NA	NA	NA
Switzerland	5%	0%	38	54	24	122	41
The FYROMacedonia	7%	3,7%	117	105	NA	NA	NA
Turkey	NA	NA	NA	399	NAP	NA	NA
Ukraine	NA	NA	NA	NC	NA	NA	NA
UK-England and Wales	NA	NA	NA	NC	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NC	NA	NA	NA
UK-Scotland	NA	NA	NA	NC	NA	NA	NA
<b>Average</b>	13,0%	8,7%	541	675	112	276	486
<b>Median</b>	8,5%	3,4%	350	286	48	91	311
<b>Minimum</b>	0,0%	0,0%	38	54	8	0	41
<b>Maximum</b>	44,0%	29,3%	2566	2648	529	1071	1365
Israel	NA	4,3%	462	611	NA	NAP	NA

**Table 9.35 Average length of proceedings for insolvency cases in first instance courts in 2012 in days (Q102)**



The lengths of proceedings, which can be studied for 18 states or entities, can be considered as a complement to the indicator of Disposition Time. The durations must be studied together with the volume of cases, and the complexity of the procedures considered in order to be able to draw in-depth conclusions as regards court efficiency.

In most of the member states studied, the courts cannot cope with the increasing volume of cases, which lead to backlogs and increasing durations.

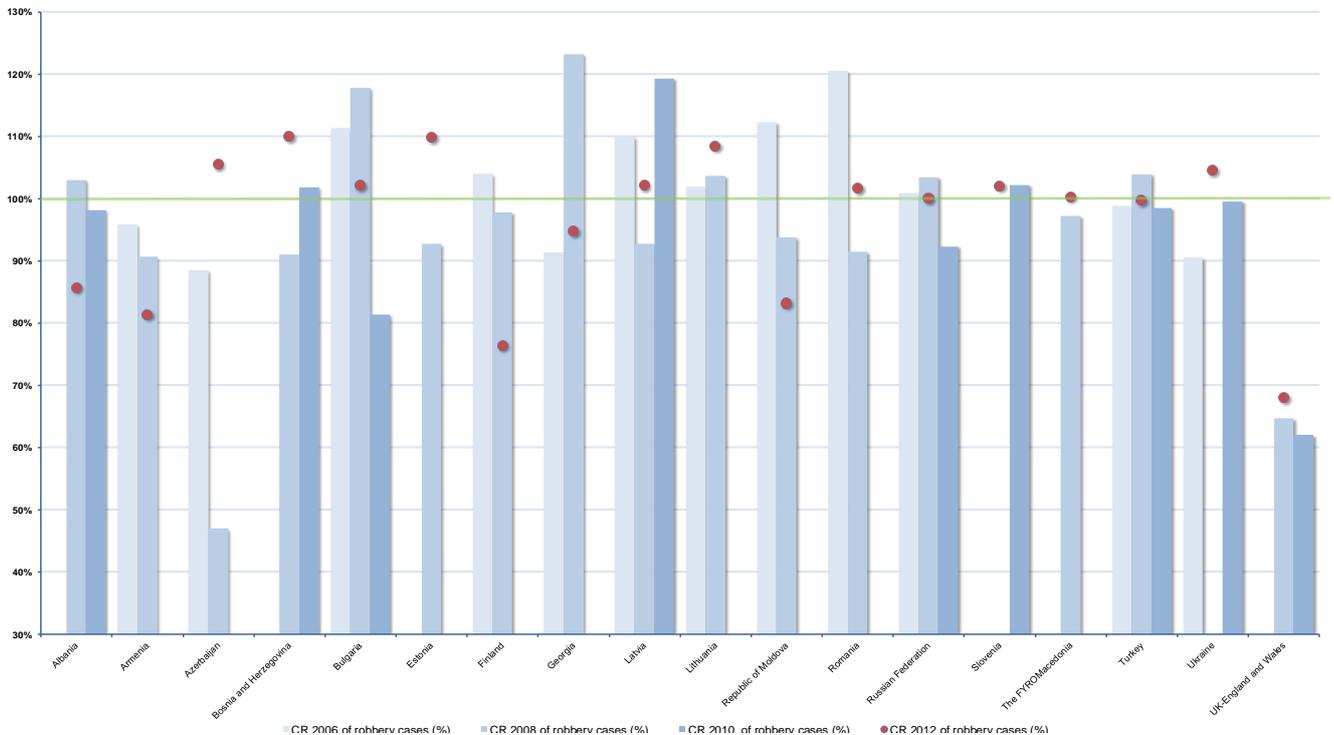
Very high Disposition Times can be noted in several states, with more than 2.500 days in **Italy** and more than 1.000 days in the **Russian Federation** and **Spain**.

The economic crisis is certainly one of the main reasons for such situations, together with the level of complexity of judicial procedures which might original in a wish to offer guarantees for the durability of the firms and the individual rights of their employees. The balance between the flexibility of the market and social protection might differ according to the national systems. The specificity of the bankruptcy procedures and of the legislations which make it possible for companies in financial difficulty to remain provisionally under court monitoring, can also explain some durations.

### 9.3.4 Robberies

Only 18 states or entities were able to provide data allowing the calculation of a Clearance Rate for robbery cases.

**Figure 9.36 Clearance Rate of robbery cases in first instance courts between 2006 and 2012 (Q101)**



Among the responding states, 6 have a negative Clearance Rate. **Albania, Armenia, Finland, Georgia, Republic of Moldova** and **UK-England and Wales** experience a decreasing trend over the years, with a Clearance Rate below 90 % in 2012, which means that backlogs are increasing in courts for this case category.

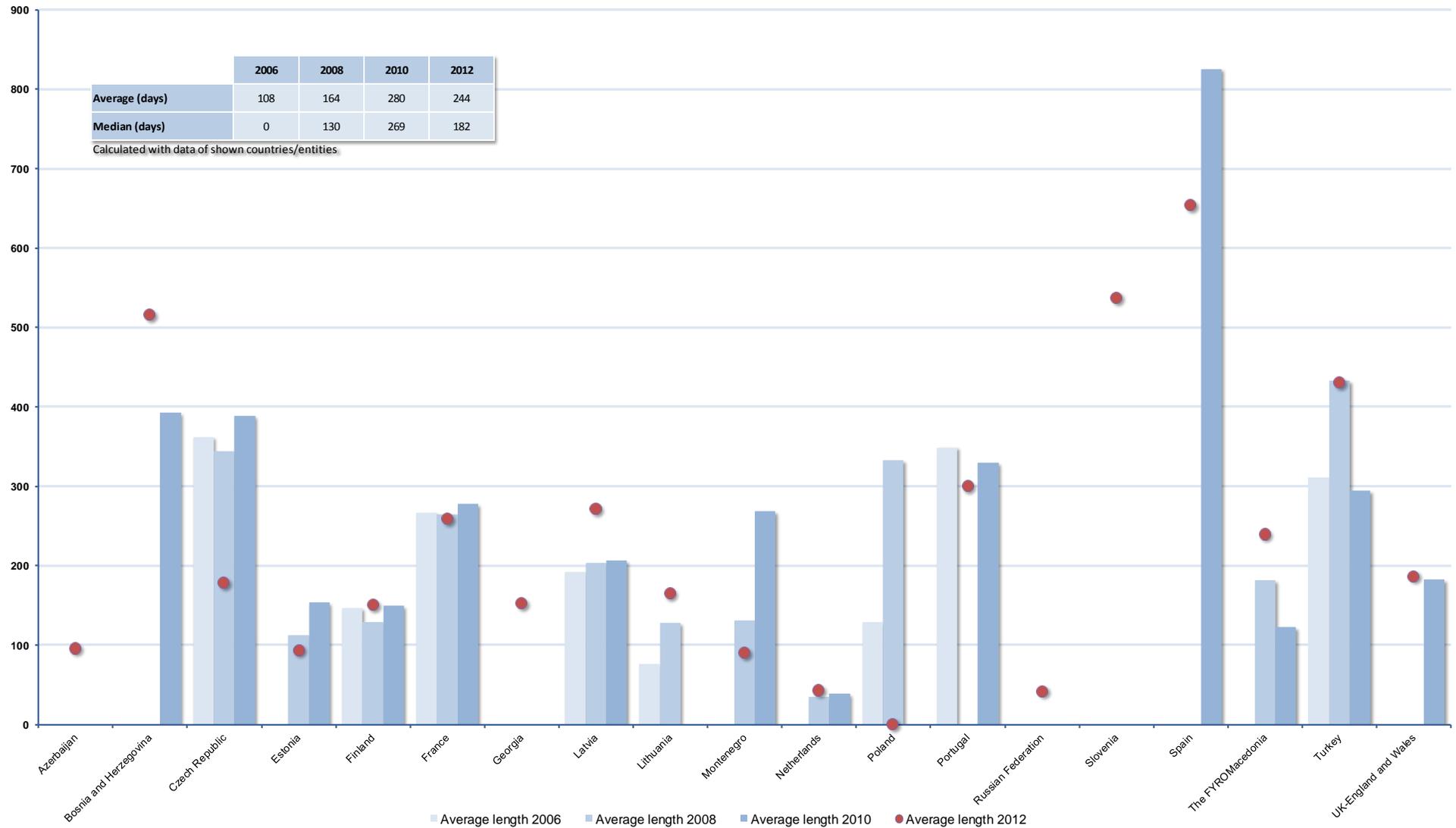
On the contrary, the situation in courts has improved for **Azerbaijan, Bosnia and Herzegovina, Estonia, Lithuania, Slovenia,** and **Ukraine** whose Clearance Rate has become progressively positive.

Only very little information is available as regards appeal procedures, long pending cases and lengths of proceedings. Improving such information must be a clear target for the CEPEJ and its member states in order to strengthen their knowledge of case flow management in the criminal law field and then propose specific tools for improving court efficiency accordingly.

**Table 9.37 Appeal and highest instance percentage, long pending cases and average length of robbery proceedings in 2012 (Q101, Q102)**

States/entities	% of decisions subject to appeal	% of cases pending more than 3 years	Length of proceedings at 1st instance courts (in days) PROVIDED	Disposition time at 1st instance courts (in days) CALCULATED	Length of proceedings at 2nd instance courts (in days) PROVIDED	Length of proceedings at 3rd instance courts (in days) PROVIDED	Length of proceedings - Total of procedure (in days) PROVIDED
Albania	NA	NA	NA	188	NA	NA	NA
Andorra	NA	NA	NA	NC	NA	NA	NA
Armenia	NAP	NAP	NAP	290	NAP	NAP	NAP
Austria	NA	NA	NA	5	NA	NA	NA
Azerbaijan	NA	NAP	95	119	55	35	185
Belgium	NA	NA	NA	NC	227	NA	NA
Bosnia and Herzegovina	52,3%	26,3%	515	279	68	NA	292
Bulgaria	37%	NA	NA	137	NA	NA	NA
Croatia	NA	NA	NA	NC	NA	NA	NA
Cyprus	NA	NA	NA	NC	NA	NA	NA
Czech Republic	NA	NA	178	NC	247	NA	182
Denmark	NA	NA	NA	NC	NA	NA	NA
Estonia	36,3%	0%	93	67	61	NA	NA
Finland	NA	NA	150	215	NA	NA	NA
France	NA	NA	259	NC	317	NAP	295
Georgia	22,5%	0%	152	119	41	69	262
Germany	NA	NA	NA	NC	NA	NA	NA
Greece	NA	NA	NA	NC	NA	NA	NA
Hungary	NA	NA	NA	232	NA	NA	NA
Iceland	NA	NA	NA	NC	NA	NA	NA
Ireland	NA	NA	NA	NC	NA	NA	NA
Italy	NA	NA	NA	180	NA	191	NA
Latvia	NA	NA	271	359	66	NA	NA
Lithuania	NA	8%	165	132	NA	NA	NA
Luxembourg	NA	NA	NA	NC	NA	NA	NA
Malta	NA	NA	NA	NC	NA	NA	NA
Republic of Moldova	NA	NA	NA	243	NA	NA	NA
Monaco	NA	NA	NA	NC	NA	NA	NA
Montenegro	60%	0%	90	608	60	0	270
Netherlands	NA	NA	42	NC	302	NA	344
Norway	NA	NA	NA	NC	NA	NA	NA
Poland	NA	NA	NA	NC	NA	NA	NA
Portugal	NA	NA	300	NC	90	60	NA
Romania	0%	0%	NA	113	NA	NA	NA
Russian Federation	33,3%	NA	41	44	14	16	NA
Serbia	NA	NA	NA	NC	NA	NA	NA
Slovakia	20,7%	NA	NA	NC	NA	NAP	254
Slovenia	36,4%	27,3%	537	365	112	154	577
Spain	NA	NA	654	NC	191	NA	NA
Sweden	NAP	NAP	NAP	NC	NAP	NAP	NAP
Switzerland	NA	NA	NA	NC	NA	NA	395
The FYROMacedonia	45%	2,2%	239	242	NA	NA	NA
Turkey	NA	4,7%	431	324	NAP	NA	NA
Ukraine	NA	NA	NA	87	NA	NA	NA
UK-England and Wales	NA	NA	186	NC	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NC	NA	NA	NA
UK-Scotland	NA	NA	NA	NC	NA	NA	NA
<b>Average</b>	34,3%	7,6%	244	207	132	75	306
<b>Median</b>	36,3%	2,2%	182	188	79	60	281
<b>Minimum</b>	0,0%	0,0%	41	5	14	0	182
<b>Maximum</b>	60,0%	27,3%	654	608	317	191	577
Israel	NA	NA	NA	NC	NA	NA	NA

Figure 9.38 Average length of proceedings for robbery cases in first instance courts in 2006, 2008, 2010 and 2012, in days (Q102)

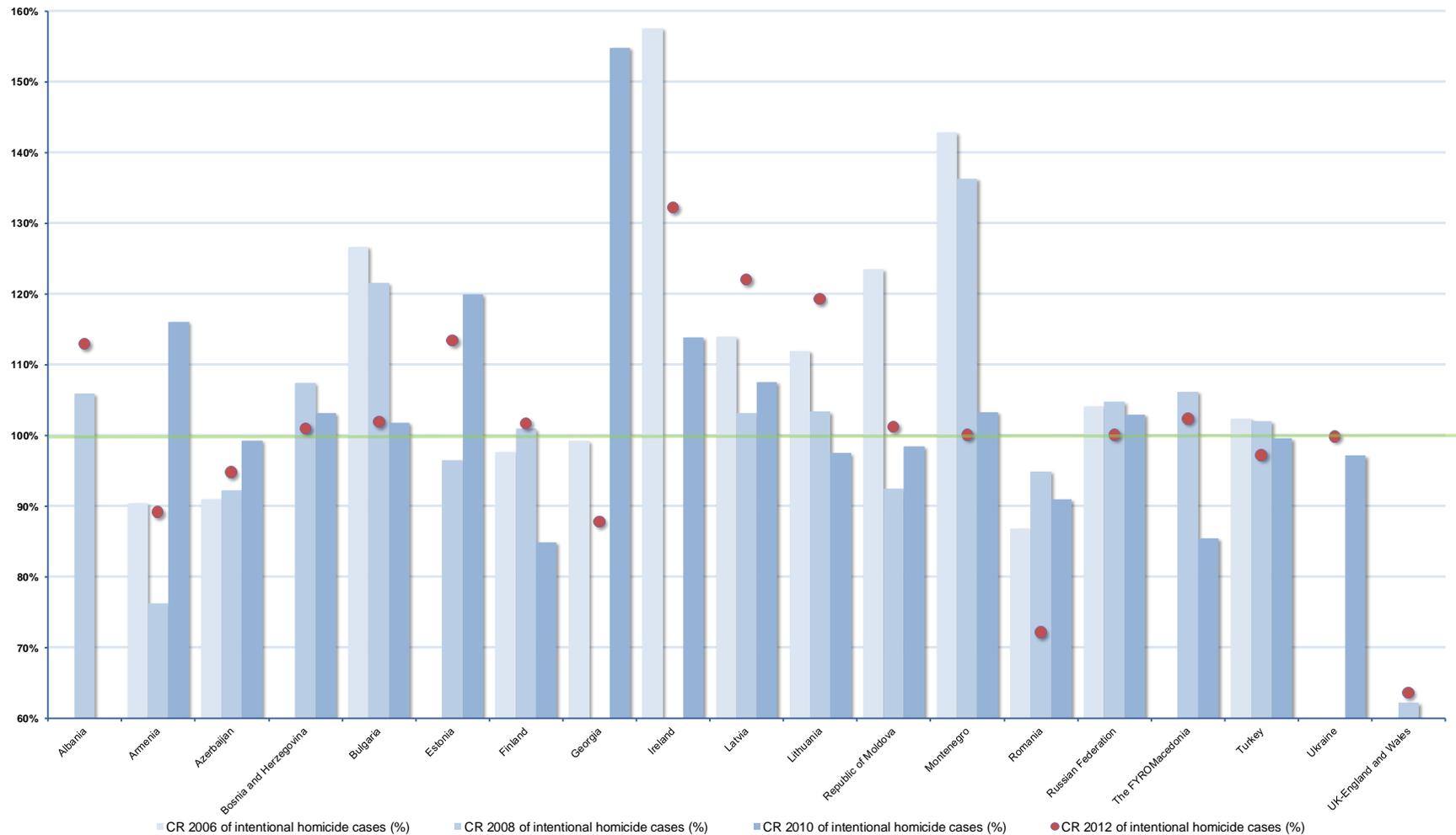


Lengths of robbery proceedings remain very high, though decreasing in **Spain**. They are increasing in **Bosnia and Herzegovina**, **Latvia**, **Lithuania**, “the former Yugoslav Republic of Macedonia” and decreasing in **Czech Republic**, **Estonia**, and to a lesser extent in **France** and **Portugal**.

### 9.3.5 Intentional homicides

As for robbery cases, less than half of the member states are able to provide the relevant information enabling an analysis of the case flow management by courts as regards intentional homicides.

**Figure 9.39 Evolution of the Clearance Rate of intentional homicide cases in first instance courts between 2006 and 2012 (Q101)**



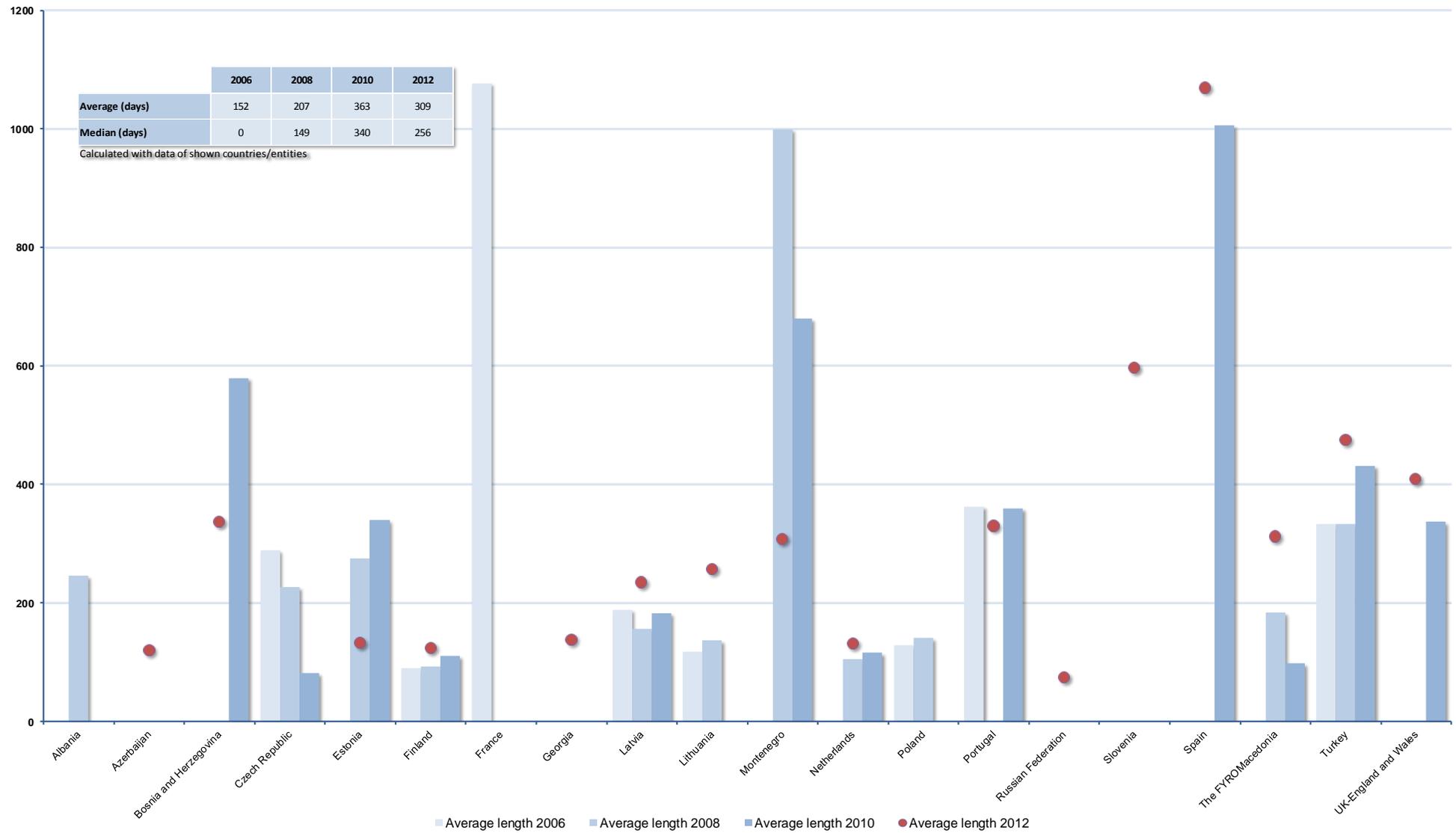
Among the responding states, a low Clearance Rate can be stressed in particular for **UK-England and Wales, Romania, Georgia and Armenia**. Although it experiences a positive Clearance Rate, the Disposition Time of **Italy** remains higher than 400 days.

The capacity of the courts to cope with the volume of criminal cases of international homicides is improving in **Albania, Finland, Latvia, Lithuania, Republic of Moldova and Ukraine**. On the contrary, the Clearance Rate in courts is deteriorating, while remaining positive, in **Bulgaria, Montenegro, Russian Federation**. It has become negative in **Turkey**.

**Table 9.40 Appeal and highest instance percentage, long pending cases and average length of intentional homicide cases in 2012 (Q101, Q102)**

States/entities	% of decisions subject to appeal	% of cases pending more than 3 years	Length of proceedings at 1st instance courts (in days) PROVIDED	Disposition time at 1st instance courts (in days) CALCULATED	Length of proceedings at 2nd instance courts (in days) PROVIDED	Length of proceedings at 3rd instance courts (in days) PROVIDED	Length of proceedings - Total of procedure (in days) PROVIDED
Albania	NA	NA	NA	167	NA	NA	NA
Andorra	NA	NA	NA	497	NA	NA	NA
Armenia	NAP	NAP	NAP	114	NAP	NAP	NAP
Austria	NA	NA	NA	NC	NA	NA	NA
Azerbaijan	NA	NAP	120	30	70	45	235
Belgium	NA	NA	NA	NC	339	NA	NA
Bosnia and Herzegovina	117,8%	35,8%	337	413	62	NA	200
Bulgaria	93%	NA	NA	158	NA	NA	NA
Croatia	NA	NA	NA	NC	NA	NA	NA
Cyprus	NA	NA	NA	1001	NA	NA	NA
Czech Republic	NA	NA	NA	NC	NA	NA	154
Denmark	NA	NA	NA	NC	NA	NA	NA
Estonia	52,9%	0%	132	316	58	NA	NA
Finland	NA	NA	123	276	NA	NA	NA
France	NA	NA	NA	NC	NA	NAP	NA
Georgia	64,1%	0%	138	55	60	50	248
Germany	NA	NA	NA	64	NA	NA	NA
Greece	NA	NA	NA	NC	NA	NA	NA
Hungary	NA	NA	NA	214	NA	NA	NA
Iceland	NA	NA	NA	NC	NA	NA	NA
Ireland	NA	NA	NA	NC	NA	NA	NA
Italy	NA	NA	NA	NC	NA	237	NA
Latvia	NA	NA	234	148	185	NA	NA
Lithuania	NA	6,5%	256	48	NA	NA	NA
Luxembourg	NA	NA	NA	NC	NA	NA	NA
Malta	NA	NA	NA	NC	NA	NA	NA
Republic of Moldova	NA	NA	NA	160	NA	NA	NA
Monaco	0%	0%	NA	NC	0	0	NA
Montenegro	100%	0%	307	758	113	0	420
Netherlands	NA	NA	130	NC	302	NA	432
Norway	NA	NA	NA	NC	NA	NA	NA
Poland	NA	NA	NA	214	NA	NA	NA
Portugal	NA	NA	330	240	90	60	NA
Romania	59%	0%	NA	279	NA	NA	NA
Russian Federation	66,2%	NA	74	50	14	16	NA
Serbia	NA	NA	NA	341	NA	NA	NA
Slovakia	42,9%	NA	NA	NC	NA	NAP	257
Slovenia	56,3%	28,9%	596	NC	161	132	846
Spain	NA	NA	1069	218	217	292	NA
Sweden	NAP	NAP	NAP	NC	NAP	NAP	NAP
Switzerland	NA	NA	NA	NC	NA	NA	861
The FYROMacedonia	75%	6,7%	312	121	NA	NA	NA
Turkey	NA	4,4%	475	NC	NAP	NA	NA
Ukraine	NA	NA	NA	NC	NA	NA	NA
UK-England and Wales	NA	NA	408	NC	NA	NA	NA
UK-Northern Ireland	NA	NA	NA	NC	NA	NA	NA
UK-Scotland	NA	NA	NA	NC	NA	NA	NA
Average	66,1%	8,2%	315	256	129	92	406
Median	64,1%	2,2%	282	214	90	50	257
Minimum	0,0%	0,0%	74	30	0	0	154
Maximum	117,8%	35,8%	1069	1001	339	292	861
Israel	NA	NA	NA	NC	NA	NA	NA

Figure 9.41 Average length of proceedings for intentional homicide cases in first instance courts in 2006, 2008, 2010 and 2012, in days (Q102)



**Comment:**

**Slovakia:** the Disposition Time for intentional homicide increased because of the total number of criminal cases brought to courts.

**Spain** still has long lengths of proceedings for intentional homicides (more than 1000 days), whereas intentional homicides are judged quickly in **Finland, Netherlands, Estonia**.

**Montenegro**, which used to have a very high length of proceedings, has significantly reduced this duration. **Estonia** and **Bosnia and Herzegovina** have followed the same positive trend. On the contrary, lengths of proceedings for the most serious crimes are increasing in **Turkey, UK-England and Wales**, “the former **Yugoslav Republic of Macedonia**”, **Lithuania, Latvia**.

#### **9.4 Measures to increase the efficiency of judicial proceedings**

Several kinds of policies and measures contribute to facilitate the smooth and efficient functioning of the court system, aimed at the court users. Alternative Dispute Resolution is one of these policies (see Chapter 6 above). Beyond this, other procedural provisions are made available to ensure that justice can be rendered in due time and with the necessary quality, while taking into account the kind of litigation at stake. Therefore the CEPEJ studies on the one hand, urgent procedures aimed at better responding to the needs of the court users and, on the other hand, simplified or negotiated procedures aimed at addressing simple or non-disputed cases, so as to give to the judges more time for addressing those litigious cases which require an in-depth debate on court.

### 9.4.1 Urgent procedures

Table 9.42 Cases for which specific procedures for urgent matters are applied (Q87)

States/entities	Civil cases	Criminal cases	Administrative cases	No specific procedure
Albania	Yes	Yes	Yes	No
Andorra	Yes	Yes	No	No
Armenia	Yes	Yes	Yes	No
Austria	Yes	No	No	No
Azerbaijan	Yes	Yes	No	No
Belgium	Yes	Yes	Yes	No
Bosnia and Herzegovina	Yes	Yes	No	No
Bulgaria	Yes	Yes	Yes	No
Croatia	Yes	Yes	Yes	No
Cyprus	Yes	Yes	Yes	No
Czech Republic	Yes	Yes	Yes	No
Denmark	No	Yes	No	No
Estonia	Yes	Yes	Yes	No
Finland	No	No	No	Yes
France	Yes	Yes	Yes	No
Georgia	Yes	Yes	Yes	No
Germany	Yes	No	Yes	No
Greece	Yes	Yes	Yes	No
Hungary	Yes	Yes	Yes	No
Iceland	Yes	Yes	Yes	No
Ireland	Yes	Yes	No	No
Italy	Yes	Yes	No	No
Latvia	Yes	No	Yes	No
Lithuania	Yes	Yes	Yes	No
Luxembourg	Yes	No	Yes	No
Malta	Yes	Yes	Yes	No
Republic of Moldova	Yes	Yes	No	No
Monaco	Yes	Yes	Yes	No
Montenegro	Yes	Yes	Yes	No
Netherlands	Yes	Yes	Yes	No
Norway	Yes	Yes	Yes	No
Poland	Yes	Yes	No	No
Portugal	Yes	Yes	Yes	No
Romania	Yes	Yes	Yes	No
Russian Federation	Yes	Yes	Yes	No
Serbia	Yes	Yes	Yes	No
Slovakia	Yes	Yes	No	No
Slovenia	Yes	Yes	Yes	No
Spain	Yes	Yes	Yes	No
Sweden	Yes	Yes	Yes	No
Switzerland	Yes	Yes	Yes	No
The FYROMacedonia	Yes	Yes	Yes	No
Turkey	Yes	Yes	Yes	No
Ukraine	No	No	No	Yes
UK-England and Wales	Yes	Yes	Yes	No
UK-Northern Ireland	Yes	Yes	Yes	No
UK-Scotland	Yes	Yes	No	No
<b>Number of countries</b>	<b>44</b>	<b>41</b>	<b>33</b>	<b>2</b>
Israel	Yes	Yes	Yes	No

Yes  
No

Out of the 47 states or entities, 44 apply specific urgent procedures to civil cases, 41 to criminal cases and 33 to administrative cases. Thirty states or entities have urgent procedures for the three types of cases. No urgent procedures are made available in **Finland** and **Ukraine**. Nevertheless, in **Finland**, under the administrative law, several laws exist including urgency provisions (when necessary and when the law provides for it, cases are processed urgently, although there is no specific procedure for urgent matters).

Some national legislatures have set up general rules for enabling the judge to apply urgent procedures when the situation justifies it (**Belgium, France, Italy, Malta**). Generally speaking, almost all the states or entities provide for protective measures vis-à-vis institutions, persons, health, goods, etc.

In civil law, urgent procedures are mostly related to the following situations:

- to prevent imminent danger or irreversible damage to the claimant (**Austria, Hungary**), to secure evidence (**Bosnia and Herzegovina, Georgia, Montenegro**),
- in disputes where an interim/preliminary decision is necessary (**Albania, Cyprus, France, Netherlands**),

- in employment disputes (**Azerbaijan, Bosnia and Herzegovina, Croatia, France, Republic of Moldova, Montenegro, Serbia, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine**),
- to secure the property interests of the claimant (**Bosnia and Herzegovina, Lithuania, Montenegro, "the former Yugoslav Republic of Macedonia", Turkey**), to secure money claims (**Azerbaijan, Austria, Norway, Poland, Turkey**), in bankruptcy cases (**Serbia, "the former Yugoslav Republic of Macedonia"**),
- in matrimonial cases (**Andorra, Bosnia and Herzegovina, Estonia, Georgia, Hungary, Latvia, Montenegro, Serbia, Slovenia**), alimony disputes (**Azerbaijan, Hungary, Republic of Moldova, Ukraine**), in cases concerning the protection of the rights and welfare of children and minors (**Bosnia and Herzegovina, Croatia, Denmark, Estonia, Georgia, Hungary, Italy, Republic of Moldova, Montenegro, Norway, Russian Federation, Slovakia, Slovenia, Sweden, UK-Scotland**).

In criminal law, urgent procedures are provided for:

- juvenile offender cases (**Bosnia and Herzegovina, France, Hungary, Republic of Moldova, Montenegro, Norway, Serbia, "the former Yugoslav Republic of Macedonia", Turkey**),
- matrimonial violence (**San Marino, Slovakia**),
- slander/defamation (**San Marino**),
- illegal custody (**Andorra, France, Germany**)
- pre-trial investigation phase and custody (**Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Hungary, Lithuania, Republic of Moldova, Monaco, Montenegro, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, "the former Yugoslav Republic of Macedonia", Sweden, UK-Scotland**),
- activities within the framework of a police investigation (**Denmark**), monitoring of electronic communication (**Slovenia**),
- *flagrante delicto* (**Bulgaria, France, Latvia, Monaco, Romania**),
- organised crime (**Montenegro**),
- extradition requests (**Republic of Moldova, "the former Yugoslav Republic of Macedonia"**).

Examples of urgent procedures in administrative law cases are:

- administrative authorizations, permits (**France**)
- electoral law (**Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia"**),
- dissolution of a municipal council (**Croatia**),
- labour disputes of civil servants (**Azerbaijan, Croatia, Serbia**),
- public procurement ("**the former Yugoslav Republic of Macedonia**"),
- asylum matters (**Croatia, "the former Yugoslav Republic of Macedonia"**),
- free access to information of public importance (**Serbia**).

#### **9.4.2 Simplified procedures**

One way to increase the efficiency of judicial proceedings concerns the introduction of simplified procedures. These procedures are often less costly and the decision-making process in the court is shorter. One of the most popular simplified civil procedures that has been introduced in many states or entities relates to uncontested financial claims (for example *Mahnverfahren* in **Germany** and *Moneyclaim online* in **UK-England and Wales**). For criminal law and administrative law cases, simplified procedures can also be implemented.

Out of the 47 states or entities, 44 use simplified procedures for civil cases (small claims) and 46 apply such procedures to criminal cases (petty offences). Nineteen states or entities have provisions on simplified procedures for administrative cases and 19 apply such procedures in the three legal fields.

**Table 9.43 Cases for which simplified procedures are applied (Q88)**

States/entities	Civil cases (small disputes)	Criminal cases (small offences)	Administrative cases	No simplified procedure
Albania	Yes	Yes	No	No
Andorra	Yes	Yes	No	No
Armenia	Yes	Yes	No	No
Austria	Yes	No	No	No
Azerbaijan	Yes	Yes	No	No
Belgium	Yes	Yes	Yes	No
Bosnia and Herzegovina	Yes	Yes	No	No
Bulgaria	Yes	Yes	No	No
Croatia	Yes	Yes	No	No
Cyprus	Yes	Yes	No	No
Czech Republic	Yes	Yes	No	No
Denmark	Yes	Yes	No	No
Estonia	Yes	Yes	Yes	No
Finland	Yes	Yes	Yes	No
France	Yes	Yes	Yes	No
Georgia	Yes	Yes	No	No
Germany	Yes	Yes	Yes	No
Greece	Yes	Yes	Yes	No
Hungary	Yes	Yes	Yes	No
Iceland	No	Yes	No	No
Ireland	Yes	Yes	No	No
Italy	Yes	Yes	No	No
Latvia	Yes	Yes	No	No
Lithuania	Yes	Yes	No	No
Luxembourg	Yes	Yes	No	No
Malta	Yes	Yes	No	No
Republic of Moldova	Yes	Yes	No	No
Monaco	Yes	Yes	No	No
Montenegro	Yes	Yes	Yes	No
Netherlands	No	Yes	No	No
Norway	Yes	Yes	No	No
Poland	Yes	Yes	No	No
Portugal	Yes	Yes	Yes	No
Romania	Yes	Yes	No	No
Russian Federation	Yes	Yes	Yes	No
Serbia	Yes	Yes	Yes	No
Slovakia	Yes	Yes	No	No
Slovenia	Yes	Yes	No	No
Spain	Yes	Yes	Yes	No
Sweden	Yes	Yes	No	No
Switzerland	Yes	Yes	Yes	No
The FYROMacedonia	Yes	Yes	No	No
Turkey	No	Yes	Yes	No
Ukraine	Yes	Yes	No	No
UK-England and Wales	Yes	Yes	Yes	No
UK-Northern Ireland	Yes	Yes	Yes	No
UK-Scotland	Yes	Yes	No	No
<b>Number of countries</b>	<b>44</b>	<b>46</b>	<b>19</b>	<b>0</b>
Israel	Yes	Yes	Yes	No

Yes  
 No

Simplified procedures can be of different types: judicial decision without hearing or hearing in the judge's office, decision by a single judge, accelerated procedure, simplified judgment, alternatives to sanctions, etc.

In more than half of the states, the simplified procedure in civil cases refers to payment orders and/or small claims' procedures. In addition, the member states of the European Union are subject to the European Small Claims Procedure designed to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs (the European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the member states of the EU). It can also be an order to do something (**France**).

Simplified procedures can also be applied to enforcement acts (**Croatia, Hungary**), labour disputes (**Bosnia and Herzegovina, Azerbaijan, "the former Yugoslav Republic of Macedonia"**) and commercial disputes (**Russian Federation, "the former Yugoslav Republic of Macedonia"**).

Examples of simplified criminal law procedures are found mostly in the area of minor criminal offences, punishable by a fine or a prison sentence for a limited period (**Bosnia and Herzegovina, Czech Republic, Finland, Ireland, Serbia, Montenegro, Norway, Portugal, Turkey**) or minor traffic offences (**Netherlands, Iceland**). In **Poland**, there is a short procedure for certain criminal offences dealt with by "24-hour courts". In the **Netherlands** certain small criminal offences can be dealt with within the field of the administrative law.

Examples of simplified administrative law procedures are cases that entail only a warning or a fine and are not disputed by the offender (**Russian Federation**); a simplified procedure also applies to offences captured using recording devices (**Russian Federation**). Simplified administrative law procedure is applied for administrative cases up to 13.000 € (**Spain**) and judgments given by a single judge (**Turkey**).

### ***Modalities of the procedure***

To improve the efficiency of judicial proceedings, the parties (and their lawyers) should be free to negotiate with the judge how to process a case. More than half of the states or entities stated that such action is effective in their country. Such action can be presentation of information/evidence in court (**France, "the former Yugoslav Republic of Macedonia", Georgia, Sweden**), setting hearing dates (**Denmark, Finland, France, "the former Yugoslav Republic of Macedonia", Republic of Moldova**), time allowed to the defence for providing an answer (counterclaim) (**Georgia**), questions of law and fact that can be accepted by the parties before the hearing (**Ireland**), setting a date of mailing of the findings of a lawyer to a court (**Monaco**), reduced time limits prescribed by law or established by the court with the agreement of the parties (**Norway**) or use of judicial mediation and an accelerated settlement of a civil litigation (**Slovenia**). In **France** the prosecutor can request that the judge decides without debate on several criminal cases (*ordonnances pénales*), the party having a right of opposition – such procedures represent 30% of the caseload at the level of *poursuites correctionnelles*. A similar procedure can be found for instance in **Slovakia** or **Switzerland**. In **France**, there is also a procedure of immediate decision taken by the prosecutor when the offender recognizes that he/she is guilty (plea guilty).

#### **9.4.3 Negotiated proceedings**

Some judicial systems enable the parties and their lawyers to conclude agreements on arrangements for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)<sup>28</sup>.

Such agreements are possible in 26 states or entities: **Albania, Belgium, Cyprus, Denmark, Estonia, Finland, France, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Netherlands, Norway, Romania, Slovakia, Slovenia, Sweden, Switzerland, UK-England and Wales, UK-Northern Ireland, UK-Scotland**.

### **9.5 Trends and conclusions**

The member states continue their efforts towards a more detailed understanding of the activity of their courts, as regards the monitoring of the compliance with the fundamental principles as protected by the European Convention on Human Rights and in terms of case flow management and length of proceedings. The CEPEJ encourages the member states to continue to do so, following the recommendations which appear in particular in the "CEPEJ GOJUST Guidelines". A better understanding of the activity of the courts is indeed necessary to improve court performance.

The CEPEJ analyzes court performance in its member states using two main indicators: the Clearance Rate and the Disposition Time.

In general, considering the number of litigious cases per capita, Europeans seem to be more litigious in Central and Eastern European states, South Eastern Europe and Southern European states than in the states of Northern Europe and the Caucasus.

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<sup>28</sup> See in particular "Study on the situation of the contractualisation and judicial process in Europe - CEPEJ Studies No. 16", by Julien LHUILLIER

Situations for the handling of cases differ significantly between the member states. Having to address a high volume of cases is not as such an obstacle to the proper functioning of the courts, as some states can deal relatively quickly with a high volume of cases.

When considering all the cases to be handled by the courts, it may be noted that in 2012, **a large majority of the member states are able to deal with incoming and pending cases in first instance courts without increasing their backlogs** (Clearance Rate above or close to 100%), with some exceptions.

However variations may be underlined, depending on the case categories involved. This could encourage the states where the courts have difficulties to manage case flows to review the organisation of the judiciary in order to balance the judicial management of the various case categories. Several factors may be involved, including the reallocation of financial and human resources among different legal areas and among the courts to balance the case flow management according to the volume and the categories of cases, or the diversification of judicial procedures (ADR, simplified or negotiated procedures).

**In civil and commercial matters**, the activity of first instance courts varies between the states, as some states address to a great extent non-litigious cases essentially when the courts are responsible for land or business registries. In general, non-litigious matters can increase the workload of the courts but they are rarely responsible for lack of efficiency of the courts.

On average in Europe in 2012, first instance courts are able to resolve the same number of contentious cases as the number of incoming cases (around 2.500 incoming cases per 100 000 inhabitants). However, at the state or the entity level, significant variations can be noted. In at least one third of European states, the efficiency of the courts can be considered satisfactory (**Austria, Azerbaijan, Czech Republic, Denmark, Estonia, Georgia, Hungary, Lithuania, Luxembourg, Republic of Moldova, Norway, Russian Federation, Sweden, Turkey, Ukraine**); the courts in these countries should not expect major problems to deal with the volume of civil cases that they will receive. The situation deserves careful monitoring, in order not to see the situation deteriorating, in **Andorra, Bosnia and Herzegovina, Croatia, Portugal, and Slovakia**. Other states are experiencing still high case management timeframes but can expect an improvement due to a better ability to absorb the incoming cases, which could have a positive impact on the duration of proceedings if the trend was confirmed (**France, Germany, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Armenia, Finland, Italy, Latvia, Malta, Montenegro**). The situation is more critical in other states that cannot cope with the volume of incoming cases and already experience high case management timeframes (**Greece, Poland**).

**In administrative law matters**, on average in Europe, the courts are able to manage the case flows. However, significant differences can be observed between the states. Case management does not seem to be a problem in half of the member states. **Finland, Lithuania, Netherlands and Poland** are able to cope with the volume of incoming cases without increasing their backlogs. A steady increase in the Clearance Rate is encouraging in **Bosnia and Herzegovina, Estonia, France, Georgia, Hungary, Latvia, Republic of Moldova, Slovenia, Spain, Sweden, Turkey, and Ukraine**. On the contrary, case flow management is/can become difficult for the courts in 15 states or entities. This seems especially critical in **Cyprus**, and to a lesser extent, **Luxembourg, Monaco, Serbia, Romania, and Slovakia**.

**As regards criminal cases**, the lengths of procedure for handling judicial cases is of particular importance for the protection of fundamental rights, including serious criminal cases where deprivation of liberty may be at stake. On average in Europe, the courts can handle the volume of cases without increasing backlogs. The average Disposition Time is 142 days for all criminal law cases and 189 days for serious offenses. The most efficient criminal justice systems that can quickly resolve a complaint (less than 100 days) are to be found in **Azerbaijan, Czech Republic, Denmark, Georgia, Lithuania, Norway, Poland, Ukraine, UK-England and Wales**. The indicators also show that **Armenia, Austria, Germany, Slovakia, Sweden**, as well as **Israel** have first instance criminal courts which function with acceptable timeframes. **Estonia, Hungary, Netherlands** must be vigilant in their case handling, when considering the evolution in their Clearance Rates. The courts have difficulties managing the case flows in **Andorra, Cyprus, Italy, Latvia, Montenegro and Turkey**.

In order to fine-tune the understanding of case flow management by the courts, and in line with the work of its SATURN Centre, the CEPEJ studies particularly case flow management for litigious divorce cases, employment dismissals, insolvency, robberies and intentional homicides. Too little information is available regarding the appeal rate, the procedures in second and last instances, and cases pending for more than three years; such data would make it possible to analyze more in depth the situation in each state. Improving this information should be a clear objective for the CEPEJ and for the member states to improve their case flow management and propose specific tools to strengthen court efficiency accordingly.

For **litigious divorces**, in most member states and entities analyzed, the courts are able to manage case flows without increasing their backlogs. Lengths of procedures for litigious divorces in first instance courts vary between the states and entities according to the family law procedures and the volume of cases addressed by the courts. A positive Clearance Rate can be noted as regards **Hungary** and **Latvia**. The situation has improved over the years especially in **Bosnia and Herzegovina, Bulgaria, France, Georgia, Lithuania, "the former Yugoslav Republic of Macedonia", Romania, Ukraine, UK-England and Wales**. It could also develop positively in **Monaco, Switzerland, and Portugal**. This positive development is mainly due to simplifications in the procedures. However, improving case flow management does not necessarily mean that the processing times are improved, because the cases reaching the courts are sometimes fewer, but more complex (**France, Latvia, Spain**). The courts are struggling to cope with the number of divorce cases in **Montenegro, Ireland** and to a lesser extent, **Estonia, Italy** or **Spain**.

In terms of **employment dismissals**, although the average Clearance Rate for the states studied is higher than 100%, a number of courts are struggling to cope with the volume of cases, which leads to delays and backlogs (**Montenegro, Cyprus, Luxembourg, Slovakia**). **Andorra, Bosnia and Herzegovina** must follow closely the capacity of their courts in this area, as well as, to a lesser extent, **Estonia** and **Poland**. In 16 states, the Clearance Rate is positive, including **Albania, Armenia, Finland, France, Republic of Moldova, Portugal, Romania** and **"the former Yugoslav Republic of Macedonia"**. However, in these proceedings, the length of court proceedings can also be explained by the fact that some states, through their legal proceedings, have established procedural guarantees and negotiation procedures to strike a balance between the functioning of the economic system and the individual protection of employees.

It is in respect of **insolvency proceedings** that European states experience the greatest difficulties in managing cases. Only 8 states (**Turkey, Serbia, Denmark, "the former Yugoslav Republic of Macedonia", Hungary, Norway, Austria, Georgia**) have a positive Clearance Rate, while several states indicate a very low rate of about 30% (**Republic of Moldova, Andorra, Czech Republic**). The duration of case processing is particularly long in **Italy, Russian Federation, and Spain**. The economic crisis is certainly one of the main reasons for this situation, together with the specificity of the procedures that varies according to the national systems.

For **robberies**, case flow management in first instance courts is improving in **Azerbaijan, Bosnia and Herzegovina, Estonia, Lithuania, Slovenia, Ukraine**. **Albania, Armenia, Finland, Georgia, Republic of Moldova, UK-England and Wales** experience an increasing trend as regards the backlogs in first instance courts.

Regarding the procedures for **intentional homicides**, court efficiency is improving in **Albania, Finland, Latvia, Lithuania, Republic of Moldova, Ukraine**. It must be specially monitored in **Bulgaria, Montenegro**, and the **Russian Federation**. It is an issue of concern for **Turkey, UK-England and Wales, Romania, Georgia**, and **Armenia**.

A very large majority of the member states have specific emergency procedures for civil and criminal cases. Simplified procedures, which are often less expensive and faster, are being developed in a majority of member states both in civil (especially for uncontested claims) and criminal (for minor offenses) matters. Such procedures are also being developed in administrative law in almost half of the member states. Furthermore, in 26 states or entities, systems permit the parties and their lawyers to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to present their findings or on the hearing dates).

## Chapter 10. Prosecutors

In Recommendation Rec(2000)19 adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, prosecutors are defined as: "*public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.*"

All the states or entities have, sometimes under different titles, a public authority entrusted with qualifying and carrying out prosecutions. It can be noted that, while the office of the judge seems to be relatively homogeneous in the states or entities, that of the prosecutor is much less so. In all European states or entities, they play an important role in the prosecution of criminal cases. In most of the member states or entities, they also have a responsibility in the civil and even administrative law area. Another important aspect to be taken into account relates to the different levels of autonomy of prosecutors. In some states or entities, they benefit from protection of their independence on an equal level with judges, while in other states or entities, the criminal policies are directed from the Ministry of Justice and the level of independence is limited. In some states (for example, **UK-England and Wales** and **Malta**), specially authorised police officers have prerogatives during the preparatory phase before trial, or even in conducting the prosecution, held only by prosecutors in other states.

Throughout this chapter all these elements should be borne in mind to understand the differences of prosecution functions between states and consequently differences in status and numbers.

## 10.1 Number of public prosecutors, persons with similar duties and staff

**Table 10.1 Public prosecutors, persons with similar duties as public prosecutors and non-prosecutor staff attached to public prosecution services in 2012, in FTE (Q55, Q57, Q60)**

States/entities	Public prosecutors		Persons with similar duties as public prosecutors		Non-prosecutor staff attached to the public prosecution service		
	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.	Absolute number	Per 100 000 inhab.	Per prosecutor
Albania	330	11,7		NC	NA	NC	NC
Andorra	4	5,2		NC	4	5,2	1,0
Armenia	319	10,5		NC	160	5,3	0,5
Austria	349	4,1	152	1,79	382	4,5	1,1
Azerbaijan	1 069	11,6		NC	741	8,0	0,7
Belgium	827	7,4		NC	2706	24,2	3,3
Bosnia and Herzegovina	310	8,1		NC	608	15,9	2,0
Bulgaria	1 977	27,1		NC	2989	41,0	1,5
Croatia	617	14,5		NC	1095	25,7	1,8
Cyprus	112	12,9		NC	83	9,6	0,7
Czech Republic	1 242	11,8		NC	1429	13,6	1,2
Denmark	566	10,1	NA	NC	NA	NC	NC
Estonia	168	13,1	7	0,54	84	6,5	0,5
Finland	402	7,4	NAP	NC	172	3,2	0,4
France	1 901	2,9	NA	NC	NAP	NC	NC
Georgia	405	9,0		NC	85	1,9	0,2
Germany	5 245	6,5	942	1,17	10323	12,9	2,0
Greece	549	5,0	NA	NC	NA	NC	NC
Hungary	1 812	18,3		NC	2683	27,1	1,5
Iceland	81	25,2		NC	NA	NC	NC
Ireland	107	2,3	32	0,70	84	1,8	0,8
Italy	1 900	3,2	1838	3,08	8964	15,0	4,7
Latvia	451	22,1		NC	393	19,2	0,9
Lithuania	767	25,5		NC	524	17,4	0,7
Luxembourg	47	9,0	7	1,33	109	20,8	2,3
Malta	29	6,9	NA	NC	21	5,0	0,7
Republic of Moldova	743	20,9		NC	400	11,2	0,5
Monaco	5	13,8	1	2,77	5	13,8	1,0
Montenegro	91	14,7		NC	140	22,6	1,5
Netherlands	790	4,7	NA	NC	3972	23,7	5,0
Norway	616	12,2		NC	NA	NC	NC
Poland	6 059	15,7	NA	NC	7337	19,0	1,2
Portugal	1 565	14,9	NA	NC	1672	15,9	1,1
Romania	2 557	12,0		NC	3006	14,1	1,2
Russian Federation	32 645	22,8		NC	11840	8,3	0,4
Serbia	659	9,2	NA	NC	1088	15,1	1,7
Slovakia	901	16,7		NC	913	16,9	1,0
Slovenia	189	9,2		NC	227	11,0	1,2
Spain	2 445	5,3	NA	NC	2396	5,2	1,0
Sweden	1 013	10,6		NC	421	4,4	0,4
Switzerland	839	10,4	84	1,04	1623	20,2	1,9
The FYROMacedonia	207	10,0		NC	198	9,6	1,0
Turkey	4 357	5,8		NC	18060	23,9	4,1
Ukraine	12 474	27,4		NC	NA	NC	NC
UK-England and Wales	2 689	4,8	362	0,64	3789	6,7	1,4
UK-Northern Ireland	176	9,7		NC	390	21,4	2,2
UK-Scotland	555	10,4		NC	1155	21,7	2,1
<b>Average</b>	<b>1 982</b>	<b>11,8</b>	<b>381</b>	<b>1,45</b>	<b>2307</b>	<b>14,2</b>	<b>1,5</b>
<b>Median</b>	<b>617</b>	<b>10,4</b>	<b>84</b>	<b>1,17</b>	<b>675</b>	<b>14,0</b>	<b>1,1</b>
<b>Minimum</b>	<b>4</b>	<b>2,3</b>	<b>1</b>	<b>0,54</b>	<b>4</b>	<b>1,8</b>	<b>0,2</b>
<b>Maximum</b>	<b>32 645</b>	<b>27,4</b>	<b>1838</b>	<b>3,08</b>	<b>18060</b>	<b>41,0</b>	<b>5,0</b>
Israel	925	11,6	NA	NC	528	6,6	0,6

### Comments:

**Bulgaria:** the total number of prosecutors of second and third instance also includes the investigators in the Investigation departments at the District Prosecutor's Offices, District Military Prosecutor's Offices and the National Investigation Service. The total number of prosecutors until December 31, 2012 (1 977) includes 512 magistrates serving as "investigators in the Investigation Department at the District Prosecution Office".

**Croatia:** the total number of prosecutors includes all officials in the public prosecutor's offices, including heads of the public prosecutor's offices (the Public Prosecutor of the Republic of Croatia, county and municipal public prosecutors, the head of the Bureau for Combating Corruption and Organised Crime) and all public prosecutors' deputies (deputies of the Public Prosecutor, deputies of the head of the Bureau for Combating Corruption and Organised Crime, and deputies of the county and municipal public prosecutors). As regards the number of non-prosecutor staff, the data of the previous exercise only refers to technical staff (drivers and janitor service), while 2012 data includes them, as well as civil servants (state judicial counsellors, administrative clerks, etc.).

**Finland:** the prosecutorial organization is a two-tiered structure. It consists of the Office of the Prosecutor General, which is the central authority of the prosecution service, and 13 local prosecution offices (in 2010 there were 15 local offices) with 27 service bureaus. Most criminal matters (some 82,000 cases annually) are treated by the local prosecution units. The Office of the Prosecutor-General mainly deals with criminal cases having a wider significance to society as a whole (a few dozen every year).

**Georgia:** due to an increase in the number of prosecutor in 2012, the number of non-public prosecutor staff has increased as well.

**Ireland:** in the 201 staff members, there are 117 prosecutors and 84 non-legal staff members. The total number includes 79 males and 122 females.

**Latvia:** the total number of prosecutors has decreased as compared to 2010, since prosecutors have left the service, while no new prosecutors have been recruited. Data concerning the non-prosecutor staff includes an administrative director, deputies of the administrative director and other staff of the Administrative Director Office (staff of Chancellery, interpreters, IT specialists, personal specialists, car drivers, auditors (in total 321 employees, among whom 234 females), as well as prosecutors assistants (in total 72 assistants to prosecutors, among whom 53 females). Prosecutors' assistants do not have the prosecutor's procedural powers.

**Montenegro:** the total number of deputies in the specialized department for the fight against organised crime, corruption, terrorism and war crimes is 7, among whom 4 males and 3 females. The reason for the decreasing number of public prosecutors as compared to 2010 is that some of them retired, while others left the prosecutorial organisation.

**Norway:** the organisation of the public prosecutors establishes three tiers. The first tier of prosecutors is integrated within the police. Each police district is set up with prosecutorial units or departments. The second tier of prosecutors consists of the Regional Public Prosecution Offices. The Director of Public Prosecutions forms the last and topmost tier. Although the first tier of prosecutors is organised with the police, and the budget related to these prosecutors follows the budget for the police, these prosecutors have the same formal qualifications as the two topmost layers of prosecutors, but will generally have less working experience and qualifications gained than prosecutors in the second and third tier.

**Portugal:** the data above includes the number of magistrates of the Public Prosecution Service in courts of first instance, second instance and superior courts, with the exception of the Constitutional Court.

**Slovakia:** the increase in the number of non-prosecutor staff results from the organisational changes in the prosecution services in 2011. During that year the Military prosecution services (which were administrated by the Ministry of Defence) were abolished and all the staff assigned to the prosecution services.

**Slovenia:** since November 2011, when the new State Prosecutor Act came into force, the function "assistant state prosecutor" has changed to "local state prosecutor". The same legal act dissolved the special department of the Office of the State Prosecutor General, responsible for the second instance level. The proceedings before the courts of appeal are now governed by the 4 State circuit prosecutor offices in cities where the higher courts are located. All Slovenian prosecutors are organised in 12 offices (11 circuit prosecutor offices and one specialised State Prosecutor's Office, in which local, circuit and higher prosecutors work) and the Supreme State Prosecutor Office (supreme state prosecutors and general state prosecutor).

**Turkey:** since the military judicial system is organised as a separate branch of the judiciary, the figures related to the military judicial system have not been included in the general total. The Turkish government is planning to establish second instance courts and prosecution services in these courts. Therefore, there is a dramatic increase in the number of staff members.

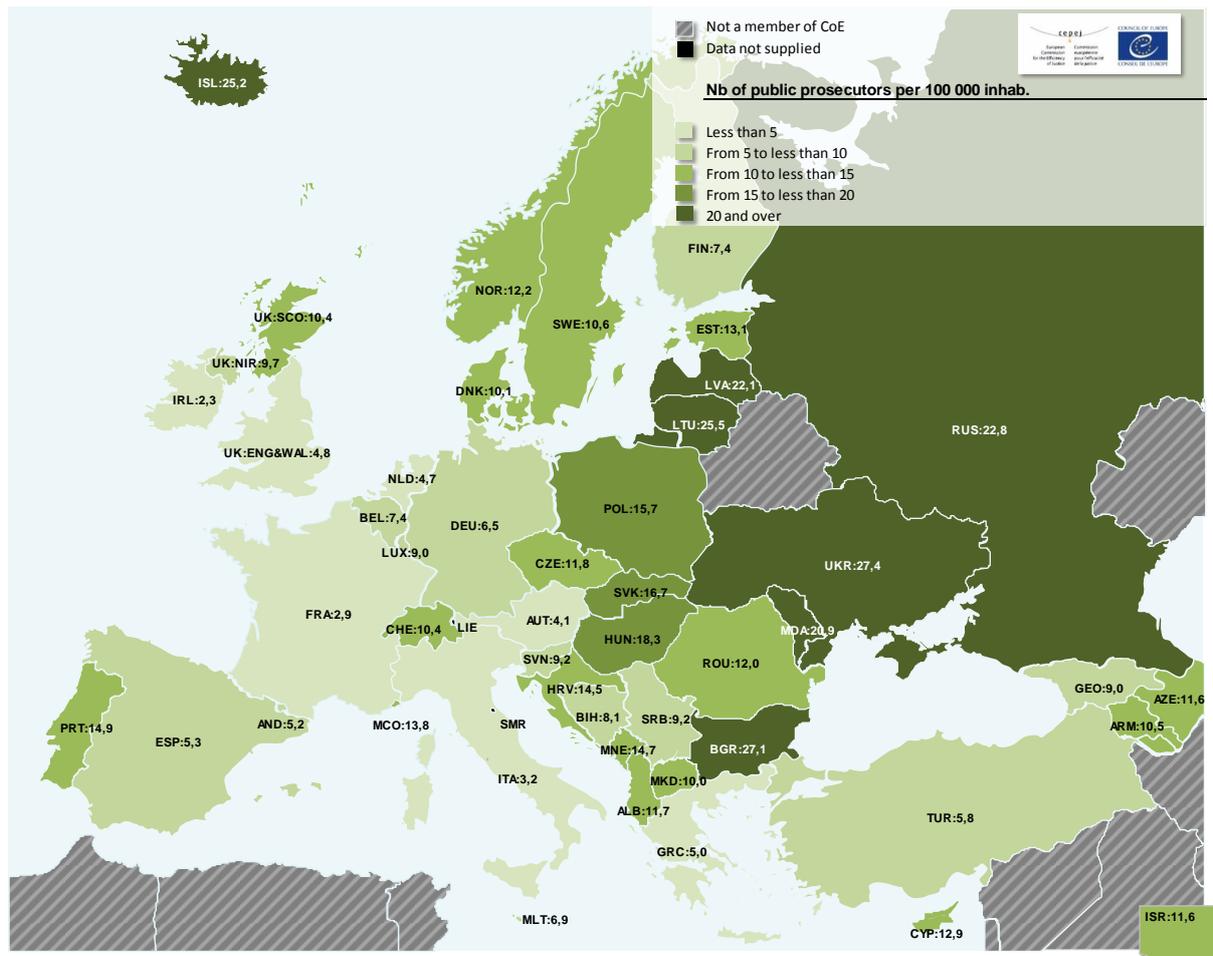
**UK- England and Wales:** the figures given are held as FTE numbers at 31 August 2013; hence, for the purpose of this report, the numbers have been rounded up individually to account for each prosecutor, regardless of their working pattern and so the summation of them does not match the total provided. The total figure of prosecutors is the number of legally qualified Crown Prosecution Service prosecutors of all levels (i.e. qualified lawyers). The non-prosecutor staff is non-legally qualified staff, employed in administrative positions. The non-prosecutor staff includes casework and paralegal staff who assist prosecutors in the administration and preparation of cases. Numbers are correct as of 31st March 2013.

**UK-Scotland:** there is a total of 33 Advocate Deputes and two law officers, who are second instance prosecutors or at the supreme court level.

**Israel:** the numbers provided concern both the Police Prosecution Department and the State Prosecutor's Office. These data also includes lawyers in public administration acting as public agents, such as state prosecutors.

In certain states, the functions of prosecutor are carried out by police officers (**Monaco, France, Denmark, Greece, Israel, Malta and Poland**) mainly in matters involving minor offences. Police officers can carry out investigations and take part in hearings.

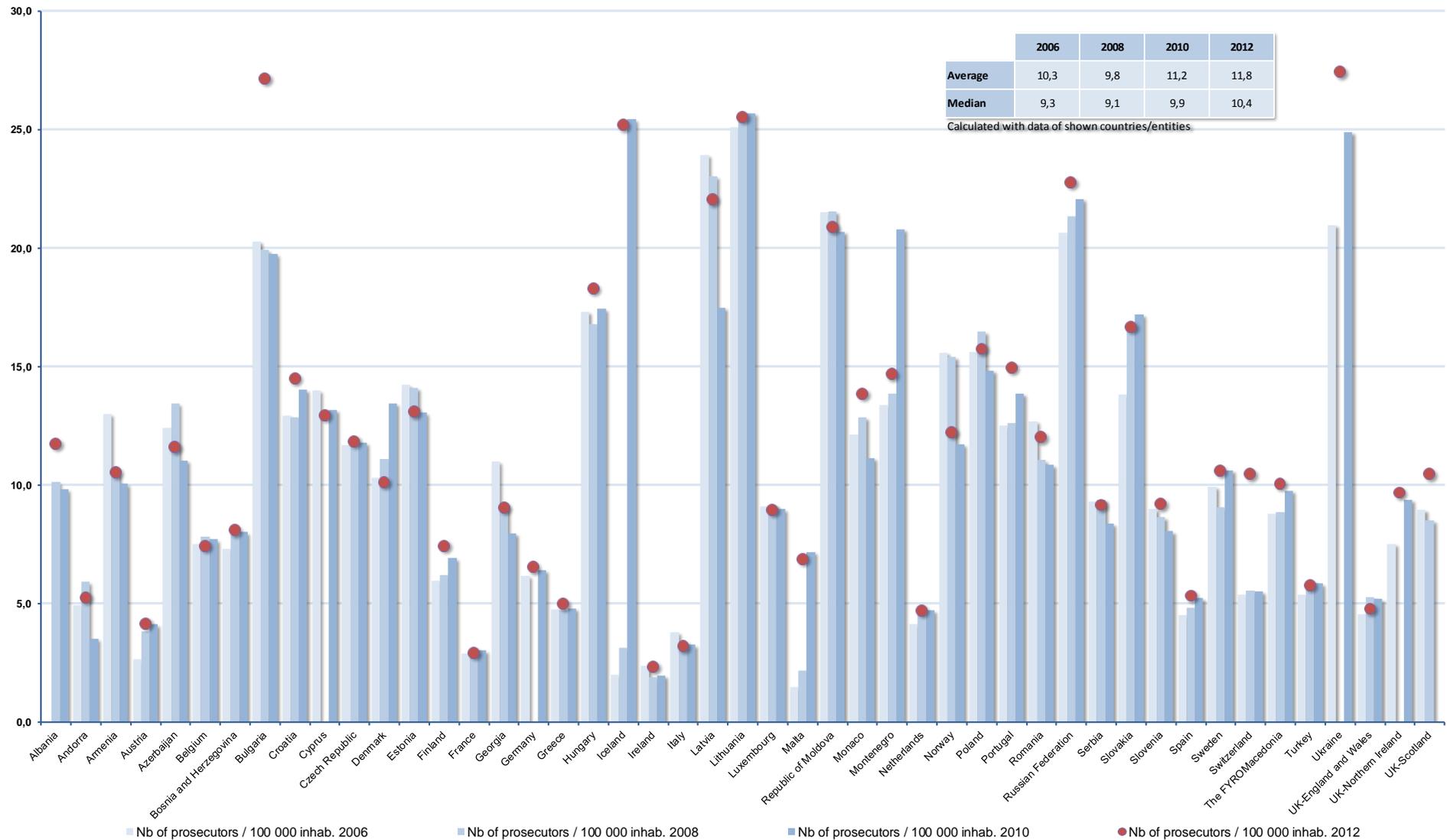
Figure 10.2 Number of public prosecutors per 100.000 inhabitants in 2012 (Q55)



The highest number of public prosecutors (20 or more prosecutors per 100.000 inhabitants) can be found in Eastern European states (**Bulgaria, Lithuania, Latvia, Republic of Moldova, the Russian Federation, Ukraine**), as well as in **Iceland**. Seven states (**UK-England and Wales, Austria, France, Greece, Ireland, Italy, and the Netherlands**) have the lowest number (less than 5 prosecutors per 100.000 inhabitants).

Only 9 states or entities were able to provide data on persons fulfilling tasks similar to the task of a public prosecutor (**Austria, Estonia, Germany, Ireland, Italy, Luxembourg, Monaco, Switzerland, UK-England and Wales**), even though persons exercising these functions exist in a larger number of states or entities. They may be counted within the overall number of prosecutors. In **Austria**, specifically trained officers of the Public Prosecutor's Office (*Bezirksanwälte*) are allowed to act under the supervision of a prosecutor (quite similar to the *Rechtspfleger* but with a lower range of competences and fewer qualifications). Police officers and public prosecutors have similar competences in **Greece, Malta, Poland and France** (*officier du ministère public*). In **UK-England and Wales**, some government Departments have prosecutors specialised in offences specifically related to the areas of the Departments concerned. In **Finland**, the Chancellor of Justice of the Government and the Parliamentary Ombudsman may also prosecute. In Ireland, much of the work of the Director of Public Prosecutions is carried out by lawyers in private practice rather than by lawyers employed by the state.

Figure 10.3 Number of prosecutors per 100.000 inhabitants between 2006 and 2012 (Q1, Q55)



As regards the evolution of the number of prosecutors between 2006 and 2012, a certain stability can be noticed. However, the situation differs according to the states. Between 2010 and 2012, an important decrease (of more than 20%) is characteristic of **Denmark** and **Montenegro**. On the contrary, a significant increase (of more than 20%) is notable for **Bulgaria** and **Switzerland**. With regard to the latter, the entry into force in early 2011 of the new Swiss Code of Criminal Procedure led to the abolition of the function of “investigating judge”; such judges all became prosecutors. A particularly low number of prosecutors (less than 5 prosecutors per inhabitant) is found in 2012 in **Austria**, **France** and **Italy** and, in a different system, such that of common law, in **Ireland** and **UK-England and Wales**.

**Figure 10.4 Number of non-prosecutor staff per 100.000 inhabitants (Q1, Q60)**

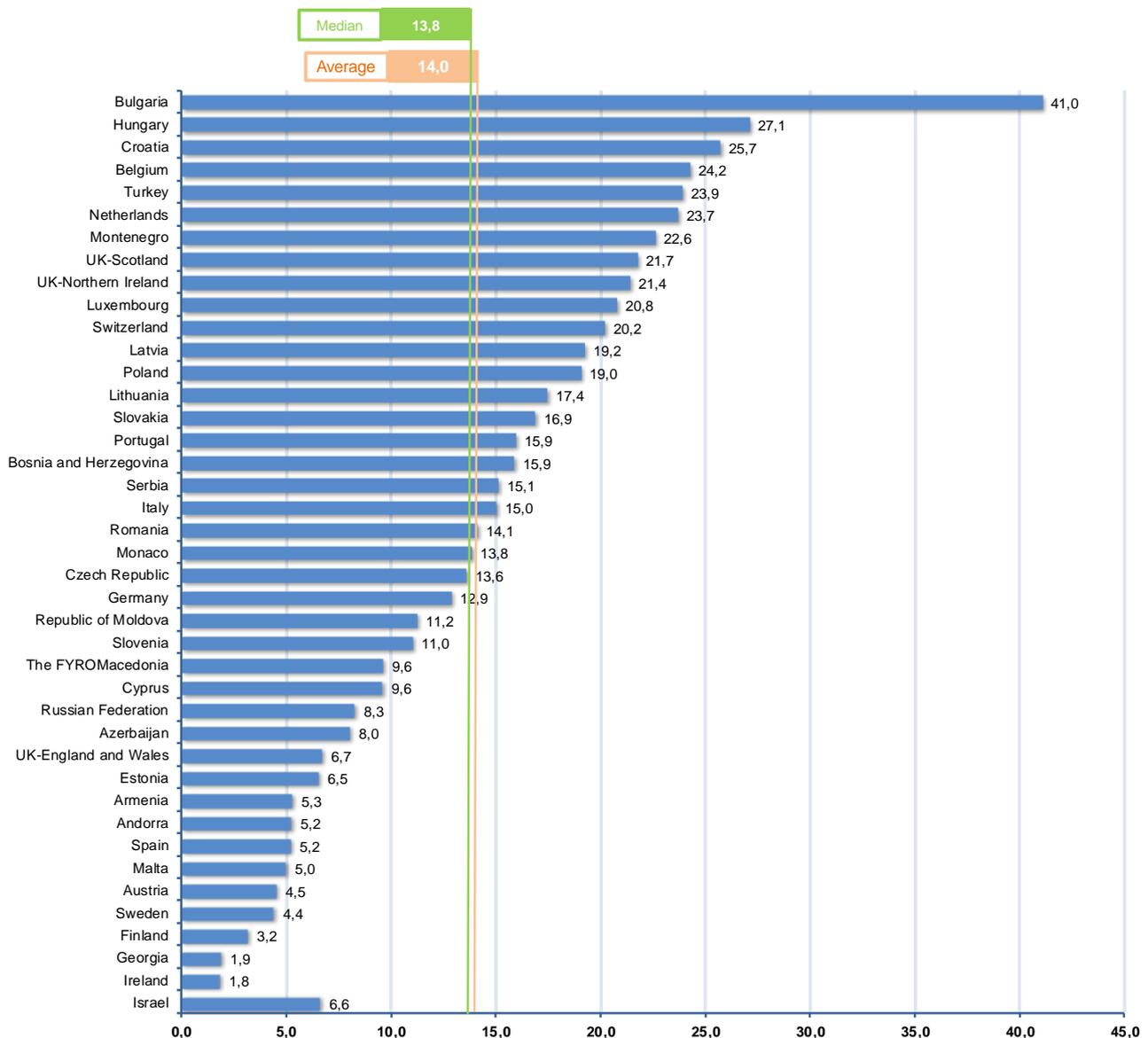
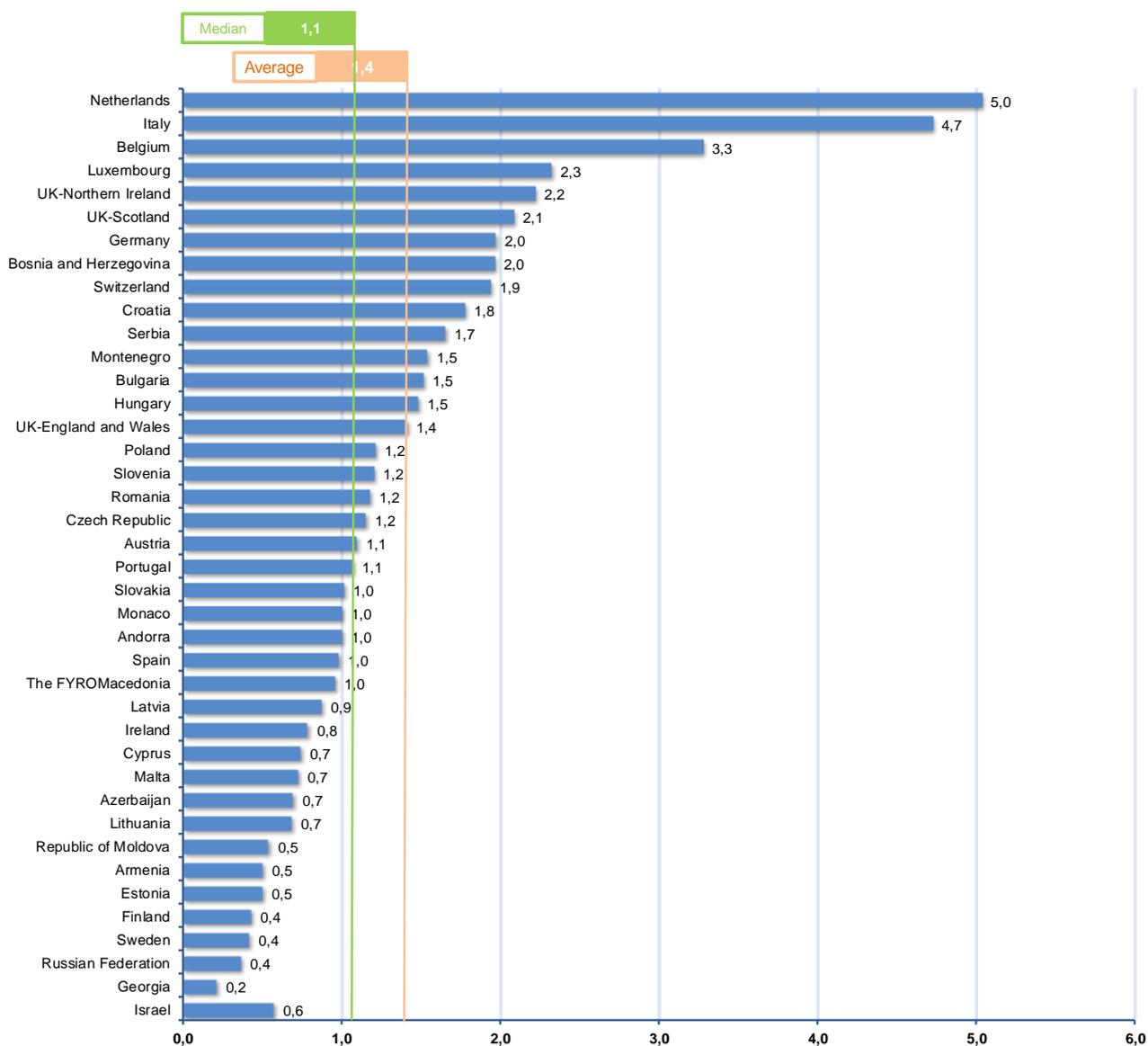


Figure 10.5 Number of non-prosecutor staff per one prosecutor in 2012 (Q55, Q60)



**Note:** France and Turkey were not included in the graph as the two countries were unable to draw a distinction between staff attached to judges and prosecutors (cf. table 8.1 – question 52).

The organisation of the prosecution office differs from one state or entity to another. In the majority of member states or entities (23), prosecutors work with a number of staff approximately equal to or higher than the number of prosecutors (in **Andorra, Austria, Spain, Latvia, Monaco, "the former Yugoslav Republic of Macedonia", Portugal and Slovenia** the number is approximately equal). In some states or entities, a limited number of prosecutors work with a high number of staff, who can take on a significant part of preparatory tasks (**Belgium, Italy and Turkey**), whereas such states as **Armenia, Estonia, Finland, Georgia, Netherlands, Republic of Moldova, the Russian Federation and Sweden** have a high number of prosecutors but a low number of staff. These factors highlight the diversity of status and of functions performed under the same designation of prosecutor.

## 10.2 Role and powers of public prosecutors

### 10.2.1 Criminal law

Figure 10.6 Role and attributions of public prosecutors in criminal procedures (Q105)

States/entities	Conduct or supervise police investigation	Conduct investigations	Request investigation measures from the judge	Charge	Present the case in the court	Propose a sentence to the judge	Appeal	Supervise the enforcement procedure	Discontinue a case without needing a decision by a judge	End the case by imposing or negotiating a penalty	Other significant powers
Albania	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Andorra	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Armenia	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Austria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Azerbaijan	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Belgium	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bosnia and Herzegovina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Croatia	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Cyprus	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Finland	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Germany	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Greece	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iceland	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Ireland	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Latvia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Luxembourg	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Malta	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Republic of Moldova	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Monaco	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montenegro	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Netherlands	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norway	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Poland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Russian Federation	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Serbia	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Slovenia	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Sweden	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Switzerland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
The FYROMacedonia	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Turkey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ukraine	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
UK-England and Wales	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UK-Northern Ireland	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UK-Scotland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Number of countries</b>	<b>40</b>	<b>35</b>	<b>35</b>	<b>43</b>	<b>47</b>	<b>39</b>	<b>46</b>	<b>23</b>	<b>43</b>	<b>22</b>	<b>23</b>
Israel	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes

Yes  
No

The prosecutor's role is very important in pre-trial preparation and during the actual trial, but far more limited in the enforcement phase.

In 40 states or entities, prosecutors can conduct or supervise police investigations. Member states or entities which do not entrust this task to prosecutors are: **Belgium, Finland, Ireland, Malta, Slovenia, UK-England and Wales, UK-Northern Ireland** and **Israel**. In 35 states or entities, the prosecutor may request the judge to order specific investigation measures. This is not possible for prosecutors in: **Albania, Armenia, Azerbaijan, Croatia, Cyprus, Ireland, Norway**, the **Russian Federation, Serbia, Sweden, UK-England and Wales, UK-Northern Ireland** and **Israel**.

43 states or entities indicated that prosecutors could end cases by dropping them without the need for a judicial decision. This is not possible in **Albania, Andorra, Italy** and **Spain**. Only 22 states or entities allow prosecutors to end the case by imposing or negotiating a penalty or a measure without a judicial decision.

All the responding states or entities stated that prosecutors are authorised to present the case in court. 43 states or entities have indicated that the prosecutor may bring charges.

Prosecutors from 39 states or entities can suggest a sentence to the judge. Such a competence is not granted in the following states or entities: **Cyprus, Ireland, Italy, "the former Yugoslav Republic of Macedonia", Ukraine, UK-England and Wales, UK-Northern Ireland and UK-Scotland.**

The prosecutor can appeal the judge's decision in 46 states or entities, the sole exception being **Northern Ireland (UK).**

Prosecutors supervise the enforcement procedure in only 23 member states.

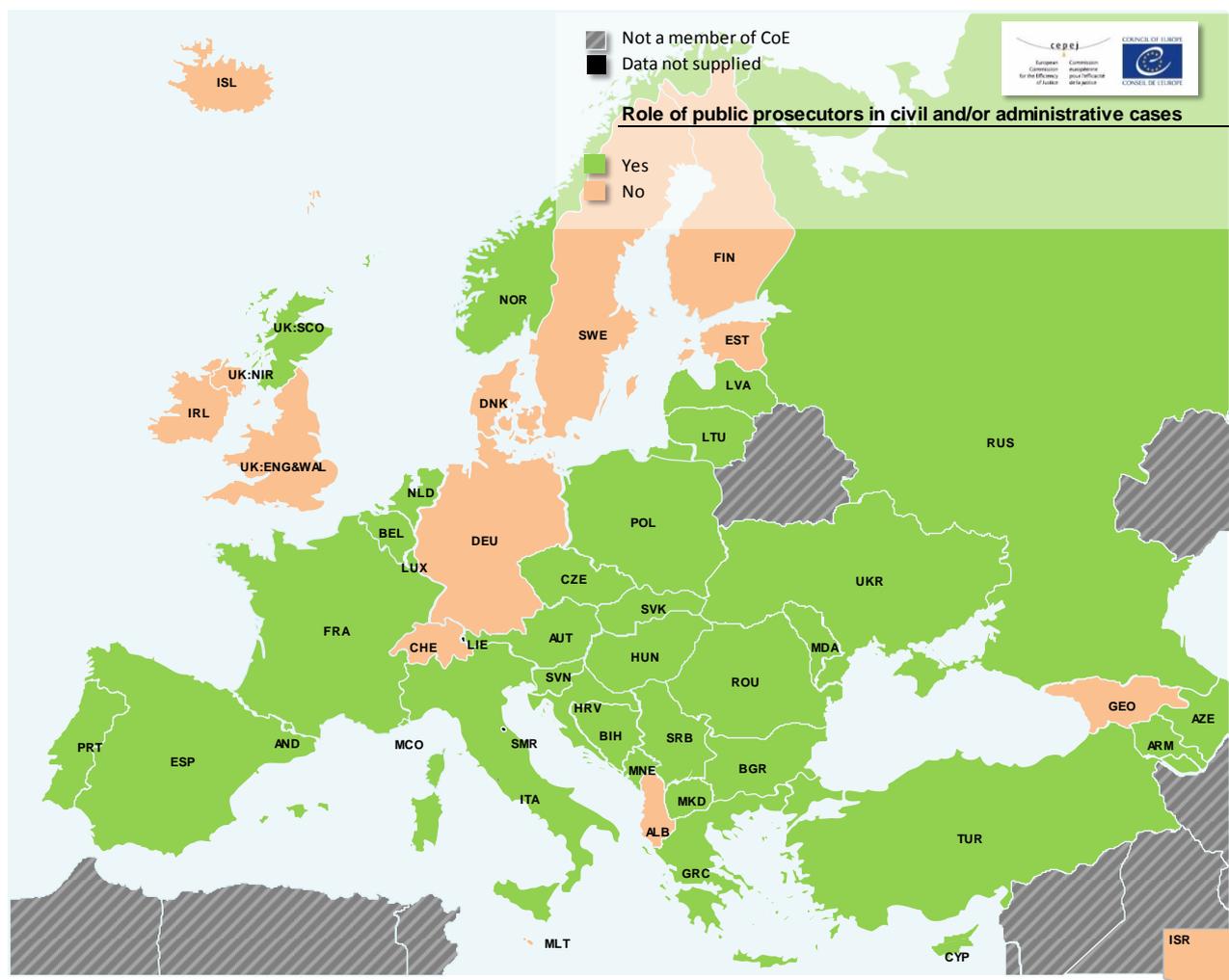
In 23 member states or entities, the prosecutors may have other significant powers in criminal matters. For example, in **France**, prosecutors may play a role in local policies for security and prevention or, for example, against domestic violence; in **Latvia and Romania**, they protect the interests of minors and persons with disabilities and prisoners; in **Croatia**, the State Attorney General may grant procedural immunity to a member of a criminal organisation; finally in **Greece**, prosecutors supervise and control correctional facilities.

### 10.2.2 Areas other than criminal law

It is obvious that the public prosecutors' main task is to prosecute criminal cases. Nevertheless, in the majority of the member states or entities (32) – public prosecutors can also play a role in civil or administrative cases.

Only 12 states or entities do not allow prosecutors to play any role in civil or administrative cases: **Albania, Denmark, Estonia, Finland, Georgia, Germany, Iceland, Ireland, Malta, Sweden, Switzerland, UK-England and Wales, UK-Northern Ireland and Israel.**

**Figure 10.7 Role of public prosecutors in civil and/or administrative cases (Q106)**



About half of the member states mentioned that public prosecutors represented the public interest and protected the legality in civil and/or administrative proceedings (**Armenia, Austria, Bosnia and**

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**Herzegovina, Croatia, the Czech Republic, France, Hungary, Italy, Lithuania, Montenegro, Republic of Moldova, Monaco, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine).** Twelve member states pointed out that prosecutors represented the state and defended the interests of state institutions in trials (**Armenia, Azerbaijan, Croatia, Cyprus, Georgia, Greece, Malta, Republic of Moldova, Portugal, the Russian Federation, Slovakia and Ukraine**).

In civil cases, the public prosecutor (in 18 states and entities) often defends the interest of *vulnerable persons* such as minors, victims, disabled, incapable and disappeared persons and plays an important role in *family law cases* (**Albania, Andorra, Austria, Bulgaria, the Czech Republic, France, Hungary, Italy, Latvia, Lithuania, Republic of Moldova, Portugal, Romania, the Russian Federation, Slovakia, Spain, Turkey and Ukraine**). They can have responsibilities concerning the annulment of marriages, determining a person's legal capacity, the declaration in respect of a disappeared or deceased person, the obtaining of a nationality, the restoration of the custody over a child (or improper removal of a child), the deprivation of parental rights and a child's adoption. Other areas of jurisdiction in the field of civil law include bankruptcy cases (the **Czech Republic and Slovakia**), compensation for victims and immigration (**Norway**), labour accidents and professional illnesses (**Portugal**), banning of associations (**Turkey**) and forfeiture of assets (**UK-Scotland**). In **France**, prosecutors deal with cases concerning personal status, the management and disciplinary aspects of certain professions, recovery of maintenance payments, the monitoring of commercial procedures and education assistance to at-risk minors. In **Monaco**, the public prosecutor also acts in civil matters (personal status, enforcement proceedings), commercial matters (struggling businesses) and drafts conclusions before the Court of Revision and the Supreme Court. In **Azerbaijan**, prosecutors also deal with administrative offences (lesser indictable offences) in which minors are involved. In the **Netherlands**, prosecutors can prevent marriage in cases provided for by law and have the authority to grant certification in relation to missing or deceased persons.

22 states reported that public prosecutors are involved in administrative law cases: **Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, Croatia, Hungary, Latvia, Lithuania, Montenegro, Republic of Moldova, the Netherlands, Poland, Portugal, Romania, the Russian Federation, Serbia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine**. In **Spain**, public prosecutors may act in proceedings for the protection of fundamental rights against acts of public administrations.

### **10.3 Case proceedings managed by public prosecutors**

The following table provides information on the number of criminal cases addressed by the prosecutors in the first instance. Five states or entities (**Cyprus, Greece, Malta, Spain and Ukraine**) were not able to provide the data for 2012, while 26 others (**Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Italy, Luxembourg, Montenegro, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, UK–Northern Ireland**) provided information on some points and not on others.

All states or entities were able to indicate that traffic cases were included. 13 states or entities (**Azerbaijan, Austria, Belgium, Bosnia and Herzegovina, Denmark, Greece, Iceland, Malta, Republic of Moldova, Norway, Slovakia, Turkey, Ukraine and Israel**) indicated that traffic cases were not included.

**Note to the reader:** whether traffic offences were included or not in the data below obviously changes significantly the number of cases handled by the prosecutors. Therefore, relevant analysis based on a comparison of states or entities can be done only while considering clusters of states / entities having or not having included traffic offences.

## 10.8 Case management by the public prosecution services in 2012 (Q107, Q108)

States/entities	Received	Discontinued				Concluded by a penalty or a measure imposed or negotiated	Brought to the courts	Ratio of cases brought to the courts / cases received	Ratio of cases brought to the courts / total non discontinued cases
		Total	Offender not identified	Lack of an established offence or a specific legal situation	Opportunity				
Albania	27 961	23 198	8 728	14 470	NA	NA	7 271	26,00%	152,66%
Andorra	53	NAP	NAP	NAP	NAP	NAP	35	66,04%	NC
Armenia	NA	4 470	NA	NA	NA	4 513	NA	NC	NC
Austria	533 610	468 578	292 159	163 884	12 535	24 410	70 962	13,30%	109,12%
Azerbaijan	388	5 873	4 418	1 322	133	NAP	9 511	NC	NC
Belgium	687 020	478 505	166 801	153 669	158 035	9 477	19 391	2,82%	9,30%
Bosnia and Herzegovina	66 302	8 795	NA	NA	NA	15 845	16 517	24,91%	28,72%
Bulgaria	144 950	91 523	NAP	91 523	NAP	NAP	41 595	28,70%	77,85%
Croatia	82 596	52 687	32 257	19 217	1 213	2 673	21 661	26,23%	72,42%
Cyprus	NA	NA	NA	NA	NA	NA	NA	NC	NC
Czech Republic	408 199	200 191	171 805	28 386	NAP	NAP	83 102	20,36%	39,95%
Denmark	180 907	35 799	NAP	NAP	NAP	45 243	90 162	49,84%	62,13%
Estonia	NA	30 915	16 788	11 231	2 896	1 705	8 829	NC	NC
Finland	84 959	10 112	NA	NA	NA	799	60 086	70,72%	80,28%
France	5 243 994	3 492 696	2 842 722	490 298	159 676	630 522	628 368	11,98%	35,88%
Georgia	47 771	18 031	2 145	13 246	75	7 897	9 120	19,09%	30,67%
Germany	4 591 966	2 572 660	NA	NA	1 282 314	197 026	1 079 154	23,50%	53,44%
Greece	NA	NA	NA	NA	NA	NA	NA	NC	NC
Hungary	221 697	54 201	6 313	12 824	NA	16 605	150 891	68,06%	90,09%
Iceland	5 711	770	NA	NA	NA	426	4 515	79,06%	91,38%
Ireland	15 289	4 674	NA	NA	NA	NA	7 123	46,59%	67,10%
Italy	3 441 519	2 369 825	1 450 679	908 825	10 321	NA	676 795	19,67%	63,15%
Latvia	13 372	1 361	0	507	854	1 407	9 220	68,95%	76,76%
Lithuania	103 966	37 596	15 092	18 299	4 205	NAP	23 954	23,04%	36,09%
Luxembourg	57 040	18 911	NA	NA	NA	1 091	13 812	24,21%	36,22%
Malta	NA	NA	NA	NA	NA	NAP	NA	NC	NC
Republic of Moldova	58 893	10 993	1 429	3 470	0	7 472	11 540	19,59%	24,09%
Monaco	2 793	1 751	1 505	124	122	246	1 042	37,31%	100,00%
Montenegro	10 948	NA	1 477	3 345	NA	1 022	5 554	50,73%	NC
Netherlands	224 200	37 200	NAP	NA	15 200	80 700	118 500	52,85%	63,37%
Norway	395 753	186 966	137 436	3 842	3 555	93 679	82 776	20,92%	39,65%
Poland	1 150 499	658 124	159 730	498 394	NAP	NAP	377 839	32,84%	76,74%
Portugal	551 252	NA	NA	NA	NA	NAP	77 350	14,03%	NC
Romania	1 756 001	548 661	NA	406 329	142 332	NAP	42 364	2,41%	3,51%
Russian Federation	921 995	758	NAP	NAP	NAP	321 479	863 335	93,64%	93,71%
Serbia	226 695	75 455	35 993	27 034	12 428	869	54 492	24,04%	36,03%
Slovakia	96 987	NA	NA	NA	NA	8 458	29 049	29,95%	NC
Slovenia	95 874	74 930	58 575	NA	2 280	1 837	13 304	13,88%	63,52%
Spain	NA	NA	NAP	NAP	NAP	NA	155 921	NC	NC
Sweden	530 311	194 329	NA	25 600	46 866	80 371	201 312	37,96%	59,92%
Switzerland	499 312	86 446	53 587	32 859	NAP	346 821	10 281	2,06%	2,49%
The FYROMacedonia	43 216	21 284	20 123	1 013	148	NAP	12 261	28,37%	55,90%
Turkey	3 052 941	1 366 311	NA	NA	NA	NA	977 492	32,02%	57,96%
Ukraine	NA	NA	NA	NA	NA	NA	NA	NC	NC
UK-England and Wales	927 256	81 167	4 181	NAP	NAP	NAP	837 719	90,34%	99,01%
UK-Northern Ireland	35 180	17 451						NC	NC
UK-Scotland	280 942	77 232	NAP	21 960	55 272	93 999	92 721	33,00%	45,52%
Average	670 508	353 169	238 432	118 067	90 974	73 948	170 657	34,97%	59,84%
Median	162 929	45 142	20 123	19 217	4 205	8 488	41 595	27,30%	61,03%
Minimum	53	758	0	124	0	246	35	2,06%	2,49%
Maximum	5 243 994	3 492 696	2 842 722	908 825	1 282 314	630 522	1 079 154	93,64%	152,66%
Israel	97 907	49 158	NA	NA	NA	NAP	40 456	41,32%	82,99%

### Comments:

**Andorra:** of the 53 cases received by the prosecutor, only 35 were able to be submitted to the courts. The remaining 18 were filed for lack of legal basis.

**Austria:** the data can include grouped cases which are counted as one case. Cases concluded with a penalty or a measure imposed, or cases negotiated by the public prosecutor are also included in "Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation".

**Azerbaijan:** received cases are the cases investigated by other investigation bodies of the Ministries and sent to the General Prosecution Office for approval – only then are they sent to the courts.

**Belgium:** the figures given come from the Public Prosecution Service's central statistics database (taken on 10 January 2013) consisting of records entered from the criminal sections (for lesser indictable offences) of the prosecution services and the registries of the courts of first instance. The Federal Prosecution Service is not taken into account. The figures given do not include traffic offences, cases dealt with by the crown counsel attached to the labour tribunals, police court appeals dealt with by the prosecution service attached to the magistrate's courts, nor disputes involving minors. The unit of account is a criminal case: a single case can have one or more defendants. In addition to the 478 505 cases on which no further action was taken, there are 37 471 cases discontinued by the crown prosecutors for reasons not included in the three sub-categories listed in question 108 (administrative fine, praetorian probation, problem concerning identification of the perpetrator, unknown grounds). Of the 9 477 cases which resulted in a penalty or measure imposed or negotiated by the prosecutor, 6 677 cases were closed following payment of a settlement, and 2 800 cases were closed following successful mediation. For 2012, there were 20 024 referrals of all types brought before the magistrate's court.

**Bulgaria:** prosecutors may not terminate pre-trial proceedings if the offender has been identified, except when statutory limits apply. When the perpetrator has not been identified, the prosecutor discontinues the case but investigation may continue. If the offender is identified at a later stage, the case is reopened.

**Croatia:** the number of cases which were discontinued because the offender could not be identified has significantly increased in 2012 (4 893 cases). Indeed, every year, the number of criminal charges against an unidentifiable offender increases, and the proceedings are discontinued when the statutory limits apply. Furthermore, in 2012, all state attorney's offices checked their records since they wanted to close their cases before the new Criminal Code came into force (on 1 January 2013). This also explains the increasing number of cases which were discontinued because the offender could not be identified. Also, some cases were discontinued because the offences in question were abolished by the new Criminal Code.

**Estonia:** figures given for "Cases brought by the public prosecutor to the courts" are not comparable with 2010 data (in 2010, figures provided concerned settlement proceedings). 2012 data only includes cases that were terminated by a prosecutor because of a lack of public interest in proceedings and in case of negligible guilt. The number of these cases is also included under "Cases discontinued by the public prosecutor". "Cases brought by the public prosecutor to the courts" include cases where a person has been sent to court in order to impose coercive psychiatric treatment by a court, as well as cases which have been sent to court in order to request termination of criminal proceedings (the latter was not taken into account in the previous reports). The total number of guilty plea procedures was 4 980. The difference found when comparing 2010 and 2012 data between "Discontinued by the public prosecutor because the offender could not be identified" and "Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation" is technical. Until 2010 (included), certain terminated cases were not included in centrally gathered statistics (cases which were terminated due to the fact that the limitation period for the criminal offence had expired). Although those cases were included in Police statistics, for technical reasons they were not included in the Ministry of Justice statistics.

**Germany:** the data does not include proceedings which were terminated by the public prosecutor because investigations did not offer sufficient reason for pursuing public charges (2011: 1 289 063 investigation proceedings terminated pursuant to section 170 (2) of the Code of Criminal Procedure). Data refer to 2011.

**Ireland:** the data refers to 2011.

**Latvia:** among the total number of cases charged by the public prosecutor before the courts, 233 were brought to court under a guilty plea procedure or similar.

**Lithuania:** cases charged by the public prosecutor before the courts also include cases discontinued by the court on the prosecutor's request, when the measures of criminal effect can be imposed on the persons concerned. As for the cases discontinued by the public prosecutor because the offender could not be identified, they include cases discontinued due to expiry of the limitation period, because the time limit usually expires when the suspect is not identified. There is an increasing number of criminal investigations and a larger workload of the prosecution service, which is influenced by the economic situation as well as national economic priorities. Increased unemployment during the downturn and other negative social phenomena brought about larger number of all kinds of criminal cases. Furthermore, the increased number of criminal investigations has direct correlations with the Law on Domestic Violence, which came into force on 15 December 2011. The Law makes it obligatory to start criminal investigation for every incident of domestic violence. Decreased number of discontinued cases (compared to 2010) may be a result of the following: larger percentage of solved cases (from 44 % up to 52% in 2011); smaller percentage of cases with an identified suspect (from 5 % in 2008-2009 to 0.9 % in 2012) discontinued due to expiry of the time limitation period; over the last few years the prosecution service has been seeking to finish criminal investigations under economy procedures - imposing penal or reformative measures, deciding the case with the Penal Order or using the accelerated process.

**Republic of Moldova:** the number of proceedings involving admission of guilt: prior to the court's decision on the admissibility of the case: 2008: 3 582; 2010: 3 058; 2012: 2 588; during the court proceedings: 2008: 4 187; 2010: 3 755; 2012: 4 287.

**Montenegro:** In 2012, public prosecutors discontinued 3345 cases due to lack of reasonable suspicion when a certain person has committed a criminal offence. The total number of cases discontinued by public prosecutors is not available, only a number for two sub-categories. There were 3 354 cases discontinued by public prosecutors because the act in question is not a criminal offence prosecuted *ex officio*. There are criminal offences prosecuted by a virtue of office - by a public prosecutor and those prosecuted upon a private complaint. This is one of the reasons for the discontinuation of cases in our legal system. The category in which this data fits better is "Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation".

**Netherlands:** cases in which no offender could be identified are not accepted by the prosecution service. The increase in the number of "cases discontinued by the public prosecutor" and the "cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor" may be explained by the fact that there has been a gradual change last years in the selection policy "at the gate" of the public prosecution. Until recently, the public prosecution had a "politieparketsecretarissen" placed in the police office. These "police public office aids" made a pre-selection of police reports before sending them to the public prosecutor. In many cases (a roughly estimated 30-40%) the reports were not transferred because of a lack of evidence. This could imply that further police investigation of cases was needed or that the reports lacked any realistic possibility to be prosecuted with success. Due to budget cuts and policy changes (as nowadays the police is responsible for the quality of the reports and therefore has to control the reports itself) the "politieparketsecretarissen" does not work any longer for the police. As a consequence, the number and proportion of policy dismissals by the public prosecutor increased considerably. The "Law of Public Prosecution sanctions" has increased the possibility for the public prosecution to impose sanctions itself, independently of the judiciary. The increase of the number of "cases discontinued by the public prosecutor for reasons of opportunity" is explained, in part for the reasons indicated above as the policy dismissal is concerned, and in part by the fact that these cases pertain to extremely minor cases ("*bagatelzaken*"), cases which have been solved by the suspects and victims themselves and cases which are considered too old to be still prosecuted. These kinds of cases are not filtered / pre-selected anymore by the "politieparketsecretarissen" and are registered now at the public prosecution offices.

**Poland:** as to the category “cases discontinued by the public prosecutor for reasons of opportunity”, since the Criminal Procedure Code does not state the opportunity rule as such, the Prosecutor General Office decided to transpose the figures of this category in the other two categories concerning discontinued cases. That is why the answer in this respect is NAP for “cases discontinued by the public prosecutor for reasons of opportunity”.

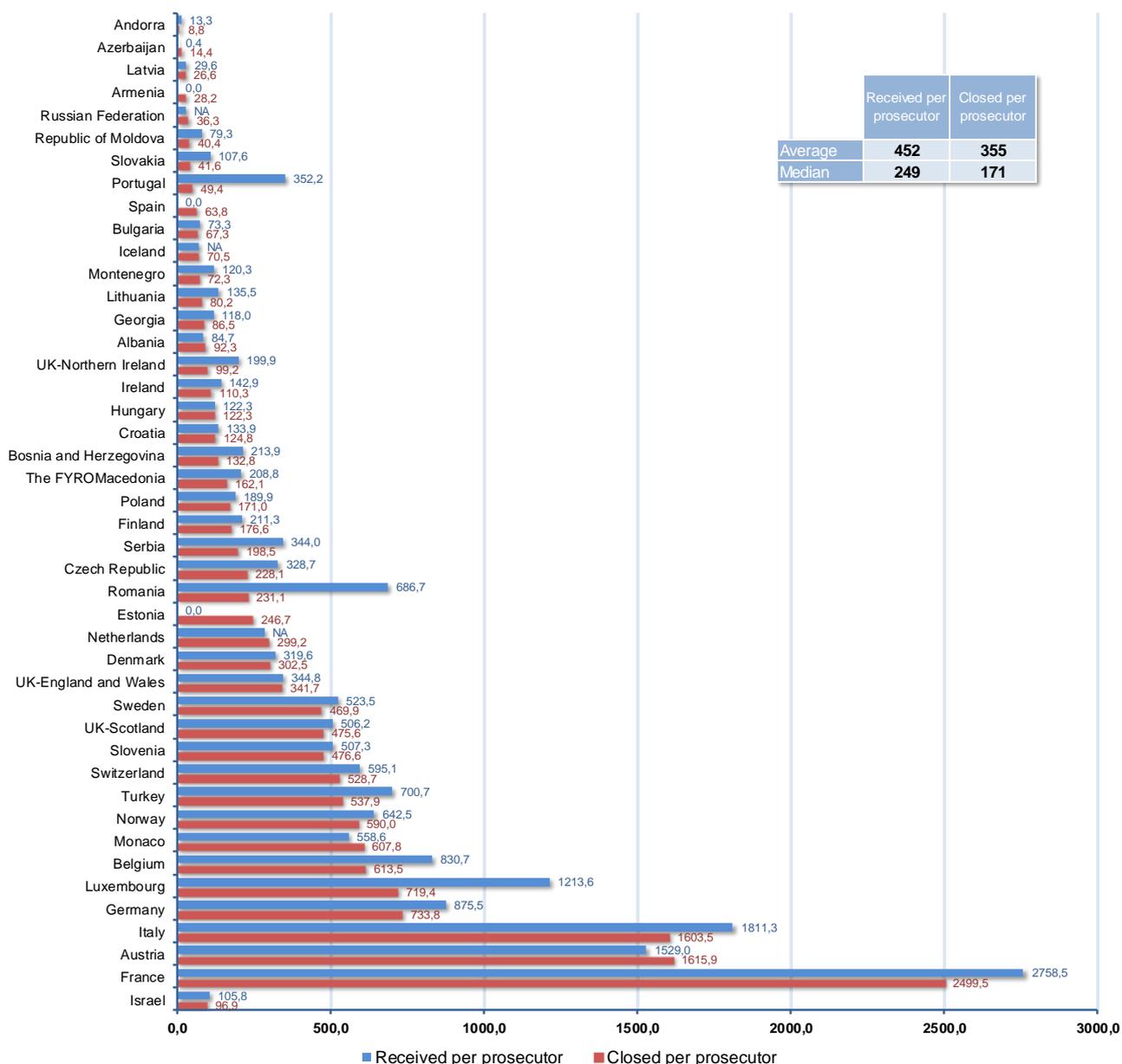
**Slovenia:** the number of cases received by the public prosecutor includes the number of cases against known and unknown offenders. There is no vertical nor horizontal consistency in the data due to the fact that data for certain categories is not available. Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor include the number of dismissed denunciations due to concluded settlement between an offender and the aggrieved person or due to the offender accomplishing some tasks imposed by a public prosecutor. The public prosecutor cannot discontinue the case, because the offender could not be identified, so the number 58 757 represents all criminal cases in which the offender was not yet identified, but which are still open. Cases discontinued by the public prosecutor for reasons of opportunity include the number of dismissed denunciations in trifle cases. The cases that are concluded by a penalty or a measure imposed or negotiated by public prosecutor (1 837) are also discontinued according to Slovenian law, so they have been included in the total number of discontinued cases. Because the public prosecutor cannot discontinue a case, if the offender cannot be identified, the figure “Offender not identified” (58 757) should be counted in the total number of discontinued cases with reserve. As to the total number of discontinued cases by the public prosecutor (74 930), it must be taken into account that there is no consistency in these figures.

**Switzerland:** the difference between the 2010 and 2012 figures can be explained by the new criminal procedure. In 2011, the two new Federal Codes of Civil Procedure and Criminal Procedure replaced the 27 cantonal codes of civil and criminal procedure. This led to a fundamental change in the judicial organisation of certain cantons and procedural law in general. For example, in criminal proceedings, the position of investigating judge was abolished and was replaced by a prosecutor who now leads the criminal investigation and then presses charges and argues the case before the criminal courts.

**UK-Scotland:** data refers to the financial year 2012-13. Total disposals will not equal total criminal cases received, as some cases against the same accused will be linked and taken forward as one case. There is also a time lag between receipt of a case and final disposal, so that some cases received in 2012-2013 will not result in a disposal that year, and some of the disposals in 2012-13 will relate to cases reported in earlier years. The cases discontinued because the offender could not be identified are not received by prosecutors. Cases discontinued due to the lack of an established offence or a specific legal situation include cases where there is insufficient admissible evidence, cases which are time barred, cases which are not a crime and cases where the prosecutor has no jurisdiction. Cases discontinued for reasons of opportunity include all other reasons for discontinuing a case. The number of discontinued cases by the public prosecutor for reasons of opportunity has increased. This is partly because of an increase in the number of cases being reported. In addition there was a high number of cases of “No further actioned” in 2012-13 (where we initially took action but discontinued the case at a later date). Some of this is due to “housekeeping” work on the data, checking and closing old cases.

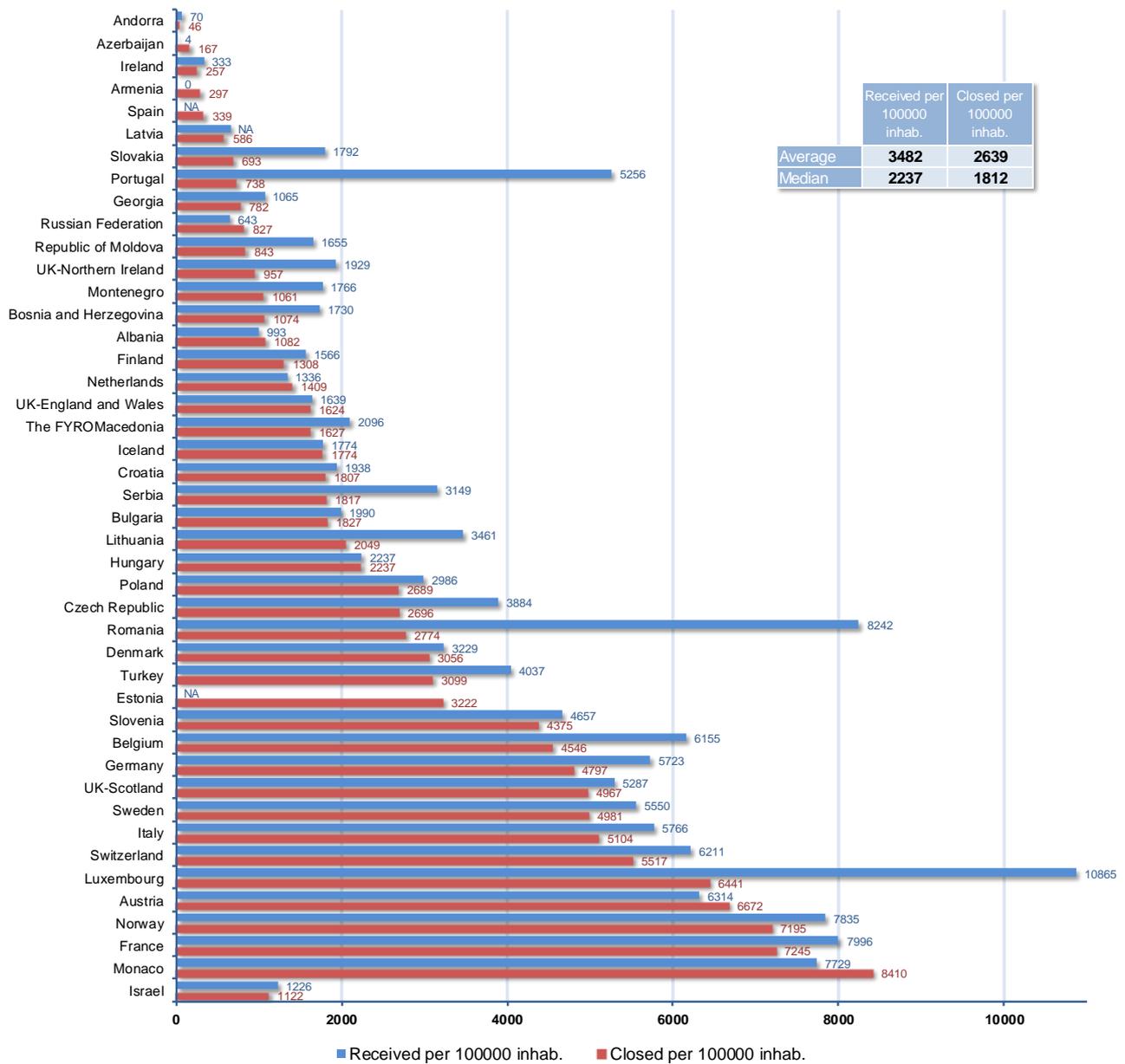
**Israel:** information concerning discontinued cases is unavailable for cases of the State Prosecution, due to limitations of the computerized system of the State Prosecution. The information is available for cases of the Police Prosecution: 1.NAP; 2. 22952; 3. 7986. As to the received cases: cases received by the public prosecutor: 97907 (Police Prosecution - 69816; State Prosecution - 28091); Cases discontinued by the public prosecutor: 49158 (Police Prosecution - 32175 ; State Prosecution – 16983; Cases charged by the public prosecutor before the courts: 40456 (Police Prosecution - 35094; State Prosecution - 5362). For all the data concerning the cases managed by the public prosecutor, it is important to note that the cases are counted differently by the Police Prosecution, the State Prosecution, and the Courts Management. The number of discontinued cases of the Police Prosecution also includes cases which were received during previous years, but which were discontinued during 2012. The number of cases charged before the courts does not correspond with the answer to question 94 (number of first instance criminal law cases) because this number does not include traffic offenses, some infractions, and all arrests before and after the indictment. For this reason, the numbers provided here do not reflect what we mentioned when we indicated that the Police Prosecution handles about 90% of criminal cases. The number of cases charged before the courts also includes some cases received during previous years. The sum of cases discontinued by the public prosecutor and cases charged before the courts does not add up exactly to the number of cases received by the public prosecutor. This is because some cases were passed along to other prosecutorial functionaries (such as in the Ministry of Environmental Protection); in some cases a decision has not been made yet; and in some instances the cases were concluded by a penalty or a measure (for which information is unavailable).

**Figure 10.9 Number of 1<sup>st</sup> instance criminal cases received and closed by public prosecutors (number of cases per one prosecutor) in 2012 (Q55, Q107, Q109)**

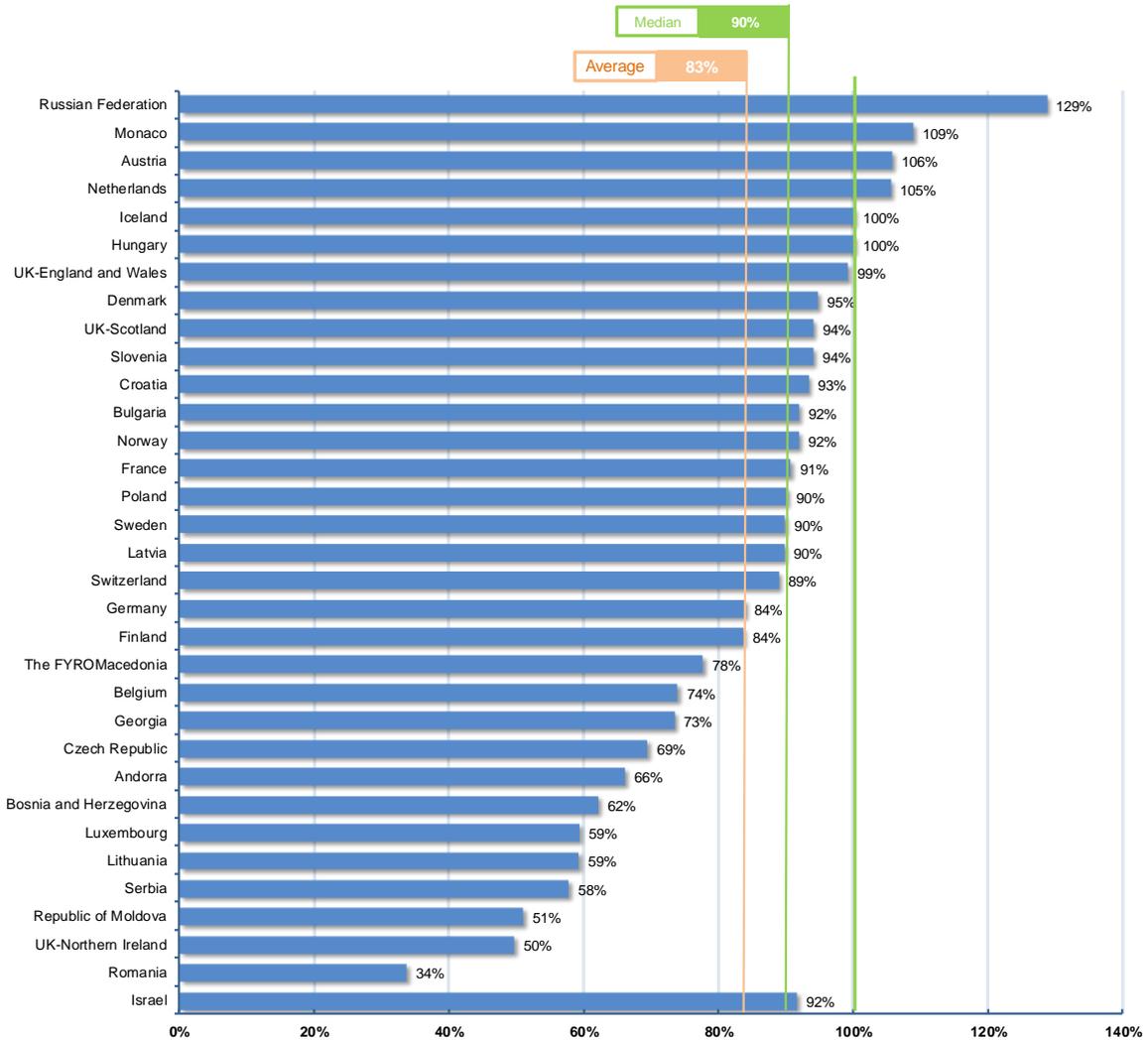


It can be noted that states or entities with the highest numbers of received cases per prosecutor (**Austria**, **France**, and **Germany**) have the lowest numbers of prosecutors per 100.000 inhabitants. **Italy** is an exceptional case as there are also 1838 non-professional public prosecutors exercising. States and entities with the lowest numbers of cases per prosecutor can be found in Eastern European states, which, however, have a high number of prosecutors per 100.000 inhabitants (in particular **Lithuania**, **Latvia**, the **Russian Federation**, and **Republic of Moldova**).

**Figure 10.10 Number of 1<sup>st</sup> instance criminal cases received and closed by public prosecutors per 100.000 inhabitants in 2012 (Q1, Q107)**



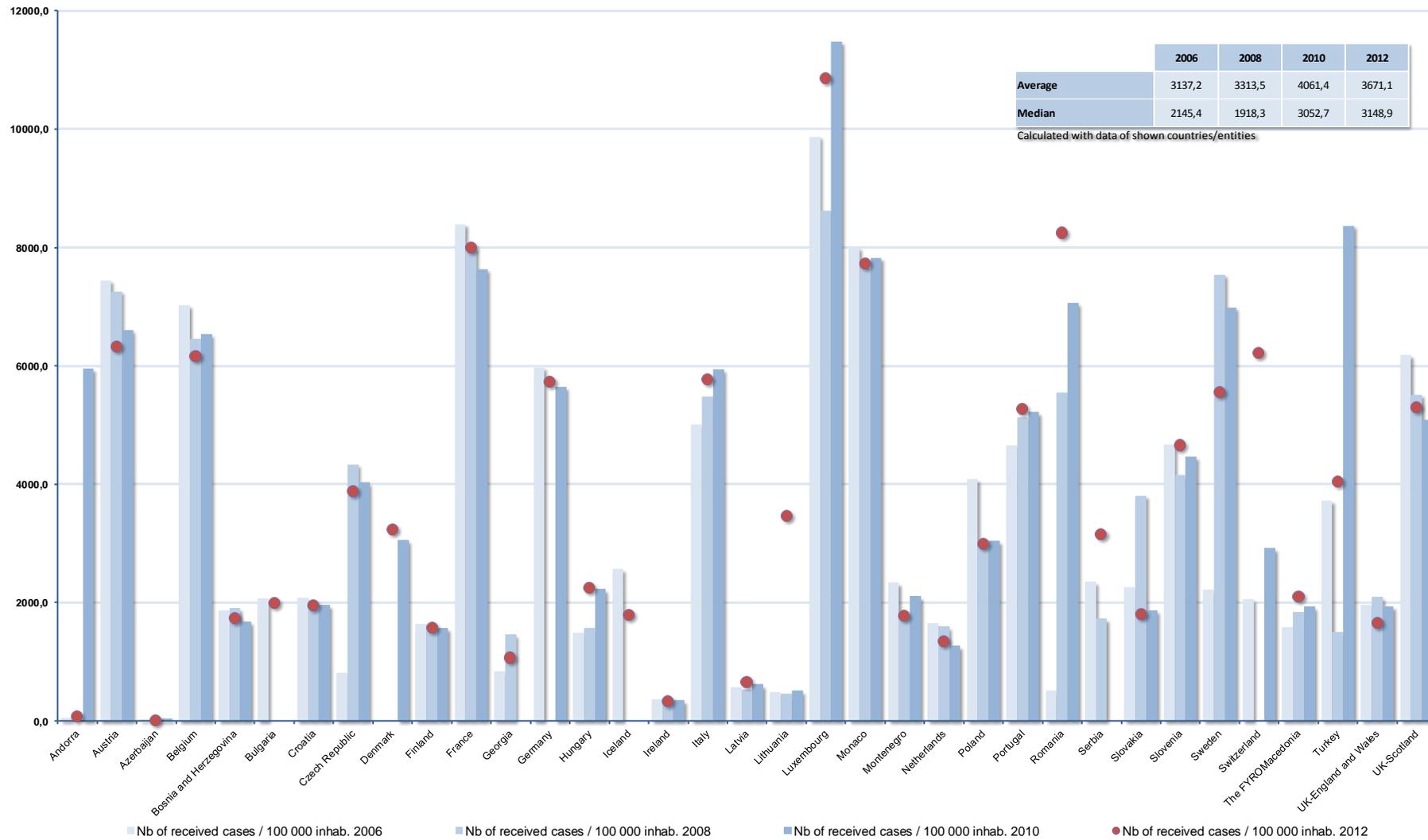
**Figure 10.11 Clearance Rate (CR) of cases handled by public prosecutors in 2012 (Q107)**



The methodology for calculating Clearance Rate is set out in chapter 9. For the cases handled by the prosecutor, the CR is calculated by dividing the number of cases closed by the number of cases received. The number of closed cases is calculated as a sum of discontinued cases, cases concluded by a penalty or a measure and cases brought before the courts. Thirty-three states or entities are considered here.

In most countries, prosecutors are unable to cope with the influx of new cases. Only in 7 states or entities was the number of completed cases higher than the number of new cases. Very positive performance was to be seen in the **Russian Federation**. 17 states have a ratio of completed to received cases below 90%. In particular, **Romania**, **Northern Ireland (UK)**, and **the Republic of Moldova** are the states experiencing the most difficulties in finding a balance between completed and received cases.

Figure 10.12 Number of received cases by the public prosecutor per 100.000 inhabitants between 2006 and 2012 (Q107)



## Comments:

**Andorra:** the 2010 figure includes criminal cases in which the prosecutor acted, whereas in 2012 only criminal cases received directly by the prosecutor have been taken into account.

**Lithuania:** the increased number of criminal investigations and larger workload of the prosecution service is influenced by the economic situation as well as national economic priorities. Furthermore, the increased number of criminal investigations has direct correlations with the Law on Domestic Violence, which came into force on 15 December 2011. The Law obligates to start criminal investigation regarding every incident of domestic violence.

**Switzerland:** the difference between the 2010 and 2012 figures can be explained by the new criminal procedure. In 2011, the two new Federal Codes of Civil Procedure and Criminal Procedure replaced the 27 cantonal codes of civil and criminal procedure. This led to a fundamental change in the judicial organisation of certain cantons and procedural law in general. For example, in criminal proceedings, the position of investigating judge was abolished and was replaced by a prosecutor who now leads the criminal investigation and then presses charges and argues the case before the criminal courts.

This table covers 35 states or entities. For most states, the number of received cases remained stable between 2010 and 2012, with some significant increases for **Lithuania, Romania** and **Switzerland**. There was a fall in the number of received cases per prosecutor per 100.000 inhabitants in **Turkey** and **Sweden**.

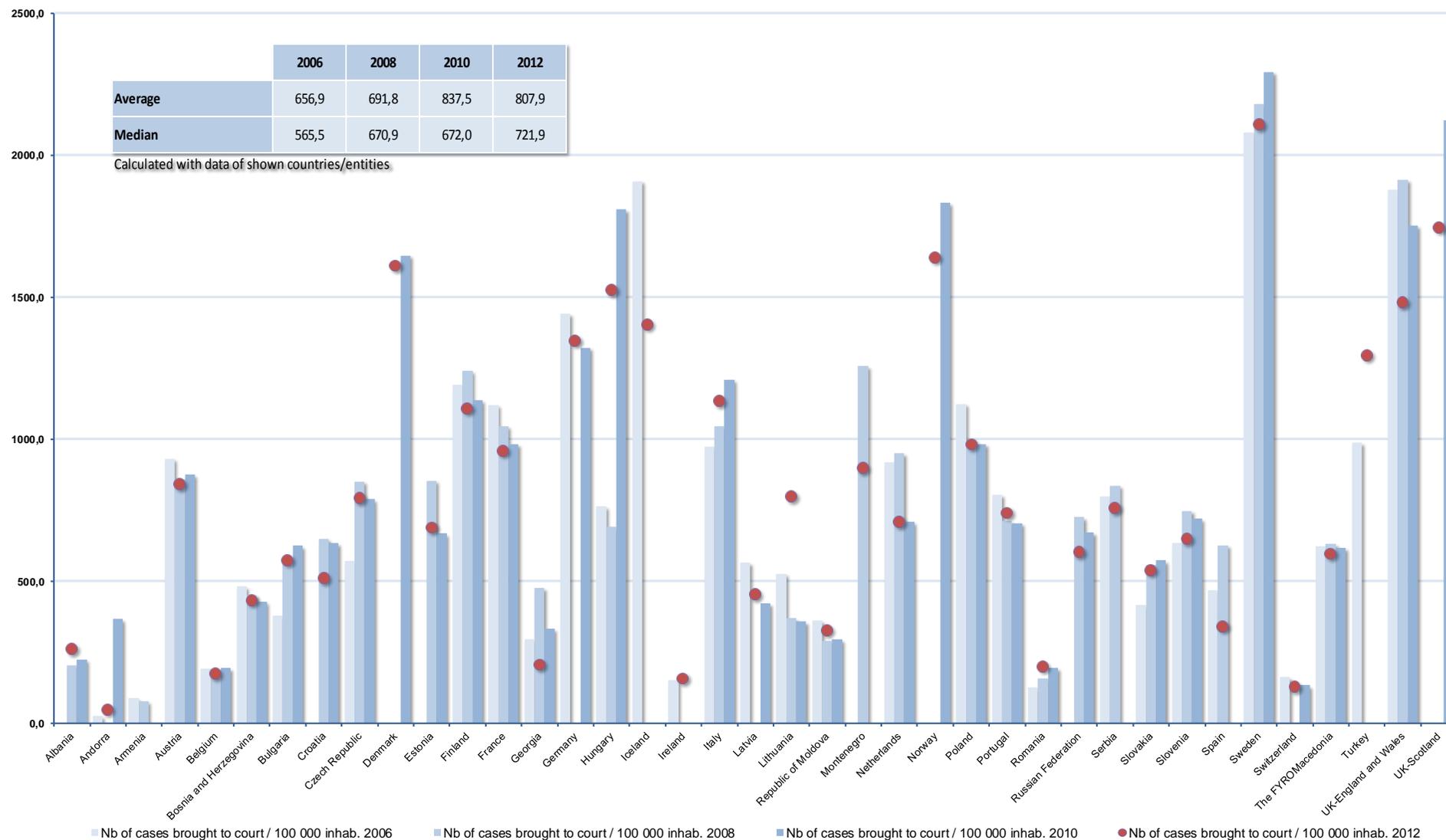
This graph does not allow prosecutors' workload to be measured in relation to the number of cases dealt with. Indeed, a major distinction should be drawn between states which include the total number of cases received by the prosecution (for example, **France**) and those which exclude the cases where it has not been possible for the police to identify the culprit (**Netherlands**).

**Table 10.13 Number of cases concluded by a penalty or a measure imposed or negotiated by the prosecutor and cases brought by the prosecutor before the courts in 2012 (Q107)**

States/entities	Per one prosecutor		Per 100 000 inhabitants		Ratio brought to court / concluded by a penalty
	Case concluded by a penalty or a measure imposed or negotiated	Cases brought to court	Case concluded by a penalty or a measure imposed or negotiated	Cases brought to court	
Albania	NC	22,0	NC	258,2	NC
Andorra	NC	8,8	NC	45,9	NC
Armenia	14,1	NC	149,1	NC	NC
Austria	69,9	203,3	288,8	839,6	2,9
Azerbaijan	NC	8,9	NC	103,0	NC
Belgium	11,5	23,4	84,9	173,7	2,0
Bosnia and Herzegovina	51,1	53,3	413,5	431,1	1,0
Bulgaria	NC	21,0	NC	571,0	NC
Croatia	4,3	35,1	62,7	508,2	8,1
Cyprus	NC	NC	NC	NC	NC
Czech Republic	NC	66,9	NC	790,7	NC
Denmark	79,9	159,3	807,5	1 609,3	2,0
Estonia	10,1	52,6	132,5	686,3	5,2
Finland	2,0	149,5	14,7	1 107,2	75,2
France	331,7	330,5	961,4	958,1	1,0
Georgia	19,5	22,5	176,1	203,4	1,2
Germany	37,6	205,7	245,6	1 345,0	5,5
Greece	NC	NC	NC	NC	NC
Hungary	9,2	83,3	167,6	1 522,8	9,1
Iceland	5,3	55,7	132,4	1 402,8	10,6
Ireland	NC	66,6	NC	155,1	NC
Italy	NC	356,2	NC	1 133,9	NC
Latvia	3,1	20,4	68,8	450,9	6,6
Lithuania	NC	31,2	NC	797,5	NC
Luxembourg	23,2	293,9	207,8	2 630,9	12,7
Malta	NC	NC	NC	NC	NC
Republic of Moldova	10,1	15,5	209,9	324,2	1,5
Monaco	49,2	208,4	680,8	2 883,6	4,2
Montenegro	11,2	61,0	164,8	895,8	5,4
Netherlands	102,2	150,0	481,0	706,3	1,5
Norway	152,1	134,4	1 854,7	1 638,8	0,9
Poland	NC	62,4	NC	980,6	NC
Portugal	NC	49,4	NC	737,6	NC
Romania	NC	16,6	NC	198,8	NC
Russian Federation	9,8	26,4	224,3	602,3	2,7
Serbia	1,3	82,7	12,1	756,9	62,7
Slovakia	9,4	32,2	156,3	536,9	3,4
Slovenia	9,7	70,4	89,2	646,2	7,2
Spain	NC	63,8	NC	338,9	NC
Sweden	79,3	198,7	841,1	2 106,7	2,5
Switzerland	413,4	12,3	4 314,2	127,9	0,0
The FYROMacedonia	NC	59,2	NC	594,5	NC
Turkey	NC	224,3	NC	1 292,5	NC
Ukraine	NC	NC	NC	NC	NC
UK-England and Wales	NC	311,5	NC	1 480,9	NC
UK-Northern Ireland	NC	NC	NC	NC	NC
UK-Scotland	169,4	167,1	1 769,0	1 745,0	1,0
<b>Average</b>	62,6	102,8	544,8	885,8	9,1
<b>Median</b>	14,1	62,4	207,8	737,6	3,2
<b>Minimum</b>	1,3	8,8	12,1	45,9	0,0
<b>Maximum</b>	413,4	356,2	4 314,2	2 883,6	75,2
Israel	NC	43,7	NAP	506,7	NC

27 states or entities stated that prosecutors were able to impose or negotiate a penalty or a measure (in some of them a judicial decision was necessary). The workload of courts may be reduced in these states or entities. In **Bosnia and Herzegovina, France, Georgia, Switzerland, and UK-Scotland**, cases concluded by penalties or measures were significant compared to the cases brought before the courts. On the contrary, in **Finland, Iceland, Luxembourg and Serbia**, prosecutors did not often exercise this power.

Figure 10.14 Number of cases brought by the public prosecutor before the courts per 100.000 inhabitants between 2006 and 2012 (Q107)



#### 10.4 Trends and conclusions

The functions and status of the prosecution departments (see next chapter 11) and of their component staff can vary according to member state. The function of bringing proceedings before the courts against persons suspected of being the perpetrator of an offence is nevertheless central in all countries.

Significant reforms have occurred to extend the prerogatives of the prosecution in the investigation phase (**Austria** and **Switzerland**) under the supervision of a judge for violations of individual rights, in accordance with the European Court of Human rights case-law.

The largest number of prosecutors found in the countries of Eastern Europe (**Bulgaria, Lithuania, Latvia, Republic of Moldova, Russian Federation, Ukraine**) but also in **Iceland**. 7 states (**UK-England and Wales, Austria, France, Greece, Ireland, Italy, Netherlands**) have less than five prosecutors per 100.000 inhabitants. There is a relative stability in the evolution of the number of prosecutors in recent years, although the situation varies by state.

The caseload of the courts in the criminal sphere much depends on the possibilities afforded the prosecution to hold or not to hold the power to non-suit a case or to propose a negotiated sanction, with or without the intervention of a judge to authorise or validate this measure. It should be noted that in some states, some functions are performed by police personnel in the investigation or prosecution and participation in the hearing.

Prosecutors' workload depends on their area of intervention in the criminal sphere (half the member states assign them competence for the enforcement of penalties) but also in external matters. In almost half of the states, they intervene to uphold compliance with the law in civil or administrative proceedings. In 18 states, in civil litigation, they defend the interests of vulnerable persons (minors, the legally incapacitated...) and perform a role in cases of personal status and family law (civil status, nationality, parental rights, adoption...), or in certain fields of public interest (bankruptcies, immigration...). Any comparison among the member states should take account of this situation.

At the European level, the number of cases which prosecutors receive and bring before the courts can be a good indication (requiring qualification in the light of the foregoing remarks) as to the respective workloads of judges and prosecutors by comparison with the ratio of their respective number to the population. It is plain that in some countries the burden on the prosecution is large having regard to the small number of prosecutors for every 100.000 inhabitants as against a very high number of cases dealt with.

The states or entities with the highest numbers of received cases per prosecutor (**Austria, France, and Germany**) have the lowest numbers of prosecutors. States and entities with the lowest numbers of cases per prosecutor can be found in Eastern European states, which, however, have a high number of prosecutors per 100.000 inhabitants (in particular **Lithuania, Latvia, Russian Federation, Republic of Moldova**).

In most states or entities, globally, prosecutors are not able to cope with the volume of cases to be addressed. Only in 7 states or entities was the number of completed cases higher than the number of new cases. Very positive performance was to be seen in the **Russian Federation**. 17 states have a ratio of completed to received cases below 90%. In particular, **Romania, Northern Ireland (UK), and the Republic of Moldova** are the states experiencing the most difficulties in finding a balance between completed and received cases.

## Chapter 11. Status and career of judges and prosecutors

Judges personify the judiciary. The public expect judges to be independent and impartial in the judicial practice throughout their career, and for these principles to be respected also in connection with judges' recruitment and appointment. The expected level of professional skills and competencies should be matched by the salaries paid to judges, who, for their part, should be ready to have their performance evaluated. The Consultative Council of European Judges (CCJE) affirms in its Opinion N°1 (2001): "*Their independence is not a prerogative or privilege in their own interests, but in the interests of the rule of law and of those seeking and expecting justice*". In the same Opinion, the CCJE underlines that : "*every decision relating to a judge's appointment or career should be based on objective criteria and be either taken by an independent authority or subject to guarantees to ensure that it is not taken other than on the basis of such criteria*" (CCJE's Opinion N°1 (2001) par.37).

Considering the diversity of the prosecutor's status according to the member states or entities of the Council of Europe, it is not possible to apply equally the above principles, followed by judges, to public prosecutors. Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system states that: "*the recruitment (...) of public prosecutors [is] carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination(...)*". Nevertheless, a comparison between these two professions, both similar and different is necessary as their interaction is critical for the functioning of a judicial system that is entirely at the service of the public.

### 11.1 Recruitment and appointment

#### 11.1.1 Recruitment and appointment of judges

The way in which judges are recruited is a sensitive subject as it has an impact on the independence that judges enjoy when performing their functions. It is one of the main parameters used by the European Court of Human Rights to determine whether there is an independent tribunal within the meaning of Article 6§1 ECHR (*Kleyn and Others v. the Netherlands*, applications nos. 39343/98, 39651/98, 43147/98 and 46664/99, 6/05/2003, § 190). The European standards in this area are not based on one or more specific procedures but make the conformity of states' choices dependent on the existence of sufficient safeguards against the risk of appointments which are not based on objective criteria (Recommendation R(94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges, 13/10/1994, § 1c); *Basic Principles on the Independence of the Judiciary*, UN General Assembly Resolutions 40/32 of 29/11/1985 and 40/146 of 13/12/1985, § 10). As a result, member states apply several different recruitment methods, which are reflected in the following table.

**Table 11.1 Modalities of recruitment of judges (Q110, Q110.1)**

States/entities	Competitive exam	Recruitment procedure for legal professionals with long-time working experience	Combination of both	Other	Specific provisions for facilitating gender equality
Albania					
Andorra					
Armenia					
Austria					
Azerbaijan					
Belgium					
Bosnia and Herzegovina					
Bulgaria					
Croatia					
Cyprus					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Georgia					
Germany					
Greece					
Hungary					
Iceland					
Ireland					
Italy					
Latvia					
Lithuania					
Luxembourg					
Malta					
Republic of Moldova					
Monaco					
Montenegro					
Netherlands					
Norway					
Poland					
Portugal					
Romania					
Russian Federation					
Serbia					
Slovakia					
Slovenia					
Spain					
Sweden					
Switzerland					
The FYROMacedonia					
Turkey					
Ukraine					
UK-England and Wales					
UK-Northern Ireland					
UK-Scotland					
<b>Number of countries</b>	<b>18</b>	<b>7</b>	<b>15</b>	<b>17</b>	<b>7</b>
Israel					

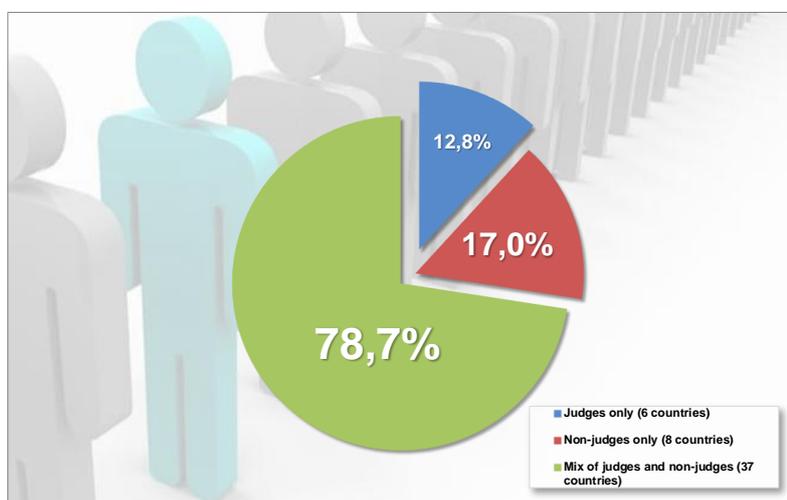
Most of the member states recruit judges on the basis of a competitive exam and very often according to the experience of the candidate (combination of both). Sometimes the procedure varies depending on the qualifications of the candidate and the office she/he applied for (**Croatia, Estonia, France, Montenegro, Portugal, Slovenia, UK-England and Wales**, for instance).

In some member states, a solid legal experience is requested to be appointed as a judge (**Albania, Austria, Ireland, Norway, Switzerland, UK-England and Wales, UK-Scotland**). The characteristic of the system in **Iceland** lies in the choice between the experience as a legal practitioner or as a member of the Parliament. In other member states, such an experience is a second way of being appointed as judge, next to a

competitive exam for more junior persons (**Estonia, France, Slovenia, “the former Yugoslav Republic of Macedonia”, Turkey**).

As to other specific modalities of recruitment of judges, **Finland** and **Sweden** have indicated that judges are generally nominated after a practical training in courts. In **Denmark**, the status of temporary judge, which is acquired following a competitive exam and on the basis of the applicant’s legal experience, is the prerequisite for appointment as a judge, for which there is no formal entrance exam. Likewise, in **Hungary**, although the open competition is the key stage, candidates must have worked for at least one year in a post in which their professional skills can be assessed (as court clerk for example). Judges in **Monaco** must also have served for two years as auxiliary judges, having passed an open competitive exam before being appointed to a permanent post. **Slovenia** requires applicants to pass a national exam and to have at least three years’ experience. In **Croatia**, before the reform of 2013, candidates who were not already judges had to have already passed the national lawyers’ exam and have professional legal experience to be entitled to sit the exam held by the National Judicial Council. In 2013, a National Judicial Service College was set up but professional experience is still an alternative means of access to the function of judge. In **Estonia**, candidates who pass the open competitive exam attend two years’ compulsory training which are followed by a formal exam and a “security check”. The system in **Georgia** is based on the results of an open competitive exam, professional experience and 10 months’ compulsory training.

**Figure 11.2 Composition of the competent authorities for the recruitment of judges (Q111)**



Irrespective of the modalities of recruitment, it is important that the authorities competent for the recruitment of judges have a certain degree of independence. A large majority of the member states or entities have mixed (judges and non-judges) authorities ensuring recruitment. In a limited number of states or entities, the recruitment is under the competence of a non-judge authority (**Andorra, Czech Republic, Malta, Serbia, Ukraine** and **UK-Northern Ireland**) or in the hands of judges only (**Cyprus, Hungary, Latvia** and **Luxembourg**). In **Germany** and in **Switzerland**, the three types of authority are founded at the level of the federated entities depending on their respective systems.

In many member states, a council for the judiciary (**Andorra, Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Lithuania, Republic of Moldova, Monaco, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia, Spain, Sweden, Turkey**) or a special council for judicial appointments (**Azerbaijan, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Latvia, Luxembourg, Netherlands, Norway, Russian Federation, Slovenia, Sweden, Switzerland** for some cantons, "**the former Yugoslav Republic of Macedonia**", **Turkey, UK-England and Wales, UK-Northern Ireland** and **UK-Scotland**) play important roles. Such bodies are independent and often composed of members of the judiciary and legal practitioners. While the extent of their involvement varies, ranging from the power to make proposals (most member states) to that to formally appoint (**Andorra, Bosnia and Herzegovina, Cyprus** except for Supreme Court judges, **Georgia, Montenegro**), they are, in any event, a solid guarantee of the quality of recruitment procedures in terms of objectivity.

In many states or entities, the authority entrusted with the formal appointment of judges is the Head of State, acting on proposals by the Judicial Council (**Albania**, except for the judges of the Constitutional Court and the Supreme Court; **Austria** and **Iceland**, for Supreme Court judges; **Denmark**, where the Queen acts on the proposal of the Minister of Justice, who acts on the recommendation of the Judicial Appointments

Council; **France; Finland; Ireland; Lithuania**, except for Supreme Court judges; **Republic of Moldova; Monaco; Netherlands; Slovakia and Ukraine**), the government (**Norway; Germany**, in some *Länder*; **Sweden**), the Minister of Justice (**Austria**, except for Supreme Court judges) or another minister (**Iceland**, the Minister of the Interior is responsible for district court judges). In **UK-England and Wales**, the Lord Chancellor or the Queen, in **UK-Northern Ireland**, the Northern Ireland Judicial Appointments Commission or the Lord Chancellor as the Queen's representative and in **UK-Scotland**, the Queen on the recommendation of the Scottish First Minister acting on the basis of the Judicial Appointments Board, appoint judges.

It should be pointed out that, under the established case-law of the European Court of Human Rights, the appointment of judges by the executive or the legislature is permissible provided the appointees are free from influence or pressure when carrying out their adjudicatory role (*Flux v. Moldova* (No. 2), application no. 31001/03, 3/10/2007, § 27; *Zolotas v. Greece*, application no. 38240/02, 30/11/2005, § 24).

Appointments by the legislature by means of elections are less common. In **Slovenia and Serbia**, the parliament elects judges on the proposal of the Judicial Council. In **Lithuania**, Supreme Court judges are elected by the *Seimas* on the proposal of the President of the Republic, whereas in **Estonia**, they are elected by the Parliament on the proposal of the Chief Justice (elected by the Parliament on the proposal of the Head of State). Similarly, the judges of the Supreme Court and the Supreme Commercial Court of the **Russian Federation** are elected by the upper house of the Russian Parliament on the recommendation of the Head of State and in the light of the opinion of the presidents of those courts. In **Switzerland**, judges in second instance courts and the Supreme Court are appointed by the cantonal parliaments and the Federal Parliament on the recommendation of the political parties and, in most cases, after the examinations of their applications by a parliamentary commission.

In the case of specialized courts, some states have chosen to nominate their judges by their peers (**France**: judges of labour courts responsible for disputes between employers and labour court judges responsible for disputes regarding employment contracts).

Cases in which the judiciary has the right to propose or recommend candidates are still rare. In **Cyprus**, the judges of the Supreme Court are appointed by the President of the Republic from among all the judges, on the recommendation of the Supreme Court. In the **Russian Federation**, judges other than those of the Supreme Court or the Supreme Commercial Court are appointed by the Head of State on the recommendation of the presidents of the two supreme courts referred to above, within their respective jurisdictions. Furthermore, in **Estonia**, judges of first and second instance are appointed by the President of the Republic on the proposal of the full court of the Supreme Court.

Nor is it entirely unheard of for the power of formal appointment to be entrusted to certain judicial authorities. For example, in **Switzerland**, the judges of the courts of first instance are appointed by the cantonal courts (or elected by the citizens). In **Cyprus**, all the judges who make up the National Judicial Council are appointed by that body. In "**the former Yugoslav Republic of Macedonia**", the judges of the basic courts are elected by the Court Council. In **Spain**, candidates for the post of judge sit a series of exams before a "recruitment tribunal" made up of judges at various levels and other legal practitioners, who are appointed by the General Council of the Judiciary.

In **Italy or Malta**, the recruitment process is managed exclusively by the government, especially by the Minister of Justice. In the **Czech Republic**, the President of the Republic appoints judges upon the proposal of the Minister of Justice. For candidates for posts of Supreme Court judge, the consent of the President of the Supreme Court is required. In the **Czech Republic** there is no National Judicial Council. Instead each court has its own Judicial Council, which is an advisory body, expressing its opinion on candidates for President or Vice-President on a professional level and from other organisational viewpoints.

### 11.1.2 Recruitment and appointment of prosecutors

As for judges, some states or entities make a distinction between the procedures for recruitment and appointment of a General Prosecutor or a state prosecutor and the procedures related to an *ordinary* public prosecutor, since the former are responsible for the control and policy making of the public prosecution and are more influenced by politics (see for instance **Andorra, Finland, Montenegro, Slovakia, Slovenia** and "**the former Yugoslav Republic of Macedonia**").

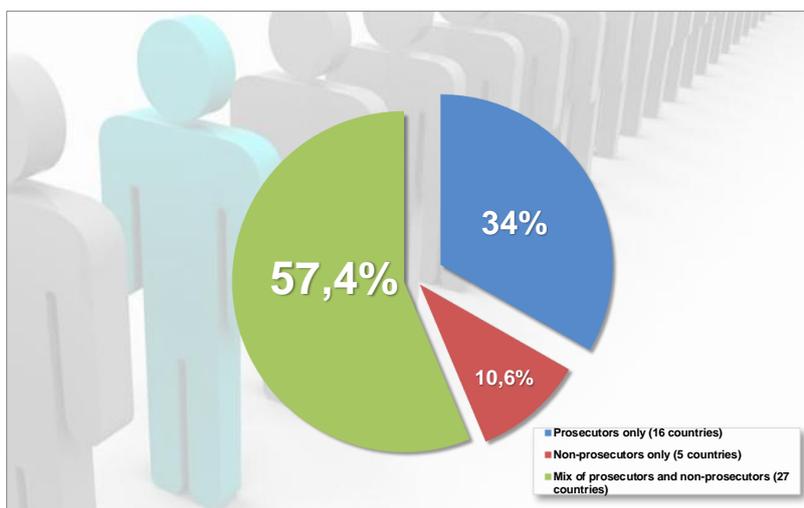
**Table 11.3 Modalities of recruitment of prosecutors (Q116)**

States/entities	Competitive exam	Recruitment procedure for legal professionals with long-time working experience	Combination of both	Other
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Number of countries</b>	<b>16</b>	<b>5</b>	<b>18</b>	<b>12</b>
Israel				

The majority of states or entities apply both methods of recruitment (competitive exam and working experience).

Among the 12 States or entities that indicated "other ways" of recruitment, **Finland** specified that prosecutors were recruited after graduation with a law degree and, most often, after a probation period of one year. In the **Russian Federation**, a distinction has to be made between two stages: an initial selection process based on the results of a series of examinations and the initial assessment made six months after the recruitment of new prosecutors. In **Croatia**, the period as trainee which precedes appointment by the National Judicial Council as a prosecutor, is obtained following a selection process organised by the Trainee Selection Committee. Professional experience is an alternative means of access to the post of prosecutor. On the other hand, in **UK-Scotland**, the function of public prosecutor is entrusted to persons with sufficient legal qualifications and experience by means of an objective public procedure. Although in **Italy**, competitive exams are the general rule, the Chief General Prosecutor may appoint any other person as a prosecutor, such as a judge with a certain amount of experience. The system in **Slovakia** is similar, as the Principal State Prosecutor may act outside the ordinary procedure for the selection of trainees and appoint anyone who meets the legal conditions and has passed the exam held by the Judicial Academy of the Slovak Republic for trainees at the end of their three-year training course. The manner of recruitment of judges and prosecutors is different according to the states or entities, for example because the competent authority is not the same: **Albania, Andorra, Armenia, Austria, Azerbaijan, Cyprus, Denmark, Estonia, Georgia, Hungary, Iceland, Latvia, Malta, Montenegro, Norway, Russian Federation, Slovakia, Sweden, Ukraine, UK-England and Wales, UK-Northern Ireland and UK-Scotland** (see figures 11.1 and 11.3).

**Figure 11.4 Composition of the competent authorities for the recruitment of prosecutors (Q117)**



Most of the states or entities entrust the recruitment of prosecutors to mixed authorities composed of prosecutors and non-prosecutors: **Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Estonia, France, Germany, Greece, Iceland, Italy, Lithuania, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Poland, Portugal, Romania, Serbia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Turkey and UK-Scotland**.

In most of the states or entities, the prosecutor is, on the one hand, an actor of the judicial system, and, on the other hand, a representative of the state (sometimes executive) power, as a result of his/her specific function. He/she is also, in some states, independent from judicial and executive powers. Therefore, the modalities of the recruitment of prosecutors may indicate the way powers have been balanced within the states. In some states, as for example in the **Russian Federation**, prosecutors are independent of the legislative, executive and judicial powers. The following countries have indicated that their executives have substantial influence over the appointment of prosecutors: **Albania, Croatia, Czech Republic, Denmark, Iceland, Italy, Slovenia, Turkey and Ukraine**.

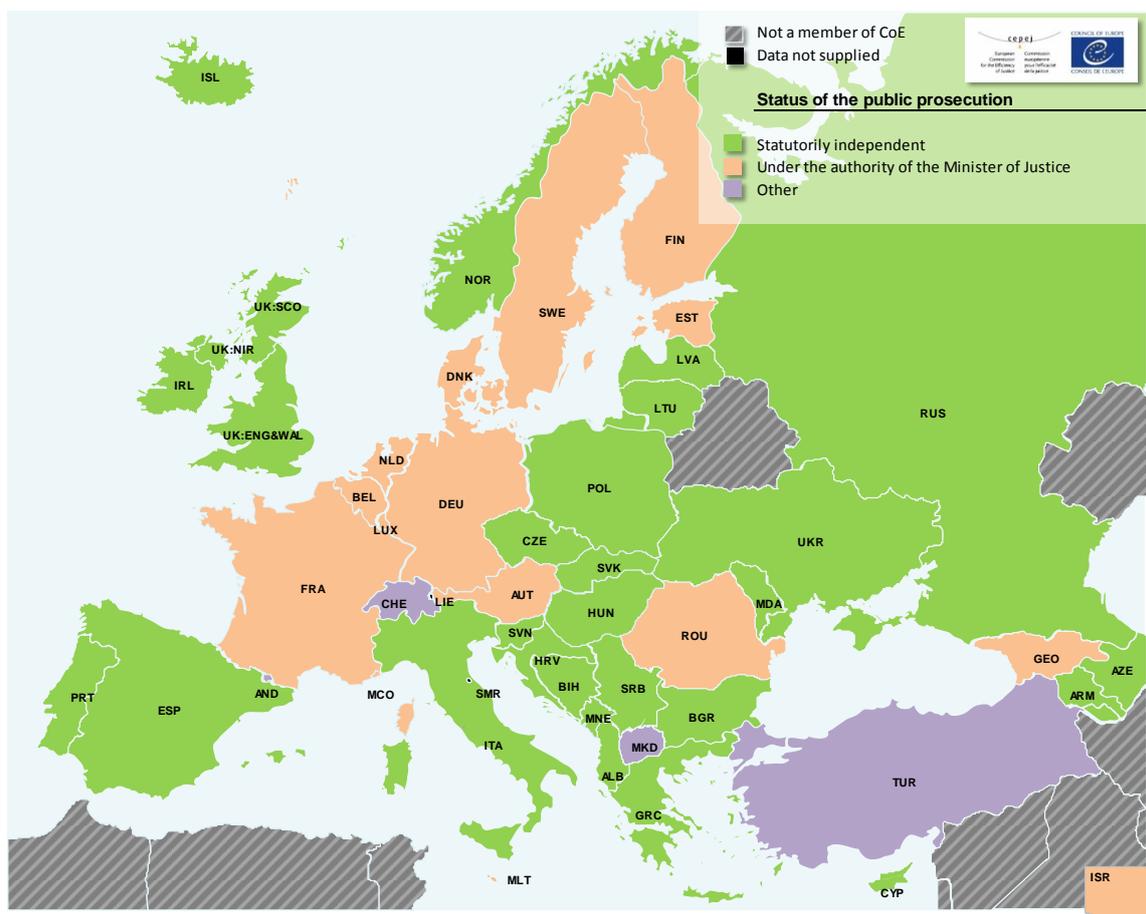
States whose prosecution systems include a function of "State Prosecutor General" usually provide for the incumbent of this post to be elected by parliament for a fixed term of office (**Armenia and Hungary** on the proposal of the President of the Republic; **Montenegro** on the proposal of the Prosecutors' Council; **Serbia** on the proposal of the government based on a list drawn up by the National Prosecutors' Council; **Slovenia** on the recommendation of the Government, and **Switzerland**, where the principal prosecutor of a canton or

that of the Confederation may be elected by their respective parliaments). In **Ukraine** and **Slovakia**, the Principal State Prosecutor is appointed by the Head of State upon the recommendation of the parliament. In **Serbia**, prosecutors other than the Principal State Prosecutor are also elected by the parliament but upon the proposal of the Prosecutors' Council. The Principal State Prosecutor appoints prosecutors in **Finland**, **Hungary**, **Latvia** and **Lithuania** (on the basis of a list of candidates drawn up by a Selection Committee), **Republic of Moldova** (on the proposal of the National Prosecutors' Council) and some prosecutors in **Slovakia**. In **Azerbaijan**, **Croatia**, **Estonia**, **Georgia** and the **Russian Federation**, they are appointed by an *ad hoc* board made up of prosecutors (and non-prosecutors in **Croatia** and **Estonia**). In **UK-England and Wales**, **Sweden** and **Ukraine** (with the exception of the Principal State Prosecutor), the appointment procedure is an internal matter for the prosecution services. In **Portugal**, the body responsible is the *Centro de Estudos Judiciários*, which is made up of judges, prosecutors and other persons (professors of law, psychologists), while in **Greece** it is the National Judicial Service College. The national judicial council appoints prosecutors in **Andorra**, **Belgium**, **Bulgaria**, and **Romania**. In **Cyprus**, prosecutors are appointed by the Public Service Commission, which is an independent body with the constitutional power to manage the careers of all civil servants.

As for the judges, two authorities can participate in the appointment of the prosecutors. As such, a Council of Prosecutors plays an important role in the nominations in **Albania**, **Moldova**, **Montenegro**, **Poland**, **Portugal**, **Slovenia**, **Serbia** and “**the former Yugoslav Republic of Macedonia**”.

## 11.2 Status of prosecutors

Figure 11.5 Status of the public prosecutor (Q115)



In a state governed by the Rule of Law, judges are independent from the executive and legislative powers. The situation is more complex regarding public prosecutors, whose statute differs significantly according to the states. This statement must also be qualified. In some states, the prosecutorial independence vis-à-vis the political power may be asserted through the statute, but does not reflect the reality in the light of an historical tradition of prosecutors' dependence. In other states, the independence is not stipulated in the text, but the tradition and the daily practice have conferred an independence *de facto*.

The institutional role of the public prosecutor and in particular its relationship with the executive power vary according to the states. However, the principle of functional independence is emerging as an essential guarantee that has become a true European standard.

In a majority of states or entities (29), public prosecutors enjoy an independent status, often organized according to a centralized and hierarchical structure or not (**Italy**). They might be considered as part of the judicial power (**Azerbaijan, Croatia, Greece, Italy, Republic of Moldova, Slovenia, Spain**) or not (**Montenegro, Portugal, Russian Federation, Serbia, Slovakia, UK-England and Wales**). They might be accountable vis-à-vis the Parliament (**Hungary**).

**Switzerland** has 11 cantons in which the status of prosecutors is independent. In 14 member states, Public Prosecutors are under the authority of the Minister of Justice. They can then usually receive instructions of a general nature from the government but not as regards specific cases where they act independently and on the basis of the law (**Estonia, Finland, France, Monaco, Romania, Switzerland** (8 cantons), **Turkey** and **Luxembourg** where a constitutional amendment currently under way will formally establish the principle of functional independence of the Public Prosecutor). Their subordination can be limited to financial and recruitment issues (**Greece**). 3 states declared that they have another specific position. In **Andorra** for example, prosecutors operate outside the executive but may receive general instructions from the government. In **Turkey**, prosecutors enjoy independence in the performance of their judicial tasks but are answerable to the Ministry of Justice in respect of their administrative responsibilities. The term used by the Constitution of "**the former Yugoslav Republic of Macedonia**" to describe the status of prosecutors would seem to be corresponding to something less than full independence.

## 11.3 Training

### 11.3.1 Training of judges

The CCJE underlines that the authority competent for supervising the quality of the training programmes should be independent of the executive and the legislature and that at least half its members should be judges (CCJE's Opinion N°4 (2003), par. 13 & 16). Indeed, this is a corollary of the general principle of the independence of the judiciary (*Ibid.* par.14). The CCJE also recommends that training should be ensured by an independent body with its own budget and which is competent for the preparation of training programmes (*Ibid.* par. 17).

**Initial training:** the specific knowledge which is necessary to practice the function of a judge is often acquired through an initial training period. In a large majority of states or entities, this is mandatory (38 out of 47 states or entities). The initial training is not mandatory in 8 states or entities: **Bosnia and Herzegovina, Finland, Montenegro, Sweden, Switzerland, UK-Northern Ireland** and more recently in **Cyprus**. This type of training does not exist in **Malta**.

Initial training takes several years in countries where judges are trained in the schools for magistrates (**Albania, France, Hungary, Italy, Slovakia, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine**), in specific centres either attached to the Ministry of Justice and/or to the Judicial Council (**Bosnia and Herzegovina, Bulgaria, Slovenia, Spain**) or acting as independent state authorities such as in **Belgium**, or in private university institutions (**Switzerland**). The same applies in **Austria, Denmark, Estonia, Finland, Iceland, Ireland** and **Lithuania** which provide training programmes outside such specialised institutions. Nonetheless, in states which appoint their judges among experienced professionals, the training may take only a couple of days (in **UK-England and Wales** it takes for example the form of an intensive 5 day course with additional days sitting-in and supervised sittings). Similarly, in **Malta**, where judges and prosecutors are selected from among practising lawyers, no training is provided except for occasional activities organised among those concerned through the Judicial Studies Committee.

**In-service training (general and others):** 18 states or entities require a general in-service training. Among these countries, in-service training can also be mandatory for practising specialised functions (17), for managing courts (10) or to use computer facilities in court (9). In most of the member states, general in-

service trainings are organised regularly. Regular in-service training for specific cases is organised in more and more member states.

**Table 11.6 Types and frequency of trainings for judges in 2010 and 2012 (Q127, Q128)**

States/entities	Initial training*		General in-service training		In-service training for specialised judicial functions **		In-service training for management functions of the court ***		In-service training for the use of computer facilities in courts	
	2010	2012	Training 2012	Frequency 2012	Training 2012	Frequency 2012	Training 2012	Frequency 2012	Training 2012	Frequency 2012
Albania	●	●	●	○	●	○	●	●	●	○
Andorra	●	●	●	●	●	○	●	○	●	○
Armenia	●	●	●	●	●	●	●	●	●	●
Austria	●	●	●	●	●	●	●	●	●	●
Azerbaijan	●	●	●	●	●	●	●	●	●	●
Belgium	●	●	●	●	●	●	●	●	●	●
Bosnia and Herzegovina	●	●	●	●	●	●	●	●	●	●
Bulgaria	●	●	●	●	●	○	●	○	●	●
Croatia	●	●	●	○	●	○	●	○	●	●
Cyprus	●	●	●	○	●	○	●	○	●	○
Czech Republic	●	●	●	●	●	○	●	○	●	○
Denmark	●	●	●	●	●	●	●	○	●	○
Estonia	●	●	●	●	●	●	●	○	●	○
Finland	●	●	●	●	●	●	●	●	●	●
France	●	●	●	●	●	○	●	○	●	○
Georgia	●	●	●	●	●	●	●	●	●	●
Germany	●	●	●	●	●	●	●	●	●	●
Greece	●	●	●	○	●	●	●	●	●	○
Hungary	●	●	●	●	●	●	●	●	●	●
Iceland	●	●	●	○	●	●	●	○	●	●
Ireland	●	●	●	●	●	●	●	●	●	●
Italy	●	●	●	○	●	○	●	○	●	○
Latvia	●	●	●	●	●	●	●	○	●	○
Lithuania	●	●	●	●	●	●	●	●	●	○
Luxembourg	●	●	●	●	●	○	●	○	●	○
Malta	●	●	●	○	●	○	●	●	●	●
Republic of Moldova	●	●	●	●	●	●	●	○	●	○
Monaco	●	●	●	●	●	●	●	●	●	●
Montenegro	●	●	●	●	●	●	●	●	●	○
Netherlands	●	●	●	●	●	●	●	○	●	○
Norway	●	●	●	●	●	○	●	●	●	○
Poland	●	●	●	●	●	●	●	○	●	●
Portugal	●	●	●	●	●	●	●	●	●	○
Romania	●	●	●	●	●	○	●	○	●	○
Russian Federation	●	●	●	●	●	●	●	●	●	●
Serbia	●	●	●	●	●	●	●	●	●	●
Slovakia	●	●	●	●	●	○	●	○	●	○
Slovenia	●	●	●	●	●	○	●	●	●	●
Spain	●	●	●	●	●	●	●	●	●	●
Sweden	●	●	●	●	●	●	●	●	●	●
Switzerland	●	●	●	○	●	○	●	○	●	○
The FYROMacedonia	●	●	●	●	●	●	●	●	●	○
Turkey	●	●	●	○	●	○	●	○	●	○
Ukraine	●	●	●	●	●	○	●	○	●	○
UK-England and Wales	●	●	●	●	●	○	●	○	●	○
UK-Northern Ireland	●	●	●	●	●	○	●	○	●	○
UK-Scotland	●	●	●	●	●	●	●	●	●	●
Israel	●	●	●	●	●	●	●	●	●	●

\* e.g. attend a judicial school, traineeship in the court

\*\* e.g. judge for economic or administrative issues

\*\*\* e.g. court president

Training	
●	Compulsory
○	Optional
●	No training offered

Frequency	
●	Annual (e.g. every 3 months)
○	Occasional (e.g. at times)
●	No training offered

### 11.3.2 Training of prosecutors

According to Recommendation Rec(2000)19, paragraph 7, training is an essential factor for the performance of a public prosecutor's functions and constitutes both a duty and a right for them, both before they take up their functions and when in service. The states which clearly indicate that prosecutors attend this type of training, at least at the beginning of their careers, in the same way as judges, have increased in number since 2010, and include **Albania, Armenia, Austria, Bosnia and Herzegovina, Belgium, Bulgaria, Croatia, France, Italy, Republic of Moldova, Netherlands, Romania, Serbia, Slovakia, Switzerland, "the former Yugoslav Republic of Macedonia"** and **Turkey** (in Hungary a reform along these lines has been launched). In **Latvia** and **Lithuania**, as there is no specialised institution for the training of prosecutors, they are asked to attend the training for judges. In this connection, the Consultative Council of European Prosecutors (CCPE) has pointed out that "where appropriate, joint training for judges, public prosecutors and

lawyers on themes of common interest can contribute to the achievement of a justice of the highest quality” (Opinion No. 4 (2009) of the CCPE, § 10).

**Initial training:** 36 responding states or entities require an initial training for the prosecutors. In 7 states, the initial training is optional (**Albania, Bosnia and Herzegovina, Cyprus, Finland, Latvia, Montenegro and Switzerland**) and in 4 states it is not provided (**Iceland, Malta, Norway, Ukraine**). This type of training has been introduced as an option in **Cyprus** and in **Switzerland**.

**In-service training (general and other):** according to Recommendation R(2000)19, the in-service training is necessary to optimise international cooperation and keep account of the state of affairs and evolution of crime. In 2012, general in-service training was provided in all 47 of the states and entities surveyed and in most cases it was compulsory and regular. On the whole, in-service training for prosecutors (both general and specialised) is on the increase in European states.

**Table 11.7 Types and frequency of trainings for prosecutors in 2010 and 2012 (Q129, Q130)**

States/entities	Initial training		General in-service training		In-service training for specialised judicial functions*		In-service training for management functions of the court**		In-service training for the use of computer facilities in courts	
	2010	2012	Training 2012	Frequency 2012	Training 2012	Frequency 2012	Training 2012	Frequency 2012	Training 2012	Frequency 2012
Albania	●	●	●	○	●	○	●	○	●	○
Andorra	●	●	●	●	●	○	●	○	●	○
Armenia	●	●	●	●	●	●	●	○	●	●
Austria	●	●	●	●	●	●	●	●	●	●
Azerbaijan	●	●	●	●	●	●	●	●	●	●
Belgium	●	●	●	●	●	●	●	●	●	●
Bosnia and Herzegovina	●	●	●	●	●	●	●	●	●	●
Bulgaria	●	●	●	●	●	○	●	○	●	●
Croatia	●	●	●	○	●	○	●	○	●	○
Cyprus	●	●	●	○	●	○	●	○	●	○
Czech Republic	●	●	●	●	●	○	●	○	●	●
Denmark	●	●	●	●	●	●	●	●	●	○
Estonia	●	●	●	●	●	●	●	○	●	○
Finland	●	●	●	●	●	●	●	○	●	○
France	●	●	●	●	●	○	●	○	●	○
Georgia	●	●	●	●	●	○	●	○	●	○
Germany	●	●	●	●	●	●	●	●	●	●
Greece	●	●	●	○	●	○	●	○	●	○
Hungary	●	●	●	●	●	●	●	●	●	○
Iceland	○	○	●	○	○	○	○	○	○	○
Ireland	●	●	●	●	●	○	●	○	●	○
Italy	●	●	●	○	●	○	●	○	●	○
Latvia	●	●	●	●	●	○	●	○	●	○
Lithuania	●	●	●	○	●	●	●	○	●	○
Luxembourg	●	●	●	●	●	○	●	○	●	○
Malta	○	○	●	○	●	○	●	○	●	○
Republic of Moldova	●	●	●	●	●	○	●	○	●	○
Monaco	●	●	●	●	●	●	●	●	●	●
Montenegro	●	●	●	●	●	●	●	○	●	○
Netherlands	●	●	●	○	●	●	●	○	●	○
Norway	○	○	●	○	●	○	●	○	●	○
Poland	●	●	●	○	●	○	●	○	●	○
Portugal	●	●	●	●	○	○	●	○	○	○
Romania	●	●	●	●	●	○	●	○	●	○
Russian Federation	●	●	●	●	●	●	●	●	●	○
Serbia	●	●	●	●	●	●	●	●	○	○
Slovakia	●	●	●	○	●	○	●	○	●	○
Slovenia	●	●	●	○	●	○	●	○	●	○
Spain	●	●	●	○	●	●	●	○	●	○
Sweden	●	●	●	●	●	○	●	○	●	○
Switzerland	○	○	●	○	●	○	●	○	●	○
The FYROMacedonia	●	●	●	●	●	●	●	●	●	○
Turkey	●	●	●	○	●	○	●	○	●	○
Ukraine	○	○	●	●	●	○	●	○	○	○
UK-England and Wales	●	●	●	●	●	●	●	●	●	○
UK-Northern Ireland	●	●	●	●	●	●	●	●	○	○
UK-Scotland	●	●	●	●	●	○	●	○	●	○
Israel	●	●	●	●	●	●	●	●	●	●

\* e.g. public prosecutor specialised on organised crime

\*\* e.g. Head of prosecution office, manager

**Training**

●	Compulsory
○	Optional
○	No training offered

**Frequency**

●	Annual (e.g. every 3 months)
○	Occasional (e.g. at times)
○	No training offered

### 11.3.3 Specialised institutions for the training of judges and prosecutors

Table 11.8 Public training institutions for judges and/or prosecutors and their budget (Q131)

States/entities	Initial training only			Continuous training only			Initial and continuous training			Total budget
	Institution for judges	Institution for prosecutors	Institution for judges and prosecutors	Institution for judges	Institution for prosecutors	Institution for judges and prosecutors	Institution for judges	Institution for prosecutors	Institution for judges and prosecutors	
Albania										NA
Andorra										NA
Armenia										265 000,00 €
Austria										NA
Azerbaijan										4 789 811,00 €
Belgium										5 637 000,00 €
Bosnia and Herzegovina										615 593,00 €
Bulgaria										1 503 273,00 €
Croatia										1 716 506,54 €
Cyprus										NA
Czech Republic										2 318 295,00 €
Denmark										2 106 500,00 €
Estonia										374 788,00 €
Finland										NA
France										28 915 000,00 €
Georgia										613 309,00 €
Germany*										4 000 000,00 €
Greece										2 266 300,00 €
Hungary										1 662 335,00 €
Iceland										NA
Ireland										250 000,00 €
Italy										NA
Latvia										136 570,00 €
Lithuania										263 843,84 €
Luxembourg										NA
Malta										NA
Republic of Moldova										419 798,00 €
Monaco										NA
Montenegro										90 000,00 €
Netherlands										32 800 000,00 €
Norway										NA
Poland										NA
Portugal										5 076 495,00 €
Romania										4 761 224,00 €
Russian Federation										2 882 514,00 €
Serbia										1 002 964,00 €
Slovakia										620 000,00 €
Slovenia										306 317,00 €
Spain										23 907 600,00 €
Sweden										530 000,00 €
Switzerland										NA
The FYROMacedonia										567 970,00 €
Turkey										4 986 016,00 €
Ukraine										NA
UK-England and Wales										NA
UK-Northern Ireland										130 000,00 €
UK-Scotland										490 520,00 €
<b>Number of countries</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>12</b>	<b>5</b>	<b>21</b>	
Israel										304 841,00 €

\* only federal budget is indicated

Yes
No
Not available (NA)
Not applicable (NAP)

Since 2010, there has been an increase in the number of European states or entities with joint training institutions for judges and prosecutors (22). Most of those specialised institutions provide both initial and continuous training.

**Denmark, Estonia, Ireland, Latvia, Lithuania, Malta, Sweden, UK-Northern Ireland and UK-Scotland** have specialised institutions for training judges but not prosecutors. In **Denmark**, prosecutors are offered both in-house and external training while in **Estonia** training for prosecutors is provided by the Principal State Prosecutor's Office. For some years, the judicial training centre in **Latvia** has been going beyond its remit and holding regular training courses for prosecutors. In **Lithuania**, prosecutors are encouraged to attend the courses provided for judges. In **Ireland** and in **Sweden**, training for prosecutors is provided by the prosecution services themselves.

In **Spain** the *Escuela Judicial* provides initial and in-service training for judges while the *Centro de Estudios Juridicos* is responsible for initial and in-service training for other judicial officials including prosecutors. In **Ukraine**, judges receive initial and in-service training at the National Judicial Service College whereas prosecutors receive in-service training only from the National Academy of the Prosecution Services.

These institutes can be attached to the Ministry of Justice (in **Finland, France, Slovakia, Slovenia, Turkey** for example), to the High Council for the Judiciary (**Spain, Iceland, Romania**), to the Supreme Court (**Estonia, Montenegro**) and more generally to the court administration (**Norway, Sweden, UK-Scotland**) and to the Prosecutor Office (**Russian Federation**), or they may function according to an independent or autonomous status (**Albania, Belgium, Croatia, Italy** for example). In **Bulgaria**, the National Institute of Justice has functional relationships both with the Ministry of Justice and the High Council of Justice. In states where there is no specific training institution, judicial training can be tasked to the Supreme Court (**Cyprus**).

## Comments:

**Albania:** the main duties of the School of Magistrates are professional initial and continuous training of judges and prosecutors. The Attorney General issued the Order 'On the process of training of prosecutors' for the establishment of the Training Organization Board (TOB). Besides, there have been several agreements with the Ministry of Interior and with other institutions for continuous training on prosecutors and judicial police officers for specific topics.

**Andorra:** the *Counsell Superior de la Justicia* has joined the *Consejo General del Poder judicial* and the French *Ecole Nationale de la Magistrature* to sign collaboration agreements, so members of the judiciary, along with the Andorran prosecution authorities, can be sent to the training modules offered by their judicial schools. These agreements also facilitate the organization of initial training internships for the newly appointed judges.

**Armenia:** the public training institution for judges and prosecutors is the Justice Academy of Armenia, a nonprofit organization (initial and continuous trainings). The budget for 2012 was around 265 000€.

**Austria:** candidates for judges and prosecutors get the same initial compulsory training before choosing between a career as a judge or as a prosecutor. The initial training takes about 4 years and is conducted by judges. All the candidates also get practice at the Public Prosecutions Office. After 4 years of practice at Court and the Public Prosecutions Office and initial training the candidates are allowed to make the Judge Office Examination, which is held by examination commissions established at each court of appeal. The continuous training is based on a balanced decentralized and centralized judicial training system. After having passed the examination both judges and prosecutors are free to take part in continuing education offered by the presidents of the 4 courts of appeal, the Public Prosecution Offices, the Judges Association and the Federal Ministry of Justice/Training Unit for Judges and Prosecutors. An annual Training Program for judges and prosecutors is published as a booklet and distributed to every judge and prosecutor and it also can be found on the homepage of the Federal Ministry of Justice. The general in-service training offered by the judicial authorities mentioned above is taken up by more than 70% of the judges and prosecutor every year.

**Azerbaijan:** there are 2 institutions for training of judges and prosecutors: the Academy of Justice which trains judges and the Training center of prosecutors which trains prosecutors. The budget is 3 644 224€ (judges) and 1 145 587€ (prosecutors).

**Belgium:** the budget for the judicial training institute, which is operational since 1st January 2009, was 5 637 000€ (see [www.igo-ifj.be](http://www.igo-ifj.be)).

**Bosnia and Herzegovina:** judicial training is organised through 2 training institutions for judges and prosecutors (Centers for Judicial and Prosecutorial Training i.e. JPTC). There is also a Brcko Judicial Commission, which in coordination with other two JPTC's, organizes some training for judiciary. The governments of Bosnia and Herzegovina and Republika Srpska provide respective annual budgets for the functioning of the JPTC's. The amount of their combined budget for 2012 was 615 593€, which was reduced significantly compared to previous years. Brcko Judicial Commission has very limited competencies in terms of judicial training and it cannot be estimated what amount of funds this institution allocates to the judicial training.

No initial training is obligatory. On the contrary, the general in-service training is compulsory for judges and prosecutors (minimum of 4 days per year). Judges and prosecutors during annual evaluation are scored, beside other criteria, with number of days spent on in-service training. However, they may choose topics from the annual program of the JPTC's as well as timing of the training, preferably in accordance with their scope of the work.

**Bulgaria:** the National Institute of Justice (NIJ) is a public institution, which main activities are: initial compulsory training of 9 months (before 1<sup>st</sup> January 2012 it was 6 months); compulsory initial qualification intended to further the qualification of the judges, prosecutors and investigators who are first-time appointed; continuing training (the emphasis in these qualification courses is laid upon the current amendments to legislation, changes in jurisprudence, interdisciplinary topics and training in EU Law) and many other (the budget for 2012 is 1 503 273 €).

**Croatia:** the Judicial Academy is an independent and autonomous public institution responsible for the initial and continuous trainings of judges and prosecutors. Its founder is the Republic of Croatia, while the founding rights and obligations are performed by the Ministry of Justice. Within the Academy there are two organizational units: the State School for Judicial Officials and the Directorate for Professional Training of Trainees, Advisors and Judicial Officials. The 2012 budget is 1 716 506,5 €.

**Czech Republic:** the budget of the Judicial Academy in 2012 is of 2 318 395 €. The training is voluntary and the frequency of attendance depends on judges. However, the training is organized "regularly", by the Judicial Academy.

**Denmark:** there is only one institution for judges (budget approx. 2 106 500 €). As to prosecutors, after completion of the 3-year initial training programme, the majority of prosecutorial training (incl. managerial training) is voluntary and can be undertaken as and when needed. The Director of Public Prosecutions offers a catalogue of some 25 different short-term courses covering a wide range of topics. External training is also offered – mainly focusing on managerial training. On average the intent is that each prosecutor should engage in training activities for 5 days a year.

**Estonia:** one of the servicing departments of the Estonian Supreme Court Judicial Training Department of the Supreme Court is organizing the judges training. Therefore, there is no separate judicial training institution in Estonia but the Department acts as an institutional whole. The budget is 314 788 € and it includes all the operational expenses of the department, including budget allocated to (gross) salaries. The Office of the Prosecutor General organizes the training of public prosecutors (initial and continuous training) together with the universities and practicing professionals. There is no special training department as in the Supreme Court. The budget allocated to the training of prosecutors in 2012 was 60 000 € (it does not include the operational expenses or administrative costs). The Training Council determines annually a part of the training programme, the completion of which is mandatory to judges.

**Finland:** judicial training has traditionally been based on practical training in the courts and on the in-service training for judges that the Ministry of Justice provides. There is also basic and advanced professional training for prosecutors that the Office of the Prosecutor General provides.

**France:** the *Ecole Nationale de la magistrature (ENM)* offers initial and continuous training for judges and prosecutors, which are both absolutely compulsory since 2007. A probationary training, organized by the *ENM*, has been instituted for

the main parallel recruitment methods: judges and prosecutors who have been appointed through complementary exams, applicants to a direct integration, temporary magistrates and *juges de proximité* (local judges). The 2012 budget was 28 915 000 €.

**Georgia:** there is one institution for judges (budget: 402 300 €) and one institution for prosecutors (budget: 211 009 €). The main reason why in-service training for specialized functions (e.g. public prosecutor specialized on organized crime) and in-service training for management functions of the court (e.g. Head of prosecution office, manager) was regular is the amendment of the criminal procedure code of Georgia in 2010 and the need for training on new material. New information is fully mastered by prosecutors and now the training is occasional.

**Germany:** the budget of the single institution for both judges and prosecutors is 4 million (Federation). It does not include information from Mecklenburg-Western Pomerania, Thuringia, North Rhine-Westphalia and Bremen. In addition to the German Judicial Academy, which is funded jointly by the Federation and the Länder, some Länder maintain their own judicial academies.

**Greece:** In-service training for specialized judicial functions in the form of seminars, conferences, etc. is available and provided for but it is not obligatory, in order to ensure practically the smooth and efficient functioning of courts on the days of the training.

**Hungary:** in 2012 was established in law the one institution for initial training for trainee judges and trainee prosecutors, but in fact the common initial training did not began yet in the Hungarian Judicial Academy, it was provided separately for judges and prosecutors in 2012. The budget of the Hungarian Training Centre for Prosecutors was in 2012: 400 335€. The budget of the Hungarian Judicial Academy (for judges) was in 2012: 1 262 000€. In fact, the Act on the Organization and Management of Courts was amended in 2012. The Hungarian Judicial Academy has been renamed the Hungarian Academy of Justice, and its responsibilities have been widened: the Academy is partly responsible for the training of prosecutors and other contributors of justice (notaries, advocates). In 2012, the President of the National Office for the Judiciary decided to implement compulsory regular training for specialised judicial functions such as juvenile crimes, economic crimes, traffic crimes, drug abuse and trafficking cases.

**Iceland:** Iceland does not have public schools or institutions specifically responsible for training judges and prosecutors. The Judicial Council is to organise continuing education for district court judges. A working group appointed by the Judicial Council will submit a report suggesting training and education for judges, both initial and in-service training. A special committee by the Judicial Council provides continuing education for the district court judges. A working group appointed by the public prosecutor will submit a report soon making suggestions for training and education for prosecutors, both initial training and in-service training. The police commissioners have offered courses for prosecutors, and the public prosecutor has had at least one information meeting annually for prosecutors.

**Ireland:** 250 000€ for judicial training. Training is conducted in-house for prosecutors.

**Italy:** for a short introduction to the Italian School for the Judiciary see:

[http://www.giustizia.it/giustizia/it/contentview.wp?previousPage=mg\\_1\\_28&contentId=ART749202](http://www.giustizia.it/giustizia/it/contentview.wp?previousPage=mg_1_28&contentId=ART749202). The School is an independent entity with legal personality under public and private law, as well as full capacity vis-à-vis organizational, functioning, management, contractual and accounting aspects of its activity. The charter of the School – which represents the expression of its autonomy - was adopted on February 6, 2012. The School is the sole agency competent with regard to professional training of the judiciary.

**Latvia:** the budget of the Judicial Training Center in 2012 is 136 57 0€ (including training for non-judge staff). Formally, the Judicial Training Center is responsible for training of judges, but in the last years the Judicial Training Center also organized several regular training programmes for prosecutors approximately once in 2-3 months. In total for prosecutor training in 2012 has been spent 4 757 € .

**Lithuania:** there is no training institution for prosecutors. Prosecutors are invited to join judges at their training institution. The answers to questions 127-128 concern only trainings of judges (according to the special programmes approved for judges). Courts can also provide training of judges at their own expenses. In this case the topics of trainings and their periodicity depend on the financial possibilities. The assignments of the State budget to the Center is 263 843,8 € .

**Luxembourg:** Luxembourg has entered into a specific training agreement with the French *ENM (Ecole nationale de la Magistrature)*. A compulsory initial training programme has been set up. Judges and prosecutors, once appointed, can attend specific training programs offered by the *ENM*, but also national training seminars at the *INAP (Institut national de formations de l'administration publique)* and internal seminars (peer to peer formations). Luxembourg is also a member of the *ELA (European Law Academy)*, and the seminars offered by the *ELA* are regularly attended by judges and prosecutors. In case of a justified professional need, any other, even private sector organized, training programme can be attended.

**Malta:** judges and magistrates are chosen from the practicing lawyers and then no training is given to them, other than the occasional activity which they organize amongst themselves through the Judicial Studies Committee. It assists judges and magistrates in skills training and continued professional development mainly through seminars conducted by both local and foreign experts and speakers. The JSC is composed of 4 members, 2 appointed by the Chief Justice and 2 members appointed by the Minister responsible for justice, and acts under the general direction of the Chief Justice.

**Republic of Moldova:** the budget of the National Judicial Institute was 419 798 €.

**Monaco:** there is no public institution for judicial training. There is however an optional one-week programme of continuous training organized by the French *ENA*. For detached French magistrates who have been appointed after 2001, a one-week programme of continuous training per year is compulsory. The law No. 1.382 (20 July 2011) on preventing and responding to particular violences contains specialized training for the judiciary.

**Montenegro:** the Judicial Training Center is organized as a separate organizational unit of the Supreme Court of Montenegro and thus does not have a separate budget. This does not imply that other sources of finance are not possible. In 2012, approximately 90 000 € was spent on the activities of the Center, including salaries of the employees.

**Netherlands:** SSR provides training for both judges and prosecutors. SSR 2012 budget total is 32 800 000 € (15 600 000 € for salaries and 17 200 000 € for trainings/courses).

**Norway:** The initial training is organized by the Department of Training Development in the Norwegian Courts Administration, and consists of 5 gatherings held during the first year at the bench, each gathering with a duration of 3-4

days. Proper routing of the training for judges is ensured through the Training Advisory Council, and by establishing several committees divided into legal fields (criminal law and procedure, civil procedure, etc.).

**Portugal:** budget - 5 076 495 € .

**Romania:** the budget is 4 761 224 €. The responsibility of the initial and continuous training of judges and prosecutors lies with the National Institute of Magistracy, an autonomous institution, coordinated by the Superior Council of Magistracy. The initial training is compulsory in a differentiated way (2 years for the judges and prosecutors newly employed, without legal experience and 6 months for the magistrates recruited among the persons with legal experience). The continuous training is organized at the centralized level, by the National Institute of Magistracy, as well as at the decentralized level, within courts and prosecutor's offices, with the participation of the NIM. Judges and prosecutors are obliged to participate in training activities at least once every 3 years. For the judges and prosecutors with administrative duties, there are organised courses on judicial management after their appointment. The professional training of judges and prosecutors is made taking into account their specialization. The case-law of the ECtHR is included in the initial training programme of the NIM and as priority training field in the continuous training programmes. Within the last years there has been intensified the professional training for specialised functions of judges and prosecutors in the field of the fight against corruption and economic-financial criminality, and there has been established as priority the professional training concerning the major legislative amendments in the Romanian judicial system brought about by the entry into force of the 4 new codes (civil, criminal, civil procedure, criminal procedure).

**Russian Federation:** the budget of the training institution for judges in 2012 is 2 882 514 € . The data has been given by the Russian Academy of Justice. There is also the Academy of the Prosecutor's General of the Russian Federation Office. As to the budget of the latter, data are not available.

**Serbia:** the 2012 budget of one single training institution for both judges and prosecutors was 1 002 964 € .

**Slovakia:** the Judicial Academy of the Slovak Republic is the institution which provides training for all judges, prosecutors and court staff (the budget for 2012 is 620 000 € ). The compulsory initial training is comprised of several pre-exam sessions for the applicants who wish to pass the judicial exams. These applicants are "judicial officers" or "assistants to the prosecutor" who perform their legal practice at the courts or in the prosecutors' offices. Before the judicial exam they can also attend the training events offered on an optional basis. There is no in-service compulsory training. Under the Act on judges every judge is obliged to train himself/herself. The Judicial Academy offers on average 150 training activities per year for judges, prosecutors and non-judge staff, mainly the judicial officers (*rechtspfleger*).

**Slovenia:** the Judicial Training Centre is a body of the Ministry of Justice responsible for the training of judicial trainees; the execution of legal state exams, other forms of exams required in the justice system, different types of permanent in-service training of judges, judicial advisers and court personnel; the obligatory professional training for presidents and directors of courts; the publication of professional literature. An Expert Council is set up for providing expert assistance to the Centre. The work of the Expert Council is conducted by the Minister of Justice or by the State Secretary under his/her authorization. The Judicial Training Centre spent 308 317 € in 2012.

**Spain:** the institution in charge of judges' initial and continuous trainings is the Judicial School (*Escuela Judicial*) which depends on the Council General of the Judiciary, (budget for 2012 – 26 452 820€ ). The Center of Judicial Studies (*Centro de Estudios Jurídicos*) is in charge of the initial and continuous training of prosecutors, *secretarios judiciales*, forensics, non-judicial staff of the justice administration and state advocacy (budget for 2012 – 17 665 900 €, of which 6 241 700 € for prosecutors' training). These budgets include the salaries and benefits of judges and prosecutors during the training period.

**Sweden:** the Swedish Judicial Academy was established in 2009. It is a part of the Swedish courts administration. There is an initial training for judges comprised of four years traineeship including compulsory courses at the Academy. It is however possible to become a judge also without this initial training. After appointment, the new judge has a large range of different courses to choose between to suit his or her needs. All training within the prosecution service comprises lectures concerning ECHR and humanitarian law, e.g. ECHR Article 6. The budget is of 530 000€. All newly employed prosecutors have to undergo a compulsory basic training for a total of 15 weeks, divided into four parts, during their first three years in the service. After this they are offered continuous training which is compulsory for specialized senior public prosecutors. The training is offered by the Prosecution Authority and is not a public body. The total budget for the training of prosecutors was 3 317 967€ in 2012.

**Switzerland:** there is no compulsory public school for the judiciary. Initial and continuous training is globally offered by universities or private institutes, whose budgets are unknown. As regards continuous training, judges and prosecutors can attend seminars and congresses on specific topics related to their functions. There is a Swiss foundation offering specific in-service training for judges. There are also judges and prosecutors associations which offer seminars from time to time.

**"the former Yugoslav Republic of Macedonia":** the Academy for judges and public prosecutors is the competent body for conducting initial (two years) and continuous training for judges and public prosecutors. The budget of the Academy for 2012 was 567 970 €. A new Law on Academy for Judges and Public Prosecutors was adopted in July 2010. Its purpose is to create high profile professional staff to perform the offices of a judge or public prosecutor, through redefinition of the requirements for enrolment of candidates for the initial training; introduction of a psychological test and a test of integrity; increased duration of the initial training, to two years; the right of the best-ranked candidates in the first stage of initial training – theoretical part – to decide whether they would perform the office of a judge or of a public prosecutor.

**Turkey:** Education is given to judges and prosecutors at the Turkish Academy of Justice, which is a public institution. The 2012 budget of this institution is 4 986 016€.

**Ukraine:** the training institution for prosecutors is the National Academy of Prosecution (special institute within the Academy). The initial and continuous training institution for judges is the National School of Judges of Ukraine.

**UK-England and Wales:** for prosecutors who are trainees in the CPS (currently 70) there is a personal induction plan supporting their development giving a framework for learning. For all prosecutors there are dedicated e-learning modules for their role and some mandatory modules.

**UK-Northern Ireland:** the 2012 budget of the institution was 130 000 € . Attendance at continuous training events is voluntary. The programme in any given year will reflect the perceived needs for judicial training in that year and is determined by a number of factors including: developments in case law; newly commenced legislation; feedback from the judiciary; and initiatives of the Lord Chief Justice (LCJ). Most continuous training events are approximately one and a half hours duration. Induction training will cover a range of topics delivered over a sequence of days, some of which will involve residential attendance. Human Rights Law is mainstreamed into all judicial training and this applies for all tiers. In house training is provided by the Northern Ireland Judicial Appointments Commission in respect of judges and the PPS in respect of prosecutors.

**UK-Scotland:** there is one institution for judges (the 2012 budget is 637 676€). Above is the overall budget for the judicial training institution for judges. The training budget itself was 490 520€. The Lord President delegates responsibility for judicial training to the Judicial Institute, of which he/she is President. The Judicial Studies Committee (changed names and structure on 1 January 2013 to become Judicial Institute) is part of the Judicial Office for Scotland within the Scottish Court Service and provides training to all judiciary. Public prosecutors are mainly trained in-house within COPFS. Technical legal trainers are employed to provide such training as required. Additionally, external training and qualifications will be funded where there is a business case to do so.

#### 11.4 Salaries of judges and prosecutors

The remuneration of judges is a delicate issue. The objective is to give the judge a remuneration corresponding to his/her status and social role, taking into account the difficulties related to the practice of this function and protecting him/her from any pressure which might challenge his/her independence and impartiality. The remuneration is composed of a basic salary, which may be supplemented with bonuses and/or other various (material or financial) advantages (see the following title 11.5).

Recommendation Rec (2010)12 on the independence, efficiency and responsibilities of judges provides that judges' remuneration should be guaranteed by law and "*should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions*" (§53, 54).

Two different indicators are further analysed which allow together to get closer to a comparable reality between states. The first concerns the judge's salary at the beginning of her/his career. The distinction must obviously be done between two groups: the countries recruiting (young) judges graduating from a school for judicial studies and the countries recruiting judges among legal professionals who benefit from long working experiences, most of the time as lawyers. The second level of comparison allows a cross-sectional study at the end of the career in which this type of differentiated recruitment no longer plays a role. The average judge's salary at the Supreme Court or at the Highest Appellate Court allows a more meaningful comparison. If we analyse both the salaries at the beginning and at the end of the career, it is possible to measure a judge's possible progression within a state and to evaluate the consideration attributed to his/her social position. The ratio of the judge's salary to the national average salary makes it possible to better visualise his/her salary at the national level by removing any biases inflicted by the exchange rate or GDP.

In any case, the data which are presented in the next table must be interpreted with caution. The allocated salaries depend on several factors which are connected to the exchange rate for non-Euro states but also to the living standards, modalities of recruitment, seniority etc. It is important to take into account the special features for each state presented in the comments.

Similar reservations to those made as regards the salary of judges should be made for prosecutors. The salaries of prosecutors are composed of a basic salary that can be supplemented with bonuses and/or other benefits (see the following title 11.5). Paragraph 5d. of Recommendation R(2000)19 provides that: "*reasonable conditions of service should be governed by law, such as remuneration, tenure and pension commensurate with the crucial role of prosecutors as well as an appropriate age of retirement.*"

#### Comments:

**Armenia:** according to legal provisions, the salary of a prosecutor comprises the official pay rate, supplements, and other payments stipulated by law.

**Cyprus:** the net is calculated individually.

**Czech Republic:** the salary of the public prosecutors was increased to bring it closer to the salary of judges.

**Ireland:** the judicial salary reflects that of a judge of the District Court and a judge of the Supreme Court at December 2012. Salary for prosecutor reflects the salary of a new entrant solicitor and the salary of a principal Prosecution Solicitor.

**Italy:** the salaries of judges and PMs do not depend on the position held but rather on experience (i.e. years of service). That means that the salary of a judge working in the lowest courts can be the same as the salary of a judge working in the Highest Appellate Court.

**Luxembourg:** the net salary is not available as it varies considerably according to the family situation of the persons concerned.

**Malta:** a magistrate has competence to hear all civil cases up to 11 650€ and criminal cases up till a period of imprisonment of 10 years, whilst judges are competent to hear all the other cases. For the purpose of this exercise, the figure mentioned relates to the initial salary of a judge, though, in practice and as a rule, the beginning of one's career in the judicial field is as a magistrate, whose salary is far less than that indicated above. In terms of the Judges and Magistrates Salaries Act, the Chief Justice has a gross annual salary of 46 456€, a judge has a gross annual salary of 40 221€ whilst magistrates have a gross annual salary of 34 188 € . The net annual salary varies according to the income tax bands announced, from time to time, and therefore it is not possible to indicate the amounts. Nevertheless, for the purpose of this exercise, the figures provided for as net income were calculated based on the above mentioned salary for a married person.

**Montenegro:** annual gross salary for deputies of the prosecutor in basic prosecution offices was around 21 872 €, for the deputies in high prosecution offices – 25 449 €, for the deputies of the Supreme state prosecutor – 26 892 €, and for the deputies of the specialised prosecutor – 35 937 €.

**Norway:** the net salary is calculated by subtracting taxes from gross annual salary. The actual net salary for a judge will however depend on which deductions the judge will have (tax deductible interest etc.).

**Slovakia:** the indicated sums represent the gross salary of the judge/prosecutor without the bonuses and supplements. The value of net salary depends on several individual criteria, e.g. the number of children, the voluntary pension security scheme etc. The average monthly salary of the judge is equal to the monthly salary of a deputy of the parliament. The average salary of the prosecutor is equal to the average salary of the judge. The judge has the right to 2 additional salaries in May and in November under the conditions stipulated in law. Similar rules are applicable for the salaries of the prosecutors.

**Spain:** the net annual salary is an average as net salary is calculated deducting income taxes from gross salary depending on the salary and on the individual's family situation.

**Sweden:** the net annual salary is not stated as the level of income tax varies depending on the income and domicile.

**Switzerland:** the annual salary of judges/prosecutors can vary highly from one canton to another; hence indicated figures come from weighted average salaries of the number of judges who provided data.

**Turkey:** there is no difference between salaries of judges and public prosecutors.

**UK-England and Wales:** net annual salaries would depend on an individual's tax and national insurance position during any particular year. London posts also attract a London Allowance (Recruitment and Retention Allowance) of 3 668 € (£2,991.30) per year. In addition to this, London posts attract a salary lead of 3 131 € (£2,553.87) at the beginning of their career as a Crown Prosecutor and 5 060 € (£4,126.35) at the highest prosecutor grade (Principal Crown Advocate). It should be noted that all Crown Prosecutors would join at a Point 1 salary which then increases year on year to a maximum. The point 1 salary is actually 33 938 € (£27,675.42) but at the time this data was requested, no one was on this salary and so the figure indicated above is the minimum salary for a Crown Prosecutor at the time.

**UK-Scotland:** salaries of all judges in Scotland (in Euros using exchange rate indicated in Q5): Lord President 262 603 €; Lord Justice Clerk 253 642 € ; Inner House Judge 241 197 € ; Outer House Judge 211 825 € ; Sheriff Principal 169 884 € ; Sheriff 157 312 € ; Stipendiary Magistrate 86 521 € .

### 11.4.1 Salaries of judges and prosecutors

Table 11.9 Gross and net annual salaries of judges and prosecutors at the beginning of their career, in 2012 (Q4, Q132)

States/entities	Judges			Prosecutors		
	Gross annual salary	Gross salary in regard to national average gross annual salary	Net annual salary	Gross annual salary	Gross salary in regard to national average gross annual salary	Net annual salary
Albania	7 482 €	1,7	5 747 €	7 500 €	1,7	5 760 €
Andorra	73 877 €	3,1	69 814 €	73 877 €	3,1	69 814 €
Armenia	1 145 €	0,4	918 €	NA	NC	NA
Austria	49 509 €	1,7	31 415 €	52 548 €	1,8	32 966 €
Azerbaijan	11 364 €	2,4	9 338 €	5 305 €	1,1	4 268 €
Belgium	64 886 €	1,6	35 334 €	64 886 €	1,6	35 334 €
Bosnia and Herzegovina	23 674 €	3,0	15 081 €	23 674 €	3,0	15 081 €
Bulgaria	14 345 €	3,2	12 911 €	14 345 €	3,2	12 911 €
Croatia	29 184 €	2,3	16 992 €	33 126 €	2,6	18 696 €
Cyprus	72 948 €	3,0	NA	32 038 €	1,3	NA
Czech Republic	26 492 €	2,1	NA	23 771 €	1,9	NA
Denmark	104 755 €	2,0	NA	53 230 €	1,0	NA
Estonia	35 321 €	3,3	27 376 €	16 620 €	1,6	12 972 €
Finland	61 336 €	1,6	43 123 €	47 508 €	1,2	35 013 €
France	36 793 €	1,1	31 196 €	37 798 €	1,1	32 112 €
Georgia	12 634 €	NC	10 108 €	9 072 €	NC	7 248 €
Germany	41 127 €	0,9	NA	41 127 €	0,9	NA
Greece	30 160 €	NC	22 070 €	30 160 €	NC	22 070 €
Hungary	17 644 €	1,9	11 152 €	17 644 €	1,9	11 152 €
Iceland	72 002 €	2,6	NA	37 193 €	1,4	NA
Ireland	122 512 €	3,7	NA	30 218 €	0,9	NA
Italy	54 497 €	1,9	33 911 €	54 497 €	1,9	33 911 €
Latvia	19 755 €	2,2	13 379 €	19 356 €	2,2	13 104 €
Lithuania	18 614 €	2,5	14 149 €	14 551 €	2,0	11 059 €
Luxembourg	72 426 €	1,7	NA	72 426 €	1,7	NA
Malta	40 221 €	2,6	32 919 €	22 515 €	1,4	20 792 €
Republic of Moldova	3 393 €	1,3	2 710 €	2 853 €	1,1	2 236 €
Monaco	45 995 €	NC	43 414 €	45 995 €	NC	43 414 €
Montenegro	20 170 €	2,3	13 514 €	21 872 €	2,5	NA
Netherlands	74 000 €	1,4	43 000 €	62 855 €	1,2	NA
Norway	130 737 €	2,0	90 163 €	66 234 €	1,0	64 873 €
Poland	21 942 €	2,1	17 489 €	21 942 €	2,1	17 489 €
Portugal	28 703 €	1,4	NA	28 703 €	1,4	NA
Romania	24 688 €	4,4	17 316 €	24 688 €	4,4	17 316 €
Russian Federation	14 843 €	1,9	12 914 €	NA	NC	NA
Serbia	16 904 €	2,8	10 050 €	16 904 €	2,8	10 050 €
Slovakia	29 710 €	3,1	NA	28 060 €	2,9	NA
Slovenia	32 633 €	1,8	20 291 €	31 980 €	1,7	19 560 €
Spain	47 494 €	2,1	33 721 €	47 494 €	2,1	33 721 €
Sweden	54 471 €	1,3	NA	53 479 €	1,3	NA
Switzerland	129 946 €	2,3	110 454 €	112 136 €	2,0	89 709 €
The FYROMacedonia	17 252 €	2,9	11 480 €	16 085 €	2,7	10 714 €
Turkey	23 003 €	1,9	16 718 €	23 003 €	1,9	16 718 €
Ukraine	8 154 €	2,3	6 906 €	5 723 €	1,6	4 500 €
UK-England and Wales	127 474 €	3,8	NA	38 474 €	1,2	NA
UK-Northern Ireland	122 553 €	4,2	82 228 €	41 000 €	1,4	NA
UK-Scotland	157 312 €	5,1	NA	37 042 €	1,2	27 106 €
Average	47 789 €	2,3	27 694 €	34 700 €	1,8	24 247 €
Median	32 633 €	2,2	17 316 €	30 218 €	1,7	17 489 €
Minimum	1 145 €	0,4	918 €	2 853 €	0,9	2 236 €
Maximum	157 312 €	5,1	110 454 €	112 136 €	4,4	89 709 €
Israel	86 297 €	3,8	NA	22 924 €	1,0 NA	NA

#### Comments:

**Belgium:** for first instance professional judges at the beginning of their careers (First Instance Court; Work Court; Commercial Court), 3 years of service (beginning of career) gross annual salary: 41 147,51 \* 1,5769; for prosecutors at the beginning of their careers, 3 years of service (beginning of career) gross annual salary: 41 147,51 \* 1,5769. Index from 1<sup>st</sup> March 2012 to 31<sup>st</sup> December 2013: 1,5769. (1) 132-2-1 and 132-2-3: net salary for judges or substitutes with 3 years of service, married with two children.

**Bosnia and Herzegovina:** the following presumptions were used for calculating these amounts: first instance professional judge at the beginning of his/her career – 3 years of work experience; public prosecutor at the beginning of his/her career – 3 years of work experience. The amounts of salaries were increased compared to the previous

evaluation cycle due to the change of legislation providing for the general upgrade of salaries of judges and public prosecutors.

**France:** first instance judges at the beginning of their career: 1<sup>st</sup> career stage, 2<sup>nd</sup> rank judges (non-specialized judges from high instance courts).

**Georgia:** the amount of salaries of judges of common courts is determined by a special law. In the Prosecutor's Office the interns (beginners) receive the salary as well, but their official status is an intern and not a prosecutor. Their salary is 213 € - gross, 171 € - net. In the Georgian prosecutor's office, there is no division of prosecutors according to court instances. If the prosecutor has not been promoted, his/her salary at the beginning and the end of their career remains the same.

**Iceland:** public prosecutors at the beginning of their career are deputy prosecutors who are not appointed as public prosecutors.

**Monaco:** Judges and prosecutors at the beginning of their career belong to the same career stage, and thus have the same annual salary.

**Netherlands:** A public prosecutor at the beginning of his/her career: gross annual salary in € on 31 December 2010 12 \* 4 503; net annual salary in €, on 31 December 2010 12 \* 2 717.

**Slovakia:** the salary of the judge at the beginning of the career is 90% of the average monthly salary of the judge.

**Ukraine:** the salary of public prosecutors and investigators of office of public prosecutor consists of post salaries, raises for class ranks, time-in-service and must provide sufficient material terms for independent implementation of official duties. Raises for a time-in-service are set also to other workers of office (to the specialists, office workers) of the public prosecutor. The sizes of post salaries, raises for class ranks and time-in-service are established by the Cabinet of Ministers of Ukraine. The differences between 2010 and 2012 data are due to the adoption the Law of Ukraine "On the Judiciary and the Status of Judges" on 7 July 2010.

**UK-Northern Ireland:** for a first instance professional judge we have included the salary of a District Judge and for the Highest Appellant Instance a Lord Justice of Appeal.

**Reminder: a comparison of the salaries at the beginning of the career between the states must always take into account the different kinds of recruitment which have a decisive influence on the level of remuneration of judges and prosecutors.**

**Note to the reader:** concerning the salaries' analysis, the evolution of the exchange rate of the national currencies against the euro for states that are not in the euro zone must be taken into account before drawing conclusions from these figures expressed in euro. The exchange rate's variations for the period 2007-2013 may be found in the appendix of this report.

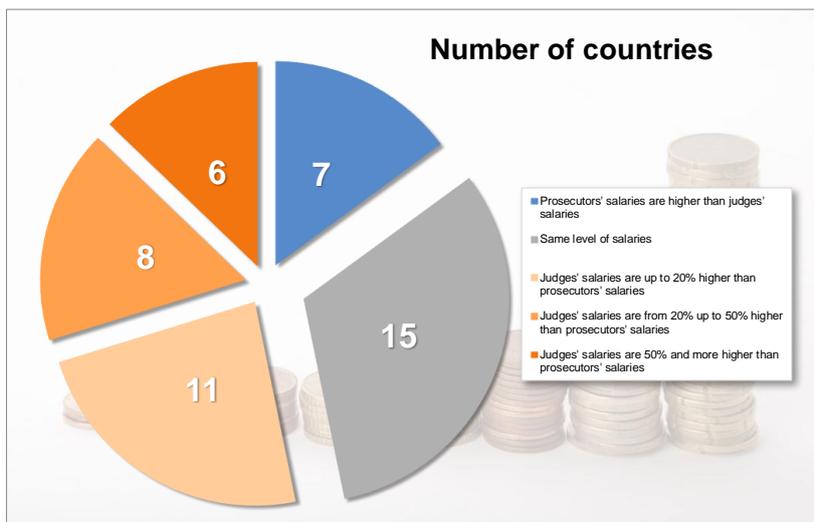
Thus, it will be necessary, for example, to interpret an increase in the absolute value of the gross salary in the light of a positive variation of the exchange rate observed for the same period.

Between 2009 and 2013, the states that had the highest positive variations in the exchange rate are **Norway** (24,52 %), **Sweden** (20,96 %), **Switzerland** (18,71 %), **Azerbaijan** (18,23 %), **UK-England and Wales** (15,14 %), **UK-Northern Ireland** (15,14 %), **UK-Scotland** (15,14 %), **Georgia** (6,94 %), **Czech Republic** (6,30 %), **Poland** (3,08 %), **Ukraine** (2,99 %), **Russian Federation** (2,89 %) and **Iceland** (0,59 %). In **Bosnia and Herzegovina**, **Bulgaria**, **Latvia** and **Lithuania**, there was no variation in the exchange rate during this period.

Regarding the countries that had a negative evolution of the exchange rate, these are **Serbia** (- 26,99 %), **Albania** (- 12, 13 %), **Romania** (- 10,79 %), **Turkey** (- 10,64 %), **Armenia** (- 10,61 %), **Hungary** (- 10,35 %), **Republic of Moldova** (- 8,52 %), **Croatia** (- 2,93 %).

At the European level in 2012, judges and prosecutors at the beginning of their career are better paid than the average national gross salary (in average 2,3 times more for judges and 1,8 times more for prosecutors). This situation applies for almost all member states (except for prosecutors in **Ireland**). In **Germany**, where judges and prosecutors earn a little bit less than the average salary when entering the career, it must be pointed out that the average national gross salary is high compared to other European states. The difference can be significant, like in **Andorra**, **Bosnia and Herzegovina**, **Bulgaria**, **Cyprus**, **Estonia**, **Lithuania**, **Romania**, **Serbia**, and **Slovakia**. These are countries which made the choice to support strongly the position of the judiciary within the society, sometimes to fight corruption within the judiciary. The difference in **Ireland**, **UK-England and Wales**, **UK-Scotland** can be partially explained, as regards judges, by the fact that judges are recruited among lawyers with a solid judicial or legal experience.

**Figure 11.10** Categorisation of the differences between judges' and prosecutors' gross salaries at the beginning of their career, in 2012 (Q132)



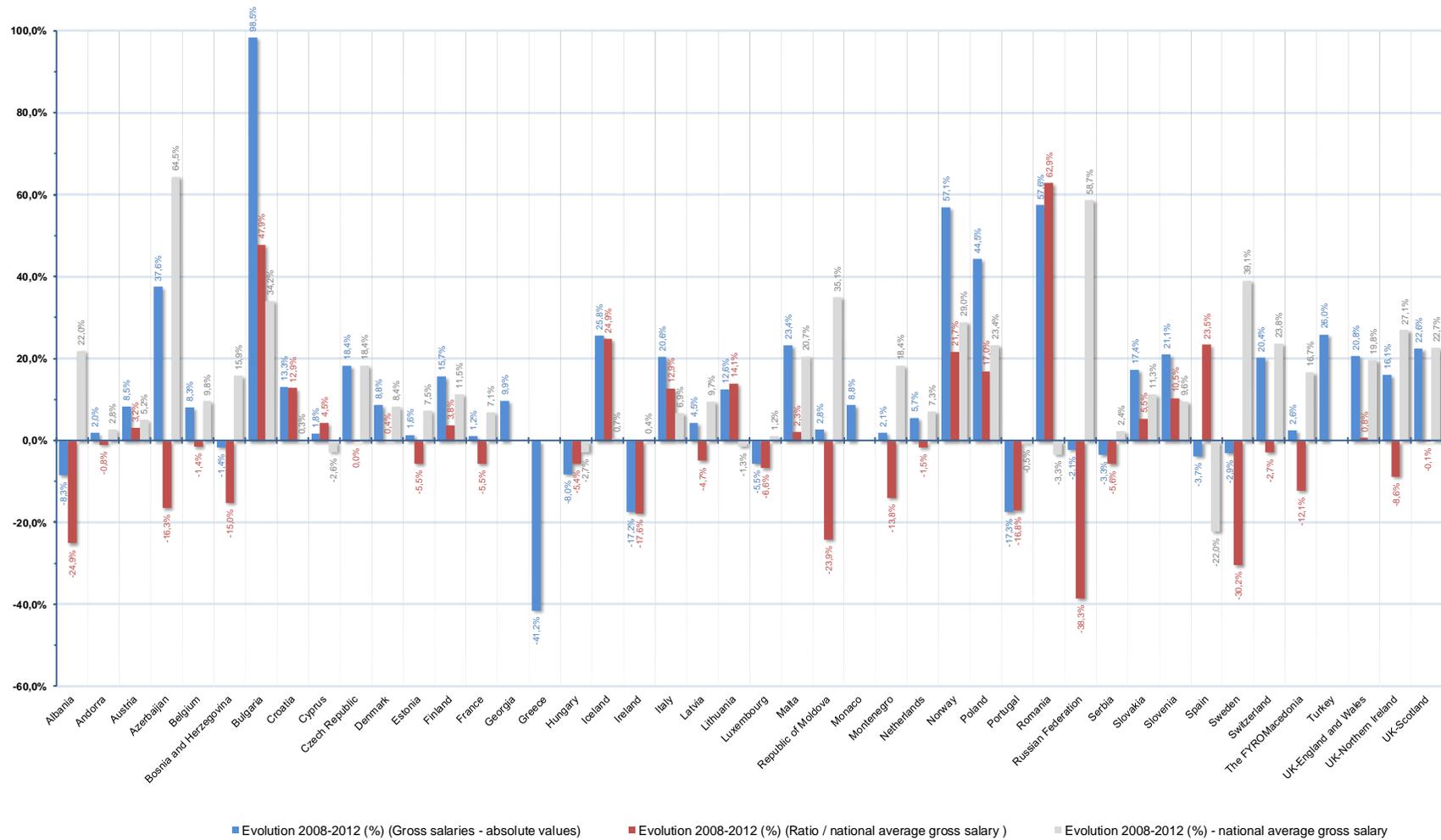
At the European level, judges earn on average 21% more than public prosecutors at the beginning of their career. However there are significant differences according to the systems, depending the powers and status of public prosecutors.

16 states do not apply any difference between the salaries of the judges and prosecutors at the beginning of their career: **Andorra, Belgium, Bosnia and Herzegovina, Bulgaria, Germany, Greece, Hungary, Italy, Luxembourg, Monaco, Poland, Portugal, Romania, Serbia, Spain, and Turkey**. In 9 states or entities among those which provided data, the difference is limited. It is more significant, in favour of judges, in 8 states or entities: in **Azerbaijan, Cyprus, Denmark, Estonia, Georgia, Iceland, Ireland, Lithuania, Ukraine**; this can be the result of a political will to support judicial power in countries which had experienced strong prosecution authorities in a previous system. In **Finland, Malta, Norway or Switzerland** this is explained by the organisation of the prosecution system, as well as by the practice of recruiting judges among experienced lawyers.

**Albania, Austria, Croatia, France and Montenegro** have a particular situation: the salary of a prosecutor is higher than a judge's salary at the beginning of their career. Yet, the differences observed remain fairly minor.

More generally, the national features (i.e. number of judges and prosecutors at the beginning and at the end of their career, particular status, functions, etc.) are to be taken into account for a correct interpretation of the figure 11.10.

**Figure 11.11 Evolution of salaries of judges at the beginning of the career between 2008-2012 – Evolution of the gross salaries (absolute value) and evolution of the ratio between the gross salaries of judges and the national average gross salary (Q4, Q132)**



## Comments:

**Bulgaria:** the basis for assessment was different in 2010 and 2012. Data for the present exercise reflects the actually received gross salaries, which include the basic salary and additional remuneration for grade and service.

**Croatia:** due to the different calculation of tax rates and changes in the amounts of tax reliefs, there is a difference between calculation of salaries in 2010 and 2012.

**Iceland:** salaries of judges were temporarily increased due to the workload in courts.

**Ireland:** in line with the Government's fiscal policy, the salary or remuneration of public service staff and office holders has been reduced since the 2010 statistics provided for the 2012 report. This action was part of a suite of measures which were required to be introduced in view of Ireland's financial situation. Following a constitutional amendment, legislation was passed to allow for the reductions in the remuneration of judges.

**Latvia:** during the economic crisis starting from 1<sup>st</sup> July 2009, the salaries for judges were reduced by 15% and starting from 1<sup>st</sup> January 2010, the salaries were reduced by 27%. Starting from 1<sup>st</sup> January 2011, the determination of the salaries for judges and prosecutors are included within unified remuneration system for the officials and employees of the state and local government institutions.

**Norway:** due to differences in currency rates, the salary reported for the 2010 evaluation was artificially low.

The data makes it possible to analyse the evolution between 2008 and 2012 of the gross salaries of judges at the beginning of the career for 44 states or entities and an observation of the variation of these salaries against the national average gross salary in 39 of those states. This data, in absolute value, excludes inflation and therefore must be put into perspective, but in a uniform manner as regards the states of the euro zone. The variation of absolute values outside the euro zone can be explained by the variations in the exchange rates of the national currency against the euro, between 2008 and 2012.

Between 2008 and 2012, the salaries of judges in Europe have increased, in absolute value, for most of the states and entities (32 out of 44).

More precisely, between 2008 and 2012, the highest increases in the salaries of judges at the beginning of their careers, in absolute value, are observed in **Norway, Romania, Poland, Azerbaijan, Turkey, Iceland, Malta, UK-Scotland, Slovenia, UK-England and Wales, Italy** and **Switzerland**. Nevertheless, those evolutions must be observed in the light of the exchange rate variations for countries outside the euro zone. Indeed, in **Norway, Azerbaijan, UK-Scotland, UK-England and Wales** and **Switzerland** the increase of the salaries, indicated in euros in the figure, is less significant when considering the positive variations of the exchange rate between the national currencies and the euro during the period 2008-2012. On the contrary, for **Romania** and **Turkey**, the strong increase in the salaries of judges at the beginning of their careers is amplified when considering the negative variation of the exchange rate, thus highlighting the public efforts for improving the remuneration of judges at the beginning of their careers.

The salaries of judges have decreased, in absolute value, mainly in **Greece, Ireland, Portugal** and, to a lesser extent, in **Luxembourg**. A decrease in judges' salaries took place in the economic context of the recent years in **Greece, Ireland** and **Portugal**. In **Ireland**, the decrease of 17% observed between 2010 and 2012 may be explained through the financial position of the state and the government's fiscal policy. The new legislation was adopted following a constitutional revision allowing a decrease in the salaries of judges. In **Greece**, the decrease observed starting from 2010 also continued in 2012 as a result of the measures taken by the mechanism of support of Greek economy established by the member states of the Euro area and the IMF.

Contrary to what may appear in the figure, the salaries have not decreased in **Albania** and **Hungary**. This is actually due to the exchange rate variation between the national currency and the euro, which explains the presentation in the table.

However, the increases and decreases in the salaries of judges at the beginning of their careers, indicated in absolute value, are to be further studied while taking into account the evolution of the national average salary of each state or entity in order to determine whether the salary policy has been indeed in favour of judges in the national economic context.

A determined public policy aimed at increasing the salary of judges at the beginning of their careers can be noticed in particular in **Romania**: a strong increase in the gross salaries of judges at the beginning of their careers can be observed, together with a strong increase in the ratio of the salary of judges against the national average salary - when at the sometime the national average salary decreases in Romania. To a lesser extent, this trend can also be noticed in **Norway, Poland, Iceland, Italy, Slovakia, Slovenia, Croatia**. The same can be observed for **Lithuania** and, to a lesser extent, **Cyprus**, where the salaries of judges increase when the national average salary decreases. The increase in the salaries of judges is more or less in line with the increase in the national average salary in **Austria, Finland, Czech Republic, Denmark,**

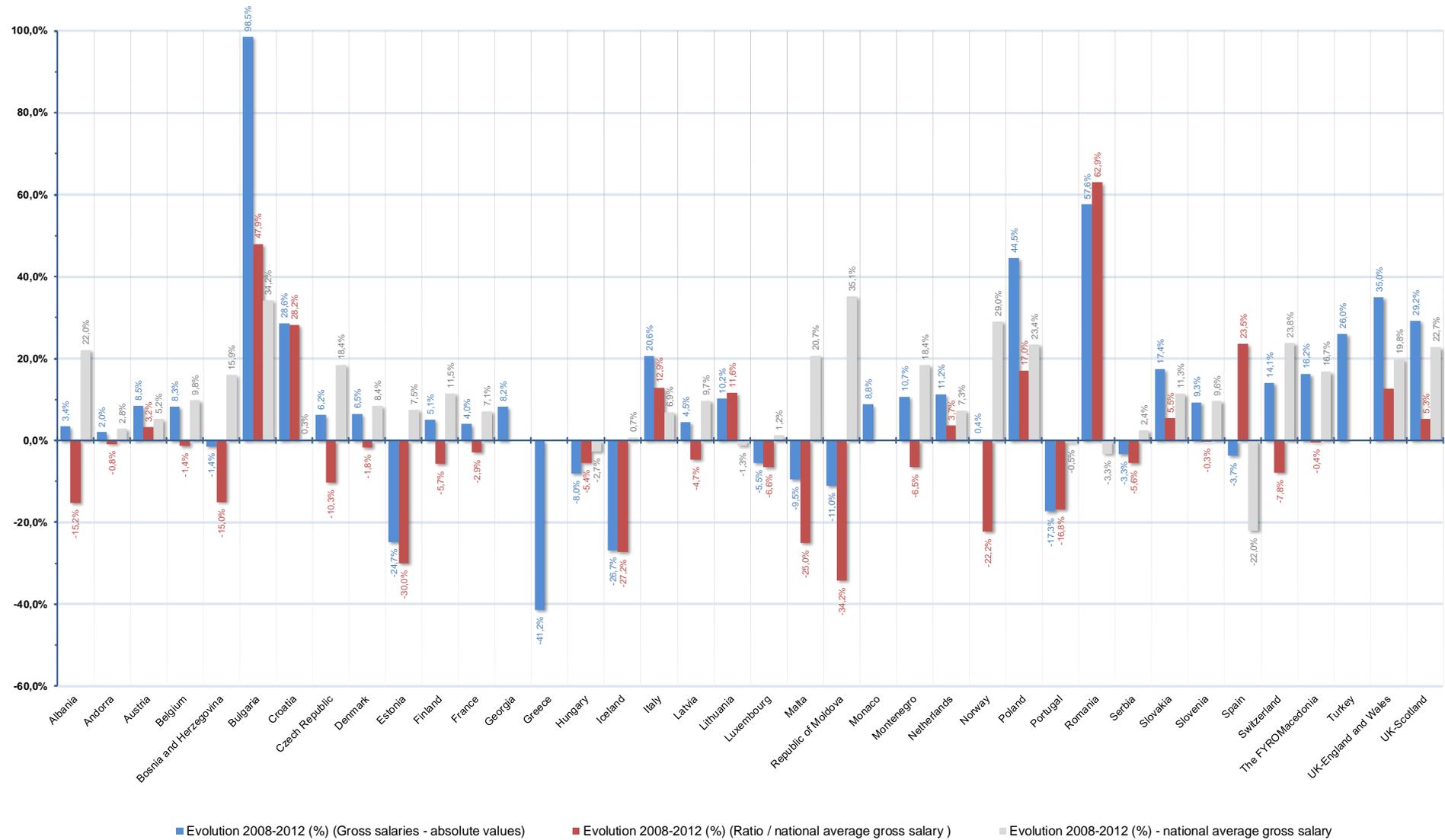
**Netherlands, Malta.** This reflects for those states a clear political will to maintain a certain level of remuneration for judges at the beginning of their careers.

In **Azerbaijan**, the increase of the salaries observed is to be interpreted in light of the evolution of the exchange rate, but also with regard to the evolution of the average salary which does increase more strongly than the salaries of judges. In **Belgium, Estonia, France, Latvia, Republic of Moldova, Montenegro, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, UK-Northern Ireland**, the same trend can be stressed: although the salaries of judges are increasing, they do not follow the level of increase of the national average salary.

In the **Russian Federation, Albania, Bosnia and Herzegovina, Luxembourg, Serbia**, the national average salaries have increased between 2008 and 2012, when the salaries of judges at the beginning of their careers have decreased. As regards **Albania**, the variation in the exchange rate explains the apparent decrease, however the evolution of the ratio of the salaries of judges against the national average salary makes it possible to note that the judges' situation in **Albania** is less favourable in 2012 than in 2008 in relation to the average standard of living.

The evolution of the salaries of judges follows the decreasing evolution of the national average salary in the states where the economic and financial crisis have been particularly significant: **Greece, Ireland, Portugal, Hungary**. In **Ireland** and **Hungary**, the decrease in the salaries of judges is even stronger than the decrease of the national average salary. It is the contrary in **Spain**: despite the decrease in the salary of judges, an increase of the ratio in relation to the national average gross salary can be observed.

**Figure 11.12 Evolution of salaries of prosecutors at the beginning of the career between 2008-2012 – Evolution of the gross salaries (absolute value) and evolution of the ratio between the gross salaries of prosecutors and the national average gross salary (Q4, Q132)**



## Comments:

**Albania:** the prosecutor's salary changes depending on the salary of the President of the Republic and in a proportional way.

**Bulgaria:** the basis for assessment was different in 2010 and 2012. Data for the present exercise reflects the actually received gross salaries, which include the basic salary and additional remuneration for grade and service.

**Iceland:** according to law, the salary of public prosecutors was decreased temporarily in 2010 as a result of the banking crisis in 2008 and the demand of savings in government operations. Since then salaries have increased.

The same variation has been assessed for 38 states or entities as regards the prosecutors' gross salaries. The same reservations as mentioned for figure 11.11 must be taken into account.

At the European level, although prosecutors' salaries have increased in absolute terms in most of the states and entities surveyed (27 out of 38). The economic crisis had an impact in several countries (see figure 11.12 above).

More precisely, between 2008 and 2012, the highest increases in prosecutors' salaries at the beginning of their career, in absolute value, can be observed in **Romania, Poland, UK-England and Wales, UK-Scotland, Croatia, Turkey and Italy.**

However, those evolutions must be observed in the light of the variations of the exchange rates for the states outside the euro zone.

Indeed, the increase of the salaries which appear in the figure for **UK-Scotland** and **UK-England and Wales** must be put in perspective, as it can be partially explained by the positive variation of the exchange rate during the period 2008-2012. However, concerning **Romania** and **Turkey** and, to a lesser extent **Croatia**, the strong increase in the salaries of prosecutors at the beginning of their careers is amplified when taking into account the variation of the exchange rates with the euro, highlighting the efforts in improving the remuneration of prosecutors at the beginning of their careers.

The salaries of prosecutors at the beginning of their career have decreased, in absolute value, mainly in **Greece, Iceland, Estonia, Portugal, Republic of Moldova, Malta and Luxembourg.**

Contrary to what may appear on the graph, salaries have not decreased in **Hungary**. This is actually the exchange rate variation between the national currency and the euro, which explains the presentation in the table. In **Republic of Moldova**, the same variation in the exchange rate reduces the observed decrease in salaries.

However, the increases and decreases in the salaries of prosecutors at the beginning of their career, in absolute value, are to be further studied taking into account the evolution of the national average salary of each state or entity.

In **Romania**, an increase in gross salaries of prosecutors at the beginning of their careers and an increase in the ratio between the salary of prosecutors and the national average salary can be noted. As for the judges (see above), the gap is widening significantly between the level of the salary of prosecutors and the national average salary in these two countries. The same situation can be observed, to a lesser extent, in **Poland, Croatia, Italy, Slovakia, UK-England and Wales** and **UK-Scotland**. The increase in the salaries of prosecutors at the beginning of their careers is more or less in line with the increase in the national average salary in **Austria, Netherlands, Slovenia, "the former Yugoslav Republic of Macedonia"**.

In **Belgium, France, Latvia, Montenegro, Switzerland, Czech Republic, Denmark, Albania, Finland**, the salaries of prosecutors are increasing, but they do not follow the level of increase of the national average salary.

In **Bosnia and Herzegovina, Luxembourg, Estonia, Malta, Republic of Moldova, Norway**, the national average salaries have increased between 2008 and 2012, when the salaries of prosecutors at the beginning of their careers have decreased.

The evolution of the salaries of judges follows the decreasing evolution of the national average salary in the states where the economic and financial crisis have been particularly significant: **Greece, Ireland, Portugal, Hungary, Serbia**. In **Iceland** and **Hungary**, the decrease in the salaries of judges is even stronger than the

decrease of the national average salary. It is the contrary in **Spain**: despite the decrease in the salary of prosecutors, an increase of the ratio in relation to the national average gross salary can be observed.

#### 11.4.2 Salaries at the end of the career

**Table 11.13 Gross and net annual salaries of judges and prosecutors at the Supreme Court or at the last instance in 2012 (Q132)**

States/entities	Judges			Prosecutors		
	Gross annual salary	Gross salary in regard to national average gross annual salary	Net annual salary	Gross annual salary	Gross salary in regard to national average gross annual salary	Net annual salary
Albania	14 965 €	3,5	12 030 €	10 500 €	2,4	8 640 €
Andorra	39 823 €	1,7	37 633 €	106 186 €	4,4	99 283 €
Armenia	1 877 €	0,7	1 485 €	NA	NC	NA
Austria	119 771 €	4,0	71 418 €	119 771 €	4,0	71 418 €
Azerbaijan	20 852 €	4,4	17 200 €	17 213 €	3,7	14 880 €
Belgium	118 643 €	2,9	56 536 €	120 815 €	2,9	57 409 €
Bosnia and Herzegovina	41 098 €	5,2	25 788 €	41 098 €	5,2	25 788 €
Bulgaria	28 019 €	6,2	25 217 €	28 019 €	6,2	25 217 €
Croatia	63 120 €	5,0	31 320 €	63 120 €	5,0	31 320 €
Cyprus	133 219 €	5,5	NA	NA	NC	NA
Czech Republic	54 272 €	4,4	NA	46 635 €	3,7	NA
Denmark	176 769 €	3,4	NA	88 200 €	1,7	NA
Estonia	48 077 €	4,5	37 924 €	39 733 €	3,7	30 526 €
Finland	128 700 €	3,3	78 553 €	82 018 €	2,1	54 484 €
France	110 082 €	3,2	93 762 €	110 082 €	3,2	93 762 €
Georgia	24 170 €	NC	19 336 €	NAP	NC	NAP
Germany	104 711 €	2,3	NA	104 711 €	2,3	NA
Greece	57 009 €	NC	47 030 €	57 009 €	NC	47 030 €
Hungary	35 289 €	3,9	25 476 €	34 121 €	3,7	21 235 €
Iceland	89 746 €	3,3	NA	55 665 €	2,0	NA
Ireland	197 272 €	5,9	NA	85 127 €	2,6	NA
Italy	179 747 €	6,3	97 833 €	179 747 €	6,3	97 833 €
Latvia	37 616 €	4,2	25 573 €	25 788 €	2,9	17 412 €
Lithuania	29 103 €	3,9	22 118 €	23 742 €	3,2	18 044 €
Luxembourg	129 943 €	3,1	NA	121 421 €	2,9	NA
Malta	40 221 €	2,6	32 919 €	32 434 €	2,1	27 861 €
Republic of Moldova	5 012 €	1,9	3 701 €	3 701 €	1,4	2 776 €
Monaco	132 592 €	NC	125 152 €	132 592 €	NC	125 152 €
Montenegro	27 934 €	3,2	18 716 €	26 892 €	3,1	NA
Netherlands	128 900 €	2,4	67 000 €	94 585 €	1,8	NA
Norway	212 295 €	3,3	159 836 €	103 842 €	1,6	101 729 €
Poland	60 998 €	5,9	43 445 €	60 998 €	5,9	43 445 €
Portugal	66 204 €	3,3	NA	66 204 €	3,3	NA
Romania	42 049 €	7,6	29 493 €	35 344 €	6,4	24 791 €
Russian Federation	NA	NC	NA	NA	NC	NA
Serbia	28 174 €	4,6	16 752 €	28 174 €	4,6	16 752 €
Slovakia	42 916 €	4,4	NA	42 916 €	4,4	NA
Slovenia	63 664 €	3,5	34 212 €	55 812 €	3,0	31 536 €
Spain	107 565 €	4,7	66 690 €	107 565 €	4,7	66 690 €
Sweden	94 500 €	2,3	NA	73 378 €	1,8	NA
Switzerland	294 565 €	5,2	276 361 €	157 690 €	2,8	126 152 €
The FYROMacedonia	21 454 €	3,6	14 241 €	18 858 €	3,2	12 536 €
Turkey	42 638 €	3,5	32 991 €	42 638 €	3,5	32 991 €
Ukraine	21 456 €	6,1	17 266 €	6 326 €	1,8	4 959 €
UK-England and Wales	256 206 €	7,7	NA	111 027 €	3,3	NA
UK-Northern Ireland	234 229 €	8,0	129 502 €	53 000 €	1,8	NA
UK-Scotland	241 196 €	7,8	NA	NA	NC	NA
Average	90 188 €	4,2	52 780 €	67 017 €	3,4	45 919 €
Median	62 059 €	3,9	32 955 €	56 410 €	3,2	31 320 €
Minimum	1 877 €	0,7	1 485 €	3 701 €	1,4	2 776 €
Maximum	294 565 €	8,0	276 361 €	179 747 €	6,4	126 152 €
Israel	125 304 €	5,5	NA	78 771 €	3,5 NA	NA

## Comments:

**Belgium:** judge of the Supreme Court or of the Highest Appellate Court (*Cour de Cassation*), 24 years of service (maximum) - indexed gross annual salary: 75 238,3 x 1,5769 €; prosecutor of the Supreme Court or of the Highest Appellate Court (Advocate General at the *Cour de Cassation*), 24 years of service (maximum) - indexed gross annual salary: 76 615,7 x 1,5769€. The difference between salaries in the Supreme Court in 2010 and 2012 data is explained by the fact that the currently indicated salary is the salary of a judicial advisor and not of the President or the Advocate General. (2) 132-2-2: net salary of a judge at the *Cour de Cassation* with 24 years of service (maximum length): Married without children; (3) 132-2-4: net salary of an Advocate General at the *Cour de Cassation* with 24 years of service (maximum length): married without children.

**Bosnia and Herzegovina:** judge of the Supreme Court or the Highest Appellate Court – 20 years of work experience; public prosecutor of the Supreme Court or the Highest Appellate Court – 20 years of work experience.

**France:** judge of the Supreme Court / highest instance court: advisor at the *Cour de Cassation* – grade D3/E

**Germany:** the figure given as the salary of a judge or public prosecutor of the Supreme Court is the basic salary R6 without any allowance and without family allowance.

**Iceland:** The appointed public prosecutors are all working for the director of public prosecution and they all can plead cases before the Supreme Court. Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the salary of the Public prosecutor General: A: Public prosecutor = 55 665 €; deputy director of public prosecution = 66 679 € ; director of public prosecution = 89 746 €

**Ireland:** There is no start and end of career structure in relation to the judiciary in Ireland. Each appointment of a judge is to a particular court, there is no automatic entitlement to progression from a District Court to any other court by way of career progression so it is not correct to compare the remunerations of each court in the context of a start of or end of career comparison.

**Monaco:** judges of the Supreme Court – the *Tribunal Suprême* or the *Cour de révision* – have no fixed salaries insofar as they do not work permanently – they sit during sessions. Judges are paid in allowances. Thus, the salary specified in the entry for the "judge of the Supreme Court or the Highest Appellate Court" is that of the highest magistrate of the Court of Appeal, which is the highest instance court and which sits permanently. Salary is equivalent to that of a prosecutor in the Supreme Court.

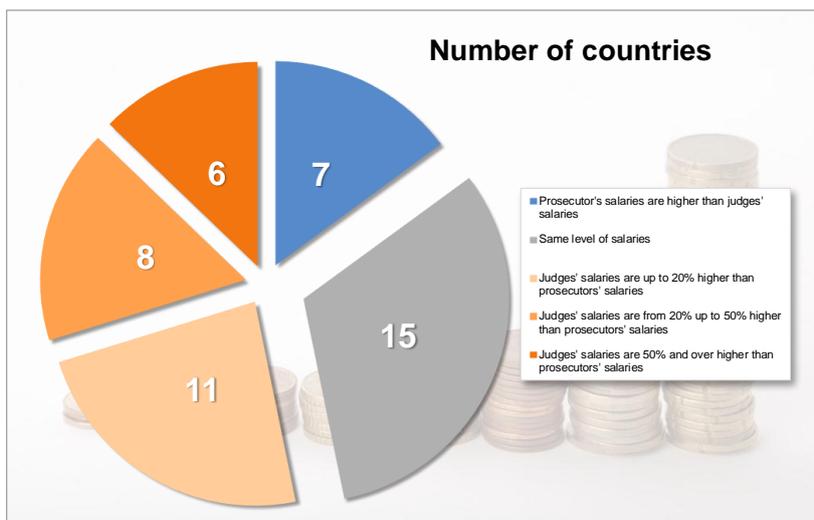
**Slovakia:** the salary of the judge of the Supreme Court is 130% of the monthly salary of the deputy of the parliament.

**Ukraine:** according to the national legislation in force, any prosecutor of the General Prosecutor's Office may participate in the proceedings in the Supreme Court and the High Courts of Appeal. In this connection, the salary stated in the last column of the question is the salary of the prosecutor of the General Prosecutor's Office. The salary indicated in the column 'Judge of the Supreme Court or the Highest Appellate Court' is an average annual salary of a judge of the Highest Appellate Court.

The ratio between the salary of a judge or prosecutor at the Supreme Court or at the last instance and the national average gross annual salary is an interesting indicator for measuring differences between states by removing the biases resulting from the modes of recruitment, age, previous career, the exchange rate or GDP.

In relation to the national average gross salary, the salaries of judges and prosecutors at the end of their career are almost two times higher than at the beginning of the career (4,2 times higher for judges and 3,4 times higher for prosecutors). The difference between start-of-career-and end-of-career pay is the most marked, both for judges and for prosecutors in **Romania, Italy, Bulgaria, Poland, Bosnia and Herzegovina, Croatia**. It is also significant, in the common law countries (**UK-Northern Ireland, UK-Scotland, UK-England and Wales**), but only with regard to judges; which is explained by their specific types of recruitment, among experienced lawyers.

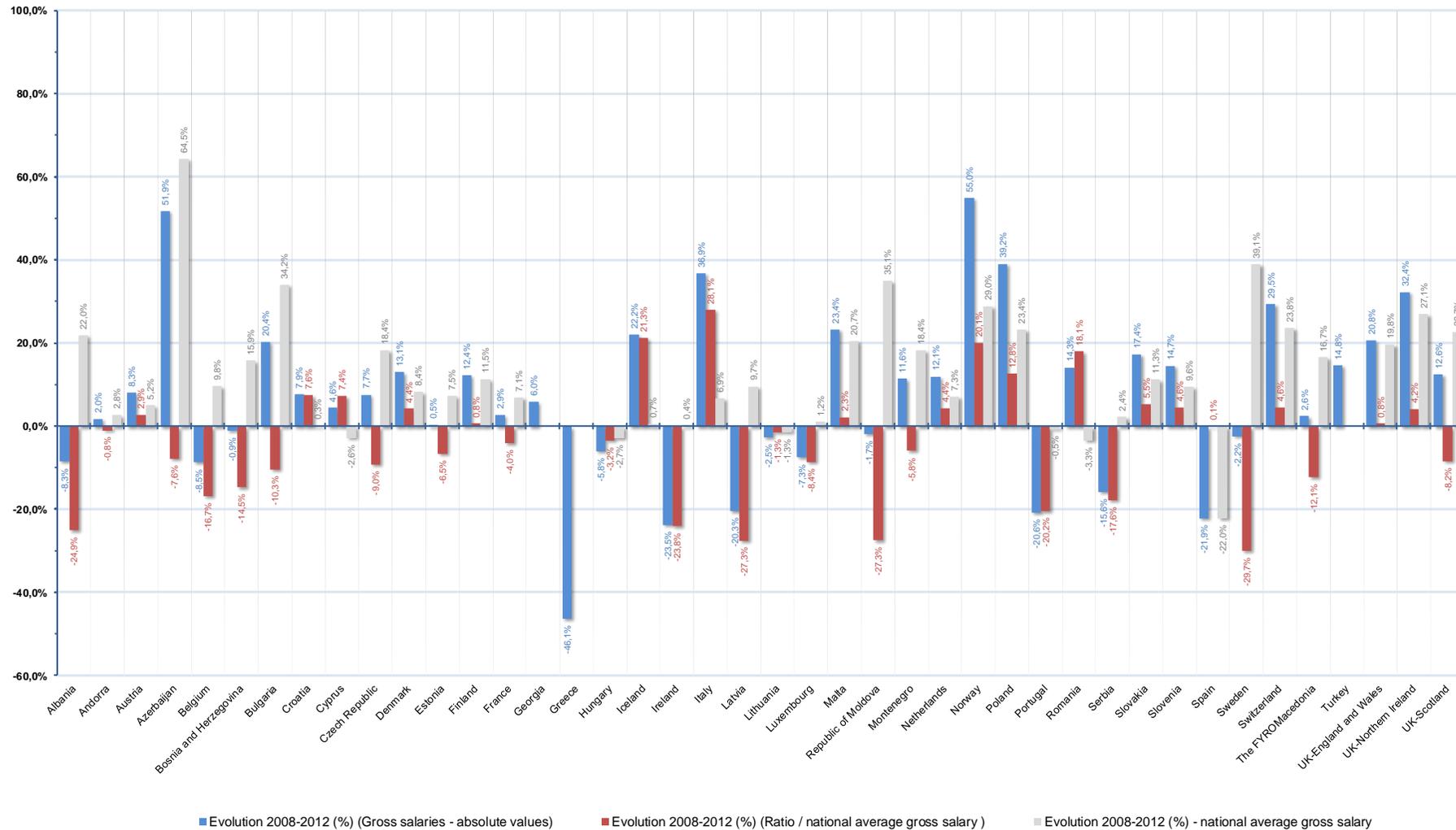
**Figure 11.14** Categorisation of the differences between judges' and prosecutors' gross salaries at the end of their career, in 2012 (Q132)



**Romania, Italy, Bulgaria, Poland** grant judges at the Supreme Court or at the highest instance court with the highest salaries reported to the national average gross salary (between 6 and 8 times higher).

In 15 states or entities, the remuneration of judges and prosecutors at the end of their career is the same (**Austria, Bosnia and Herzegovina, Bulgaria, Croatia, France, Germany, Greece, Italy, Monaco, Poland, Portugal, Serbia, Slovakia, Spain, Turkey**). Only in **Andorra** and **Belgium** the salary of prosecutors at the end of the career is higher than the ones of judges (in **Belgium** it is a slight difference). There is no real reversion of the curve between judges' and prosecutors' salaries at the beginning or end of career, though a very limited change can be noticed in **Albania, Andorra, Austria, Belgium, Croatia, France, Luxembourg, Montenegro, Romania, Slovakia**.

**Figure 11.15 Evolution of salaries of judges at the Supreme Court between 2008-2012 – Evolution of the gross salaries (absolute values) and evolution of the ratio between the gross salaries of judges and the national average gross salary (Q4,Q132)**



**Comment:**

**Bulgaria:** the basis for assessment was different in 2010 and 2012. Data for the present exercise reflects the actually received gross salaries, which include the basic salary and additional remuneration for grade and service.

The data allowed for an analysis of the evolution between 2008 and 2012 of the judges' gross salaries at the Supreme Court or at last instance for 42 states or entities. As for the other evolutions of salaries studied in this report, the adjustments and comments made by the states during the different exercises must be taken into account.

The trends observed in the evolution of the salaries of judges at the Supreme Court or at the highest instance are close to those observed for the evolution of the salaries of judges at the beginning of their careers. However, the evolution observed has a much lower amplitude here.

Thus, the absolute value of the salaries of judges at the end of the career has increased between 2008 and 2012 in a significant number of states and entities (27 out of 42).

More precisely, between 2008 and 2012, the highest increases in the salaries of judges at the end of their careers, in absolute value, are observed in **Norway**, and, to a lesser extent, in **Azerbaijan, Poland, Italy, UK-Northern Ireland, Switzerland, Malta, Iceland** and **UK-England and Wales**. However, those evolutions, as they appear in the figure, must be observed in the light of the variation of the exchange rates for the states outside the euro zone. Indeed, the increase in the salaries which appears in the figure for **Azerbaijan, Norway, Switzerland, UK-England and Wales** and **UK-Northern Ireland** must be analysed taking into account the positive variations of the exchange rates during the period 2008-2012.

The salaries of judges at the end of their career have decreased, in absolute value, mainly in **Greece, Ireland, Spain, Portugal, Latvia, Belgium** and **Luxembourg**. Contrary to what may appear on the graph, salaries have not decreased in **Albania, Hungary** and **Serbia**. This is actually due to the exchange rate variation between the national currency and the euro, which explains the presentation in the figure.

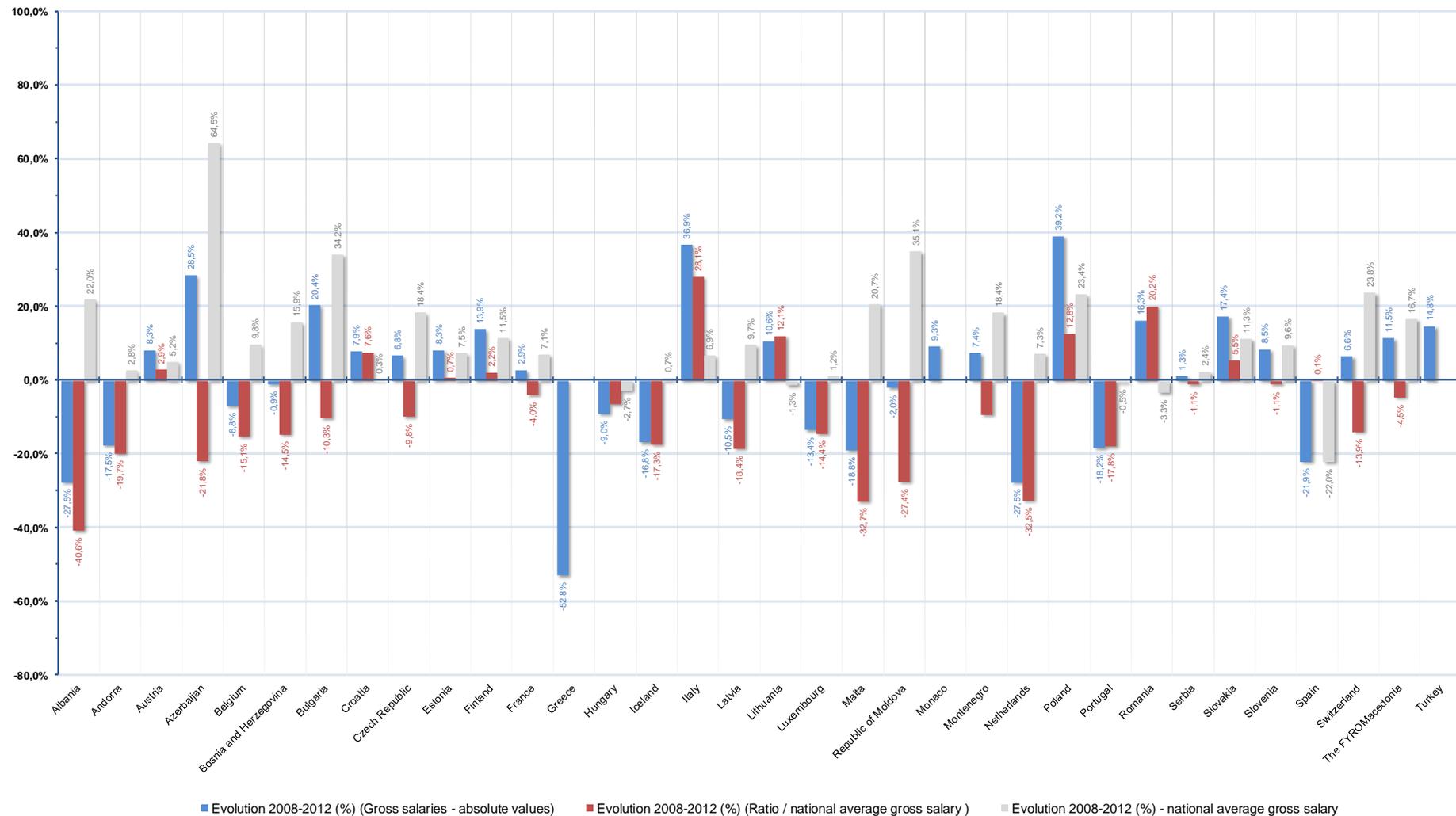
However, the increases and decreases in the salaries of judges at the end of their career in absolute value are also to be analysed further taking into account the national average salary of each state or entity.

In **Italy, Iceland, Norway, Romania, Poland** and, to a lesser extent in **Slovakia, Slovenia, Switzerland, Croatia, Cyprus, Denmark** and **UK-Northern Ireland**, an increase in the salaries of judges at the end of their careers and an increase in the ratio of the salaries of judges at the end of their career against the national average salary can be observed. This increase is even more significant in **Italy** and in **Iceland**.

In **Czech Republic** and "**the former Yugoslav Republic of Macedonia**", the variation in the exchange rate between the national currency and the euro comes to reduce the apparent increase in the salaries of judges at the end of their career; however the evolution of the salaries of judges reported to the national average salary makes it possible to stress that the situation is less favourable for judges in 2012 than in 2008.

In **Albania, Belgium, Hungary, Ireland, Latvia, Luxembourg, Portugal, Serbia, Sweden**, the decrease in the salaries of judges is in line with the decrease in the national average salary. In **Albania, Hungary** and **Serbia**, the variation of the exchange rate comes to reduce the visible effects of evolution of the salaries. This shows that the salaries of judges at the end of their career have indeed evolved more slowly than the national average salary. In **Portugal** and **Ireland**, the remuneration of judges at the end of their career has decreased while the national average salary has not evolved. This gap can be explained by the salary policies carried out by the public authorities during the crisis.

**Figure 11.16 Evolution of salaries of prosecutors at the Supreme Court or at the highest instance between 2008-2012 – Evolution of the gross salaries (absolute value) and evolution of the ratio between the gross salaries of prosecutors and the national average gross salary (Q4,Q132)**



**Comment:**

**Bulgaria:** the basis for assessment was different in 2010 and 2012. Data for the present exercise reflects the actually received gross salaries, which include the basic salary and additional remuneration for grade and service.

The evolution of gross salaries of prosecutors of the highest instance appears to be far less favourable than that of the judges of the same instance.

As regards prosecutors, 34 states or entities submitted data for analysing the changes in the salaries of prosecutors at the end of their career, in absolute value. The same trends as those mentioned above can be highlighted here.

More precisely, between 2008 and 2012, the highest increases in the salaries of prosecutors at the end of their careers in absolute value are observed in **Poland, Italy** and **Azerbaijan**. However, those evolutions must be observed in the light of the variations of the exchange rate for the countries outside the euro zone. Indeed, the increase of the salaries which appear in the figure for **Azerbaijan** is more limited while taking into account the positive variations of the exchange rates during the period 2008-2012.

The salaries of the prosecutors at the end of their careers have decreased, in absolute value, mainly in **Greece, Albania, Netherlands, Spain, Malta, Portugal, Andorra, Iceland, Luxembourg, Latvia** and **Belgium**.

Contrary to what appears in the figure, the salaries of prosecutors have not decreased in **Hungary**. The variation of exchange rate between the national currency and the euro explains the presentation in the figure. In **Albania**, the same variation in the exchange rate reduces the decrease in salaries that can be observed.

However, the increases and decreases of the salaries of prosecutors, at the end of their career, in absolute value, are to be analysed further taking into account the national average salary of each state or entity.

In **Austria, Croatia, Estonia, Finland, Italy, Lithuania, Poland, Romania** and **Slovakia**, an increase in the salaries of prosecutors at the end of their careers and a positive increase in the gap between the salaries of prosecutors and the national average salary can be observed. This increase is even more significant in **Italy, Poland**, and **Romania**. The effort made to increase the salaries of prosecutors at the end of their careers in these three states, just as that of the judges, is therefore particularly significant.

In **Azerbaijan**, the situation for prosecutors at the end of their careers is less favourable in 2012 than in 2008, since the apparent increase in the salaries is to be moderated when considering the positive variation in the exchange rate. Meanwhile, there has been a decrease of 22% in the ratio involving the salaries of prosecutors against the national average salary. **Switzerland** is, to a lesser extent, in a similar situation: the salaries of prosecutors at the end of the career has increased more slowly than the national average salary.

In **Albania, Andorra, Belgium, Bosnia and Herzegovina, Hungary, Iceland, Latvia, Luxembourg, Malta, Republic of Moldova, Netherlands** and **Portugal** the decrease in the salaries of judges contributes to reduce the gap between the salaries of the prosecutors and the national average salary. In **Albania, Hungary** and **Republic of Moldova**, the variations in the exchange rate come to reduce the effects that appear in the figure of the variations in the salaries.

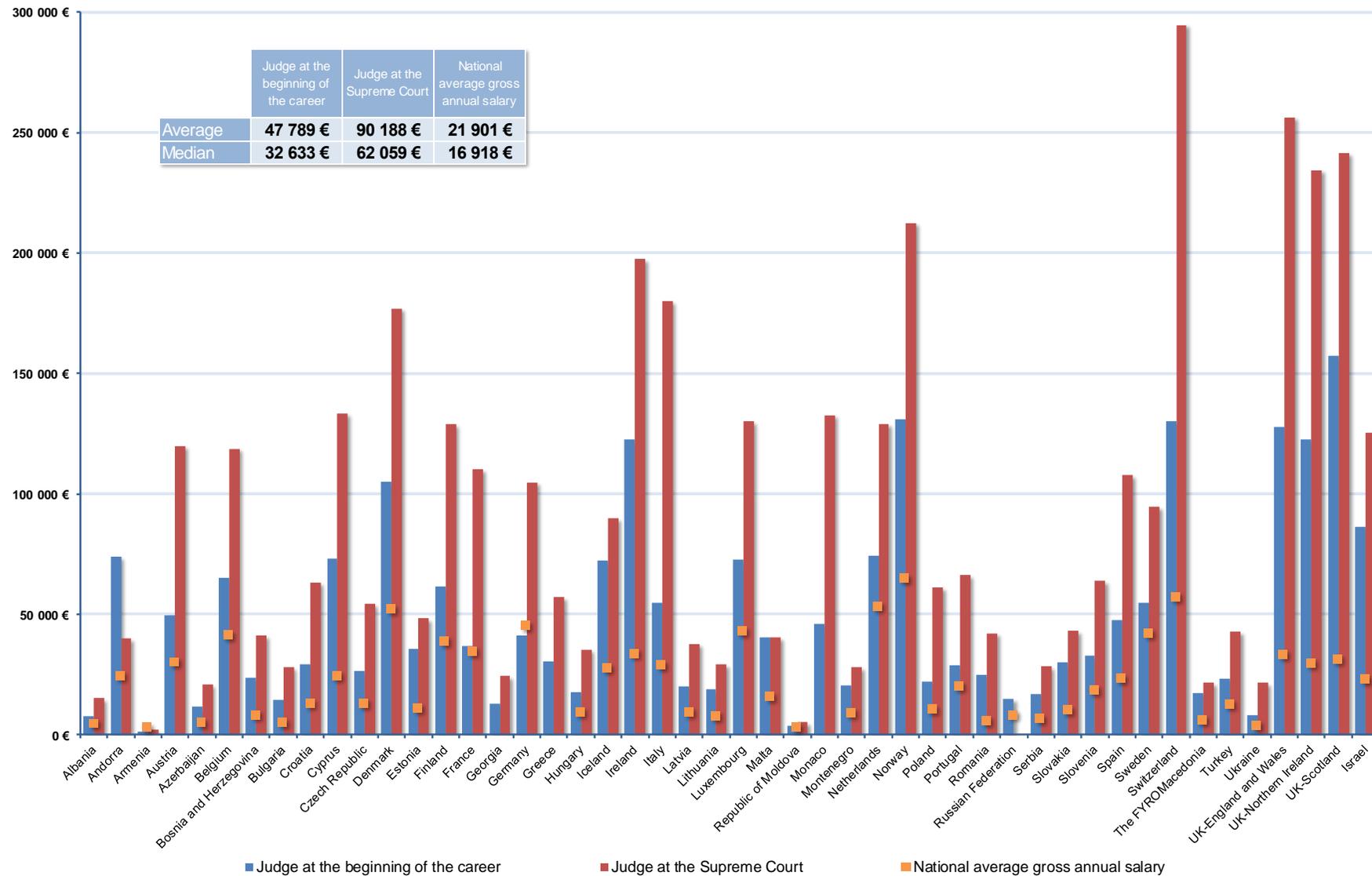
### **11.4.3 Comparison of the salaries at the beginning and at the end of the career**

In virtually all the states or entities examined, the salaries of the judges at the Supreme Court or at the highest instance are higher than those paid to the judges at the beginning of their career. There is only one exception for the data of **Malta**. For **Andorra**, the data is only indicative; the judges of the Supreme Court do not sit on a permanent basis

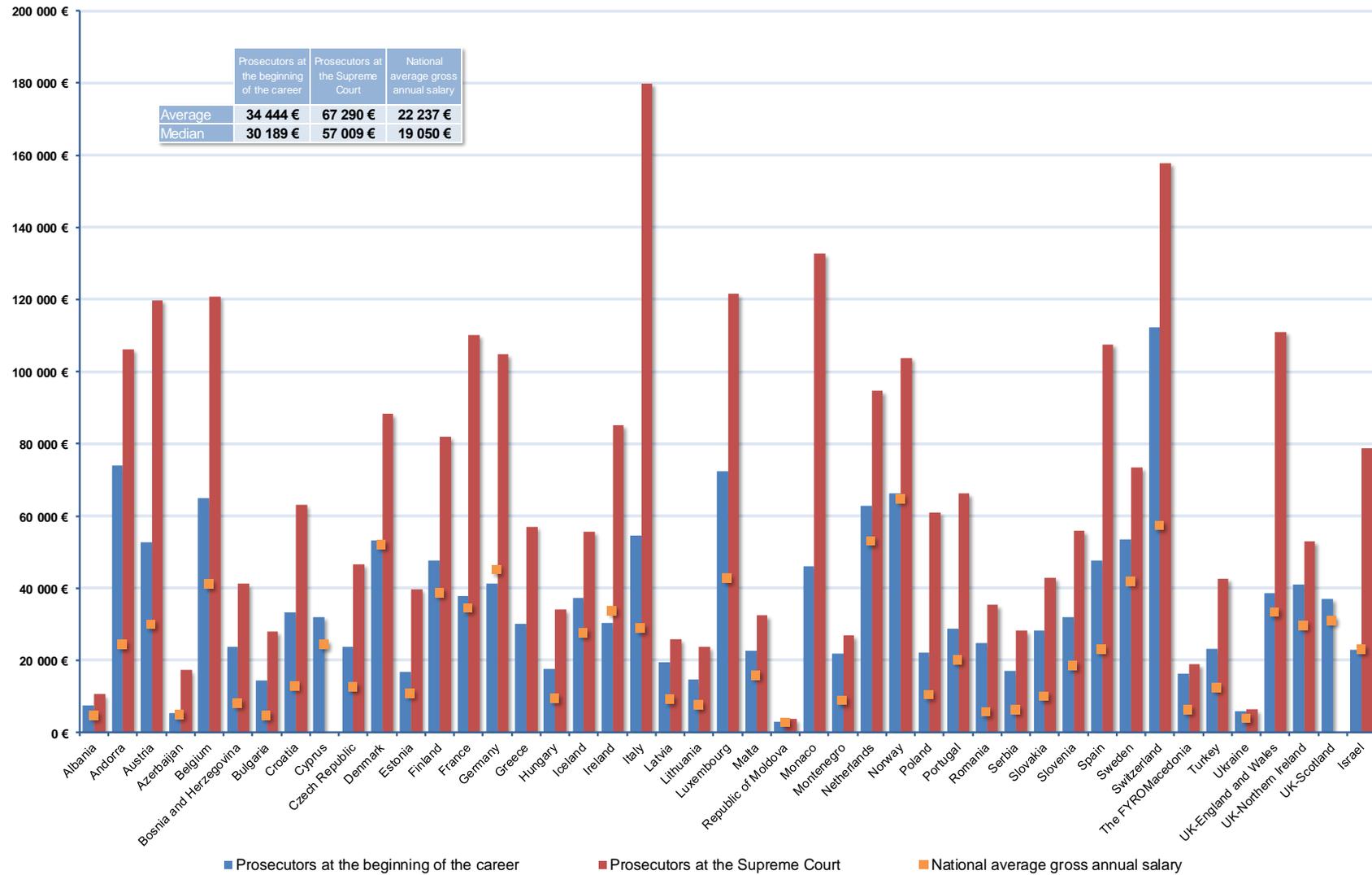
In Europe a judge at the end of the career earns on average 1.87 times more than a judge at the beginning of his or her career.

A number of specific situations can be noted, which serve to qualify this general finding. The difference obviously depends on the duration of the career; it is greater in states that recruit young judges after completing their law studies, in particular through competitive exams and training in a school for magistracy or (and) after a period as assistant judge or trainee. Thus, the difference is greatest in **Italy**, where Supreme Court judges' salaries are 3.3 times higher than those received by start-of-career judges. The difference is also significant in **France** (3), **Monaco** (2.9), **Poland** (2.8), **Ukraine** (2.6), **Germany** (2.5), **Austria** (2.4), **Portugal, Spain, Switzerland** (2.3), **Croatia** (2.1). Salary doubles between the beginning and the end of a judge's career in **Bulgaria, Czech Republic, Finland, Hungary, Slovenia** and **UK-England and Wales**. The difference is however smaller in "**the former Yugoslav Republic of Macedonia**" and **Iceland** (1.2), and the same applies in **Montenegro** and **Slovakia** (1.4), **UK-Scotland** and **Republic of Moldova** (1.5), and **Armenia, Ireland, Lithuania** and **Norway** (1.6).

Figure 11.17 Gross annual salary of a judge at the beginning of the career, of a judge at the Supreme Court (highest instance court) and at national level in 2012 (Q4, Q132)



**Figure 11.18 Gross annual salary of a prosecutor at the beginning of the career, of a prosecutor at the Supreme Court (at the highest instance) and national average salary in 2012 (Q4, Q132)**



As the status and functions of prosecutors differ among the member states (contrary to those of judges), the distribution of salaries in Europe is logically much less linear than for judges. However, on average, in Europe, a prosecutor at the end of her or his career earns 1.96 times more than a prosecutor at the beginning of her or his career (quite similar to the situation of judges).

The difference obviously depends on the duration of the career. It is greater in states that recruit young prosecutors after completing their law studies, in particular through competitive exams and training in a school for magistracy or (and) after a period as assistant prosecutor or trainee. In all the states or entities examined, prosecutors' salaries increase over their career. As for judges, the biggest difference can be found in **Italy**, where a prosecutor's salary is 3.3 times higher at the end of the career than at the beginning. There is also a significant difference in **Azerbaijan** (3.2), **UK-England and Wales**, **France** and **Monaco** (2.9), **Ireland** and **Poland** (2.8), and **Germany** (2.5). A multiplier of between 2 and 2.5 can be noted in **Estonia**, **Austria**, **Portugal**, **Spain**, **Bulgaria** and the **Czech Republic**. Conversely, the variance between the two salaries is relatively small in **Ukraine** (1.1), **Montenegro** and "**the former Yugoslav Republic of Macedonia**" (1.2), **Albania**, **Andorra**, **Romania**, **Sweden** and **Switzerland** (1.4), **Iceland**, **Slovakia**, and the **Netherlands** (1.5), or **Lithuania**, and **Norway** (1.6).

## 11.5 Bonuses and other benefits for judges and prosecutors

Table 11.19 Additional benefits for judges in 2012 (Q133)

States/entities	Reduced taxation	Special pension	Housing	Other financial benefit
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Number of countries</b>	<b>0</b>	<b>19</b>	<b>10</b>	<b>16</b>
Israel				

In most of the states or entities (28 out of 47), judges may be given some benefits in addition to the basic remuneration. In 19 systems, such benefits are not granted.

Sometimes, the additional benefits are granted only to judges of the Supreme Court (and presidents of the first instance courts). This is the case in **Iceland** and **Switzerland**, for the special retirement pension, and in **Cyprus** for the representation costs. In **Norway**, since a 2011 reform, judges of the Supreme Court no longer benefit from a specific retirement scheme.

Other benefits for judges include: salary bonuses (**Albania, Armenia, Estonia, Italy** for judges willing to work in courts with staff shortages, **Malta, Monaco, Montenegro, Russian Federation**); bonuses or allowances for specific responsibilities (**Albania, Croatia, Montenegro, Portugal, Ukraine**) or depending on the workload and working conditions (**Croatia** for judges transferred to another court); allowances to cover operating or representational expenses (**Croatia, Czech Republic, Montenegro, Portugal, Slovakia, Turkey**); compensation for loss of office (**Latvia**); specific life and/or health insurance cover (**Albania, Croatia, Estonia, Hungary, Latvia, Montenegro, Romania, Russian Federation**); housing facilities (**Czech Republic, France, Hungary, Montenegro, Portugal, Russian Federation**); travel allowances (**Croatia, Malta, Romania, Russian Federation**); help with medical costs (**Germany, Latvia, Romania, Russian Federation**); provision of a car and driver (**Malta**), and leave related benefits (**Slovakia**). **Hungary** also grants support when moving house and social and educational support, together with a family allowance. In **Croatia** and **Hungary**, vocational and specialist training benefits are available, while in the **Czech Republic** there is a research and legal publications allowance.

Reduced taxation is no more a benefit granted to judges or prosecutors in European states.

Only 5 states reported that an additional financial bonus is granted on the basis of the achievement of specific quantitative or qualitative targets: **France, Georgia, Italy, Russian Federation** and **Spain**. In **Iceland**, on an exceptional and temporary basis, a special annual salary is granted due to the significant increase in the number of cases in courts due to the economic crisis.

#### Comments:

**France:** there is a flexible premium granted to judges by the heads of courts depending on their contribution, in terms of quality and quantity of their work, to the proper functioning of the judiciary. This bonus can be up to 16,5% of their gross indexed salary (this maximum rate which was increased on 1<sup>st</sup> August 2011, was increased by 17,5% on 1<sup>st</sup> August 2012 and by 18% on 1<sup>st</sup> January 2013).

**Georgia:** a judge, apart from salary, may receive additional financial benefits after taking into consideration his/her monthly performance.

**Italy:** for the first time the Italian judiciary system by Law decree No. 98/2011 has provided for economic bonuses to Court office and single magistrates when the number of pending cases is reduced by 10% in a year. The provision, adopted last July, has not yet been implemented.

**Russian Federation:** according to Article 19 of the Federal Law 'On the Status of Judges in the Russian Federation', bonuses and financial assistance may be granted to judges. An amendment to this law was adopted in 2012 which stipulates that bonuses and financial aid may be paid to judges: [http://base.garant.ru/70289758/#block\\_1](http://base.garant.ru/70289758/#block_1).

**Spain:** there are two different ways to receive productivity bonuses according to the Spanish judiciary system: (i) by fulfilling quantitative objectives (mainly number of judgments delivered over a given period of time); (ii) by substituting for other judges (a single judge assumes the extra work of another judge, in addition to the performance of his/her own work).

Table 11.20 Additional benefits for prosecutors in 2012 (Q133)

States/entities	Reduced taxation	Special pension	Housing	Other financial benefit
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Number of countries</b>	<b>0</b>	<b>15</b>	<b>10</b>	<b>14</b>
Israel				

More states and entities do not provide additional benefits to prosecutors (24 versus 19 as regards judges). This illustrates that, in a number of states, prosecutors have a different status than judges, are less protected and sometimes are not socially recognised in the same way, depending on the functions and the position of prosecutors inside or outside of the judicial power.

In **Azerbaijan, Belgium, Estonia, Hungary, Malta, Montenegro, Portugal, Russian Federation, Slovakia,** and **Turkey**, prosecutors have comparable benefits to those of judges. In **Iceland**, the public prosecutor benefits from a specific retirement scheme similar to that of judges of the Supreme Court.

## 11.6 Career of judges and prosecutors

### 11.6.1 Terms of judges' and prosecutors' offices

One can but conclude, like the CCJE, that "*European practice is generally to make full-time appointments until the legal retirement age*", which "*is the approach least problematic from the viewpoint of independence*." (Opinion No. 1 (2001) § 48). However, where tenure is provisional or limited, the body responsible for the objectivity and the transparency of the method of appointment or re-appointment as a full-time judge is of special importance (Opinion No.1 (2001) §§ 53 and 60).

As for the last evaluation period, judges' and prosecutors' offices are of undetermined terms in a great majority of states or entities: 43 regarding the judges and 41 regarding the prosecutors. This is not the case, for both functions, in **Andorra, Switzerland** (even though first instance judges can be appointed "for life") and **Ukraine**. In **Latvia**, judges are appointed for a fixed period, contrary to prosecutors. In **Georgia**, following a constitutional reform of 2013, judges who were appointed for a 10 year term are now appointed "for life". On the contrary, prosecutors are appointed for a fixed period in **Azerbaijan, Estonia, Iceland** and **Serbia**, whereas judges are appointed "for life".

For judges and prosecutors appointed for a fixed period, terms of reference vary from 3 to 10 years. Such periods are generally renewable.

Judges and prosecutors appointed "for life" can be requested to work through a probation period before the definitive appointment. This is the case in 18 states as regards judges, for whom the probation period varies from 6 months to 5 years. For prosecutors, probation periods concern 25 states or entities and vary from 3 months to 5 years. In general an indefinite term of office can be interrupted only when the incumbent reaches retirement age, in the event of death or incapacity, when the conditions for appointment as a judge or prosecutor are no longer fulfilled, and also as a disciplinary measure or if the incumbent is found guilty of certain offences. In **Estonia** a prosecutor who is declared bankrupt is required to resign.

The retirement age for judges varies from 63 (**Cyprus**) to 75 (**Italy**) years old. Some systems permit prolongation in office by decision of the Judicial Council (**Azerbaijan, Romania**), or of the Supreme Court (**Estonia**), when it is in the interest of the good functioning of the courts (**Estonia**) or the public interest (**UK-England and Wales**), or at the request of the judge concerned (**Italy, Poland**). In **Hungary**, a reform is being implemented aimed at gradually bringing the retirement age for judges and prosecutors in line with the general retirement age (65). In **Slovakia**, there is no compulsory retirement age for judges. When a judge reaches the age of 65, the Judicial Council informs the President of the Republic, who decides in a discretionary manner whether to maintain him/her in office. In several states, the retirement age is higher for judges at the Supreme Court or other higher courts than for the judges of the lower courts.

The retirement age for prosecutors varies from 63 (**Cyprus**) to 70 (9 states). In certain states, prolongation in office is possible (**Albania, Azerbaijan, Italy, Romania, Russian Federation, Serbia**). In **Albania, Georgia** and "**the former Yugoslav Republic of Macedonia**", the retirement age for prosecutors varies between men and women. In **UK-England and Wales** and **UK-Scotland**, there is no compulsory retirement age for prosecutors.

**Latvia, Republic of Moldova** and **Ukraine** have mentioned the irremovability of judges, gained after 3 to 5 years of practice. 5 other countries have reported a similar situation for prosecutors: **Croatia, Hungary, Luxembourg, Montenegro** and **Serbia**.

A number of countries reported other approaches. The term of office of judges holding senior positions is limited in **Belgium, Bulgaria, France, and Russian Federation**. The same applies to prosecutors in **Belgium, Bulgaria** (5 years), **Croatia** (4 years), **Estonia** (5 years), **Serbia** (6 years) and "**the former Yugoslav Republic of Macedonia**" (6 years). On the other hand, in **Iceland** the Prosecutor General's term of office is unlimited, unlike those of other prosecutors. In **France**, certain judges and prosecutors may be appointed for a limited term of office (5 to 8 years), which may be renewable in certain cases (judges of the second grade holding office in the *tribunaux d'instance* and the *tribunaux de grande instance*, the Advocates General and Special Counsellors at the Court of Cassation, senior officials appointed to the judiciary on the basis of their service record and holding office as judges or prosecutors). In **UK-England and Wales** and **UK-Scotland**, stipendiary judicial office holders are initially appointed for 5 years. The term of office of French judges and prosecutors seconded to **Monaco** varies from 3 to 6 years. **Belgium, Bosnia and Herzegovina** and **Norway** employ certain judges on a temporary basis (see Chapter 7).

The principle that a judge should not be transferred to another court without his/her consent follows from the fundamental principle of irremovability from office. However, in certain circumstances and provided certain legal guarantees are in place, this principle must be reconciled with the need for an effective and efficient system of justice and with modern management practices designed to meet this need (for example, the mobility policies implemented in **Belgium** and **Netherlands**). The Venice Commission underlines that "*procedural safeguards for any judge or prosecutor who is to be transferred under compulsion should be set out in the law and the criteria for such transfer clearly stated together with the possibility for the judge or prosecutor affected to answer any case which is made against him or her and to have a right of appeal to a court of law against any decision to transfer.*" (CDL-AD(2011)004, 29 March 2011, § 48). Along the same lines, the CCJE recommends the involvement of an authority independent of the executive and legislative powers, in particular a judicial council, at all stages in judges' careers (Opinion No. 1 (2001) § 38).

Under the European Charter on the Statute for Judges (DAJ/DOC (98) 23, 8-10 July 1998), a judge serving within a given court must in principle not be assigned to another court or have his/her duties changed, even entailing a promotion, without his/her free consent. This applies except where transfer is a disciplinary measure, results from a lawful reorganisation of the court system or takes place on a temporary basis with the purpose of assisting a neighbouring court, in which case the duration of the temporary transfer must be strictly limited (point 3.4).

In **Andorra, Ireland, Latvia, Norway, Russian Federation** and **Netherlands**, the principle of irremovability is regarded as absolute and no transfer is possible without the consent of the judge concerned. In **Monaco**, judges cannot be assigned to new duties without their consent.

In certain states a transfer can be decided without the judge's consent for organisational reasons. In this case a transfer safeguard may be provided by law (**Austria, Belgium, Bosnia and Herzegovina, Iceland, Montenegro, Slovenia, UK-England and Wales**) and/or by the involvement of a judicial council (**Albania, Croatia, Iceland, Lithuania, Montenegro, Turkey**), or again by the possibility of appealing to a competent court (**Estonia, "the former Yugoslav Republic of Macedonia"**). In **Denmark**, only deputy judges can be transferred to another court without their consent for organisational, training or health reasons or because they have proved unsuited to a given post. In **Georgia**, a transfer without the judge's consent is possible only in the "interests of justice".

A transfer may take place following a disciplinary action. In this case, the safeguard lies in the involvement of the disciplinary authority, more often than not the judicial council (**Bosnia and Herzegovina, France, Italy, Monaco, Slovakia, Slovenia, Spain**).

Table 11.21 Terms of office of judges and prosecutors in 2012 (Q121, Q122, Q123, Q124, Q125, Q126)

States/entities	Judges			Prosecutors		
	Compulsory age of retirement	If renewable mandate, length	Probation period (in years)	Compulsory age of retirement	If renewable mandate, length	Probation period (in years)
Albania	NA			65 / 60		
Andorra	NAP	6		No	6	
Armenia	65			65		
Austria	65			65		
Azerbaijan	65		5	60	5 / 1	1
Belgium	70/77					
Bosnia and Herzegovina	70			70		
Bulgaria	65		5	NA		5
Croatia	70			70		
Cyprus	63		2	63		2
Czech Republic	70			70		
Denmark	70			NA		
Estonia	68		3	65		0,3
Finland	68			68		
France	67		3	67		3
Georgia	65	10	3	60/65		
Germany	65		5	65		5
Greece	67		1,5	67		1,5
Hungary	70		3	70		3
Iceland	70			70	5	
Ireland	70			NA		1
Italy	75			NA		
Latvia	70	3	0,5	65		0,5
Lithuania	65			65		2
Luxembourg	68		1,5	68		
Malta	65			65		
Republic of Moldova	65		5	65		
Monaco	65		2	65		2
Montenegro	67			67		4
Netherlands	NAP			65		1
Norway	70			NA		
Poland	67		NAP	67		NAP
Portugal	70		2	70		2
Romania	65		1	65		1
Russian Federation	70			70		0,5
Serbia	65		3		6	3
Slovakia	NAP			NA		
Slovenia	70			70		
Spain	70		2	70		0,75
Sweden	67			67		2,75
Switzerland*		4			4	
The FYROMacedonia	64/62			64/62		
Turkey	65		2	65		2
Ukraine	65	5			5	1
UK-England and Wales	NA			NA		0,5
UK-Northern Ireland	70			NA		1
UK-Scotland	NA			NA		0,75
Average	68	6	2,8	67	5	1,86
Median	67	5	2,5	67	5	1,50
Minimum	63	3	0,5	60	4	0,3
Maximum	75	10	5,0	70	6	5
Israel	70			NAP	2 / 4	1

\* Judges are appointed for a determined term of office (renewable until retirement) - in some cases, first instance judges can be elected for life. The statute of the prosecutors is different according to the cantons.

### 11.6.2 Gender issues within the judiciary

Following the adoption by the Committee of Ministers on 12 May 2009 of a Declaration entitled "Making equality between women and men a reality in practice", the Council of Europe has implemented a policy of parity between men and women within its member States. In this context, the CEPEJ requests from its member states specific data on the male/female distribution among professional judges (questions 46 and 47) and amongst prosecutors (questions 55 and 56).

Through the dissemination of such data and its analysis, as well as by development, if necessary, of measures and recommendations enabling judicial systems to modify their approach towards a greater gender parity, the CEPEJ wishes to provide practical support for these specific policies which are, or should be, very topical issues at the European level.

This chapter analyses the objective data provided by the member states on the gender distribution among professional judges, court presidents, prosecutors and heads of prosecution services, both in a general manner and according to the various instances. The CEPEJ is nevertheless aware that gender issues cannot be limited to such an analysis.

In the majority of European states general legislation has been enacted with a view to achieving gender parity, the adoption of which also affects the organisation and operation of their judicial systems (**Austria, Denmark and Iceland** expressly indicated that the general law applied in matters of appointment and promotion of judges and prosecutors). Certain states or entities have taken their efforts further and have adopted regulations specific to their justice systems (**Armenia, Bosnia and Herzegovina**, most of the federated entities of **Germany, Montenegro**). Elsewhere, specific action plans have been drawn up based on the general legislation in this field (**Norway**) or the authorities making judicial appointments are showing a growing awareness of these issues, without there being any specific regulations (**Sweden, UK-Northern Ireland**).

#### Comments:

**Armenia:** gender balance is taken into account during the preparation of the candidates' list for judges. If the number of one of the sex is less than 25 % of the total number of judges, the representatives of that sex should have more than 5 places in the list.

**Austria:** there is no necessity of specific dispositions, as the number of female judges already exceeds that of male judges, general non-discrimination rules apply.

**Azerbaijan:** equal provisions are provided for and applied in respect of males and females.

**Bosnia and Herzegovina:** article 43 of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina prescribes the criteria for the recruitment of judges. Its second paragraph provides for realizing gender parity within the framework of the procedure for recruiting judges. This provision of the Law applies to all appointments and promotions of judges.

**Cyprus:** the same procedure applies to both male and female judges.

**Denmark:** the relevant provisions are the law on equal treatment of men and women in regard to access to employment etc. as well as general administrative law principles.

**Georgia:** the selection Committee is concerned with maintaining gender balance in the internal selection process for prosecutors.

**Germany:** the majority of the federal entities have adopted specific provisions or plans aimed at promoting gender parity within the procedure of appointment of judges and public prosecutors.

**Hungary:** there are no specific provisions. The proportion of women for many years is higher than for men in respect of judges and prosecutors.

**Iceland:** there are no specific regulations. The promotion of gender parity with regard to judges and prosecutors is carried out on the basis of the Act No 10/2008 on equal status and equal rights of women and men.

**Montenegro:** the Law on Judicial Council prescribes that in making a decision on the appointment of judges and presidents of courts, the Judicial Council shall maintain a proportional representation of minorities and other minority ethnic groups and gender-balanced representation. The Law on State prosecutor's Office prescribes that when making the decision on election of a manager of a state prosecution office or a state prosecutor, the Prosecutorial Council is under a duty to take account of proportional representation of members of minority peoples and other minority ethnic communities and gender balance.

**Netherlands:** the number of female judges surpassed the number of their male colleagues some years ago.

**Norway:** pursuant to Working Environment Act, and the Gender parity act, all public institutions are obliged to actively promote gender parity at work. Accordingly, the Judicial Appointments Board and the Government exerts the principle of moderate gender allocation per quota in courts with gender imbalance. This is also applicable to the recruitment and appointment of court presidents, where we still have too few female court presidents. The gender parity policy is also established in the policy note to the Judicial Appointments Board, which is made publicly available on its web site, and updated on a regular basis. Although no promotion system exists, the Norwegian Courts Administration is working actively with calling on female judges or attorneys to apply for positions as court president. It is a general rule for all public positions that the public office should try to achieve gender parity.

**Sweden:** there are no specific provisions for facilitating gender parity within the framework of the procedure for recruiting judges. Judges are appointed essentially on the basis of ability and suitability for the profession. However, it is possible to consider the interest of gender parity if the qualifications regarding ability and suitability for the profession are similar between the applicants.

**UK-Northern Ireland:** NIJAC, as an appointing and recommending body is tasked by statute to appoint on merit from the widest possible eligible pool. There is no positive discrimination allowable. NIJAC has been working within a Joint Liaison Committee with the Bar Council and Law Society examining the position of women in the legal profession, and barriers particular to them regarding securing senior appointments. Various initiatives are in place such as mentoring and Women in the Law lecture series.

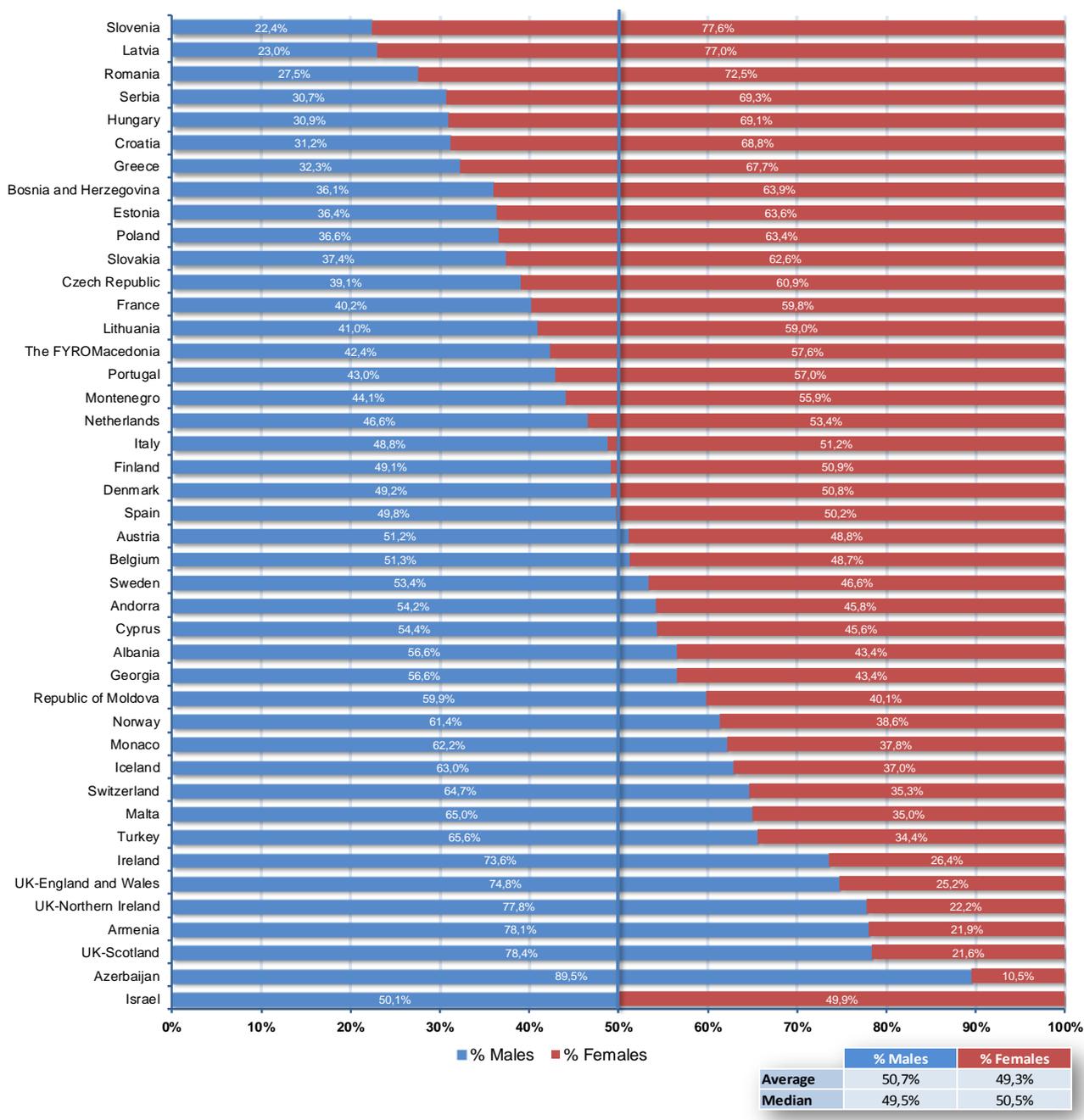
**Table 11.22 Number of male and female professional judges per category of courts (first instance, second instance and Supreme Court) (Q46)**

States/entities	Professional judges sitting in first instance courts		Professional judges sitting in second instance courts		Professional judges sitting in supreme courts	
	Males	Females	Males	Females	Males	Females
Albania	158	142	46	18	11	5
Andorra	4	8	9	3	0	0
Armenia	129	35	28	10	14	3
Austria	653	672	94	64	45	20
Azerbaijan	NA	NA	NA	NA	NA	NA
Belgium	622	641	173	132	24	6
Bosnia and Herzegovina	226	439	75	127	46	49
Bulgaria	NA	NA	NA	NA	NA	NA
Croatia	389	989	192	322	22	18
Cyprus	47	43	NAP	NAP	9	4
Czech Republic	644	1 213	407	557	142	92
Denmark	111	148	59	35	14	5
Estonia	49	118	17	25	17	2
Finland	350	394	105	89	27	16
France	1 819	3 143	787	908	223	153
Georgia	96	72	29	29	12	4
Germany	NA	NA	NA	NA	NA	NA
Greece	411	1 107	291	521	129	115
Hungary	496	1 176	326	695	34	40
Iceland	25	18	NAP	NAP	9	2
Ireland	99	37	NAP	NAP	7	1
Italy	2 259	2 670	609	509	232	68
Latvia	47	216	31	95	23	27
Lithuania	259	425	31	20	25	8
Luxembourg	NA	NA	NA	NA	NA	NA
Malta	20	14	6	0	NAP	NAP
Republic of Moldova	198	124	46	40	20	13
Monaco	7	9	3	2	13	3
Montenegro	81	99	26	39	9	9
Netherlands	784	1 071	306	213	32	4
Norway	218	151	111	57	13	7
Poland	3 371	6 070	221	276	109	67
Portugal	507	973	282	163	75	9
Romania	619	1 379	554	1 663	14	81
Russian Federation	NA	14 813	NA	646	NA	48
Serbia	652	1 576	230	424	14	20
Slovakia	310	561	140	212	39	45
Slovenia	154	632	42	108	21	13
Spain	1 533	2 114	964	467	68	9
Sweden	428	338	152	172	20	13
Switzerland	545	328	250	110	27	11
The FYROMacedonia	220	312	54	62	9	11
Turkey	4 901	2 695	NAP	NAP	431	99
Ukraine	NA	NA	NA	NA	NA	NA
UK-England and Wales	NA	NA	NA	NA	NA	NA
UK-Northern Ireland	42	16	3	0	10	0
UK-Scotland	132	36	13	4	NA	NA
Average	590	1147	186,4	238	52	28,20
Median	243	394	99,3	108	22	11,00
Minimum	4	8	3,0	0	0	0,0
Maximum	4 901	14813	964,0	1 663	431	153
Israel	212	247	103	74	11	4

Concerning the gender distribution of prosecutors at each level of jurisdiction, out of the 28 states or entities represented in the figure, we observe a general downward trend of the percentage of female judges in relation to the percentage of male judges, as we move up through the judicial hierarchy.

Indeed, a majority of women are seen at first instance, while the proportion of women is much lower than that of men at last instance. It is necessary to note that first instance judges are the most numerous. *A contrario*, in a few states (**Bosnia and Herzegovina, Hungary, Latvia, Romania, Serbia, Slovakia**), female judges outnumbered men judges at last instance.

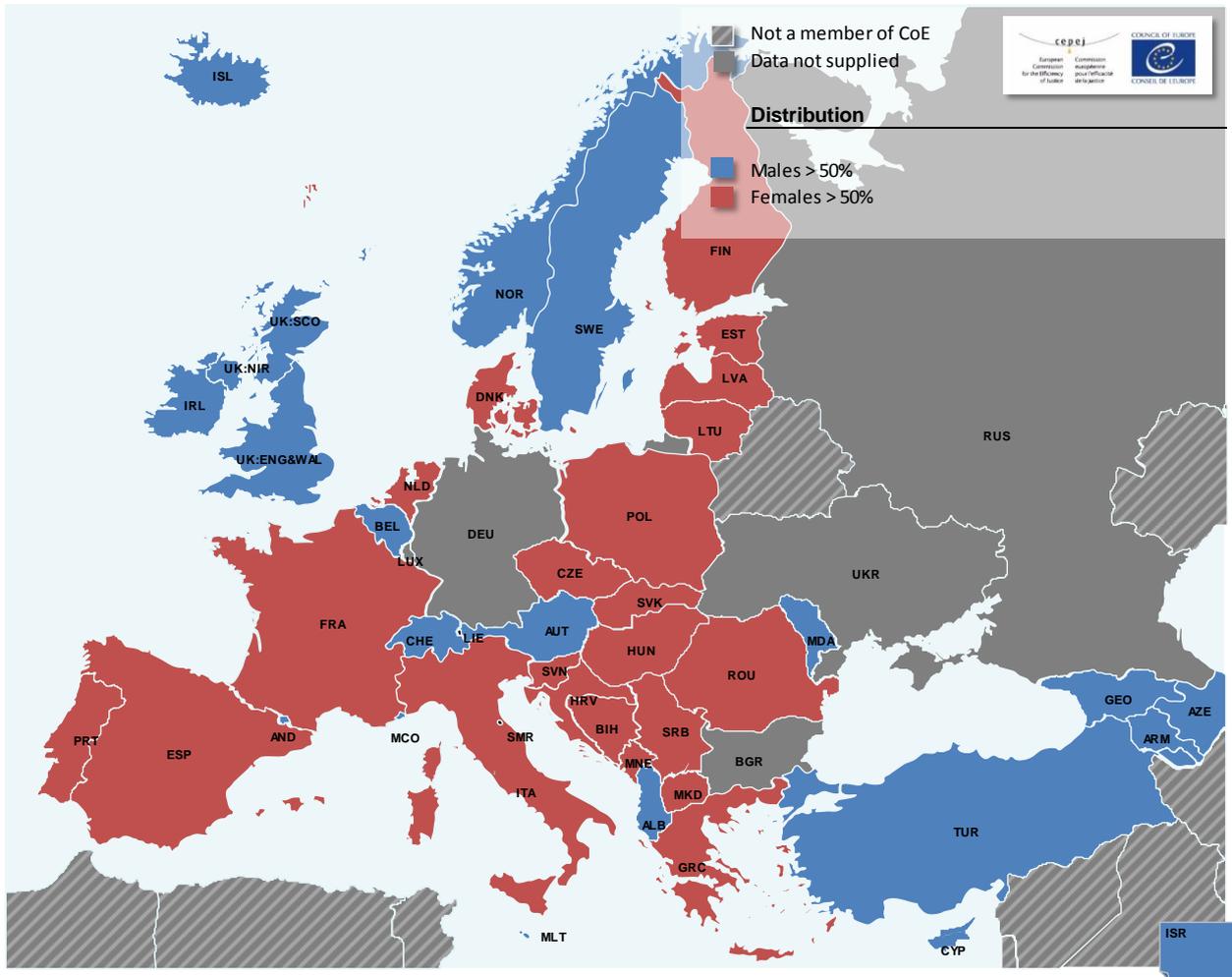
**Figure 11.23 Distribution of male and female professional judges within the total number of professional judges in 2012 (Q46)**



Out of the 42 states or entities that were able to provide data on the distribution of males/females in the total number of professional judges, we observe an almost equal male/female distribution in the judiciary. The average for all states or entities is 51% for men and 49% for women. 17 states or entities (14 in 2010) stay in line with an appropriate male-female parity within a range from 40% to 60%.

Although 21 states or entities have more than 50% of women among their judges, some countries such as **Slovenia, Latvia** and **Romania** have more than 70% women judges. In contrast, 20 states or entities have more than 50% of male judges and 6 of them have more than 70% of male judges. In this group, the percentage of male/female in the small states should be qualified taking into account their low total number of judges, as in **Andorra** (24), **Malta** (40) and **Monaco** (37).

Figure 11.23bis Distribution of male and female professional judges within the total number of professional judges in 2012 (Q46)

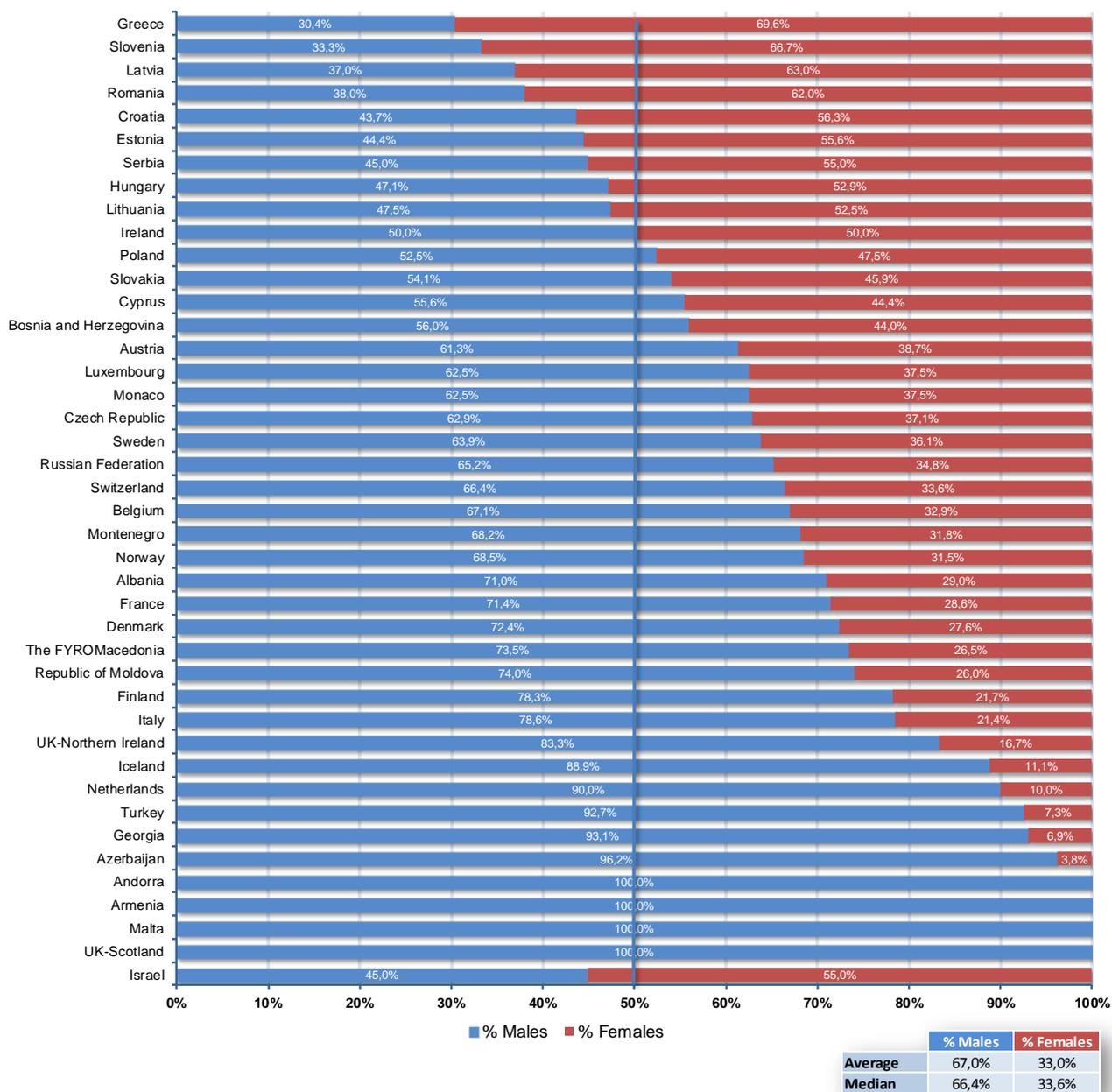


**Table 11.24 Number of male and female court presidents (professional judges) per category of courts (first instance, second instance and Supreme Court) (Q47)**

States/entities	Court presidents of first instance courts		Court presidents of second instance courts		Court presidents of supreme courts	
	Males	Females	Males	Females	Males	Females
Albania	18	5	4	3	0	1
Andorra	1	0	1	0	0	0
Armenia	17	0	3	0	1	0
Austria	38	25	9	6	1	0
Azerbaijan	70	2	5	1	1	0
Belgium	47	24	7	3	1	0
Bosnia and Herzegovina	31	25	9	7	2	1
Bulgaria	NA	NA	NA	NA	NA	NA
Croatia	54	85	14	4	1	0
Cyprus	9	8	NAP	NAP	1	0
Czech Republic	54	32	6	3	1	1
Denmark	18	8	2	0	1	0
Estonia	2	4	1	1	1	0
Finland	29	9	6	0	1	1
France	139	57	34	13	2	0
Georgia	24	2	2	0	1	0
Germany						
Greece	88	314	85	84	1	1
Hungary	57	74	16	9	1	0
Iceland	7	1	NAP	NAP	1	0
Ireland	2	1	NAP	NAP	0	1
Italy	153	46	22	2	1	0
Latvia	15	24	1	5	1	0
Lithuania	25	31	2	0	1	0
Luxembourg	3	3	NAP	NAP	2	0
Malta	2	0	1	0	NAP	NAP
Republic of Moldova	30	14	5	0	1	0
Monaco	3	2	0	1	2	0
Montenegro	13	5	2	1	0	1
Netherlands	11	2	6	0	1	0
Norway	43	23	6	0	1	0
Poland	142	140	9	2	6	0
Portugal	NA	NA	NA	NA	NA	NA
Romania	54	91	25	37	0	1
Russian Federation	1 512	810	19	8	2	0
Serbia	34	62	23	9	1	0
Slovakia	28	24	4	4	1	0
Slovenia	19	41	2	3	1	0
Spain	NAP	NAP	88	15	5	0
Sweden	38	22	7	3	1	1
Switzerland	244	125	18	8	1	0
The FYROMacedonia	23	5	2	3	0	1
Turkey	363	29	NAP	NAP	3	0
Ukraine	NA	NA	NA	NA	4	0
UK-England and Wales						
UK-Northern Ireland	3	1	0	0	2	0
UK-Scotland	NAP	NAP	NAP	NAP	NAP	NAP
Average	87	54	12,4	7	1	0,24
Median	29	23	6,0	3	1	0,00
Minimum	1	0	0,0	0	0	0,0
Maximum	1 512	810	88,0	84	6	1
Israel	4	8	4	3	1	0

Regarding access to responsible positions, we observe that the delicate balance between men and women which is taking place in many European countries in relation to the number of magistrates in general, is not yet reached with regard to the heads of courts. **Bulgaria, Germany, Portugal, Spain, Ukraine and UK-England and Wales** have not been able to provide comprehensive data and therefore could not be included in all tables related to the male/female distribution of court presidents.

**Figure 11.25 Distribution of male and female court president (professional judges) within the total number of court presidents (professional judges) in 2012 (Q47)**



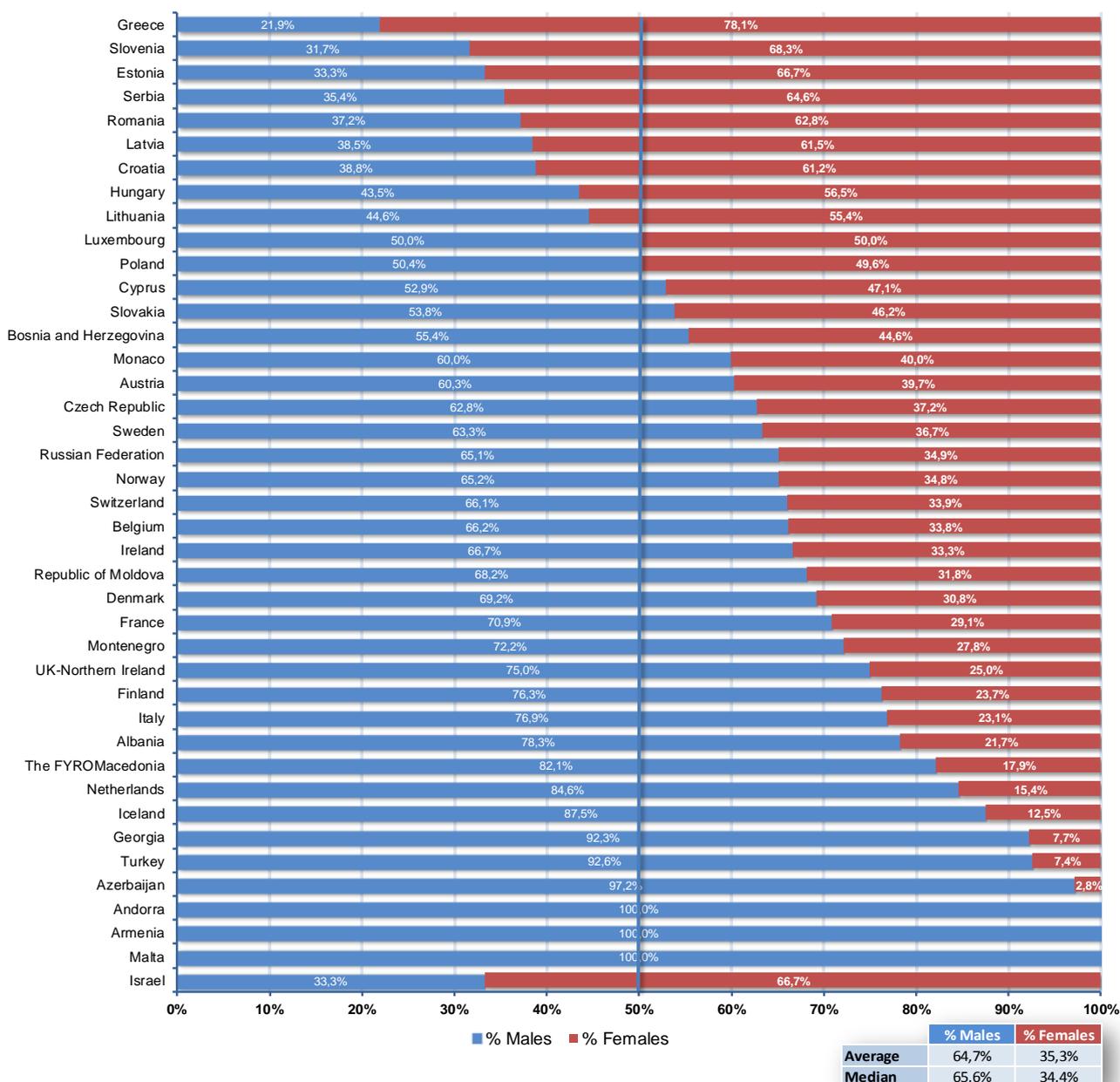
**Note:** it should be clarified that in all states the 100 % value is reached with a very low population density (between 1 and 6 court presidents).

Concerning the distribution of male and female court presidents within the total number of court presidents in 2012, the analysis was carried out for 41 states or entities. **Spain** has indicated that the function of president in the first instance courts does not exist.

In 31 states or entities the proportion of male presidents exceeds 50%, in 15 of them 70% and in 8 of them 90% (**Netherlands, Turkey, Georgia, Azerbaijan, Armenia** as well as **UK-Scotland, Malta** and **Andorra** (100%) although the situation can be qualified in the light of the organisation of their courts). In countries with a low number of court presidents as in **Andorra** (2) or **Malta** (3), it is necessary to qualify the situation. **Ireland** has a perfect balance, whereas in the 9 states or entities with more female court presidents than male, the 60% mark is exceeded only in **Romania, Latvia, Slovenia** and **Greece**.

Fewer women than men presidents of the courts are observed, and this is especially true as we move up through the judicial hierarchy.

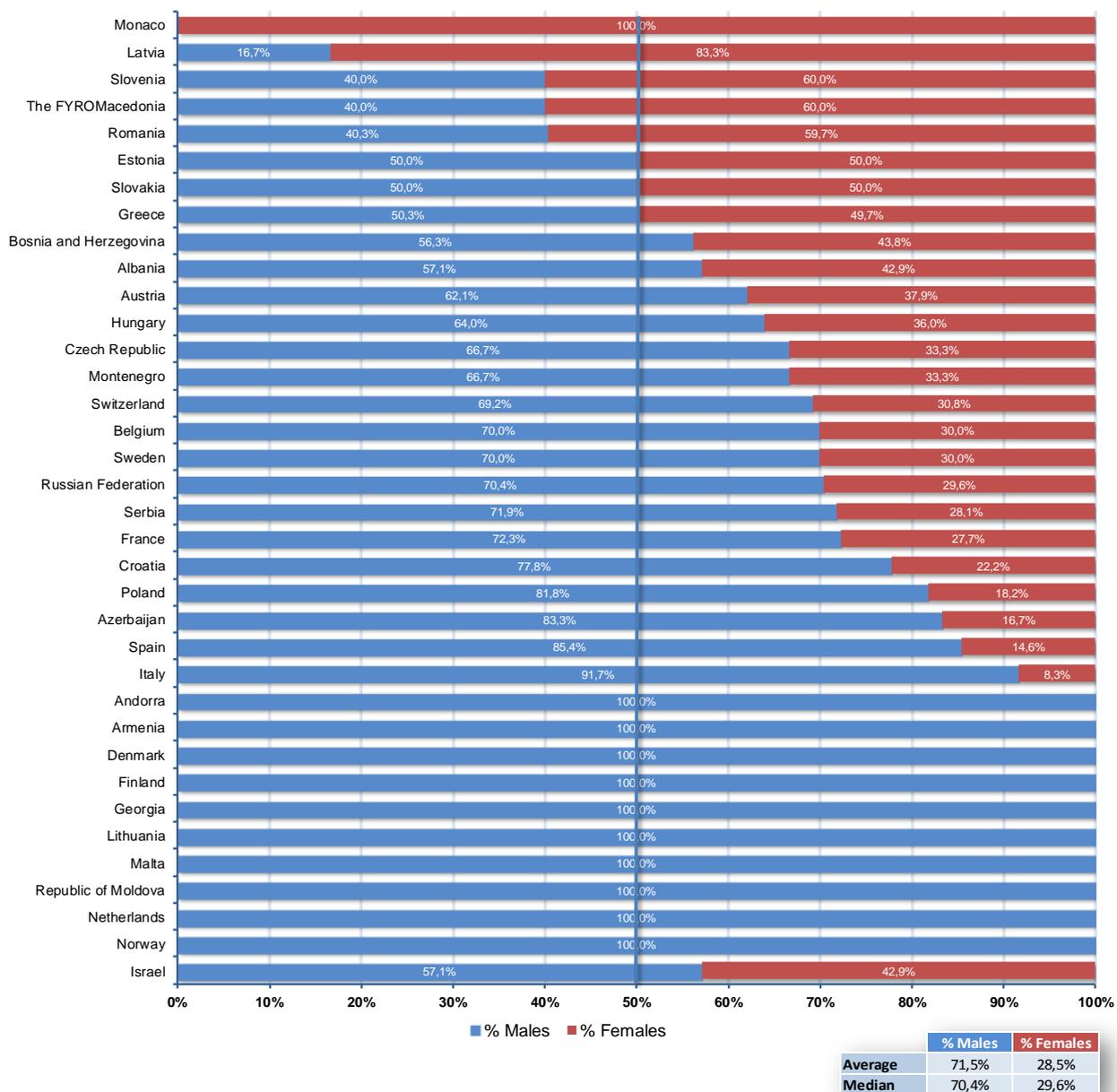
**Figure 11.26 Distribution of male and female court presidents (professional judges) in first instance courts in 2012 (Q47)**



Out of 41 states or entities that were able to provide data as regard the distribution of male/female court presidents of first instance, 30 of them have a number of men presidents higher than the number of women. Among those states, 26 have a proportion of men that exceeds 60% (in 9 it is more than 80%, and in 6 more

than 90%). Meanwhile, the number of female presidents exceeds this level in only 8 states or entities (it is higher than 70% in **Greece** alone). The average distribution is 36% women and 64% men.

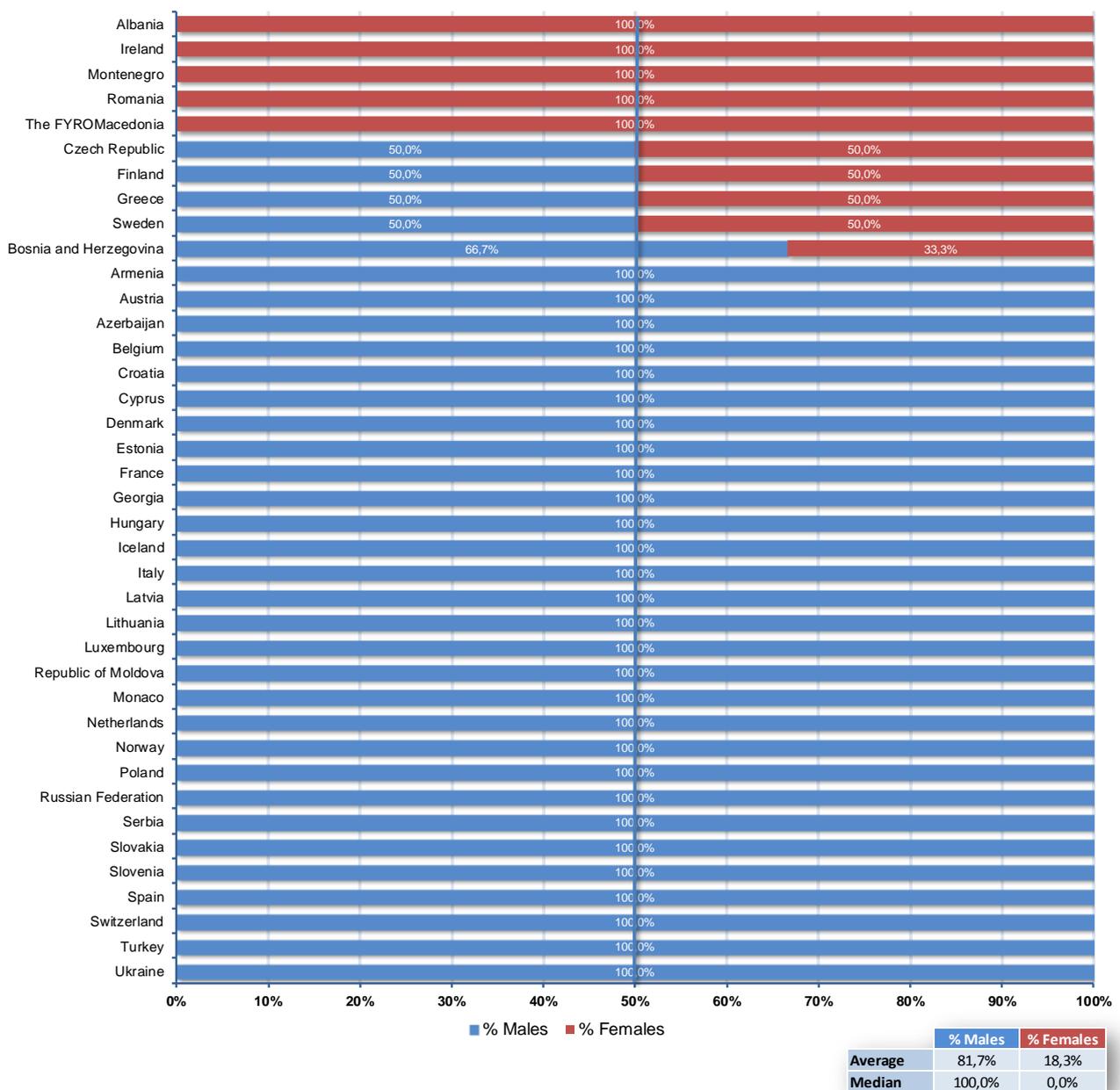
**Figure 11.27 Distribution of male and female court presidents (professional judges) in second instance courts in 2012 (Q47)**



**Note:** it should be clarified that in all states the 100 % value is reached with a very low population density (between 1 and 6 court presidents).

In the second instance courts the number of male presidents is higher than the number of female presidents in 31 states or entities (out of a total of 36 that were able to provide comprehensive data). In 25 of them, the proportion of presidents who are men exceeds 60% (in 14 it is more than 80%, and in 11 more than 90%), while the number of women presidents exceeds this level in only 4 countries (it exceeds 80% only in **Latvia** and **Monaco** which have a single presiding judge at second instance). The average distribution is 29 % women and 71% men.

**Figure 11.28 Distribution of male and female court presidents (professional judges) in supreme courts in 2012 (Q47)**



**Note:** it should be clarified that in all states the 100 % value is reached with a very low population density (between 1 and 6 Supreme Court presidents).

In courts of last instance the number of male presidents is higher than the number of female presidents in 31 states or entities (out of a total of 41 that were able to provide comprehensive data). In 30 states, all the presidents are men. **Bosnia and Herzegovina** indicated that it has 2 men and one woman. In 4 countries, the numbers of men and women are equal and in 5 others all presidents are women. In 2012, of the 41 states or entities that provided data, only 10 had a woman at the head of their supreme court (or equivalent) or at least one of their high courts. The "glass ceiling" impeding women's access to the hierarchical progression seems to exist also in the field of justice. The years to come will show whether this trend will tend to be inverted as a result of the perpetuation and strengthening of regulations and practices designed to ensure equal access for men and women in their judicial role.

**Table 11.29 Number of male and female public prosecutors per category of courts (first instance, second instance and Supreme Court) (Q46)**

States/entities	Public prosecutors sitting in first instance courts		Public prosecutors sitting in second instance courts		Public prosecutors sitting in supreme courts	
	Males	Females	Males	Females	Males	Females
Albania	201	77	23	5	20	4
Andorra						
Armenia						
Austria	151	154	19	12	8	5
Azerbaijan	NA	NA	NA	NA	NA	NA
Belgium	291	370	105	49	12	0
Bosnia and Herzegovina	131	130	NAP	NAP	24	25
Bulgaria	NA	NA	NA	NA	NA	NA
Croatia	133	308	88	67	11	10
Cyprus	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	365	482	189	151	36	19
Denmark	130	291	40	58	16	31
Estonia						
Finland	NAP	NAP	NAP	NAP	NAP	NAP
France	655	738	280	174	42	12
Georgia						
Germany	2 755	2 014	263	112	75	25
Greece	145	231	102	52	17	2
Hungary	427	718	257	309	57	44
Iceland	40	34	NAP	NAP	2	5
Ireland	NAP	NAP	NAP	NAP	NAP	NAP
Italy	891	729	162	64	50	4
Latvia	102	189	43	45	37	35
Lithuania	354	338	NAP	NAP	43	32
Luxembourg	19	15	NAP	NAP	6	7
Malta					NAP	NAP
Republic of Moldova	398	199	17	6	82	41
Monaco						
Montenegro	24	38	4	11	2	5
Netherlands	NA	NA	NA	NA	NAP	NAP
Norway	225	277	66	35	9	4
Poland	1 709	2 282	1 107	874	64	23
Portugal	551	914	46	38	9	7
Romania	602	615	352	445	277	266
Russian Federation	NA	NA	NA	NA	NA	NA
Serbia	241	328	35	30	6	6
Slovakia	NA	NA	NA	NA	NA	NA
Slovenia	NA	NA	NA	NA	NA	NA
Spain	NA	NA	NA	NA	NA	NA
Sweden					8	5
Switzerland	NAP	NAP	NAP	NAP	NAP	NAP
The FYROMacedonia	86	82	15	14	8	2
Turkey	3 832	257	15	0	210	43
Ukraine	NA	NA	NA	NA	NA	NA
UK-England and Wales	1 226	1 464	347	256	NA	NA
UK-Northern Ireland	36	75	28	33	3	1
UK-Scotland	183	337	22	13	22	13
Average	568	489	151,0	119	41	24,14
Median	233	300	56,0	47	19	8,50
Minimum	19	15	4,0	0	2	0,0
Maximum	3 832	2282	1107,0	874	277	266
Israel						

Table 11.29 illustrates the distribution between male and female prosecutors by category of courts. In the majority of the 29 states or entities that has the data, a reduction in the proportion of female prosecutors when climbing up the judicial hierarchy can, as in the case of judges, be observed. However, this trend varies according to the state or entity concerned. Some states or entities present a very marked contrast with a very different men/women distribution in first instance courts and in the Supreme Court. Conversely, **Montenegro** and **Iceland** report an opposite trend, the proportion of female prosecutors increasing as one goes up the judicial hierarchy. In **Denmark**, the number of female prosecutors is higher than the number of male prosecutors at all levels of court.

**Figure 11.30 Distribution of male and female public prosecutors within the total number of public prosecutors in 2012 (Q55)**

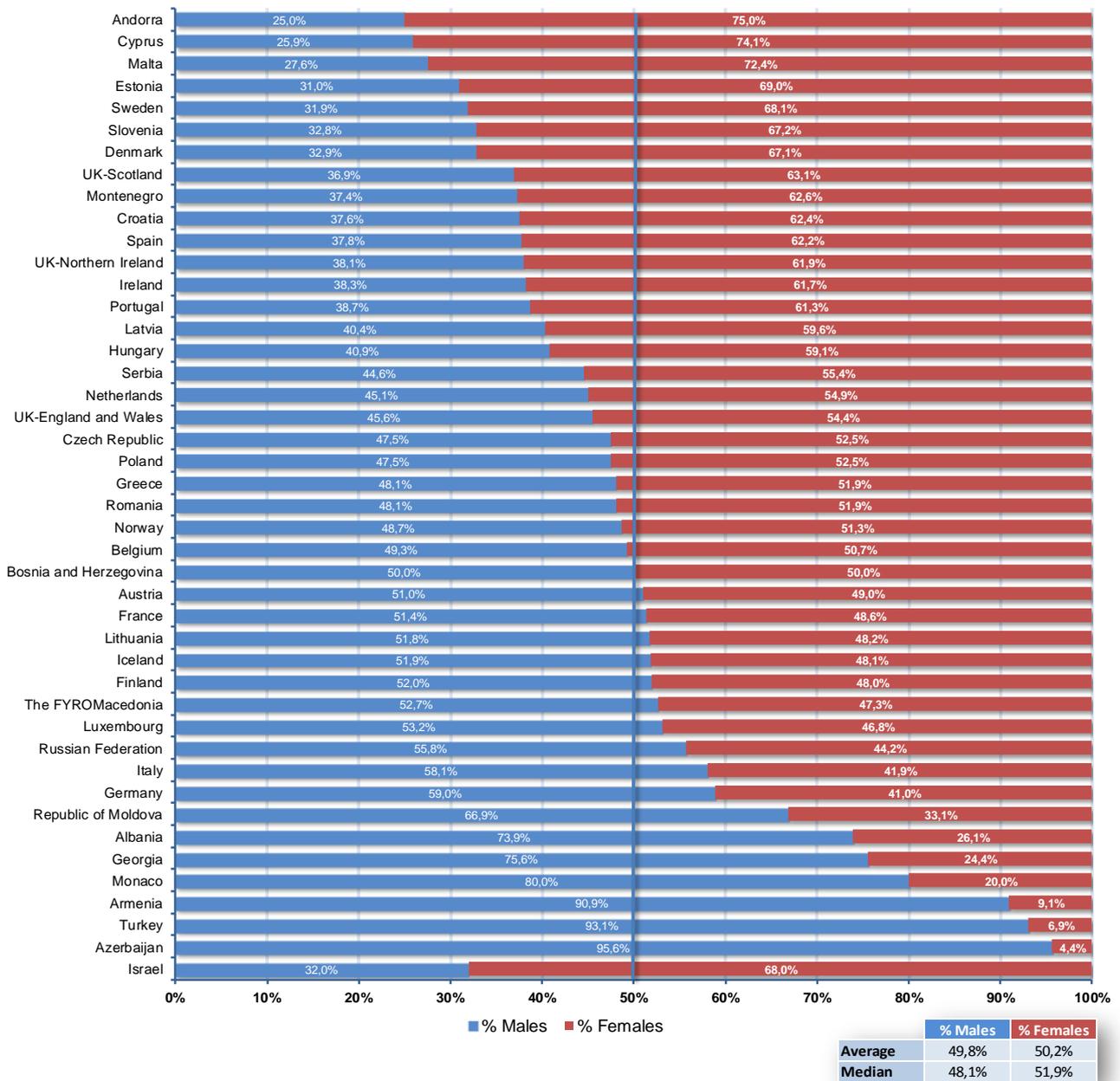
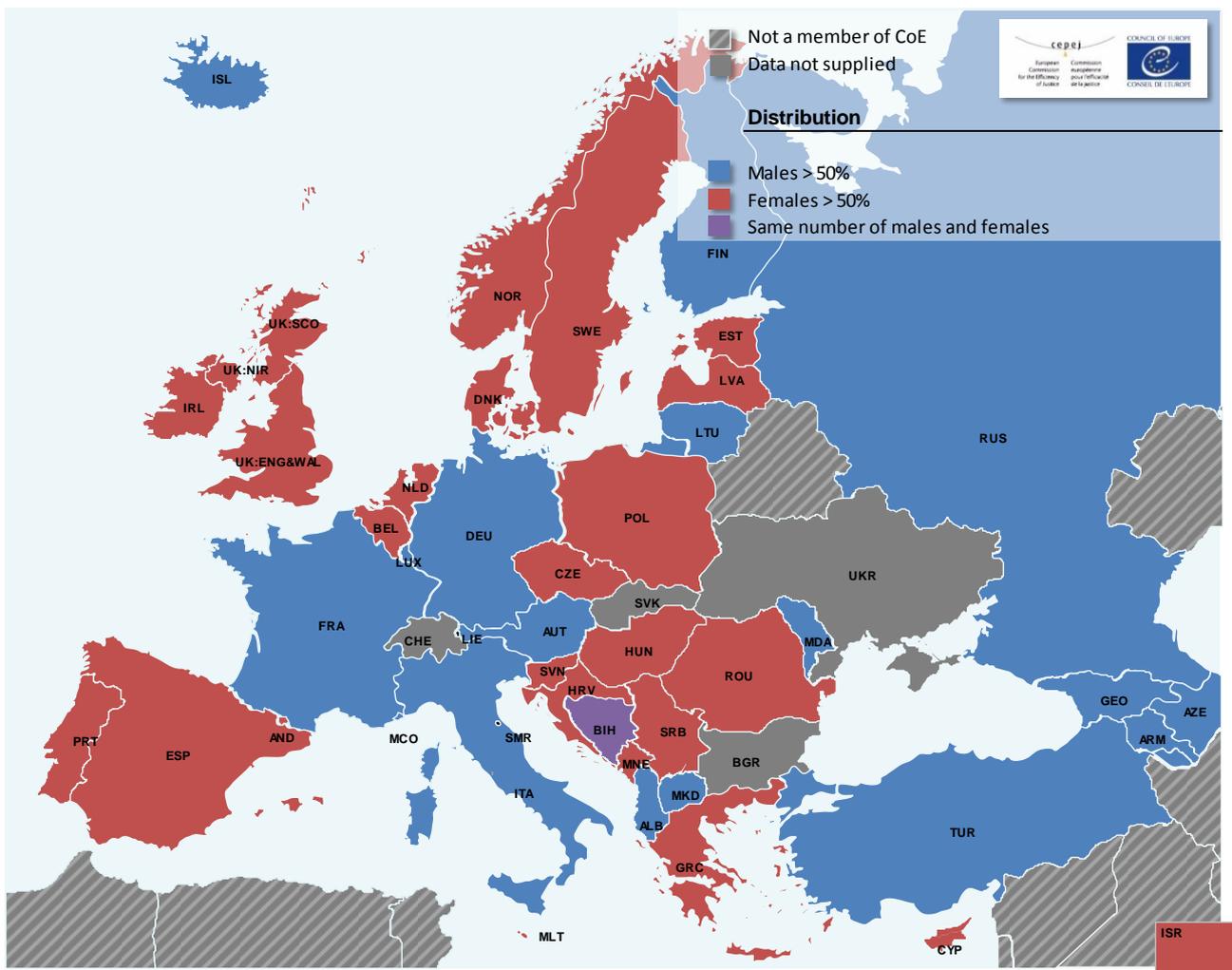


Figure 11.30 summarises the gender distribution among prosecutors for the 43 states or entities that were able to provide the data. 26 of them have reported that between 50% and 75% of prosecutors are women but only 3 countries have indicated that the percentage exceeds 70% (**Malta, Cyprus and Andorra**). A perfect balance exists in **Bosnia and Herzegovina**. In 17 states or entities, the number of men is higher than the number of women (exceeding 60% in 7 countries, 70% in 6 and 90% in 3 - **Armenia, Turkey, Azerbaijan**). In **Monaco**, 80% of prosecutors are men, but this figure must be nuanced by the fact that there are only five prosecutors in all. Apart from **Andorra**, which has only four prosecutors (3 women and 1 man), the state where the feminisation of the function of prosecutor is most pronounced is **Cyprus**, 74% are women.

The positive trend observed for women judges is even more noticeable with respect to the position of prosecutor with an average for all states or entities of 51% men and 49% women. 22 states or entities have a relative gender parity among the prosecutors within the range of 40% to 60%.

**Figure 11.30bis Distribution of male and female prosecutors within the total number of public prosecutors in 2012 (Q55)**

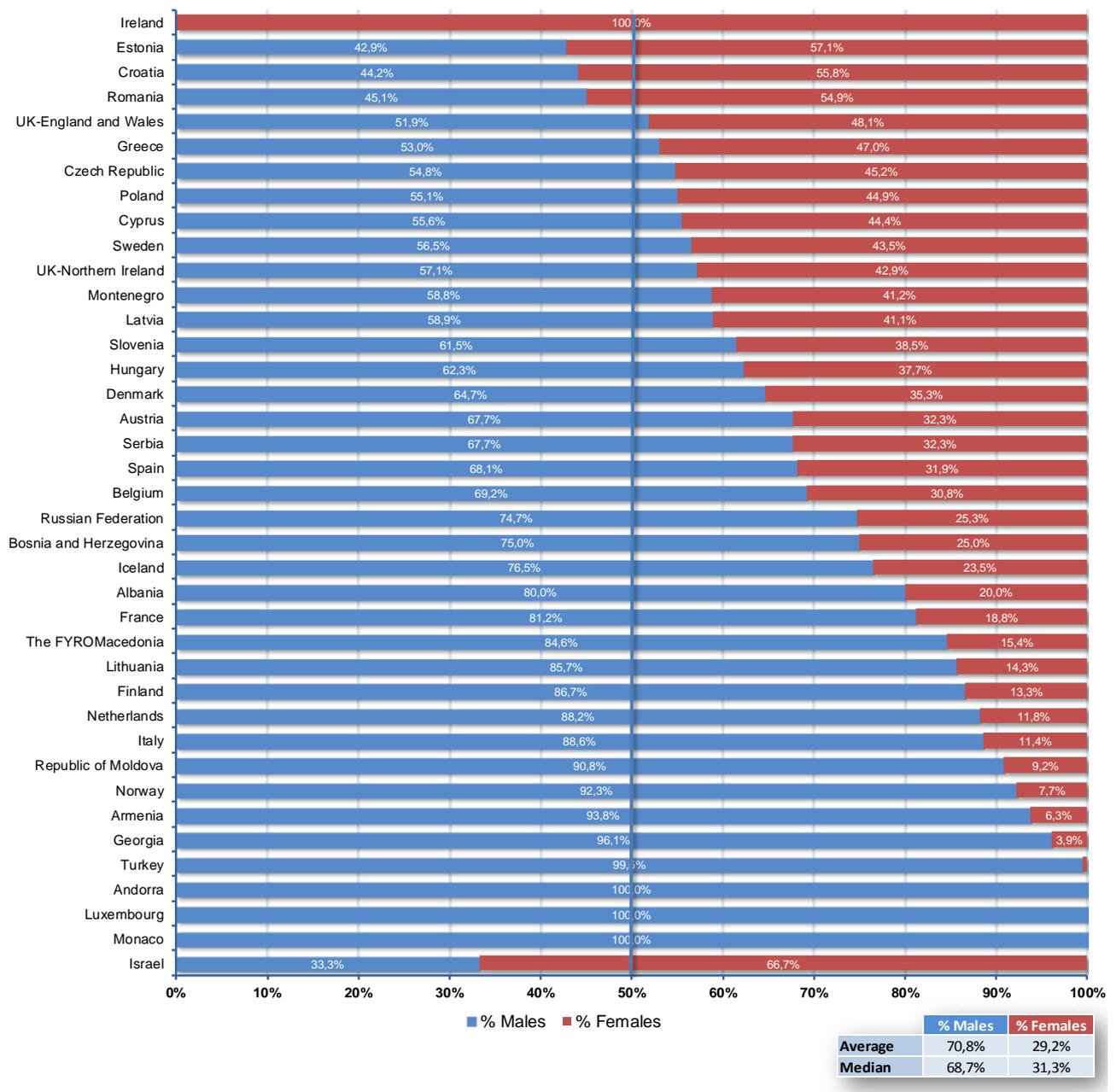


**Table 11.31 Number of men and women heads of prosecution offices per category of courts (first instance, second instance and Supreme Court) (Q56)**

States/entities	Heads of prosecution offices, first instance courts		Heads of prosecution offices, second instance courts		Heads of prosecution offices, supreme courts	
	Males	Females	Males	Females	Males	Females
Albania	19	4	5	2	4	1
Andorra						
Armenia						
Austria	11	7	6	1	0	0
Azerbaijan	NA	NA	NA	NA	NA	NA
Belgium	30	15	5	1	1	0
Bosnia and Herzegovina	13	4	NAP	NAP	2	1
Bulgaria	NA	NA	NA	NA	NA	NA
Croatia	11	16	7	8	1	0
Cyprus	NAP	NAP	NAP	NAP	NAP	NAP
Czech Republic	44	38	6	4	1	0
Denmark	7	5	2	1	2	0
Estonia						
Finland	NAP	NAP	NAP	NAP	NAP	NAP
France	129	31	30	6	1	0
Georgia						
Germany	NA	NA	NA	NA	NA	NA
Greece	28	35	15	4	1	
Hungary	82	58	21	5	1	0
Iceland	13	3	NAP	NAP	0	1
Ireland	NAP	NAP	NAP	NAP	NAP	NAP
Italy	153	23	24	0	1	0
Latvia	21	16	6	4	6	3
Lithuania	10	2	NAP	NAP	2	0
Luxembourg	2	0	NAP	NAP	1	0
Malta						
Republic of Moldova	92	10	6	0	1	0
Monaco						
Montenegro	9	4	1	1	0	1
Netherlands	11	2	4	0	NAP	NAP
Norway	0	0	11	1	1	0
Poland	405	382	1 047	36	5	1
Portugal	NA	NA	NA	NA	NA	NA
Romania	73	89	51	62	1	1
Russian Federation	6 165	1 442	1 616	1 192	148	46
Serbia	40	20	4			1
Slovakia	NA	NA	NA	NA	1	0
Slovenia	7	5			1	0
Spain	NA	NA	NA	NA	5	2
Sweden					5	2
Switzerland						
The FYROMacedonia	17	0	4	0	1	4
Turkey	199	1	15	0	2	0
Ukraine	NA	NA	NA	NA	1	0
UK-England and Wales	28	26	28	26	NA	NA
UK-Northern Ireland	NA	NA	NA	NA	NA	NA
UK-Scotland	5	3	NA	NA	NA	NA
<b>Average</b>	<b>272</b>	<b>80</b>	<b>132,4</b>	<b>64</b>	<b>7</b>	<b>2,29</b>
<b>Median</b>	<b>20</b>	<b>9</b>	<b>6,5</b>	<b>2</b>	<b>1</b>	<b>0,00</b>
<b>Minimum</b>	<b>0</b>	<b>0</b>	<b>1,0</b>	<b>0</b>	<b>0</b>	<b>0,0</b>
<b>Maximum</b>	<b>6 165</b>	<b>1442</b>	<b>1616,0</b>	<b>1 192</b>	<b>148</b>	<b>46</b>
Israel						

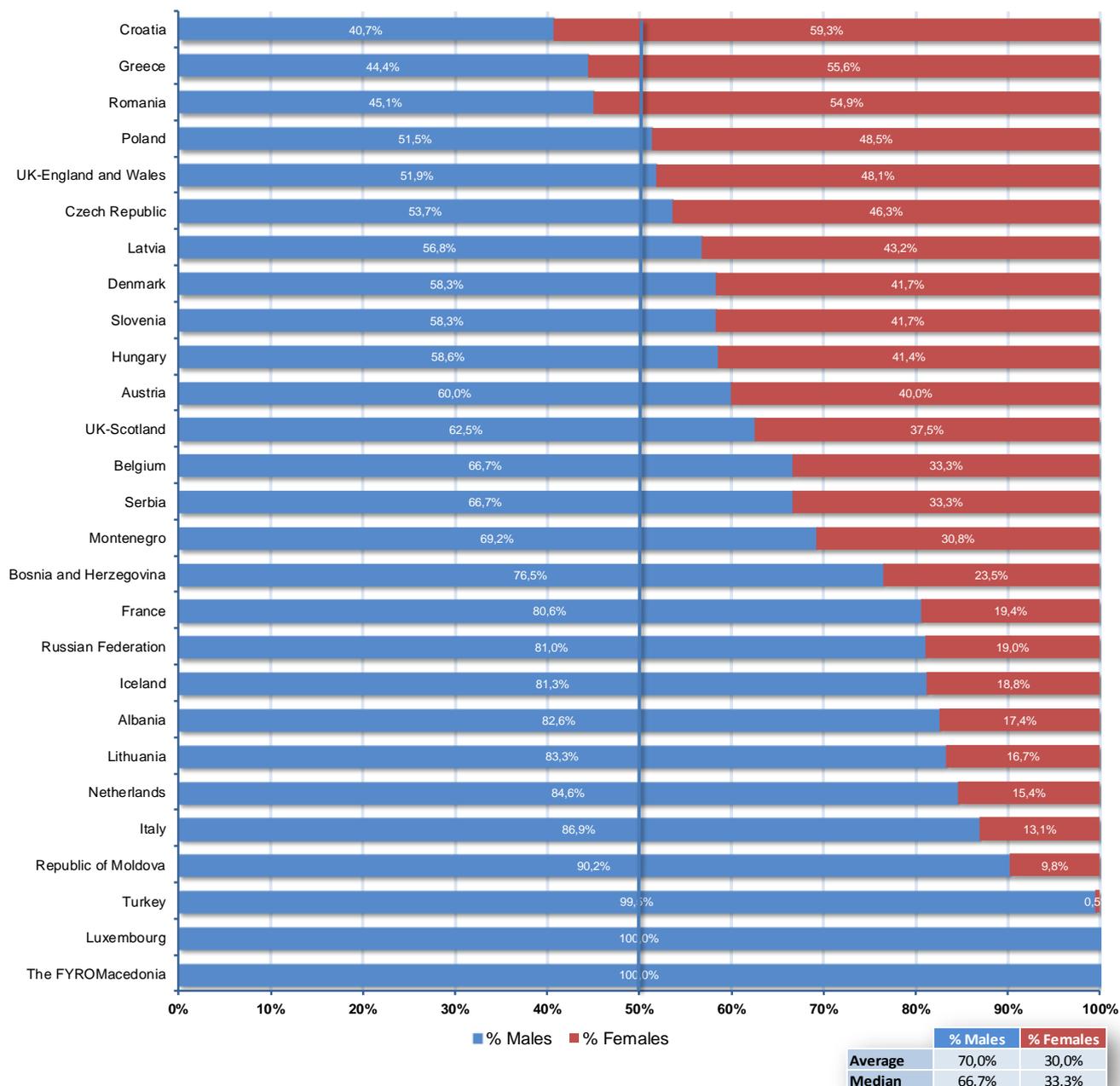
As regards access to positions of responsibility, the situation is similar to that of judges. The progressive rebalancing in favour of women observed in the judiciary in general has not yet materialised at the level of department heads. Many states have struggled to provide detailed and comprehensive data on this point.

**Figure 11.32 Distribution of male and female heads of prosecution offices within the total number of heads of prosecution offices in 2012 (Q56)**



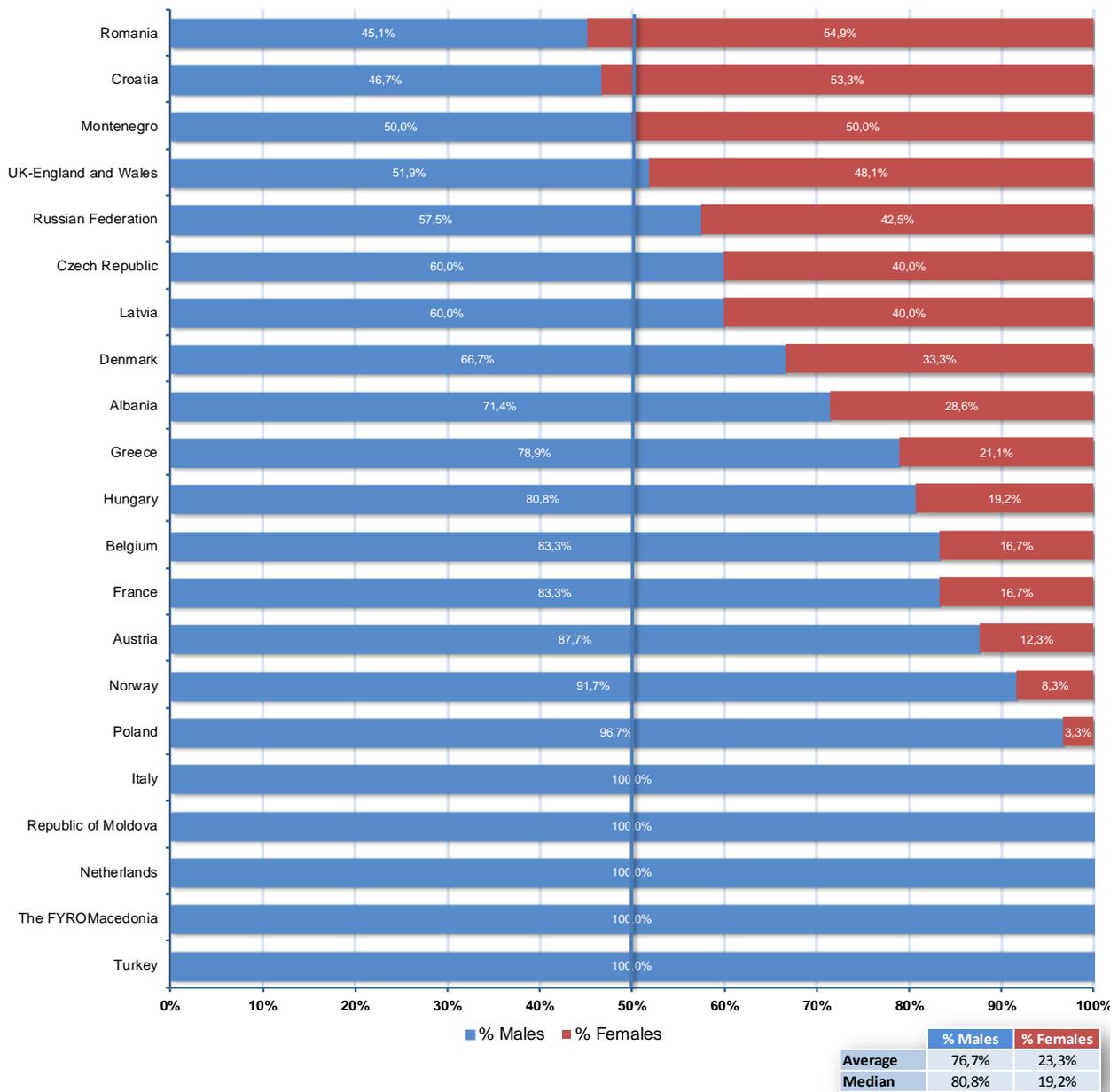
As regards the distribution of male/female heads of prosecution offices within the total number of heads of prosecution offices in 2012, the analysis was done with regard to 38 states and entities. **Malta** has not been integrated as the only head of prosecution office is the attorney general. Women account, as for judges, only for one third of the total. In 34 states or entities, the number of male heads of prosecution offices exceeds 50%, in 18 of them it exceeds 70%, in 8 it exceeds 90% (**Republic of Moldova** (91%), **Norway**, **Armenia**, **Georgia** and **Turkey** (100%)). The situation of **Monaco** (1 head of prosecution office), **Luxembourg** (3 heads) and **Andorra** (1 head) is to be nuanced given the small number of heads of prosecution offices. In 4 countries, the number of women heads of prosecution offices is higher than that of men. Excluding **Ireland**, where the data must be put in perspective like that of **Monaco** and **Andorra**, the favourable percentage of women heads of prosecution offices is in a range between 55% and 57% (**Romania**, **Croatia**, **Estonia**).

**Figure 11.33 Distribution of male and female heads of prosecution offices in first instance courts in 2012 (Q56)**



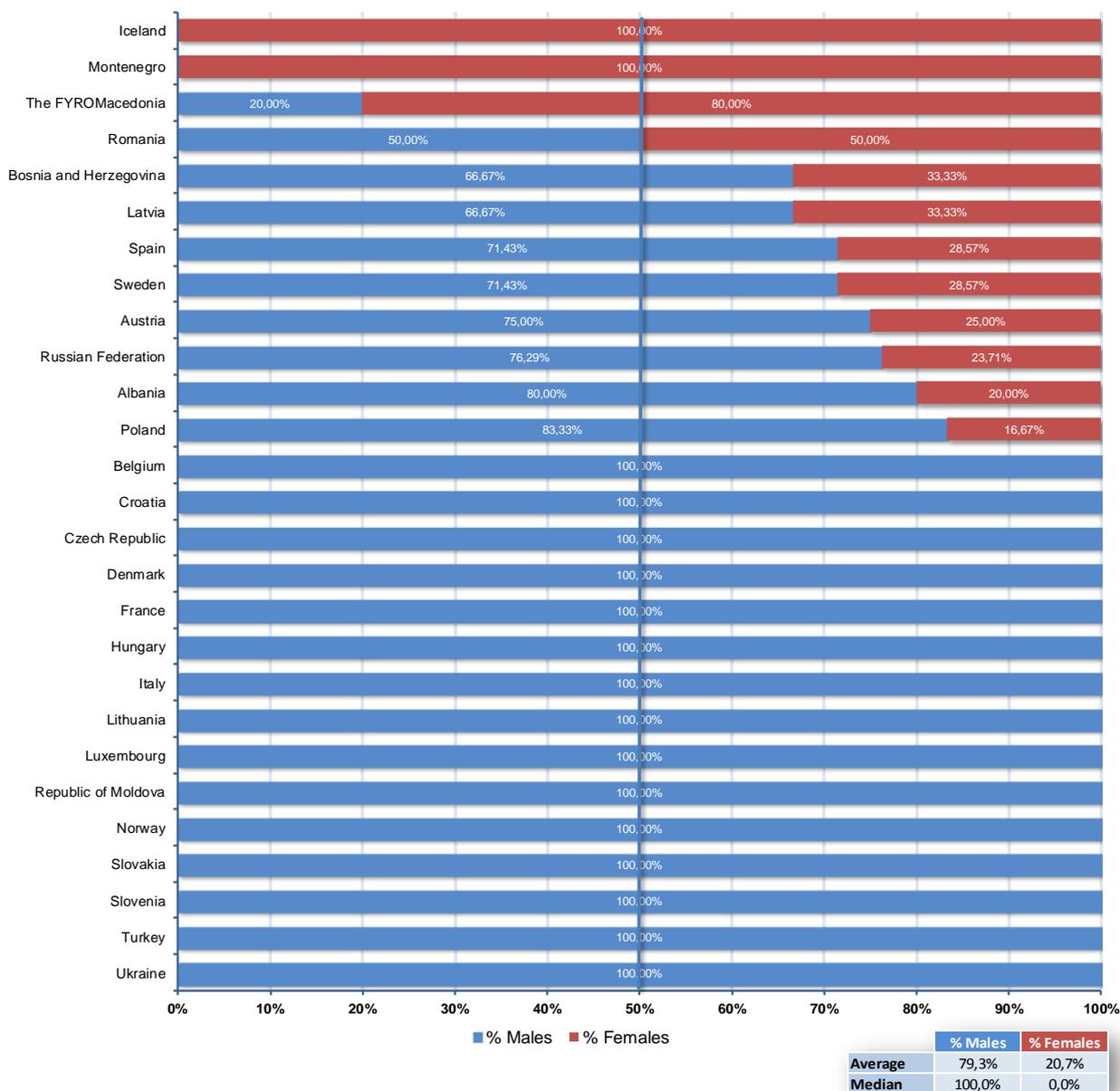
27 states or entities were able to provide the data regarding the distribution of male/female heads of prosecution offices in first instance courts. The number of male heads is higher than that of women in 24 states and exceeds 80% in 11 of them.

**Figure 11.34 Distribution of male and female heads of prosecution offices in second instance courts in 2012 (Q56)**



21 states or entities were able to provide the data as regards the distribution of male/female heads of prosecution offices in second instance courts. The number of male heads of prosecution offices is higher in 19 countries and it exceeds 80% in 11 of them. In 5 states or entities, all heads of prosecution offices are men. **Romania** and **Croatia** are the two states where the number of female department heads is just over 50%, while **Greece** is closer to the majority trend having 79% of men heads. It should be noted that the total number of heads of prosecution offices in second instance courts is considerably lower than the one of first instance courts. A nuanced analysis is therefore required.

**Figure 11.35 Distribution of male and female heads of prosecution offices in supreme courts in 2012 (Q56)**



**Note:** it should be clarified that in all states the 100 % value is reached with a very low population density (between 1 and 2 heads of prosecution offices in supreme courts).

27 states or entities were able to provide the data as regard the distribution of male/female heads of prosecution offices in last instance courts. **“The former Yugoslav Republic of Macedonia”**, **Iceland** and **Montenegro** are the exceptions with 80% and 100% of women, respectively. In **Romania**, there is a perfect parity, while in 15 states or entities the function is exclusively performed by men. This analysis must be taken in context, given the limited number of heads of prosecution offices who are competent at last instance (1 most of the time, or between 1 and 5). Some countries are exceptions. In **Spain**, **Sweden** and **Latvia**, the number of heads of prosecution offices at last instance varies between 5 and 9. **Russian Federation**, due to its federal system, has a large number of heads of prosecution offices (194).

### 11.6.3 Promotion

The promotion of judges is as important as the selection phase and helps maintain the independence of the judiciary. Therefore, the principles formulated in respect of the recruitment and appointment process can therefore be transposed to the promotion phase. The latter should be done in observance of the following statement: *“It is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary”* (CCJE Opinion No. 10 (2007) para. 48).

In more than half of the responding states or entities (26 out of 45), the authority responsible for the recruitment of judges is the same as the one which deals with their promotion: **Andorra, Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Iceland, Latvia, Lithuania, Republic of Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovakia, Sweden, "the former Yugoslav Republic of Macedonia", Ukraine and UK-England and Wales**. In the 21 other states or entities, a different authority is entrusted with the promotion of judges. In **France**, this power is entrusted to a special body, the *Commission d'avancement* (Commission for promotion). The Judicial Council intervenes in this matter in a significant number of states or entities as in **Albania** (for trial judges), **Azerbaijan, Denmark** (except for promotions within the same court which are under the jurisdiction of the court itself), **Georgia, Italy, Monaco, Montenegro, Netherlands** (although the formal responsibility lies with the Head of State, acting upon the recommendation of the Minister of Justice who follows the advice of the Judicial Council), **Portugal, Serbia, Slovenia** (except for promotions in terms of salary or as a senior judge which are under the jurisdiction of the court president), **Spain, "the former Yugoslav Republic of Macedonia"** and **Turkey**. It is not excluded that the executive power intervenes in the promotion phase, such as in **Albania** (the President of the Republic is responsible for appellate judges), **Czech Republic** (the Minister of Justice), **Ireland** (the government may advise the President to appoint a judge to a higher position). It is possible to identify a group of states that have no formal system of promotion and where access to senior positions goes through a selection process similar to the initial recruitment (**Austria, Estonia, Iceland, Norway, UK-Northern Ireland and UK-Scotland**, except when it comes to move from the Outer House to the Inner House which requires the intervention of the Lord President). This is also the case in **Malta**, but it can be explained by the fact that there is no hierarchy between the judges who are in principle the most senior members of the judiciary (with the exception of the Chief Justice appointed by the government).

Recommendation Rec(2000)19 states that the transfer or promotion of prosecutors should be governed by known and objective criteria and by the needs of the service and: *"carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups(...)"*.

In 32 states or entities, the body dealing with the appointment of prosecutors is also responsible for the management of their career (**Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, Iceland, Ireland, Latvia, Lithuania, Malta, Republic of Moldova, Monaco, Montenegro, Norway, Poland, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine, UK-England and Wales, UK-Northern Ireland and UK-Scotland**). In **Armenia**, a specific body is responsible for the prosecutors' promotion (qualification committee). The Council of Justice can be responsible, such as in **Greece, Italy, Monaco, Portugal, Serbia, Slovenia** (except for the function of Supreme State Prosecutor, the jurisdiction lies with the government), **"the former Yugoslav Republic of Macedonia"**, or **Turkey**. In some states or entities, there is no formal system of promotion and prosecutors may be appointed to a senior position following a selection procedure (**Austria, UK-Northern Ireland, Iceland**). In other countries, the promotion is entrusted to the chief prosecutor (**Georgia, Netherlands** (formal appointment is under the jurisdiction of the Queen), **Norway, Spain** (formal appointment is under the jurisdiction of the Minister of Justice)). In **Malta**, the promotions are decided by the government.

#### **11.6.4 Combination of work with other activities**

To sufficiently guarantee the independence and impartiality of judges, many states prohibit or limit the possibility for judges to exercise other professions at the same time as practicing their function as a judge. As the CCJE recommends, judges should *"refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner"* (CCJE Opinion N°3: 2002; para. 37).

Recommendation R(2000)19 underlines that prosecutors must act in an impartial manner and must be exclusively attentive to the smooth functioning of the criminal law system. Therefore, it would not be recommended for a prosecutor to exercise another profession which may interfere with his/her decisions or ways of prosecuting. However, the Recommendation foresees possibilities of restricting the freedom of conscience, expression and association of prosecutors only where such exceptions would be absolutely necessary to guarantee the role of the prosecutor and would be provided for by the law.

Table 11.36 Activities with which judges are allowed to combine their function (Q136)

States/entities	Teaching		Research and publication		Arbitrator		Consultant		Cultural function		Political function		Other function	
	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration
Albania														
Andorra														
Armenia														
Austria														
Azerbaijan														
Belgium														
Bosnia and Herzegovina														
Bulgaria														
Croatia														
Cyprus														
Czech Republic														
Denmark														
Estonia														
Finland														
France														
Georgia														
Germany														
Greece														
Hungary														
Iceland														
Ireland														
Italy														
Latvia														
Lithuania														
Luxembourg														
Malta														
Republic of Moldova														
Monaco														
Montenegro														
Netherlands														
Norway														
Poland														
Portugal														
Romania														
Russian Federation														
Serbia														
Slovakia														
Slovenia														
Spain														
Sweden														
Switzerland														
The FYROMacedonia														
Turkey														
Ukraine														
UK-England and Wales														
UK-Northern Ireland														
UK-Scotland														
<b>Number of countries</b>	<b>40</b>	<b>34</b>	<b>43</b>	<b>35</b>	<b>10</b>	<b>8</b>	<b>6</b>	<b>6</b>	<b>18</b>	<b>28</b>	<b>5</b>	<b>6</b>	<b>9</b>	<b>9</b>
Israel														

Yes  
No

As regards judges, **Austria, Finland, Germany, Iceland** and **Netherlands** seem to have the most flexible rules for combining activities with the judge's function (even remunerated). Conversely, in **Andorra, Croatia, Denmark, Georgia, Malta, Poland, UK-Northern Ireland, UK-Scotland**, the regulation is the stricter.

The main activities with which a judge can combine her/his duties are teaching and research (whether or not remunerated). Apart from **Andorra, UK-England and Wales, UK-Northern Ireland** and **UK-Scotland**, which do not permit any kind of teaching activity, **Ireland, Malta** and **Portugal** allow teaching only if it is unremunerated, while **Albania, Croatia, Czech Republic, Denmark, Georgia, Norway, Poland, Sweden** and "**the former Yugoslav Republic of Macedonia**" permit it only as a remunerated activity. Research and publication is completely prohibited in **Andorra, Malta** and **UK-Northern Ireland**, although most states authorise it only if the activity is remunerated.

Many member states and entities (30) allow judges to exercise activities in the cultural field. However, in more than one third of these states the activity must be unremunerated. The activities considered the most incompatible with judicial office are those that are political in nature. Only 4 states permit such activities (with or without remuneration): **Austria** (subject to certain limits, such as being a member of Parliament), **Finland, France** and **Sweden**. **Albania** and **Iceland** permits them if the political activity is unremunerated, while in **Norway** the activity is permitted only if remunerated.

The liberty which judges are allowed by states has its limits. A significant number of countries reported that judges must give notification or request permission before performing a second activity or certain types of activities: they include **Cyprus, Switzerland, Denmark** (where the case goes before the External Activity Review Board if the activity is not expressly permitted by law), **Estonia, Hungary** and **France** (the chief justice), **Finland** (the court), **Iceland** (the Committee on Judicial Functions), **Italy, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia"** and **Turkey** (the High Council of Justice), **Monaco** (the Director of legal services), **Norway** (the Norwegian Court Administration), **Portugal** (the Higher Council of the Bench), **Slovenia** and **Spain** (the president of the court reports to the Judicial Council). **Iceland** has indicated that a judge who is refused permission to carry on a second activity shall have a remedy before the courts. Conversely, the legislation in force in **Germany** lists activities for which no authorisation is required. Additionally, **Austria, Bosnia and Herzegovina, France, Hungary, Monaco, Russian Federation, Slovenia** and **UK-England and Wales** stressed that such activities are not in any way to affect the judicial function of the judge and its impartiality. Elsewhere, an activity is deemed incompatible with judicial office if there is a risk of undermining the office-holder's independence and impartiality. In **Bosnia and Herzegovina**, for instance, the law lays down general rules and the Judicial Council decides on the compatibility of activities performed by judges and prosecutors on the basis of those rules. In **UK-England and Wales**, there are also general rules, but any judge who has doubts about a secondary activity's compatibility with judicial office must seek the opinion of his or her supervisor, head of department or even the Lord Chief Justice. On the other hand, fee-paid judges are free to combine their judicial work with other activities and continue their primary activity as a barrister or solicitor as long as it is not contentious and does not present a conflict of interest.

In the **Russian Federation**, judges may combine teaching, research or other creative activities if they are remunerated, provided that it is not funded by other states, foreign or international organizations, persons with another nationality or homeless people (the same is applicable for prosecutors).

In **Ireland**, judges from time to time address conferences and give lectures without remuneration. The Constitution precludes judges from holding any other remunerated position but they are not precluded, for example, from receiving royalties on textbooks they have published.

Most of the states or entities (35) prohibit arbitration activities for judges. In **Croatia**, a judge may intervene as an arbitrator but only outside his/her jurisdiction, in another institution and remunerated. In **Estonia**, the judge may be an "impartial" arbitrator (that is to say he/she cannot be chosen by one of the parties) without remuneration. In an even larger number of states or entities (40), working as a consultant is forbidden. In the **Czech Republic**, judges can work if they are remunerated as consultants, but only for the Minister of Justice, the government or the Parliament.

**Table 11.37 Activities with which prosecutors are allowed to combine their function (Q137)**

States/entities	Teaching		Research and publication		Arbitrator		Consultant		Cultural function		Political function		Other function	
	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration	With remuneration	Without remuneration
Albania														
Andorra														
Armenia														
Austria														
Azerbaijan														
Belgium														
Bosnia and Herzegovina														
Bulgaria														
Croatia														
Cyprus														
Czech Republic														
Denmark														
Estonia														
Finland														
France														
Georgia														
Germany														
Greece														
Hungary														
Iceland														
Ireland														
Italy														
Latvia														
Lithuania														
Luxembourg														
Malta														
Republic of Moldova														
Monaco														
Montenegro														
Netherlands														
Norway														
Poland														
Portugal														
Romania														
Russian Federation														
Serbia														
Slovakia														
Slovenia														
Spain														
Sweden														
Switzerland														
The FYROMacedonia														
Turkey														
Ukraine														
UK-England and Wales														
UK-Northern Ireland														
UK-Scotland														
<b>Number of countries</b>	<b>42</b>	<b>39</b>	<b>43</b>	<b>39</b>	<b>9</b>	<b>7</b>	<b>8</b>	<b>5</b>	<b>22</b>	<b>28</b>	<b>6</b>	<b>5</b>	<b>10</b>	<b>9</b>
Israel														

Yes  
No

The situation for prosecutors is very similar to that of judges concerning the activities that are allowed and the limits within which they can be exercised.

In **Armenia, Austria, Iceland and Netherlands**, the rules are the most flexible. Conversely, **Andorra and UK-Northern Ireland** prohibit all combination of activities and in **Croatia, Malta, Poland, Portugal** and “**the former Yugoslav Republic of Macedonia**”, the possibility of combining activities is limited.

As for judges, we observe that the main activities with which a prosecutor can combine his/her duties are teaching and research, whether or not remunerated (45 states or entities). Similarly, a large number of states or entities (31) allow prosecutors to exercise activities in the cultural field, while political activities cannot be combined with the prosecutor function (7 states).

In **Albania**, the Attorney General gives the authorisation concerning activities' combination, while in **Bosnia and Herzegovina** it is the High Council of Justice. A prior approval is required for the following countries: **Cyprus, Switzerland, Belgium** (Minister of Justice), **Estonia and Latvia** (appointing authority), **Finland** (Office of the Prosecutor General for attorney and consultant activities; for other activities, a single notification is enough), **Georgia** (Deputy Chief Prosecutor), **Italy, Montenegro, Portugal Serbia, "the former Yugoslav Republic of Macedonia"** and **Turkey** (High Judicial Council), **Lithuania** (Attorney-General). In **UK-England and Wales**, the department head must give his/her approval regarding the combination of activities. In **Norway**, prosecutors fall under the general law on public officials. Some states such as **Austria, Denmark, Hungary, Ireland, Latvia, Serbia, Slovenia**, or **UK-England and Wales** consider that activities which may adversely affect the performance of the duties of a prosecutor should be considered prohibited. In **Iceland**, the head of prosecution office has the same status as judges of the Supreme Court and therefore is subject to the same rules regarding combination of activities. For other attorneys, prior approval of the supervisor is necessary and in case of refusal, an appeal to the Minister of Justice is possible.

Most states or entities prohibit prosecutors from taking on arbitration activities (38 states) as well as consultant activities (39 states). In **Czech Republic**, prosecutors can work as remunerated consultants but only for the Ministry of Justice, the government or the Parliament.

## 11.7 Possibility to challenge a judge

The fair trial principle implies the parties' right to request the disqualification of a judge if they have a suspicion regarding his/her impartiality. In accordance with the case-law of the European Court of Human Rights, "where it is alleged that a tribunal does not meet the requirements of independence or impartiality under Article 6§1 of the Convention, a challenge can be regarded as an effective remedy [...] for the purposes of Article 35 §1." (Kleyn and Others v. the Netherlands, [GC], applications nos. 39343/98, 39651/98, 43147/98 and 46664/99, 06/05/2003, § 157).

**Table 11.38 Number of successful challenges of a judge in 2012 (Q85)**

States/entities	Nb of successful challenges of a judge
Albania	
Andorra	
Armenia	
Austria	na
Azerbaijan	NA
Belgium	
Bosnia and Herzegovina	81
Bulgaria	NA
Croatia	NA
Cyprus	0
Czech Republic	NA
Denmark	
Estonia	NA
Finland	NA
France	NA
Georgia	1
Germany	NA
Greece	
Hungary	NA
Iceland	NA
Ireland	NA
Italy	NA
Latvia	NA
Lithuania	
Luxembourg	NA
Malta	
Republic of Moldova	NA
Monaco	0
Montenegro	
Netherlands	42 (in 2012)
Norway	
Poland	1 873
Portugal	NA
Romania	NA
Russian Federation	NA
Serbia	NA
Slovakia	NA
Slovenia	NA
Spain	NA
Sweden	
Switzerland	NA
The FYROMacedonia	1 540
Turkey	
Ukraine	
UK-England and Wales	NA
UK-Northern Ireland	NA
UK-Scotland	NA
Israel	NA

All the states or entities appear to have an efficient system of recusal for judges. However, the vast majority of them encounter difficulties in providing precise statistics.

Compared to 2010 data, an increase in the number of challenge procedures led was recorded in **Poland** (1873), **Bosnia and Herzegovina** (81) and **Netherlands** (42), while a decrease was noted in "**the former Yugoslav Republic of Macedonia**" (1540) and **Georgia** (1).

## 11.8 Responsibility of judges and prosecutors

### 11.8.1 Individual assessment of the professional activity of judges and prosecutors

In two thirds of the member states an individual evaluation of judges is foreseen, this proportion being even more significant concerning prosecutors.

As the CCJE has pointed out, the professional assessment of judges and prosecutors is a different matter depending on whether they are recruited at the beginning of their career from among candidates with no previous professional experience, or after many years of practice of a legal profession from among the most experienced practitioners. In the former case assessment is absolutely necessary to verify professional abilities which could not be demonstrated during a previous activity, but it is also not devoid of utility in the latter case, in view of the specific nature of the judicial role and the constantly changing practice and knowledge it entails (CCJE, Opinion No.10 (2007), §55). In this connection, **Estonia** stipulated that regular assessment mainly concerns "new" judges who have been recently appointed. In **Monaco**, however, no such distinction is drawn and each judge undergoes a written assessment procedure every two years.

More often than not, assessment takes place on a regular basis, with a specified frequency (every 1 to 5 years): this is the case in **Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, France, Italy, Republic of Moldova, Monaco, Montenegro, Poland, Portugal, Slovakia, Slovenia, "the former Yugoslav Republic of Macedonia", Turkey**. Individual assessment on an irregular basis is also possible (**Republic of Moldova, UK-England and Wales**). Various authorities may be responsible for carrying out such assessments. For prosecutors, the hierarchical superior is vested with this responsibility in the great majority of cases. For judges, assessments may be made by a judicial council or an equivalent body (**Azerbaijan**), the president of the relevant court (**Croatia, Estonia, Monaco, Slovakia**), a specific assessment board (**Estonia, Republic of Moldova, Slovenia**) or judges appointed as inspectors on behalf of the Judicial Council (**Turkey**). In any case, the judicial council should play a fundamental role in identifying the general assessment criteria, but without substituting itself for the relevant judicial body entrusted with the individual assessment of judges (CCJE, Opinion No.10 (2007), §56). For example, in **Bosnia and Herzegovina**, the court president carries out individual assessments of judges based on criteria pre-determined by the Judicial Council.

The individual evaluation of the professional activities of judges and public prosecutors may involve qualitative aspects. Such systems might have an influence on judges' and public prosecutors' careers and may have an impact on disciplinary issues. Indeed, the existence of such individual evaluations might either prevent disciplinary proceedings by intervening before difficulties arise, or, on the contrary, be the basis for more disciplinary proceedings by contributing to detect problems. Therefore this information is interesting in connection with the analysis of disciplinary issues, as it may partially explain the number of disciplinary proceedings (see below).

**Table 11.39 System of qualitative individual assessment of the activity of judges and public prosecutors (Q85)**

States/entities	Judges	Public prosecutors
Albania		
Andorra		
Armenia		
Austria		
Azerbaijan		
Belgium		
Bosnia and Herzegovina		
Bulgaria		
Croatia		
Cyprus		
Czech Republic		
Denmark		
Estonia		
Finland		
France		
Georgia		
Germany		
Greece		
Hungary		
Iceland		
Ireland		
Italy		
Latvia		
Lithuania		
Luxembourg		
Malta		
Republic of Moldova		
Monaco		
Montenegro		
Netherlands		
Norway		
Poland		
Portugal		
Romania		
Russian Federation		
Serbia		
Slovakia		
Slovenia		
Spain		
Sweden		
Switzerland		
The FYROMacedonia		
Turkey		
Ukraine		
UK-England and Wales		
UK-Northern Ireland		
UK-Scotland		
<b>Number of countries</b>	<b>29</b>	<b>35</b>
Israel		
		Yes
		No

### 11.8.2 Disciplinary proceedings and sanctions against judges

The European Charter on the Status of Judges states that “*compensation for harm wrongfully suffered as a result of the decision or the behaviour of a judge in the exercise of his or her duties is guaranteed by the state*”. The state has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the case of a gross and inexcusable breach of the rules governing the performance of judicial duties. This possibility is exceptional and in the majority of cases the only sanction imposed concerns disciplinary proceedings.

In spite of being independent during the exercise of their functions, judges have a series of responsibilities which may lead to disciplinary proceedings in case of non-fulfilment. The legality principle requires that

disciplinary sanctions can only be imposed on judges in cases expressly defined by the legislation on judges and their status, where one must find the list of the various sanctions that can be imposed (see CCJE Opinion N°3: 2002; para. 63 to 65).

Several states or entities explicitly reported that ethical rules for judges exist (**Bosnia and Herzegovina** and **Romania** – where the Ethical Code is not mandatory -, **Estonia, Republic of Moldova, Netherlands**). However, as the CCJE points out, "independence and impartiality cannot be protected solely by principles of conduct" (CCJE, Opinion No.3 (2002) § 45), although "the sharing of common legal principles and ethical values by all the professionals involved in the legal process is essential for the proper administration of justice" (Consultative Council of European Prosecutors (CCPE), Opinion No. 4 (2009), § 10). Statutory and procedural rules must contribute to ensure the application of those rules. **Austria, Bulgaria, Montenegro, Netherlands, Romania, Slovenia, Serbia** (disciplinary procedures rules entered into force in July 2012), and "**the former Yugoslav Republic of Macedonia**" expressly referred to their rules. **UK-England and Wales** mentioned the Judicial Discipline Regulations which describe the procedures in disciplinary matters.

A distinction is made, in the following tables, between the number of disciplinary proceedings initiated and the number of sanctions pronounced. The difference between these two figures includes discontinued cases and the fact that the years of reference are not necessarily the same, because of the length of the proceedings and the deliberation of the case.

**Table 11.40 Distribution of disciplinary proceedings initiated against judges in 2012 (Q144)**

States/entities	Total	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Albania	14	NA	NA	NA	NA
Andorra	0	0	0	0	0
Armenia	NA	48	NAP	NAP	NAP
Austria	66	54	9	3	0
Azerbaijan	10	1	9	0	0
Belgium	14	NA	NA	NA	NA
Bosnia and Herzegovina	23	4	19	0	0
Bulgaria	8	2	NAP	NAP	6
Croatia	44	2	11	0	31
Cyprus	0	0	0	0	0
Czech Republic	27	2	24	0	1
Denmark	NA	NA	NA	NA	NA
Estonia	1	0	1	0	0
Finland	13	NA	NA	NA	NA
France	4	3	1	0	0
Georgia	4	0	3	0	1
Germany	17	1	10	4	0
Greece	18	16	2	0	0
Hungary	12	6	6	9	3
Iceland	5	NA	NA	NA	NA
Ireland	0	0	0	0	0
Italy	99	8	91	0	0
Latvia	11	1	7	0	3
Lithuania	60	18	42	NA	0
Luxembourg	2	0	2	0	0
Malta	NA	NA	NA	NA	NA
Republic of Moldova	52	52	0	0	0
Monaco	0	0	0	0	0
Montenegro	1	1	0	NAP	0
Netherlands	NA	NA	NA	NA	NA
Norway	67	NA	NA	NA	NA
Poland	50	12	38	0	0
Portugal	47	NA	NA	NA	NA
Romania	20	2	18	0	0
Russian Federation	NA	NA	NA	NA	NA
Serbia	12	NA	NA	NA	NA
Slovakia	20	0	19	NAP	1
Slovenia	1	0	0	0	1
Spain	46	1	43	0	2
Sweden	2	0	1	1	0
Switzerland	7	2	2	0	3
The FYROMacedonia	1	0	1	0	0
Turkey	384	42	54	31	257
Ukraine	342	0	342	NA	NA
UK-England and Wales	1 115	17	29	11	1 058
UK-Northern Ireland	0				
UK-Scotland	0	0	0	0	0
Average	62	8	24	2	41
Median	13	1	6	0	0
Minimum	0	0	0	0	0
Maximum	1 115	54	342	31	1 058
Israel	0	0	0	0	0

**Comments:**

**Albania:** the request for disciplinary proceeding is made at the end of inspections carried out, the theme of which was: (i) procedural actions to suspend the execution of a bad loan, with the consequence of serious damage to the banking system, (ii) violation of citizens' extradition procedures, (iii) development and documentation of procedural actions by following judges at courts while following judges work outside the territory of Albania, (iv) non declaration of real estate; (v) serious violation of the rules for submission deadlines of judgements after completion of the trial, (vi) verification of complaints of citizens, (vii) verification of the solemnity of trial and regularity in filing claims for exemption of judge / waiver trial of civil and criminal cases.

**Bosnia and Herzegovina:** the increase registered between 2010 and 2012 is mainly due to the fact that the Office of Disciplinary Counsel received an unusually high number of well-founded complaints against judges and prosecutors in 2012.

**Bulgaria:** "Other" – consistent non-observance of deadlines, provided in procedural laws; action or inaction, which unduly delays proceedings; action or inaction, which undermines the prestige of the judiciary; non-observance of official duties.

**Finland:** 372 complaints have been investigated by the Chancellor of Justice; 270 by the Parliamentary Ombudsman.

**Georgia:** "Other": since 27 March 2012, the gross violation of law is not a disciplinary misconduct anymore.

**Hungary:** "Other": misdemeanour proceeding. 1+2 [breach of professional ethics+professional inadequacy] and 3+ [criminal offence+other] are the total number of disciplinary proceedings, that means: 1+2 and 3+4 are the same proceedings.

**Iceland:** all cases were dismissed. Complaints concern wrong sentences, not revised by the Committee on Judicial Functions.

**Lithuania:** the Judicial Ethics and Discipline Commission instituted 9 disciplinary actions (4 for breach of professional ethics and 5 for professional inadequacy).

**Malta:** all the proceedings which are held before the Commission for the Administration of Justice are subject to secrecy, thus no data is made available.

**Montenegro:** "Other" - the Law on Courts prescribes in a detailed manner the disciplinary responsibility of judges in case of: undue performance of judicial duties, harming reputation of judicial office, unprofessional and negligent performance of the judicial duty.

**Slovakia:** "professional inadequacy" - undue delays in proceedings (10), failure to elaborate judgements within the statutory time period (3), failure to decide within the statutory time period (3), other breach of professional duties (3) ; "Other" - misdemeanour against public order.

**Slovenia:** in 2012, one disciplinary proceeding was initiated against a judge because of an action or behaviour that conflicts with the judge's impartiality or that damages the reputation of the judicial profession (Article 81/2 – point 14 of the Judicial Service Act).

**Switzerland:** data is collected in 17 cantons. In 6 of them, no disciplinary action was taken against the judiciary.

**Turkey:** in Turkey, judges and prosecutors are subject to the same laws and have the same status. Disciplinary actions are carried out by the High Council of Judges and Prosecutors for each profession. Therefore, the figures related concern both judges and prosecutors.

**Ukraine:** the difference between 2010 and 2012 data is connected with the adoption of the Law of Ukraine "On the Judiciary and the Status of Judges" on July 7, 2010 No. 2453-VI. According to this Law the High Qualification Commission of Judges of Ukraine entered into force in September 2010. Thus, the number of disciplinary proceedings initiated against judges in 2010 is only for the 3 last months of 2010.

**UK-England and Wales:** the number of disciplinary proceedings initiated against judges (1 115) does seem relatively high. However the reason for this is that the data source for 'disciplinary proceedings' records situations where an "investigation" of some degree was undertaken. However, the vast majority of these investigations would have consisted of nothing more than checking the veracity of the claim for example listening to a tape of a hearing, concluding that there was no misconduct and then dismissing the complaint without initiating disciplinary proceedings against an individual. The bulk of those investigations, falling under "Other", related to claims of inappropriate comments or behaviour which may not be recorded as disciplinary proceedings by other countries. The number does not include the number of complaints received in relation to magistrates or tribunals but the figures do include those that have been referred by the Magistrates' Advisory Committee or Tribunal President where a disciplinary sanction is recommended following their own investigations.

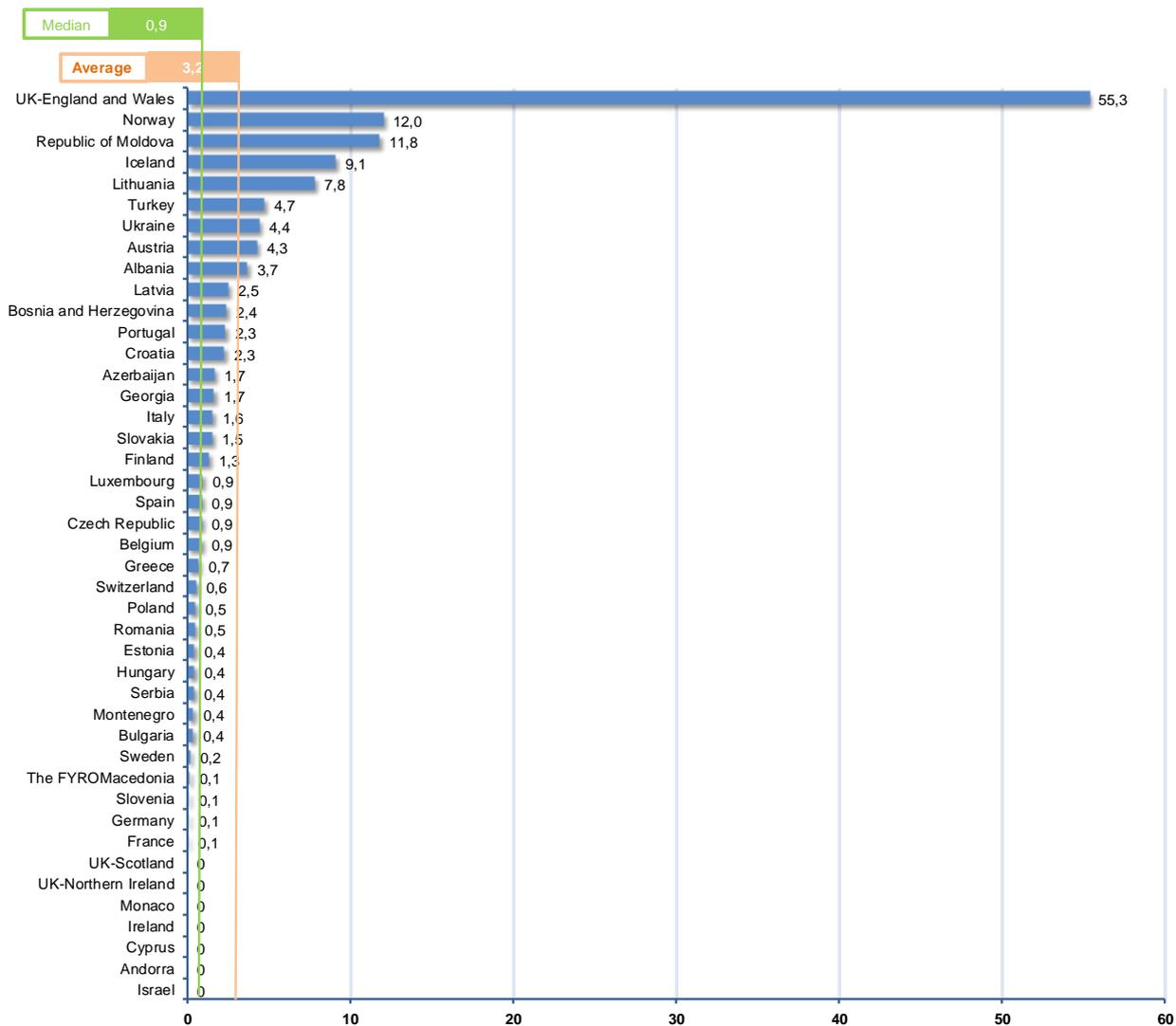
**UK-Scotland:** "Other" = misconduct.

43 states or entities were able to provide information on disciplinary procedures initiated against judges (**Denmark, Malta, Netherlands, Russian Federation** were not able to provide information). Apart from the category "other", most of the disciplinary proceedings are initiated for reasons of breach of professional ethics and for professional inadequacy.

Among the category "other", violation of legislation (**Georgia** before the entry into force of the reform of 27 March 2012 which does not consider the manifest violation of a right as a disciplinary offence) and the fact of committing "small" offences (**Hungary, Slovakia** for violations against public policy) can be a reason to initiate a procedure. It can also be a behaviour or an inappropriate comment (**UK-England and Wales, UK-Scotland**), which for example is likely to harm the prestige of the judiciary (**Bulgaria, Montenegro, Slovenia**). Similarly, any action or inaction likely to cause delays in procedures can lead to disciplinary proceedings in **Albania, Bulgaria** and **Slovakia**. **Bosnia and Herzegovina** reported that the number of disciplinary proceedings initiated against judges had increased as the Office for Disciplinary Council received a very high number of substantiated claims. In **Ukraine**, the increase is due to the entry into force of the law "on the judiciary and the status of judges" allowing the High Qualification Commission of Judges to intervene in disciplinary matters. The latter is effective since September 2010. Changes in legislation, which broaden the scope of complaints, may also explain the growing number of disciplinary proceedings. However, in **France**, despite the possibility for individuals since 2011 to consult the High Council of the Judiciary directly for a complaint against a judge, - thanks to the Organic Act of July 22, 2010 - the number of disciplinary procedures did not increase and even decreased.

The number of procedures initiated against judges varies according to the countries especially as regards the competent authority and whether it is possible to consult this authority directly, whether there is a filter system or whether this procedure is exclusively reserved for certain entities (Minister of Justice, president of the courts, etc.) (see below 11.45).

**Figure 11.41 Number of disciplinary proceedings initiated per 100 judges in 2012 (Q46, Q144)**



**Note:** as **Turkey** cannot distinguish the proceedings initiated against judges from those initiated against prosecutors, the number reported is the cumulative number of judges and prosecutors.

The number of proceedings initiated against professional judges is relatively low at the European level. Only 5 states reported a significant number of proceedings (more than 5 proceedings per 100 judges): **Lithuania, Iceland, Republic of Moldova, Norway, UK-England and Wales**. The contrast is especially important with regard to the latter, but the data is to be qualified, to the extent that the total shown does not distinguish between the different degrees of "investigations" conducted. In **Finland**, the large gap between the number of complaints (642) and the number of complaints leading to an effective sanction (13) seems to be explained by the absence of a filtering mechanism conditioning admissibility.

**Table 11.42 Authorities responsible for initiating disciplinary proceedings against judges (Q140)**

States/entities	Members of the public	Relevant Court or hierchically superior	High court / Supreme court	High judicial council	Disciplinary court or body	Ombudsman	Parliament	Executive power	Other
Albania									
Andorra									
Armenia									
Austria									
Azerbaijan									
Belgium									
Bosnia and Herzegovina									
Bulgaria									
Croatia									
Cyprus									
Czech Republic									
Denmark									
Estonia									
Finland									
France									
Georgia									
Germany									
Greece									
Hungary									
Iceland									
Ireland									
Italy									
Latvia									
Lithuania									
Luxembourg									
Malta									
Republic of Moldova									
Monaco									
Montenegro									
Netherlands									
Norway									
Poland									
Portugal									
Romania									
Russian Federation									
Serbia									
Slovakia									
Slovenia									
Spain									
Sweden									
Switzerland									
The FYROMacedonia									
Turkey									
Ukraine									
UK-England and Wales									
UK-Northern Ireland									
UK-Scotland									
<b>Number of countries</b>	<b>10</b>	<b>24</b>	<b>15</b>	<b>17</b>	<b>15</b>	<b>6</b>	<b>3</b>	<b>17</b>	<b>19</b>
Israel									
		Yes							
		No							

**Comments:**

**Andorra:** Public prosecution Office, citizen, court concerned, manager.

**Armenia:** the Minister of Justice and the Disciplinary Committee of the Justice Council with regard to first instance and appellate court judges and chairmen; the Cassation Court Chairman and the Disciplinary Committee of the Justice Council, upon motion by the Ethics Committee of the Council of Court Chairmen with regard to a Cassation Court chamber judge and chamber chairman; the Disciplinary Committee of the Justice Council, upon motion by the Ethics Committee of the Council of Court Chairmen with regard to the Cassation Court Chairman.

**Bulgaria:** the relevant administrative head; any superior administrative head; Inspectorate to the SJC; not less than one fifth of the members of the SJC; the Minister of Justice.

**Czech Republic:** President of the respective court or of higher court, Minister of Justice and President of the Republic. The Ombudsman can initiate disciplinary proceedings only against presidents and vice-presidents of the courts.

**Denmark:** the Minister of Justice has an option to ask the Director of Public Prosecutions to present a case before the Special Court of Indictment and Revision. Citizens have an option to complain against a judge which can lead to disciplinary proceedings.

**Finland:** the Chancellor of Justice, along with the Parliamentary Ombudsman, is the supreme guardian of the law in Finland. In practice, the supervision of legality is primarily carried out by ruling on complaints filed with the Chancellor of Justice against the actions of an authority or public official. Anyone, regardless of their citizenship, is entitled to turn to the Chancellor of Justice, who can also investigate matters on his/her own initiative. Besides, anyone who suspects that a public authority or an official has not observed the law or failed to perform a duty may file a complaint with the Ombudsman (even acting on behalf of someone else).

**France:** disciplinary proceedings may be initiated by the Minister of Justice, or by the first president of the Court of Appeal in the jurisdiction in which the magistrate in question is assigned. Following the constitutional amendment of 2008, individuals can directly bring the matter to the body in charge of disciplinary proceedings (applicable since January 2011).

**Georgia:** investigator or public prosecutor (with notification); media (with the information disseminated by media sources).

**Greece:** Minister of Justice, Transparency and Human Rights.

**Hungary:** the president of the National Office for the Judiciary in the case of executives who fall within its appointment authority, the Chief Justice of the Supreme Court as to Supreme Court judges, the president of the High Court of Appeal in the case of judges of the high court of appeal, the president of the county court in the case of local court judges and county court judges.

**Iceland:** any person who considers that a judge has committed an infringement against his or her rights in the discharge of judicial functions can lodge a written complaint of the matter with the Committee on Judicial Functions.

**Ireland:** according to the Constitution a judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by the Parliament. Judges of the Circuit Court and District Court have been given, by statute, tenure equivalent to that of their counterparts in the Supreme Court and High Court.

**Italy:** the Prosecutor General of the *Corte Suprema di Cassazione* (i.e. Supreme court) or by the Minister of Justice.

**Latvia:** the Chief Justice of the Supreme Court; the Minister of Justice; Presidents of Regional Courts; Presidents of the district (city) courts; Presidents the Land Registry office; the Judicial Ethics Committee; the Judicial Ethics Commission.

**Monaco:** the director of legal services acts either because of information he/she directly got to know, either when notified by a head of court or jurisdiction - the director of legal services does not belong to the Government of Monaco and is not under the authority of the Minister of State.

**Montenegro:** a court president, the president of a court of the next higher instance and the President of the Supreme Court; the general session of the Supreme Court for the President of the Supreme Court; the Commission for the Code of Ethics for Judges for the acts against the honour of a judicial office, in cases specified by law.

**Netherlands:** President of the court (judges) or head of the organizational unit (prosecutors).

**Norway:** the General Prosecutor initiates disciplinary proceedings, and in severe cases the case is presented to the King in Council. A complaint to the Supervisory Committee for Judges on alleged misconduct can be initiated by individuals and professional actors affected by the alleged misconduct, as well as by the Chief Judge, the National Courts Administration or the Ministry of Justice. The Norwegian Bar Association is also authorised to initiate disciplinary proceedings.

**Serbia:** the Rules of Disciplinary Procedure entered into force 12 July 2012 and disciplinary bodies have been appointed on 20 May 2013 when they started working.

**Slovakia:** "executive power": the minister of justice; "other" - the president of the court, the Council of judges of the court, where the judge performs its function.

**Slovenia:** the president of the court, where the judge performs judicial service, the president of the immediately superior court, the Judicial Council or the Minister of Justice. However, the formal proposal for disciplinary sanctioning shall be lodged and presented by the disciplinary prosecutor, in whose absence the deputy thereto shall act. They shall both be judges of the Supreme Court.

**Sweden:** Parliamentary Ombudsmen; the Office of the Chancellor of Justice.

**Switzerland:** in general, the authority in charge of appointments and supervision, which can vary depending on the canton concerned.

**"the former Yugoslav Republic of Macedonia":** a member of the Judicial Council, the President of the court, the President of the higher court or the general session of the Supreme Court.

**Ukraine:** everyone who has information as to the judge's misconduct is entitled to file a respective complaint with the High Qualification Commission of Judges (as regards the judges of local and appellate courts) or the High Council of Justice (as regards the judges of higher courts of appeal and the Supreme Court).

**UK-England and Wales:** any individual can bring a complaint against a judicial office holder. The decision to investigate further and therefore initiate disciplinary proceedings rests with the Office for Judicial Complaints which acts on behalf of the Lord Chancellor and Lord Chief Justice. Complaints against tribunal judiciary and magistrates are considered in the first instance by the relevant Tribunal President and Advisory Committee respectively.

**UK-Northern Ireland:** Lord Chief Justice.

**UK-Scotland:** Judiciary may only be removed from office after a fitness for office tribunal commissioned by the First Minister (leader of the Scottish Government). This may be at his/her own initiation or at the request of or the Lord President (Head of Scottish Judiciary).

Different authorities may be responsible for initiating disciplinary proceedings. Generally, it is the hierarchical superior such as the head of the court or a Higher/Supreme Court, but the Judicial Council and the Minister of Justice are also often mentioned. In 10 states, members of the public may initiate the disciplinary proceedings by making a complaint (**Andorra, Estonia, Finland, France, Georgia** - recently, the author of the complaint can be informed, upon request, of the final outcome of the disciplinary procedure which is not confidential anymore -, **Iceland, Lithuania, Malta, Norway, Russian Federation**). **Denmark** indicated that a disciplinary procedure can be initiated by a claim by a member of the public. In **France**, this possibility was recently established. There are 6 states in which an Ombudsman may start proceedings on her/his own initiative (**Czech Republic, Estonia, Finland, Georgia, Slovakia** and **Sweden**). The Parliament plays a role in **Ireland** for conducting impeachment proceedings and in **Switzerland**, the authority responsible for the

nomination of judges is entrusted with disciplinary matters. In **Malta** the Parliament also intervenes in disciplinary matters concerning judges.

In 15 states or entities, a single authority is competent for initiating disciplinary proceedings. In 3 states or entities this is the Judicial Council (**Republic of Moldova, Portugal and Turkey**) and in 4 other states this is a disciplinary body (**Austria, Bosnia and Herzegovina, Poland and Serbia**). In other states, the Minister of Justice holds this function (**Albania, Belgium, Croatia, France, Greece, Italy, Latvia and Romania**). It might happen that different hierarchical authorities are competent depending on the function of the judge against whom the proceedings have been initiated. For example, in **Romania**, since the 2012 legislative reform, the Minister of Justice, the President and the Attorney General of the High Court of Cassation and Justice may be at the origin of disciplinary procedures. Sometimes the bodies competent to initiate disciplinary proceedings against judges of Supreme Courts are different from those competent for judges of first and second instances (**Armenia**). In the category "other", references were made to the media (**Georgia**), prosecutors (**Andorra, Belgium, Georgia, Italy** (Attorney General)), to an ethics committee (**Latvia**), the National Bar Association (**Norway**), and to a Council of Judges as an internal body of the court (**Slovakia**). In **Slovenia**, the formal competence to initiate disciplinary proceedings belongs to a disciplinary prosecutor who is a judge of the Supreme Court.

**Table 11.43 Number of sanctions pronounced against professional judges in 2012 (Q145)**

States/entities	Total	Reprimand	Suspension	Removal of cases	Fine	Temporary reduction of salary	Position downgrade	Transfer to another geographical (court) location	Resignation	Other
Albania	6	6	NA	NA	NA	NA	NA	NA	NA	NA
Andorra	0	0	0	0	0	0	0	0	0	0
Armenia	28	6	NA	NAP	NAP	10	NAP	NAP	NA	12
Austria	11	3	1	0	0	5	0	0	0	2
Azerbaijan	9	5	NA	NA	NA	NA	NA	NA	NA	4
Belgium	4	4	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
Bosnia and Herzegovina	21	17	0	NAP	NAP	4	0	0	0	0
Bulgaria	16	NA	0	0	0	2	0	0	2	12
Croatia	28	20	0	0	3	0	0	0	1	4
Cyprus	0	0	0	0	0	0	0	0	0	0
Czech Republic	27	0	0	NAP	NAP	9	0	NAP	0	18
Denmark	0	0	0	0	0	0	0	0	0	0
Estonia	0	0	0	0	0	0	0	0	0	0
Finland	13	0	0	0	0	0	0	0	0	13
France	7	3	2	1	NAP	NAP	0	1	NAP	0
Georgia	2	1	NAP	NAP	NAP	NAP	NAP	NAP	NA	1
Germany	10	8	0	0	0	1	0	0	0	1
Greece	13	1	1	0	9	0	0	0	0	2
Hungary	6	4	0	0	0	1	0	0	1	0
Iceland	0	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0
Italy	39	31	0	NAP	NAP	NAP	5	3	0	0
Latvia	7	0	0	0	NAP	0	NAP	NAP	2	5
Lithuania	3	0	0	0	0	0	0	0	0	3
Luxembourg	0	0	0	0	0	0	0	0	0	0
Malta	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Republic of Moldova	38	8	NAP	NAP	NAP	NAP	NAP	NAP	1	29
Monaco	0	0	0	0	0	0	0	0	0	0
Montenegro	1	1	NAP	NAP	0	NAP	NAP	NAP	NAP	NAP
Netherlands	1	0	NA	NA	NA	NA	NA	NA	1	0
Norway	5	4	1							
Poland	25	20	0	0	0	0	0	3	2	0
Portugal	30	5	5	0	16	0	0	0	1	3
Romania	9	2	0	NAP	NAP	4	NAP	0	3	0
Russian Federation	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Serbia	6	1	NA	NA	NA	3	NA	NA	1	1
Slovakia	9	0	0	0	0	5	0	NAP	0	4
Slovenia	1	1	0	0	0	0	0	0	0	0
Spain	57	6	5	0	16	0	0	1	0	29
Sweden	0	0	0	0	0	0	0	0	0	0
Switzerland	0	0	0	0	0	0	0	0	0	0
The FYROMacedonia	6	0	0	NAP	NAP	1	NAP	NAP	0	5
Turkey	384	53	1	NA	NA	18	NA	24	13	275
Ukraine	161	138	NAP	NAP	NAP	NAP	NAP	NAP	NAP	23
UK-England and Wales	71	19	0	NAP	NAP	NAP	NAP	NAP	16	36
UK-Northern Ireland	0									
UK-Scotland	NA									
Average	24	9	0	0	2	2	0	1	1	12
Median	7	1	0	0	0	0	0	0	0	1
Minimum	0	0	0	0	0	0	0	0	0	0
Maximum	384	138	5	1	16	18	5	24	16	275
Israel	0	0	0	0	0	0	0	0	0	0

**Comments:**

**Albania:** 6 disciplinary measures of type "remarks" with warning of dismissal and removal from office.

**Armenia:** warning; reprimand, which shall be combined with depriving the judge of 25% of his/her salary for a six-month period; severe reprimand, which shall be combined with depriving the judge of 25% of his/her salary for a one-year period; filing a motion requesting the President of the Republic to terminate the judge's powers.

**Austria:** "Other" does apply to conviction and the order for costs of the proceedings. 16 disciplinary cases are pending, partly because of pending penal cases, partly because of other reasons.

**Bulgaria:** "Other" – disciplinary sanctions "remark" and "reprimand".

**Croatia:** "Other" meaning suspended sentence of dismissal.

**Czech Republic:** "Other": 2x discharge from disciplinary punishment; 4x acquittal of disciplinary charges; 12x discontinuance of proceedings.

**Estonia:** in 2012, one disciplinary proceeding was initiated but the sanction has not been pronounced yet.

**Finland:** other sanctions include opinion / recommendation.

**France:** in 2012, the Minister of Justice has withdrawn a request for a disciplinary proceeding against a judge.

**Georgia:** "notice" - a type of disciplinary measure. A private advisory note was sent to one judge. In another case, based on judge's personal statement, a disciplinary proceeding has been terminated.

**Germany:** "other": Baden-Württemberg Land law provides for deprivation of pension as a sanction against judges who are already retired. This sanction corresponds to the removal from service of judges who are still in active service.

**Greece:** "Other": repetition of disciplinary proceedings (1); declaration of a disciplinary action as unacceptable (1).

**Latvia:** "Other" - 1 formal warning; 4 - terminate the disciplinary proceedings; 1 disciplinary case pending in 2013.

**Lithuania:** there were 8 decisions of the Judicial Court of Honour concerned with sanctions against judges in 2012: 3 decisions – to impose a disciplinary sanction (censure) 3 decisions – to limit itself to the review of a disciplinary action; 2 decisions – to dismiss a disciplinary action.

**Malta:** proceedings held before the Commission for the Administration of Justice are secret and no data is made available.

**Republic of Moldova:** "other": formal warning

**Netherlands:** sanctions 2 – 7: this sanction is not made available in the law (yet); sanction 8: dismissal upon request - early retirement - on a combination of a work and private related integrity issue.

**Norway:** for the first time in over 80 years, a Norwegian judge was suspended from the bench by decision from the Government. The Government later decided to file a dismissal case before Oslo District Court.

**Portugal:** "Other": mandatory retirement (imposition of retirement). Sanctions 2 and 4 imply salary reduction.

**Slovakia:** only 9 cases have been decided by the Disciplinary court in the reference year. The remaining proceedings are pending; "other" - in 3 cases the motion has been withdrawn, in 1 case the motion has been dismissed.

**Slovenia:** for 2011: 1 reprimand because of an action or behaviour that conflicts with the judge's impartiality or that damages the reputation of the judicial profession; suspensions of promotion for one year period because of an unconscientious, late, inappropriate or negligent performance of judicial service. Two proceedings are still in progress, one for commission of an act that has the statutory definition of a criminal offence while holding judicial office and one for breach of the case roster or priority handling of cases defined by law or the court rules. For 2012: 1 reprimand because of an unconscious, late, inappropriate or negligent performance of judicial service; there has been no termination of judicial office for a judge on the grounds that he/she is not suitable for performing judicial service.

**Spain:** "Other": disciplinary proceedings resolved without a sanction for the judge.

**"the former Yugoslav Republic of Macedonia":** one judge was sanctioned with a temporary reduction of salary while 5 judges were dismissed from their function (one due to committed criminal act and the other due to the unprofessional and unconscientious performance of the judge's function).

**Ukraine:** "Other" – dismissal.

**UK-England and Wales:** of the number provided in "Other", 20 were removals from office, 7 were formal advice given, and 9 were issued with a formal warning. Judicial office holders may be removed from office by the Lord Chancellor, with the concurrence of the Lord Chief Justice, on grounds of misbehaviour or inability to perform the duties of the office. Such decisions are taken in accordance with the procedures contained in the Judicial Discipline (Prescribed Procedures) Regulations 2006 as amended (by the Judicial Discipline (Prescribed Procedure) 2013).

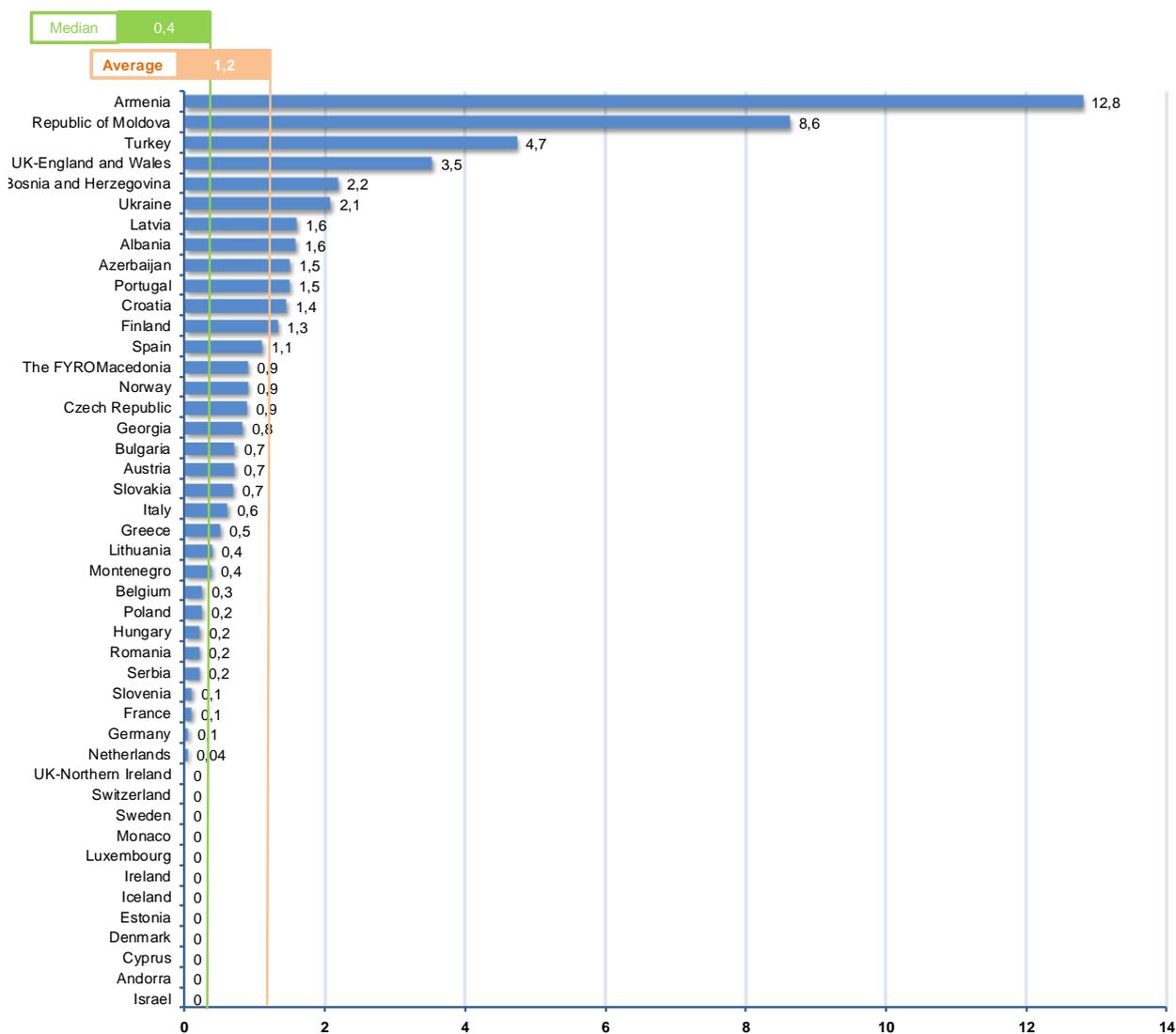
44 states or entities were able to indicate the total number of sanctions pronounced against judges. However, regarding the disciplinary proceedings, insufficient information was provided on the different kinds of sanctions available. Therefore, a comparison between the states would not be relevant.

A reprimand is the most common sanction imposed on judges. In some states, such kinds of decisions are not taken formally within the disciplinary procedure. Dismissals are rarely pronounced: only 44 judges were dismissed in European states – within the 44 responding states or entities -, among which 16 in **UK-England and Wales** and 13 in **Turkey**.

Among the "other" sanctions can be noted formal warnings (**Albania, Armenia, Latvia, Republic of Moldova, UK-England and Wales, Slovenia**), remarks (**Bulgaria**), opinions and recommendations (**Finland, Georgia**), reminders as regards obligations (**Monaco**) or guidance about the level of conduct expected (**UK-England and Wales**), order to pay the cost of the proceedings (**Austria**) or the repetition of disciplinary procedures (**Greece**). The judge can also be discharged from his/her disciplinary punishment (**Czech Republic**). There may also be a stay of the decision to dismiss (**Croatia**). In **Germany**, in the Land of Baden-Württemberg, a judge can be denied his/her pension, whereas in **Portugal**, he/she can be obliged to retire. In **Slovenia**, the right to promotion of a judge can be put on hold for one year, following a disciplinary procedure for negligent, inappropriate or non-conscientiousness practice of the duties of the judicial function. In **France** and **Romania**, the suspension of a judge can apply but it is more a protective measure adopted pending the decision on a possible disciplinary offence than a sanction. Moreover, in

**Monaco**, apart from any disciplinary action, a magistrate can, in case of professional misconduct, be reminded of his/her obligations by the president of the jurisdiction, the Attorney-General if he/she is under the authority of the Prosecutor's Office or the Director of judicial services.

**Figure 11.44 Number of sanctions pronounced per 100 judges in 2012 (Q46, Q145)**



**Note:** as **Turkey** cannot distinguish proceedings initiated against judges from those initiated against prosecutors, the number reported is the cumulative number of judges and prosecutors.

The number of sanctions pronounced per 100 judges may appear low. A median of 0,4 sanction per 100 judges is characteristic of the 45 responding states or entities. It must be noted that in states having a much higher level of sanctions, formal warnings were included. Only 6 states imposed more than 2 sanctions per 100 judges: **Ukraine** (2,1), **Bosnia and Herzegovina**, **UK-England and Wales**, **Turkey**, **Republic of Moldova** and **Armenia** (12,8). However, data provided by the 4 latter countries have to be put into perspective considering that the category "other" has the highest number of sanctions. **UK-England and Wales** as well as the **Republic of Moldova** were able to specify that the category "other" does not refer to severe sanctions. It is impossible to determine the sanctions' seriousness in **Armenia** and **Turkey**. Regarding **Turkey**, it should be noted that the number of sanctions provided includes those of both judges and prosecutors. **UK-England and Wales** and **Turkey** have the highest number of judges' dismissals. As regard **Bosnia and Herzegovina**, the increase between 2010 and 2012 is the logical consequence of the increase in the number of disciplinary procedures initiated in 2012. In **Ukraine**, the disciplinary body created by the legislative reform of July 2010, became operational from September 2010 which explains the difference compared to the data from the previous exercise concerning the number of disciplinary procedures and therefore the number of sanctions.

The difference pronounced between the number of “open disciplinary proceedings” (3 248) and the number of “finally imposed sanctions” (1 054) is explained by the fact that some cases are discontinued or ended mainly due to the lack of an established violation – most complaints are rejected as they are mainly due to dissatisfaction with judicial decisions or length of proceedings. It can also happen because of the judge’s resignation before the final decision or because the case was considered as criminal and transferred to criminal courts. We observe that the countries with the highest number of procedures initiated are also the countries with a high number of effective sanctions.

**Comments:**

**Bulgaria:** the difference between the number of initiated disciplinary proceedings in 2012 and the number of imposed disciplinary sanctions is due to the fact that part of the imposed sanctions are still under proceedings, initiated during the previous reporting period or are imposed by the administrative head.

**Finland:** most of the complaints do not call for any action. In most of the cases no measure is taken, because there is no irregularity in procedure or no grounds to suspect irregularity in procedure.

**France:** disparity between the number of disciplinary proceedings and the number of sanctions results from the lack of obligation imposed on the High Judicial Council to act within the year of referral.

**Georgia:** differences between 2010 and 2012 is caused by the fact, that in 2012 there were fewer of complaints against judges and most of them were ill-founded.

**Germany:** the imbalance between the number of sets of proceedings and the proceedings completed in the same year is due to the disciplinary procedures recorded that were not completed in the year they were initiated.

**Iceland:** in all cases there were no reasons for any sanctions, admonished or any other actions.

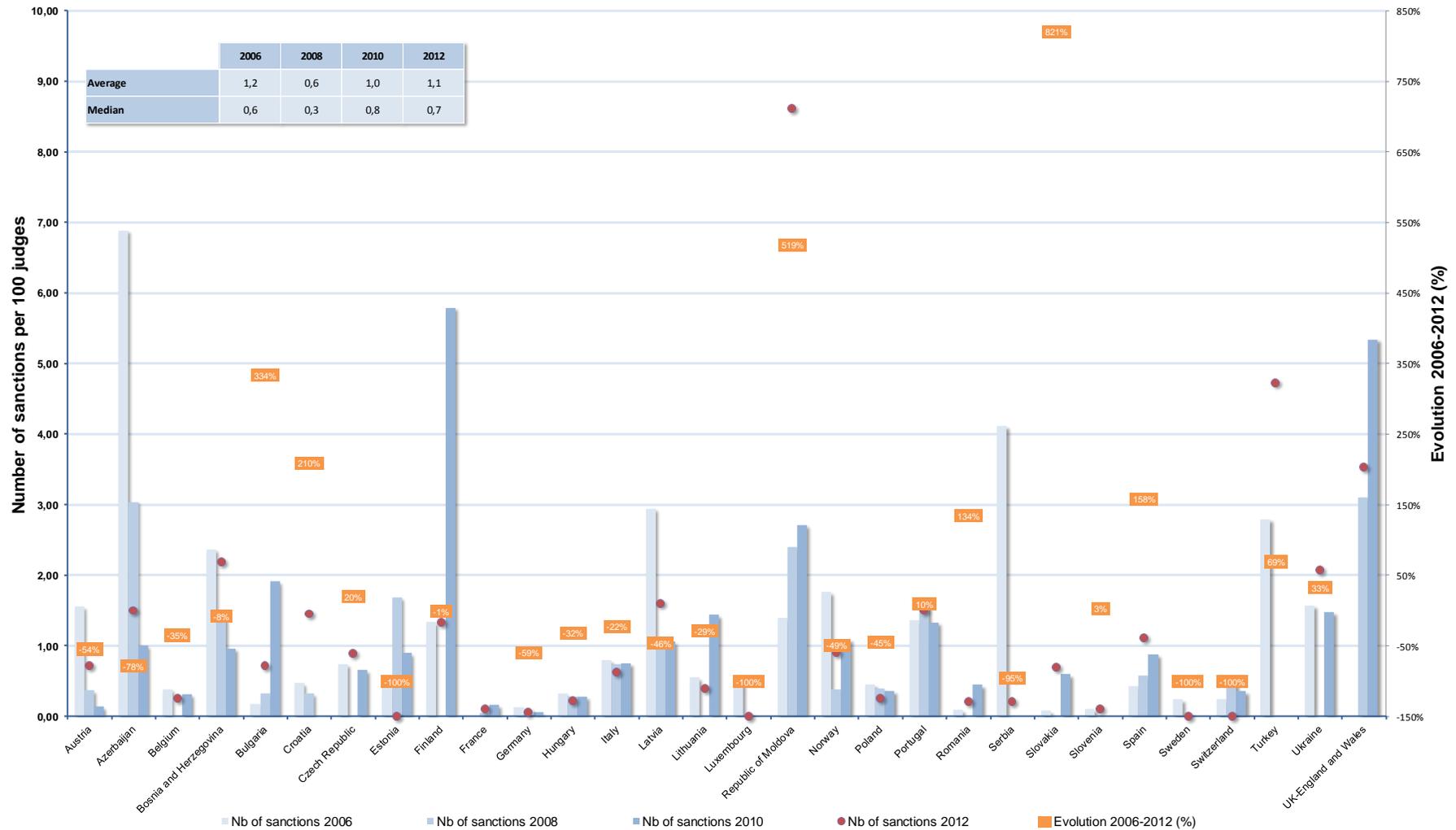
**Netherlands:** in 2012 there were no decisions imposing a disciplinary measure. One court officer was dismissed but it was at his own request (early retirement because of a combination of work and family related factors).

**Switzerland:** in most procedures no sanctions have been imposed which explains the difference between the number of procedures initiated and the number of sanctions.

**Serbia:** a procedure was terminated and the disciplinary charges were dismissed because the judge submitted a request in writing to the High Judicial Council (upon request of the judge).

**Ukraine:** the difference between the 2010 and 2012 data is connected with the adoption of the Law of Ukraine “On the Judiciary and the Status of Judges” on 7 July 2010. According to this Law the High Qualification Commission of Judges of Ukraine began to act in September 2010. Thus, the number of disciplinary procedures initiated against judges in 2010 concerns only the 3 last months of 2010.

Figure 11.45 Evolution of the number of sanctions pronounced per 100 judges between 2006 and 2012 (Q46, Q145)



**Note:** Georgia has not been included in this table because of a very high ratio of sanctions imposed in 2006.

**Table 11.46 Authorities having disciplinary power against judges (Q142)**

States/entities	Court	Higher court / Supreme court	Judicial council	Disciplinary court or body	Ombudsman	Parliament	Executive power	Other
Albania								
Andorra								
Armenia								
Austria								
Azerbaijan								
Belgium								
Bosnia and Herzegovina								
Bulgaria								
Croatia								
Cyprus								
Czech Republic								
Denmark								
Estonia								
Finland								
France								
Georgia								
Germany								
Greece								
Hungary								
Iceland								
Ireland								
Italy								
Latvia								
Lithuania								
Luxembourg								
Malta								
Republic of Moldova								
Monaco								
Montenegro								
Netherlands								
Norway								
Poland								
Portugal								
Romania								
Russian Federation								
Serbia								
Slovakia								
Slovenia								
Spain								
Sweden								
Switzerland								
The FYROMacedonia								
Turkey								
Ukraine								
UK-England and Wales								
UK-Northern Ireland								
UK-Scotland								
<b>Number of countries</b>	<b>4</b>	<b>7</b>	<b>23</b>	<b>19</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>12</b>
Israel								

	Yes
	No

**Comments:**

**Bulgaria:** “Other” - the relevant administrative head.

**Hungary:** Service Court (for disciplinary cases of judges). From 1 July 2011, the First Instance Service Court has started its work at the Budapest Regional Court of Appeal Court and the Second Instance Service Court. The president and the members of the Service Courts are appointed by the National Judicial Council. The rules of procedure containing the composition of the panels and the rules of the assignment have been approved by the NJC.

**Lithuania:** the Judicial Ethics and Discipline Commission shall be an institution of judicial self-governance deciding the issues of instituting disciplinary actions against judges. The Judicial Court of Honour shall be the body of judicial self-governance hearing disciplinary cases of judges and petitions of judges against defamation.

**Malta:** whilst the Commission for the Administration of Justice has the power to admonish a judge or a magistrate after being investigated, it is only the Parliament, on advice of the Commission for the Administration of Justice after its own investigations, that may impeach a judge or magistrate.

**Russian Federation:** according to the Federal Law 'On the Status of Judges in the Russian Federation', decisions to impose disciplinary sanctions on judges are taken by qualification panels of judges. Qualification panels of judges are bodies of the judicial community that deal with recruitment, promotion and dismissal of judges on the basis of the Federal Law 'On the bodies of judicial community. Checking of information about an alleged disciplinary offence can be performed by the qualification panels of judges or the presidents of the respective courts.

**Slovakia:** “other” - the president of the court is entitled to hear the administrative offence of a judge which can be cited by a fine of up to 800€. The president of the court is entitled to reprimand a judge by a written notice for the less serious imperfections in work or behaviour or for lesser offences.

**Slovenia:** the Disciplinary Court of First Instance and the Disciplinary Court of Second Instance; besides disciplinary procedures which are conducted upon a special initiative, a disciplinary control of judges is also performed through an assessment of judicial service, that is conducted by the Personnel Council every three years, or before such period has elapsed at the request of the Judicial Council, the President of the Court, the president of a Superior Court or the judge himself/herself. If the Personnel Council in the assessment of judicial service determines that a judge is not suitable for performing judicial function, his/her judicial office shall be terminated upon the approval of the Judicial Council.

**UK-England and Wales:** the Lord Chancellor and the Lord Chief Justice for England and Wales have joint responsibility for judicial discipline.

**UK-Northern Ireland:** the Lord Chief Justice.

**UK-Scotland:** the Lord President may exercise disciplinary powers after a complaint investigation recommends use of such a power. Separately, judiciary may only be removed from office after a fitness for office tribunal commissioned by the First Minister.

In most of the states or entities (29 out of 4), the sanction is imposed by a single authority. In most of these countries, this authority is a Council of Justice (14) which also intervenes in 9 states but without having the exclusive competence. A significant proportion of states placed the disciplinary power with a court or an independent disciplinary body (**Lithuania, Norway**), which depends on the Judicial Council (**Montenegro**) or the courts (**Austria, Estonia, Slovakia**). Generally, the disciplinary court is composed only of judges (**Austria, Estonia, Slovenia**), yet in **Norway** also non-judge staff may attend. In **Austria**, the Supreme Court is the disciplinary body for judges of its jurisdiction.

The removal of a judge is decided by a different authority from that responsible for other sanctions in **Malta** (Parliament), **Norway** (the procedure may be initiated only by the king in Council; the decision is taken by the competent court before which the government is the plaintiff), **Ukraine** (the President of the Republic as regard judges elected for 5 years and the Parliament in relation to those elected for an indefinite period) or **UK-Northern Ireland** (the Prime Minister has recourse to the office tribunal). In **Bosnia and Herzegovina**, if the trial panel of the High Judicial Council recommends the dismissal of a judge, the final decision is exceptionally made during a plenary session of the Council. In **Germany**, the Ministry of Justice is the highest disciplinary authority.

Some states mentioned the possibility of appealing against the sentence of the Judicial Council (**Azerbaijan, Bosnia and Herzegovina, Republic of Moldova, Poland, Slovakia, Slovenia** (before the second instance Disciplinary Court), **Turkey** (before the plenary session of the Council for the rulings made in the House), generally before a higher instance within this body or the Supreme Court (the panel of second instance of the High Judicial Council in **Bosnia and Herzegovina**, which is composed of members of the Council; le *Conseil d'Etat* in **France**, the civil chambers of the Cassation Court in **Italy**, a 5 judges panel of the High Court of Cassation and Justice in **Romania**; the Supreme Administrative Court in **Turkey** for the referring decisions).

## 11.7.2 Disciplinary proceedings and sanctions against prosecutors

Unlike judges, who enjoy considerable independence in the exercise of their duties, prosecutors are subject to additional obligations, which could result in disciplinary proceedings. The disciplinary system is closely linked to the hierarchical organisation of the public prosecution service, and in principle it is therefore the individual's superior who approves disciplinary measures. The Venice Commission has underlined that in disciplinary cases, especially in the event of removal from office "the prosecutor concerned should also have a right to be heard in adversarial proceedings. In systems where a Prosecutorial Council exists, this council, or a disciplinary committee within it, could handle disciplinary cases. An appeal to a court against disciplinary sanctions should be available." (CDL-AD(2010)040, 3 January 2011, §§ 51 and 52). Furthermore, according to the principle of legality, prosecutors can only be sanctioned in cases determined by law.

**Table 11.47 Distribution of disciplinary proceedings initiated against prosecutors in 2012 (Q144)**

States/entities	Total	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Albania	2	2	NA	NA	NA
Andorra	0	0	0	0	0
Armenia	22	NA	NAP	NAP	NAP
Austria	14	11	2	1	0
Azerbaijan	88	13	75	0	0
Belgium	6	NA	NA	NA	NA
Bosnia and Herzegovina	7	1	6	0	0
Bulgaria	3	3	NAP	NAP	0
Croatia	4	1	3	0	0
Cyprus	NA	NA	NA	NA	NA
Czech Republic	15	0	15	0	0
Denmark	NA	NA	NA	NA	NA
Estonia	1	0	1	0	0
Finland	4	NA	NA	NA	NA
France	5	4	0	1	0
Georgia	19	9	10	NAP	0
Germany	3	2	0	1	0
Greece	15	13	2	0	0
Hungary	4	3	1	0	0
Iceland	0	NAP	NAP	NAP	NAP
Ireland	0	0	0	0	0
Italy	43	7	36	0	0
Latvia	18	2	0	NAP	16
Lithuania	87	20	62	5	0
Luxembourg	0	0	0	0	0
Malta	NA	NA	NA	NA	NA
Republic of Moldova	51	49	0	2	0
Monaco	0	0	0	0	0
Montenegro	2	0	0	NAP	2
Netherlands	2	2	0	0	0
Norway	1			1	
Poland	40	NA	NA	NA	NA
Portugal	21	17	0	0	4
Romania	8	0	8	0	0
Russian Federation	NA	NA	NA	NA	NA
Serbia	NA	NA	NA	NA	NA
Slovakia	NA	NA	NA	NA	NA
Slovenia	2	0	1	1	0
Spain	4	1	3	0	0
Sweden	0	0	0	0	0
Switzerland	5	0	1	0	4
The FYROMacedonia	0	0	0	0	0
Turkey	NA	NA	NA	NA	NA
Ukraine	565	26	591	NA	NA
UK-England and Wales	57	3	14	1	39
UK-Northern Ireland	NA				
UK-Scotland	2	0	1	0	1
Average	29	6	27	0	2
Median	4	2	1	0	0
Minimum	0	0	0	0	0
Maximum	565	49	591	5	39
Israel	NA	NA	NA	NA	NA

## Comments:

**Bulgaria:** "Other" - "consistent non-observance of the deadlines, provided for in the procedural laws", action or inaction, which unduly delays the proceedings", action or inaction, which undermines the prestige of the judiciary", "non-observance of the official duties".

**Finland:** 87 complaints have been investigated by the Chancellor of Justice and 86 by the Parliamentary Ombudsman.

**Latvia:** "Other" - not intentionally breach of law, but negligence (breach of procedural terms, accidental non observance of criminal procedure norms or substantive legal norms).

**Malta:** all the procedures which are held before the Commission for the Administration of Justice are subject to secrecy, as a result of which, no data is made available.

**Montenegro:** "Other" - the disciplinary procedures against two public prosecutors had been initiated for exercising the prosecutor's office in a negligent manner (harming the reputation of the prosecutorial office is another ground of disciplinary liability).

**Switzerland:** data provided comes from 17 cantons; 6 cantons do not have disciplinary procedures against the judiciary.

**UK-England and Wales:** the provided data are relevant for the financial year 2012/13 and are based on cases finalised (rather than initiated) as cases are recorded once there is an outcome. "Breach of Professional Ethics" includes unauthorized absences, dishonesty, and abuse of flexible working arrangements. "Other" includes breaches of internal policies, for example, IT misuse and breach of CPS Code of Conduct. The figure includes 6 Associates Prosecutors.

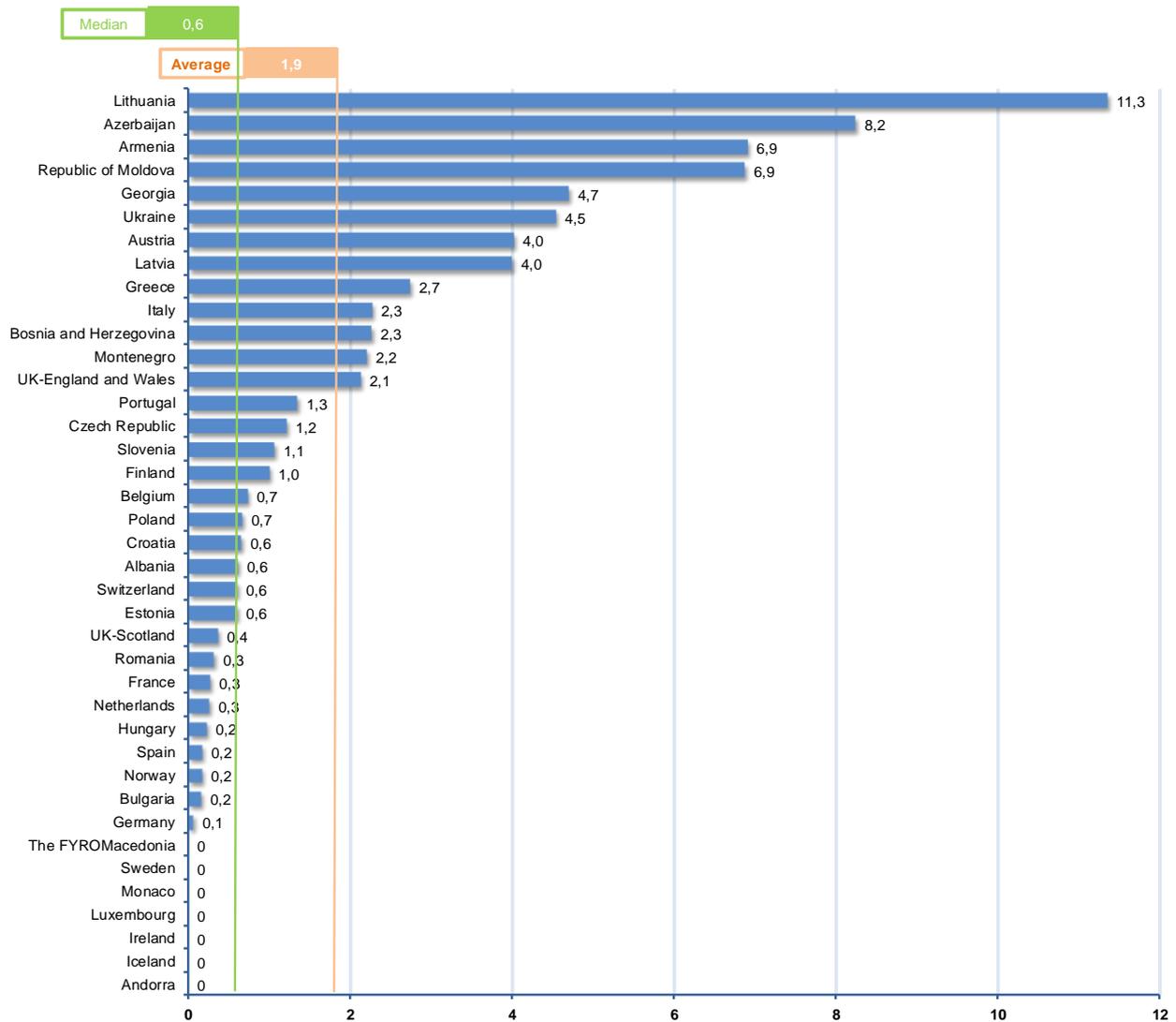
**UK-Scotland:** "Other" – misconduct.

39 states or entities were able to provide information on disciplinary procedures initiated against prosecutors. Similarly to judges, procedures for "professional inadequacy" represent the highest number of cases, followed by procedures for breach of professional ethics and for a criminal offence.

"Other" may include actions or inactions likely to cause procedural delays (**Albania, Bulgaria**), blatant violation of the law (**Georgia** until 27 March 2012) or unintentional violation (**Latvia**), inappropriate behaviour (**UK-Scotland**), for example negligence (**Montenegro**), misuse of the computer system (**UK-England and Wales**), or violation of the Code of Conduct of prosecution services / of principles of internal rules (**UK-England and Wales**). In **Iceland**, this category is very detailed and includes the lack of punctuality or other negligence, the failure to follow legally binding orders of a superior, insufficiency in terms of work outcomes, being under the influence of alcohol during professional service or any other improper behaviour during or outside working hours, as well as financial problems, such as bankruptcy. In the **Netherlands**, the lack of integrity can be found most often in the misuse of computer resources (internet, social networks, or falsification of leave entitlement) and the breaking of internal rules. In **Bosnia and Herzegovina**, the number of "well founded" complaints addressed to the disciplinary body of the Supreme Council of Magistracy increased compared to 2010 which can explain the increase in disciplinary procedures compared to the previous year. **Georgia** explained the increase in the number of disciplinary procedures by the increase in the number of prosecutors.

In **Romania**, as for judges, the breach of professional ethics, professional inadequacy and criminal offence by prosecutors are not disciplinary violations.

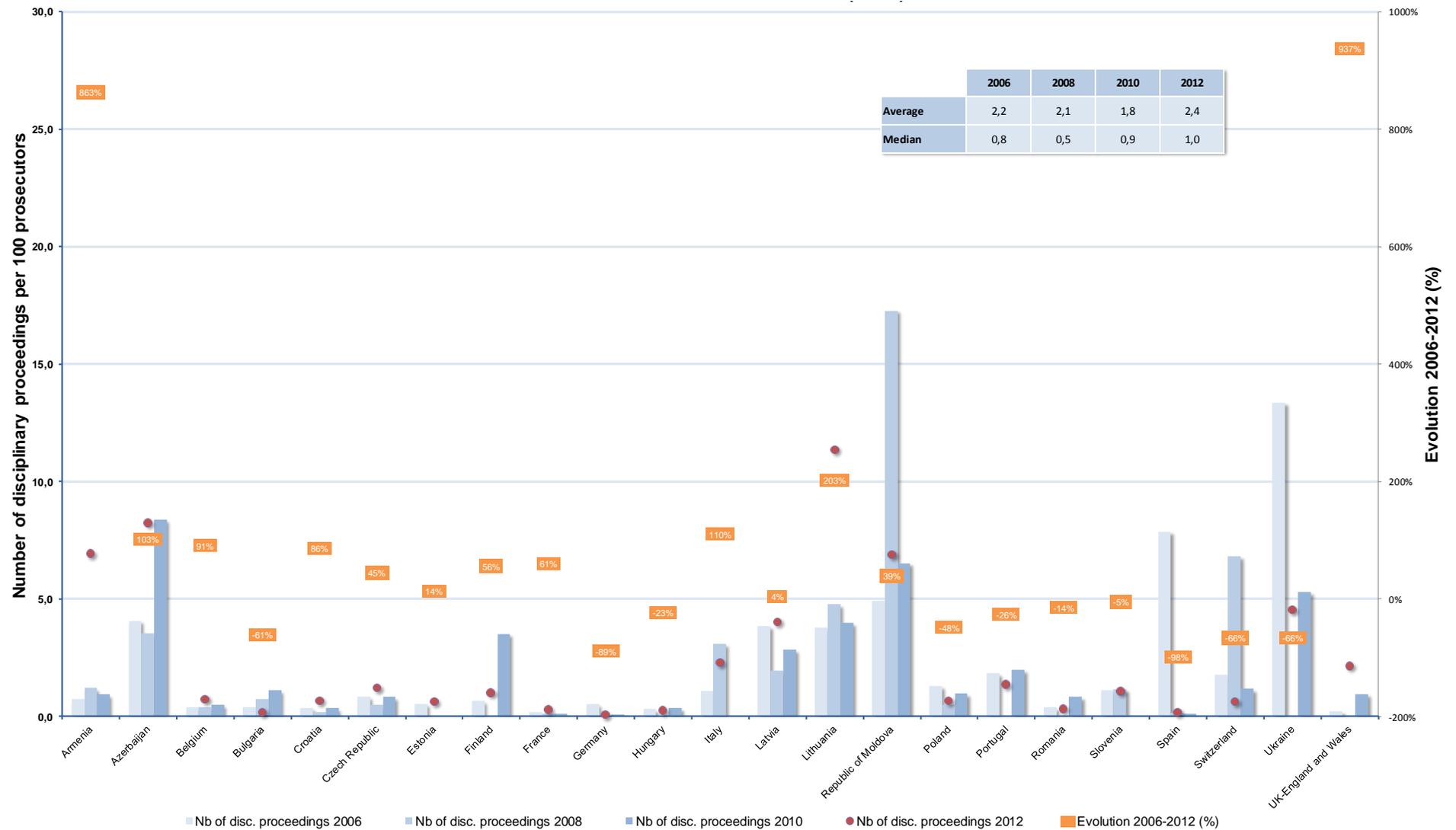
**Figure 11.48 Number of disciplinary proceedings initiated per 100 prosecutors in 2012 (Q46, Q144)**



**Note:** as **Turkey** cannot distinguish the proceedings initiated against judges from those initiated against prosecutors, the number reported is the cumulative number of judges and prosecutors.

The number of proceedings initiated against prosecutors is relatively low at the European level. Only 4 states reported more than 5 proceedings per 100 prosecutors: **Republic of Moldova, Armenia, Azerbaijan, Lithuania.**

Figure 11.49 Evolution of the number of sanctions pronounced per 100 prosecutors between 2006 and 2012 (Q55, Q145)



Note: Georgia has not been included in this table because of a very high ratio of sanctions imposed in 2006.

**Table 11.50 Authorities responsible for initiating disciplinary proceedings against prosecutors (Q141)**

States/entities	Members of the public	Head of the organisational unit or hierchically superior public prosecutor	Prosecutor general / State public prosecutor	Public prosecutorial council (and judicial council)	Disciplinary court or body	Ombudsman	Professional body	Executive power	Other
Albania									
Andorra									
Armenia									
Austria									
Azerbaijan									
Belgium									
Bosnia and Herzegovina									
Bulgaria									
Croatia									
Cyprus									
Czech Republic									
Denmark									
Estonia									
Finland									
France									
Georgia									
Germany									
Greece									
Hungary									
Iceland									
Ireland									
Italy									
Latvia									
Lithuania									
Luxembourg									
Malta									
Republic of Moldova									
Monaco									
Montenegro									
Netherlands									
Norway									
Poland									
Portugal									
Romania									
Russian Federation									
Serbia									
Slovakia									
Slovenia									
Spain									
Sweden									
Switzerland									
The FYROMacedonia									
Turkey									
Ukraine									
UK-England and Wales									
UK-Northern Ireland									
UK-Scotland									
<b>Number of countries</b>	<b>7</b>	<b>23</b>	<b>31</b>	<b>8</b>	<b>9</b>	<b>2</b>	<b>5</b>	<b>13</b>	<b>13</b>
Israel									

Yes  
 No

**Comments:**

**Bulgaria:** “Other” - Inspectorate to the Superior Judicial Council; not less than one fifth of the members of the SJC.

**Cyprus:** “Other” - Public Service Commission.

**Finland:** the Chancellor of Justice, the Parliamentary Ombudsman, the Prosecutor General.

**Georgia:** starting from 30 May 2013, the Prosecutor General is entitled to initiate disciplinary proceedings against prosecutors.

**Greece:** “Other” - Transparency and Human Rights.

**Lithuania:** the amendment of the Law on Prosecution Service in 2012 has entitled citizens to initiate disciplinary proceedings against public prosecutors.

**Netherlands:** a Prosecution Service Integrity Bureau (BI-OM) was established and has been operational since the middle of 2012. A national programme manager for integrity matters and an integrity coordinator were also appointed. They form part of the BI-OM, together with specialists from human resources, communication, the Employment Law Expertise Centre and the National Police Internal Investigations Department. Guidelines for Reporting Violations of Integrity have been adopted on 22 May 2012 by the Board of Procurators General, as part of the overall integrity policy. Integrity investigations may be instigated ex officio, at the request of the prosecutor’s superior, following a report filed by a citizen (by means of the complaints procedure or by other means) or another employee of the prosecution service, or following information coming from another source, such as another disciplinary or criminal investigation.

**Romania:** if before 2012 there were the discipline commissions at the Judicial Inspection, since 2012 the law has given to the Judicial Inspection operational independence within the Superior Council of Magistracy and legal personality, but has also introduced the right of the president of the High Court of Cassation and Justice, of the Minister of Justice and of the General Prosecutor of the Prosecution Office of the High Court of Cassation and Justice to initiate the disciplinary action, in addition to the already existing right of the Judicial Inspection.

**Slovenia:** the Minister of Justice. The competence to initiate disciplinary proceedings against public prosecutors was widened from the State Prosecutor General and the Minister of Justice to the Public prosecutorial Council and head of organizational unit where the public prosecutor executes his/her office with the new State Prosecutor Act which came into force in 2011.

**Sweden:** the Chancellor of Justice; the Prosecution Authority and the Swedish Economic Crime Authority.

Different persons or authorities can be responsible for initiating disciplinary proceedings against prosecutors.

As for judges, it is generally the hierarchical superior such as the head of the organisational unit and the General Prosecutor. Members of the public can also initiate procedures against prosecutors in 7 member states (**Andorra, Finland, France, Iceland, Lithuania, Malta, Russian Federation**). In the **Netherlands**, members of the public may indirectly initiate disciplinary procedures against prosecutors by contacting their direct superior. In only 8 states and entities, the Superior Council of prosecutors (or Justice) may initiate disciplinary procedures against prosecutors. The competence for initiating disciplinary procedures may also be granted to a specific commission for the administration of justice (**Malta**). In 13 states or entities, it is the executive power (**Andorra, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Italy, Romania, Slovenia, Switzerland**). In most cases, the executive power is represented by the Ministry of Justice. This is the case in **Belgium**, but only with regards to the Public Prosecutor at the Court of Cassation. In **Monaco**, the Director of legal services can initiate disciplinary procedures against prosecutors, either because of information he/she directly received, or because he/she has been notified by a president of a court or jurisdiction - the Director of legal services does not work for the government and is not under the authority of the Ministry of Justice. In **Montenegro**, the authorities who have the competence to initiate disciplinary procedures must first refer to a special ethics committee for an opinion (*Commission for the Prosecution Code of Ethics*) on the classification of the behaviour of the prosecutor accused of a violation of the Ethics Code.

**Table 11.51 Number of sanctions pronounced against prosecutors in 2012 (Q146)**

States/entities	Total	Reprimand	Suspension	Removal of cases	Fine	Temporary reduction of salary	Position downgrade	Transfer to another geographical (court) location	Resignation	Other
Albania	2	1	NA	NA	NA	NA	1	NA	NA	NA
Andorra	0	0	0	0	0	0	0	0	0	0
Armenia	NA	7	NA	NAP	NAP	NA	NAP	NAP	2	9
Austria	0	0	0	0	0	0	0	0	0	0
Azerbaijan	89	NA	NA	NA	NA	NA	NA	NA	NA	NA
Belgium	3	3	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP
Bosnia and Herzegovina	11	5	0	NAP	NAP	5	1	0	0	0
Bulgaria	6	NA	3	0	0	2	0	0	1	3
Croatia	2	0	0	0	0	0	0	0	1	0
Cyprus	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Czech Republic	15	2	0	NAP	NAP	1	0	NAP	0	12
Denmark	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Estonia	0	0	0	0	0	0	0	0	0	0
Finland	4	0	0	0	0	0	0	0	0	4
France	5	0	2	0	NAP	NAP	0	2	NAP	1
Georgia	33	19	NA	NA	NA	NA	NA	NA	NA	14
Germany	3	2	0	1	0	0	0	0	0	0
Greece	8	1	2	0	4	0	0	0	1	0
Hungary	3	3	0	0	0	0	0	0	0	0
Iceland	0	0	0	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	0	0	0	0
Italy	14	12	0	NAP	NAP	NAP	1	1	0	0
Latvia	18	6	0	NAP	NAP	2	0	NAP	0	10
Lithuania	9	1	0	0	0	0	2	0	2	4
Luxembourg	0	0	0	0	0	0	0	0	0	0
Malta	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Republic of Moldova	37	21	NAP	NAP	NAP	NAP	0	NAP	3	13
Monaco	0	0	0	0	0	0	0	0	0	0
Montenegro	2	0	NAP	NAP	2	NAP	NAP	NAP	NAP	NAP
Netherlands	1	0	0	0	0	0	0	0	0	1
Norway	1	1								
Poland	20	15	0	0	0	0	0	0	5	0
Portugal	24	12	1	0	9	0	0	0	2	0
Romania	8	3	0	NAP	NAP	0	NAP	0	3	NA
Russian Federation	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Serbia	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Slovakia	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Slovenia	0	0	0	0	0	0	0	0	0	0
Spain	4	0	0	0	0	0	0	0	0	0
Sweden	0	0	0	0	0	0	0	0	0	0
Switzerland	1	1	0	0	0	0	0	0	0	0
The FYROMacedonia	0	0	0	NAP	NAP	NAP	NAP	NAP	0	NAP
Turkey	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Ukraine	591	564	NA	NA	NA	NA	NA	NA	NA	NA
UK-England and Wales	45	43	0	0	0	0	0	0	0	2
UK-Northern Ireland	NA									
UK-Scotland	2	2	0	0	0	0	0	0	0	0
Average	25	20	0	0	1	0	0	0	1	2
Median	3	1	0	0	0	0	0	0	0	0
Minimum	0	0	0	0	0	0	0	0	0	0
Maximum	591	564	3	1	9	5	2	2	5	14
Israel	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

**Comments:**

**Lithuania:** (starting from least severe): admonition (4 in 2012); reprimand (1 in 2012); qualification rank downgrade (0 in 2012); position downgrade (2 in 2012); resignation (2 in 2012).

**Malta:** all the proceedings which are held before the Commission for the Administration of Justice are subject to secrecy, as a result of which, no data is made available.

**Netherlands:** sanctions 2 – 7 are not made available in the law (yet); sanction 8: dismissal upon request - early retirement - on a combination of a work and private related integrity issue. In 2012 there were 49 reported suspicions of integrity violations, 41 of them are actually fixed. A total of 39 prosecutors were involved. The disciplinary measures taken include fifteen times a written reprimand and a reduction of vacation hours four times.

**Portugal:** “Other”: mandatory retirement (imposition of retirement). Sanctions 2 and 4 imply salary reduction.

**UK-England and Wales:** Reprimand includes 6 Associate Prosecutors. “Other” includes dismissal. Please note, number of finalised cases differs to outcome by 12 as no warning or actions were issued for those actions.

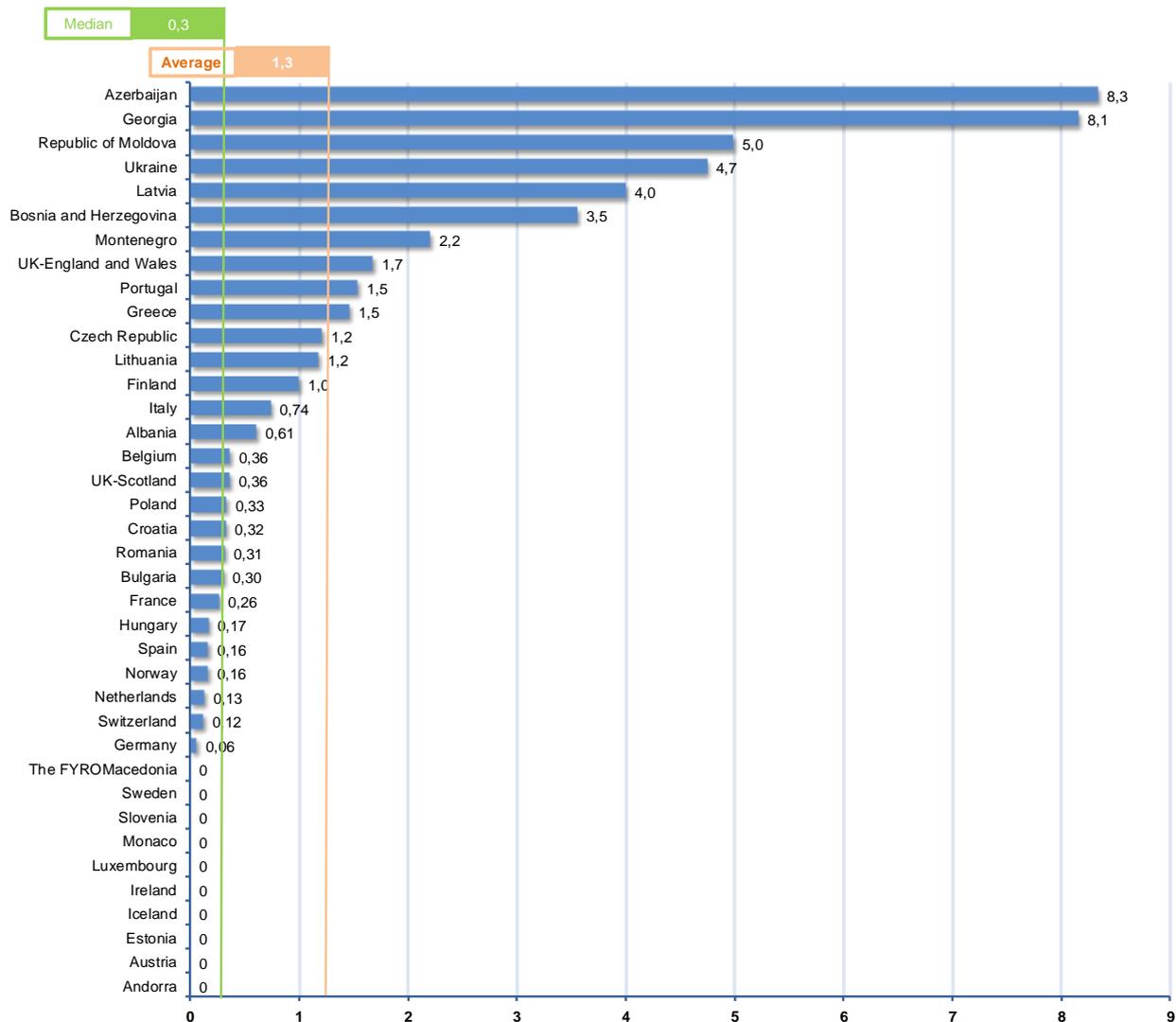
**UK-Scotland:** there were two disciplinary cases involving public prosecutors in 2012, both involving reprimands. One of these public prosecutors was also relocated and their case load removed.

The reprimand seems to be the most common sanction imposed on prosecutors, but the answers of the states are very fragmentary regarding the different types of sanctions pronounced. Therefore, further analysis is not possible.

As for judges, the “Other” category includes remarks (**Bulgaria, Georgia, Latvia**), opinions and recommendations (**Finland**), warnings (**Republic of Moldova, Iceland**), early retirement (**Netherlands**) or forced retirement (**Portugal**), payment order of the procedure cost (**Austria**), but also the "denial of certain prerogatives while retired" (**France**) and downgrading (**Lithuania, Republic of Moldova**). **Bulgaria** reported

that temporary suspension is not defined as a sanction by law, and therefore their number has not been included in the total of penalties indicated. Conversely, in **Iceland**, a temporary suspension may constitute a sanction. In **Monaco**, a judge may receive a letter of reminder of his/her legal obligations – without any disciplinary action and in the case of professional negligence, from the president of the court to which he/she belongs, from the director of judicial services, or from the prosecutor General if he/she is assigned to the Public prosecutor's Office. The president of the court or the prosecutor general shall notify the director of judicial services. In **Iceland**, prosecutors may be temporarily or permanently disbarred for committing a crime. Shortening of leave periods may be imposed in the **Netherlands**.

**Figure 11.52 Number of sanctions pronounced per 100 prosecutors in 2012 (Q55, Q145)**



**Note:** as **Turkey** cannot distinguish the proceedings initiated against judges from those initiated against prosecutors, the number reported is the cumulative number of judges and prosecutors.

**Comments:**

**Hungary:** as to the proceeding for professional inadequacy, the disciplinary penalty was imposed in 2013.

**Netherlands:** The increase is due to the increased awareness around integrity. In 2012, the Agency Integrity to (BI-to) was established. The BI-to is a national expertise centre with an advisory, stimulating and controlling role in the area of integrity. An especially great attention is focused on awareness, communication, negotiability and safe working environment. Further, in 2012 a code of conduct was introduced with five core values: professionalism, environmental focus, integrity, openness and diligence.

**Slovenia:** the proposal of the disciplinary prosecutor for the pronouncement of disciplinary sanction has been refused.

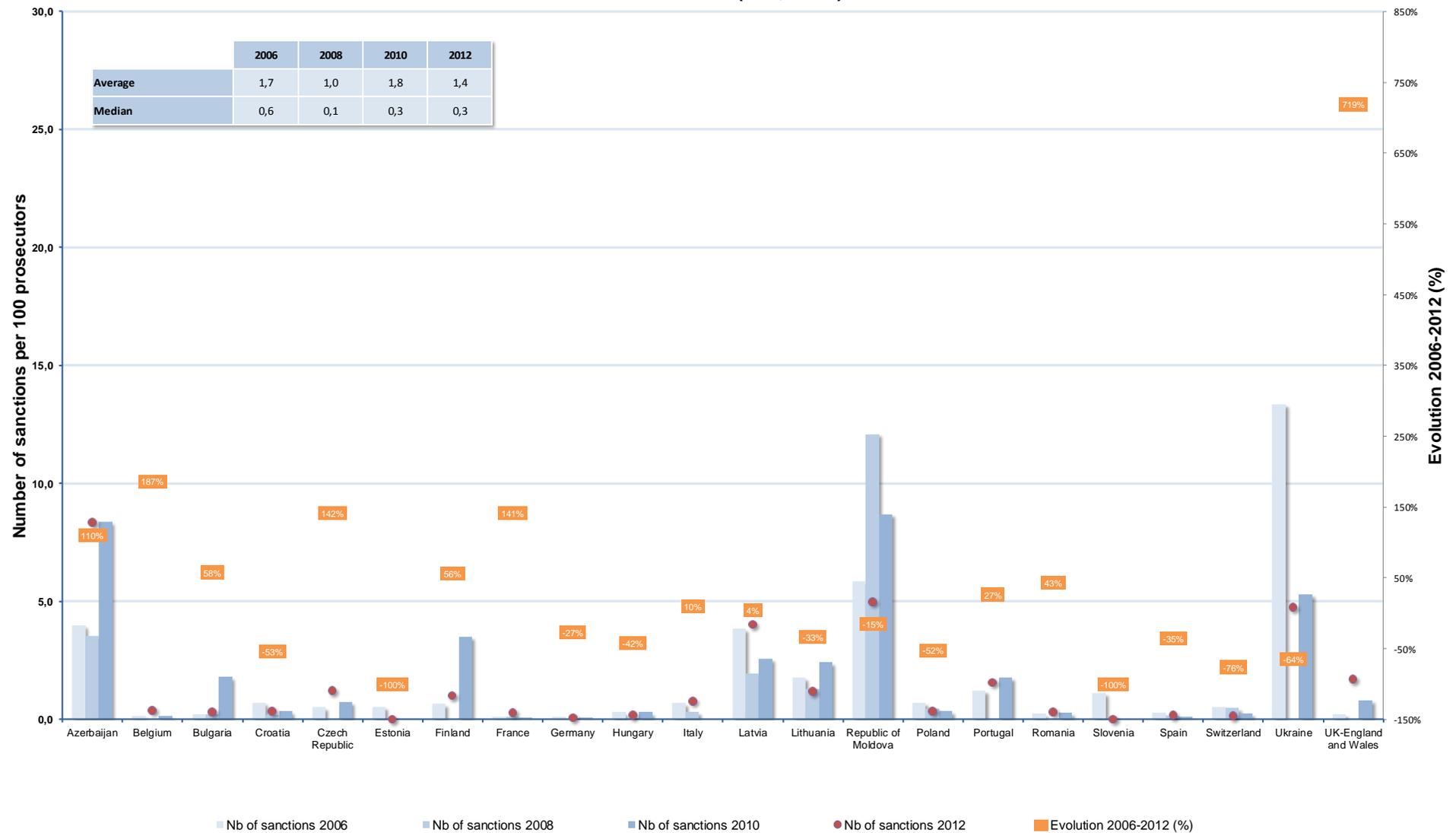
**Sweden:** two cases for possible disciplinary action and/or notification to prosecution were pending in the National Disciplinary Offence Board during the year of reference. One of the cases was closed. The other was notified by the Board for prosecution by the Prosecution Authority.

**Ukraine:** the High Qualification Commission of Judges of Ukraine began to act in September 2010. Thus, the number of disciplinary proceedings initiated against judges in 2010 is only for the 3 last months of 2010 which explains the difference of data between 2010 and 2012.

Results presented in this figure are based on the data provided by 38 states or entities. An average of 1,3 sanctions has been pronounced per 100 prosecutors, which is a relatively low rate. Only **Azerbaijan** and **Georgia** have pronounced a significant number of sanctions (more than 8) per 100 prosecutors. **Republic of Moldova, Ukraine, Latvia, Bosnia and Herzegovina, Montenegro** indicated more than 2 sanctions per 100 prosecutors.

Unlike judges, the difference between the number of disciplinary proceedings against prosecutors (1 120) and the number of penalties ultimately imposed (961) is much lower. Countries with the highest number of proceedings are also among the countries with a high number of effective sanctions.

Figure 11.53 Evolution of the number of sanctions pronounced per 100 prosecutors between 2006 and 2012 (Q55, Q145)



Note: Georgia has not been included in this table because of a very high ratio of sanctions imposed in 2006.

**Table 11.54 Authorities responsible for initiating disciplinary proceedings against prosecutors (Q143)**

States/entities	Supreme court	Head of the organisational unit or hierarchically superior public prosecutor	Prosecutor General / State public prosecutor	Public prosecutorial Council (and Judicial Council)	Disciplinary court or body	Ombudsman	Professional body	Executive power	Other
Albania									
Andorra									
Armenia									
Austria									
Azerbaijan									
Belgium									
Bosnia and Herzegovina									
Bulgaria									
Croatia									
Cyprus									
Czech Republic									
Denmark									
Estonia									
Finland									
France									
Georgia									
Germany									
Greece									
Hungary									
Iceland									
Ireland									
Italy									
Latvia									
Lithuania									
Luxembourg									
Malta									
Republic of Moldova									
Monaco									
Montenegro									
Netherlands									
Norway									
Poland									
Portugal									
Romania									
Russian Federation									
Serbia									
Slovakia									
Slovenia									
Spain									
Sweden									
Switzerland									
The FYROMacedonia									
Turkey									
Ukraine									
UK-England and Wales									
UK-Northern Ireland									
UK-Scotland									
<b>Number of countries</b>	<b>4</b>	<b>14</b>	<b>21</b>	<b>11</b>	<b>15</b>	<b>1</b>	<b>6</b>	<b>7</b>	<b>9</b>
Israel									

Yes  
 No

**Comments:**

**Iceland:** the public prosecutor enjoys the same legal status as Supreme Court judges. Therefore the same applies to the public prosecutor as to Supreme Court judges.

**Romania:** even in cases (very few in practice) where the disciplinary action is initiated by the president of the High Court of Cassation and Justice, the Minister of Justice or the General Prosecutor of the Prosecution Office of the High Court of Cassation and Justice, the investigation itself is performed only by the Judicial Inspection and the decision in all disciplinary cases is taken only by the competent section of the Superior Council of Magistracy, with right to appeal before the High Court of Cassation and Justice.

**Russian Federation:** according to the Federal Law 'On the Prosecution Service of the Russian Federation', the Prosecutor General of the Russian Federation is entitled to impose disciplinary sanctions of all types in respect of any prosecutor, while the heads of the inferior prosecutor's offices can impose only some of the sanctions and only on the prosecutors appointed by them.

**Slovenia:** the Disciplinary Court of first instance consists of nine members: six public prosecutors and two judges form the Disciplinary Court of first instance for disciplinary proceedings against judges. The Disciplinary Court of Second Instance consists of six members: two supreme public prosecutors and four judges form the Disciplinary Court of Second Instance for disciplinary proceedings against judges.

**UK-Northern Ireland:** "Other" - Northern Ireland Civil Service – Employer.

As for judges, in most of the responding states or entities, the sanction is imposed by a single authority, which is in most states a body within the Office of the Prosecutor General (21).

In 15 states, a specific disciplinary body, sometimes of a jurisdictional nature, intervenes in this matter. In **Greece**, in case of a definitive dismissal, the competent authorities are the Supreme Court and the Court of Discipline. In **Austria**, there is a disciplinary court for prosecutors practicing outside of the Supreme Court, while for prosecutors at the Supreme Court, the latter is itself the competent disciplinary body.

In 14 countries, the head of department has disciplinary authority. The Superior Council of Magistracy has disciplinary authority in 11 states. A governmental body (mainly the Ministry of Justice) exercises this responsibility in 7 states. In **France**, the Minister of Justice is the only authority for sanctions, but shall act upon a reasoned opinion delivered by the Superior Council of Magistracy. In **Belgium**, depending on the sentence, the King or the Minister of Justice is competent to impose a major penalty. In **Cyprus** and **Malta**, the same body competent to exercise disciplinary authority on judges has this responsibility towards prosecutors (the Public Service Commission and the Commission for the Administration of Justice, respectively).

In **Spain**, the disciplinary authority lies with the Attorney General and the Inspection Bureau. However, the concrete authority concerned depends on the severity of the penalty. Thus, dismissals can only be imposed by the Minister of Justice upon a proposal from the Attorney General. Similarly, in **Iceland** the authority responsible for the appointments of officials is also responsible for dismissals. Concerning prosecutors, the Minister of the Interior exercises this responsibility. **France** and **Romania** have explicitly emphasized the possibility of challenging disciplinary decisions in court (respectively before the Council of State and the High Court of Cassation and Justice).

## 11.9 Trends and conclusions

- Similarities and differences between judges and prosecutors can be noticed, firstly, regarding *recruitment, training and appointment* :

Concerning judges, in many member states, there are two authorities which may be involved in the recruitment of judges: a council for the judiciary or a special council for judicial appointments. Concerning prosecutors, most of the states or entities entrust the recruitment of prosecutors to mixed authorities composed of prosecutors and non-prosecutors. However, the recruitment modalities for judges and for prosecutors are quite the same in most of the member states (they are identical in 24 states): recruitment is made on the basis of a competitive exam and working experience.

Continuous training for judges and prosecutors is progressively developing in European countries, which confirms the trend observed since 2010. Many European states or entities have specialised institutes (judicial schools) for training judges and, to a lesser extent, prosecutors. Since 2010, the number of states with institutions providing joint training for judges and prosecutors has increased (22). European states continue to set up reforms in these areas, especially Eastern European countries where the training for the judiciary has been reinforced following the Council of Europe's opinions.

Judges are independent from the executive and legislative powers. The situation is more complex regarding public prosecutors, whose status differs in a significant way according to the states. Even if the main trend is that in the majority of states or entities, public prosecutors enjoy an independent status, the concrete situation may vary. In many states and entities, public prosecutors are under the authority of the Minister of Justice. In some states where the statutory independence of prosecutors is not assured, the *functional* independence can be achieved through various types of guarantees.

- Some trends can also be noticed concerning the development of careers:

Generally, several Eastern European countries have increased judges and prosecutors' salaries since 2004. The objective was not only to make these professions more attractive but also to preserve the independence and impartiality (of judges), to avoid corruption and to give more social recognition to the professions. However, differences as regards the level of remuneration for the two professions are noticeable (most of the time in favour of the judges). The evolution of the salaries of judges and prosecutors during their careers in relation to the national average salary is noteworthy. Indeed, the remuneration of judges and prosecutors at the end of their careers is almost two times higher than at the beginning of their career (4,2 times higher for judges and 3,4 times higher for prosecutors) and this evolution is confirmed for most of the States. At the same time, at the European level, although the judges' salaries have increased in absolute values between 2008 and 2012, it can be noted that they have slightly decreased considering the evolution of the national

average salaries in the member states. The effect of the financial and economic crisis which has had an impact on the salaries of the public officials remains significant.

From a general point of view, it is possible to see a progressive feminisation of the judiciary resulting in 2012 in gender parity in staffing numbers, with an average for all states or entities of 49% men and 51% women, yet with significant differences between states. However, this parity does not yet ensure equal access through the judicial hierarchy, in which men are by far the majority (only 9 states have more female presidents of first instance courts, and 5 states have more female presidents of courts of appeal).

## Chapter 12. Lawyers

Respecting the lawyer's mission is essential to the rule of law. Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe, on the freedom of exercise of the profession of lawyer, defines the lawyer as *"a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters"*.

It follows from this definition that a lawyer may be entrusted with legal representation of a client before a court, as well as the responsibility to provide legal assistance.

In certain states or entities, other titles and definitions of a lawyer are used, such as solicitor (a person who gives legal advice and prepares legal documents) and barrister (a person who represents his/her clients in court). In **UK-England and Wales**, in the 1990s solicitors gained additional qualifications of solicitor-advocate and were allowed to plead before the higher courts. Insofar as **Ireland** is concerned, solicitors have had full rights of audience in all courts since the early 1970s. The word attorney is also used and is similar to the term "lawyer" as mentioned in this report (a person authorized to practice law, conduct lawsuits or give legal advice).

For practical purposes, the report uses the definition of a lawyer as stated in Recommendation Rec(2000)21, because the possibility to take legal action on behalf of a client determines the activity of the courts. Where possible, a distinction will be made between the above-mentioned categories.

## 12.1 Number of lawyers

**Table 12.1 Absolute number of lawyers and legal advisors, number per 100.000 inhabitants and number per professional judge (Q1, Q46, Q146, Q147, Q148)**

States/entities	Number of practicing lawyers (without legal advisors)	Number of legal advisors	Total number of lawyers and legal advisors	Nb of practicing lawyer (w/o legal adv.) per 100 000 inhab.	Nb of lawyers and legal advisors per 100 000 inhab.	Nb of practicing lawyer (w/o legal adv.) per professional judge	Nb of lawyers and legal advisors per professional judge
Albania	6 070	NA	6 070	215,6	215,6	16,0	16,0
Andorra	167	0	167	219,0	219,0	7,0	7,0
Armenia	1 373	NA	1 373	45,4	45,4	6,3	6,3
Austria	7 861	nap	NAP	93,0	NC	5,1	NC
Azerbaijan	818	NAP	NAP	8,9	NC	1,4	NC
Belgium	17 336	NAP	NAP	155,3	NC	10,8	NC
Bosnia and Herzegovina	1 350	NAP	NAP	35,2	NC	1,4	NC
Bulgaria	12 010	NAP	NAP	164,9	NC	5,4	NC
Croatia	4 392	NAP	NAP	103,0	NC	2,3	NC
Cyprus	NA	NA	2 558	NC	295,4	NC	24,8
Czech Republic	10 944	NAP	NAP	104,1	NC	3,6	NC
Denmark	6 021	NA	6 021	107,5	107,5	17,3	17,3
Estonia	846	NA	846	65,8	65,8	3,7	3,7
Finland	1 935	NAP	NAP	35,7	NC	2,0	NC
France	56 176	NAP	NAP	85,7	NC	8,0	NC
Georgia	NA	NA	3 703	NC	82,6	NC	15,3
Germany	160 880	NA	160 880	200,5	200,5	8,1	8,1
Greece	42 113	NA	42 113	380,7	380,7	16,4	16,4
Hungary	13 000	NAP	NAP	131,2	NC	4,7	NC
Iceland	NA	NA	1 038	NC	322,5	NC	18,9
Ireland	11 055	NA	11 055	240,8	240,8	76,8	76,8
Italy	226 202	NAP	NAP	379,0	NC	35,6	NC
Latvia	1 343	NAP	NAP	65,7	NC	3,1	NC
Lithuania	1 796	NA	1 796	59,8	59,8	2,3	2,3
Luxembourg	2 020	NA	2 020	384,8	384,8	9,5	9,5
Malta	1 400	NAP	NAP	332,3	NC	35,0	NC
Republic of Moldova	1 753	NAP	NAP	49,2	NC	4,0	NC
Monaco	31	NAP	NAP	85,8	NC	0,8	NC
Montenegro	704	NA	704	113,5	113,5	2,7	2,7
Netherlands	17 000	NA	17 000	101,3	101,3	7,1	7,1
Norway	6 969	150	7 119	138,0	140,9	12,5	12,8
Poland	44 082	NAP	NAP	114,4	NC	4,4	NC
Portugal	28 341	NAP	NAP	270,2	NC	14,1	NC
Romania	20 919	NA	20 919	98,2	98,2	4,9	4,9
Russian Federation	68 292	NA	68 292	47,6	47,6	2,6	2,6
Serbia	8 032	NAP	NAP	111,6	NC	2,8	NC
Slovakia	5 210	NAP	NAP	96,3	NC	4,0	NC
Slovenia	1 417	NA	1 417	68,8	68,8	1,5	1,5
Spain	131 337	NAP	NAP	285,5	NC	25,5	NC
Sweden	5 246	NA	5 246	54,9	54,9	4,7	4,7
Switzerland	10 842	NA	10 842	134,9	134,9	8,5	8,5
The FYROMacedonia	2 498	NA	2 498	121,1	121,1	3,7	3,7
Turkey	74 496	NAP	NAP	98,5	NC	9,2	NC
Ukraine	NA	NA	111 026	NC	244,2	NC	14,3
UK-England and Wales	NA	NA	174 279	NC	308,1	NC	86,4
UK-Northern Ireland	804	NA	804	44,1	44,1	11,5	11,5
UK-Scotland	11 131	NA	11 131	209,5	209,5	60,2	60,2
Average	24 434	75	25 805	139,5	165,7	11,1	17,0
Median	6 520	75	5 634	105,8	128,0	5,2	9,0
Minimum	31	0	167	8,9	44,1	0,8	1,5
Maximum	226 202	150	174 279	384,8	384,8	76,8	86,4
Israel	50 850	NA	50 850	636,9	636,9	78,1	78,1

### Comments:

**Finland:** the number of lawyers (1935) refers to the members of the Finnish Bar Association who are entitled to use the professional titles 'asianajaja' or 'advokat' ('advocate'). Law firms (firms owned by members of the Bar) employ about 630 associates. Of the advocates, about 110 are public legal advisers. Legal aid offices also employ about 100 legal advisers who are not members of the Bar Association. In addition, there are actually a large number of jurists (persons who have a Master's Degree in law) who may offer similar legal services as the members of the Bar. From the beginning of the year 2014, only advocates, public legal aid attorneys and counsels who have obtained the license referred to in the Licensed Counsel Act will be allowed to represent a client in court.

**Germany:** all lawyers are empowered to plead in court. No distinction is made between different groups of lawyers in Germany, such as between solicitors and barristers. The number of 160,880 lawyers does not include employee legal advisers. These are those lawyers who in addition to the profession of lawyer are active as a lawyer in a secondary profession with a non-legal employer. In addition to lawyers, certain other individuals may also appear in court as 'legal advisers'; there is no statistical data on these individuals.

**Hungary:** solicitors conduct legal representation, provide legal advice and information; prepare applications, contracts and other documents. As a general rule, solicitors – in contrast to attorneys – discharge their duties (which are not as

extensive as those of attorneys) as employees. In the course of practicing their profession, attorneys-at-law help their clients to assert their rights and perform their obligations. Attorneys can provide legal representation in all cases and before all authorities. Attorneys are independent in the course of their professional work, which means that they may not be influenced and may not undertake responsibilities that would endanger this independence.

**Monaco:** in 2012, the reference year, there were 30 lawyers. For 2013 the figure is 31.

**Portugal:** in Portugal, only registered lawyers are allowed to practice law and represent people in court. The registration at the Portuguese Bar Association (OA) is mandatory.

**Serbia:** the number of lawyers refers to the territory of Serbia on 9 December 2013.

**Slovakia:** the Bar Association registers the lawyers who fulfilled the statutory conditions for being a practising lawyer (advocate).

**UK-England and Wales:** the data concerning the number of lawyers and legal advisors includes solicitors and barristers. There are 158 872 solicitors and 15 407 barristers. Unlike in other jurisdictions, the legal profession is a divided profession in England and Wales. Solicitors deal with members of the public and interface with the clients. They carry out all legal work for their clients but do not have rights of audience in all courts. Solicitors have rights of audience in the lower courts which consist of the magistrates courts (criminal), county courts (civil), tribunals and also interlocutory hearings which are heard in chambers (private hearings in the High Court). They do not have rights of audience in the high courts (unless they have a Higher Rights qualification) which comprise the Crown Court (criminal), High Court (civil), Court of Appeal and the Supreme court.

**Israel:** the Israel Bar Association is an autonomous statutory entity, which incorporates the legal profession in Israel. Membership is mandatory and is a pre-requisite for practicing law in Israel. Therefore, the total number of practicing lawyers includes all persons with a law license registered in the Israeli Bar Association, and not only practicing lawyers. This number also includes lawyers in public administration (state prosecutors, public defense lawyers, and legal advisors), as well as legal advisors for private companies. The number is updated to 31 August 2012, which is the end of the 2011-2012 'legal year' in Israel (which corresponds with the Hebrew calendar year).

The distinction between lawyers and legal advisors is relevant only in a few member states or entities. Most member states or entities explicitly indicated that this category does not exist as such.

The following figures must be interpreted with care, as the number of lawyers and legal advisors does not refer systematically to the same reality, according to their duties and powers in the different member states or entities. Finally, the importance of legal professionals can only be measured when taking into account the number of notaries (see chapter 14).

Figure 12.2 Number of lawyers per 100.000 inhabitants in 2012 (Q1, Q146, Q147, Q148)

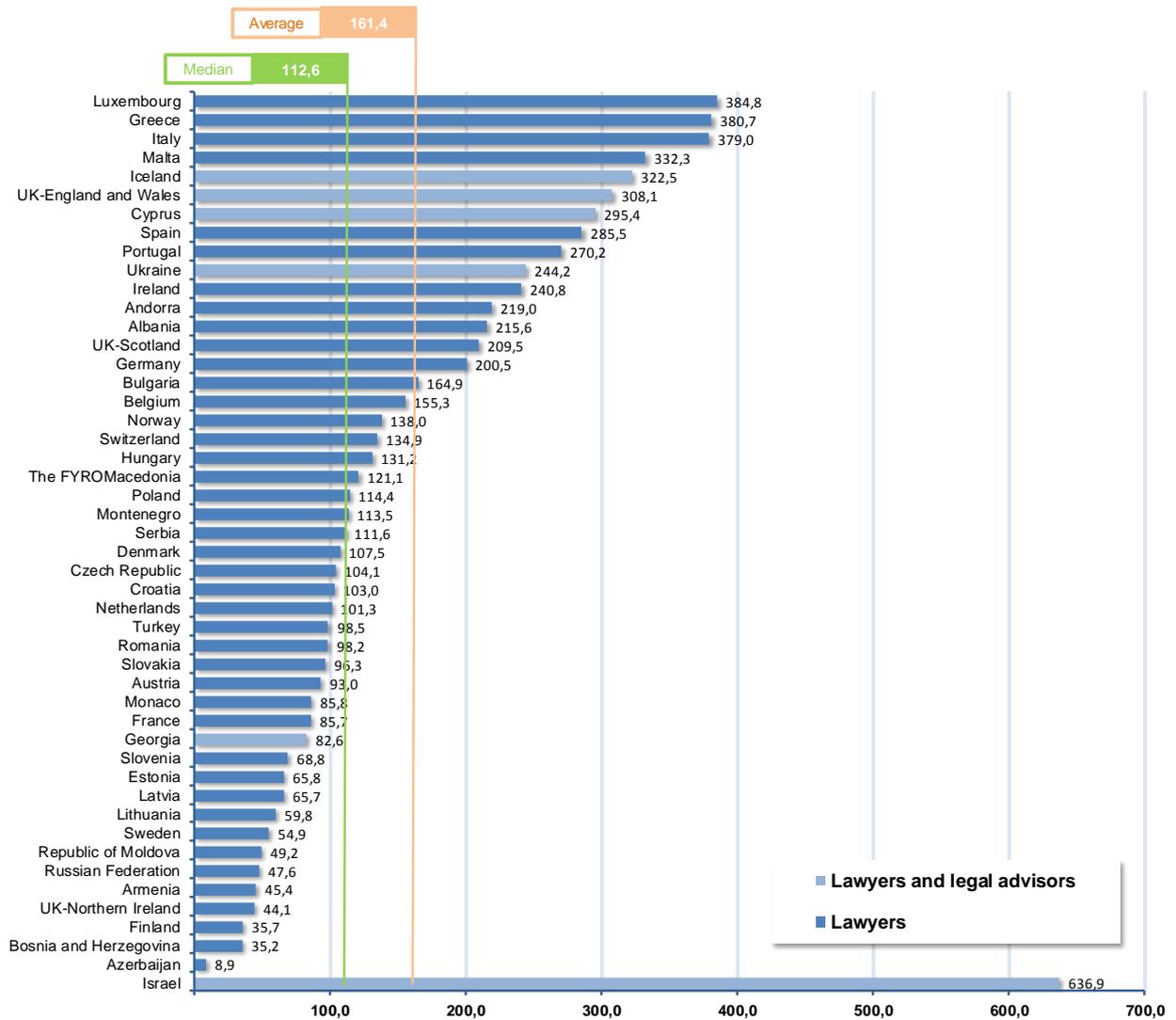
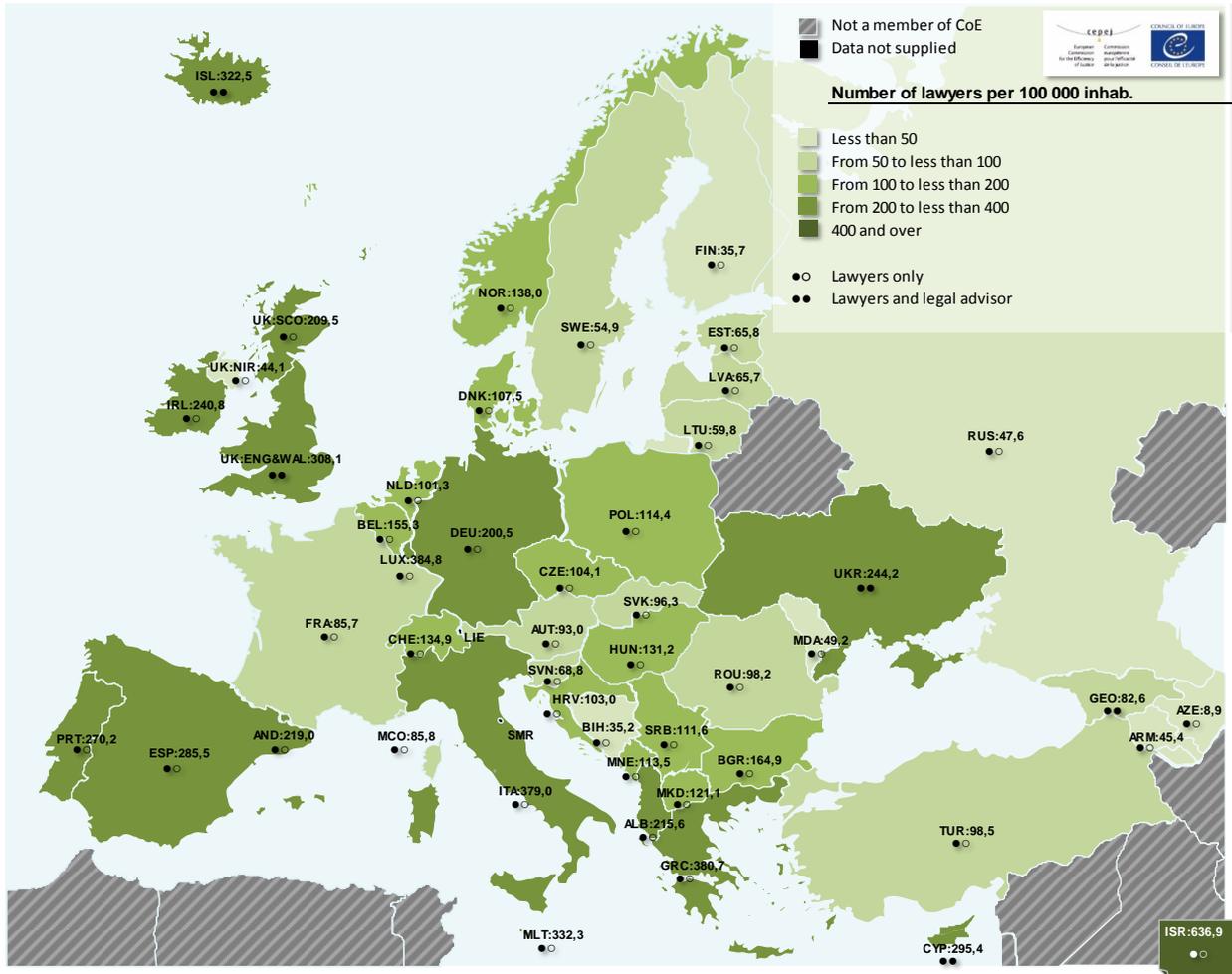
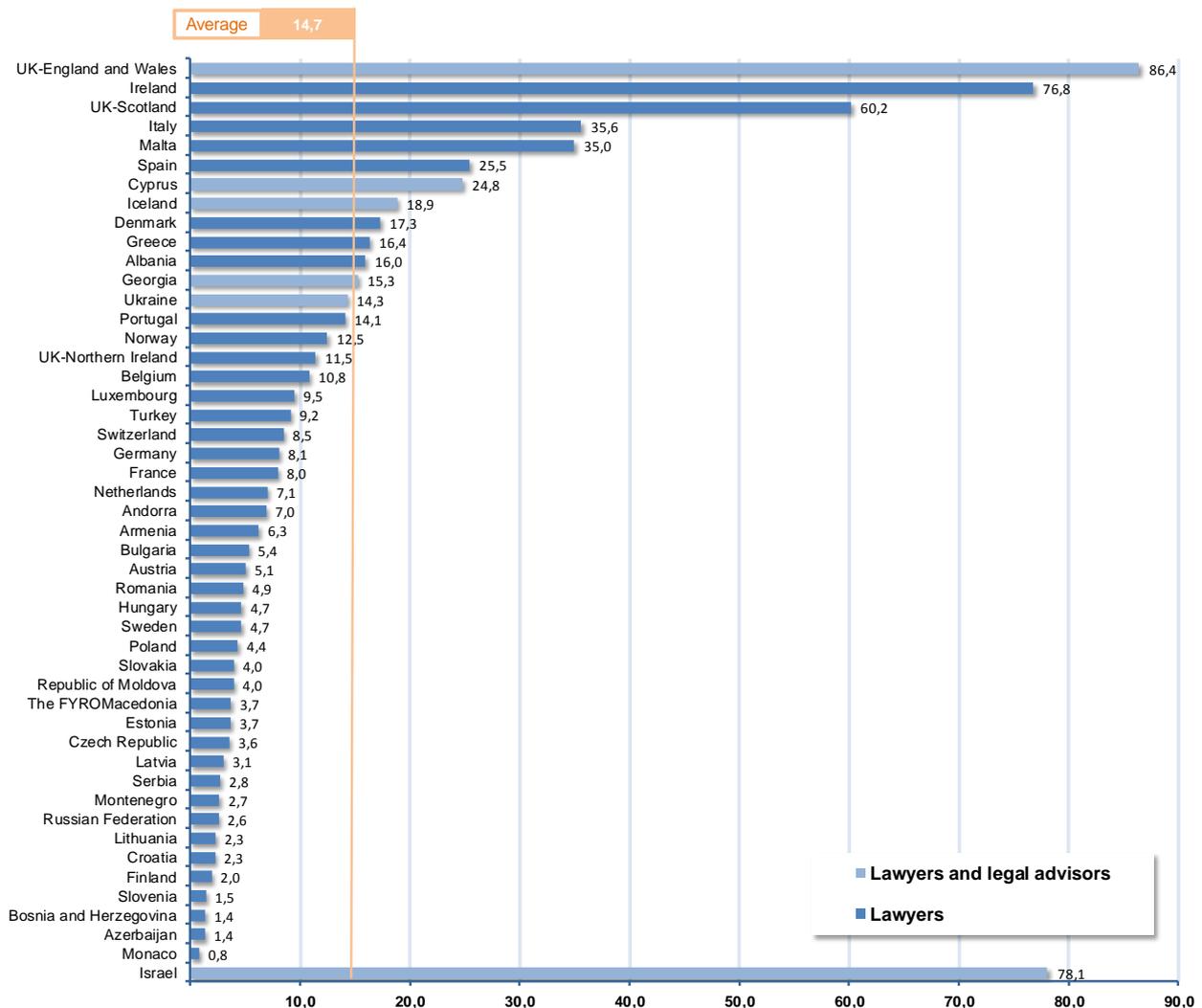


Figure 12.2b Number of lawyers per 100.000 inhabitants in 2012 (Q1, Q146, Q147, Q148)



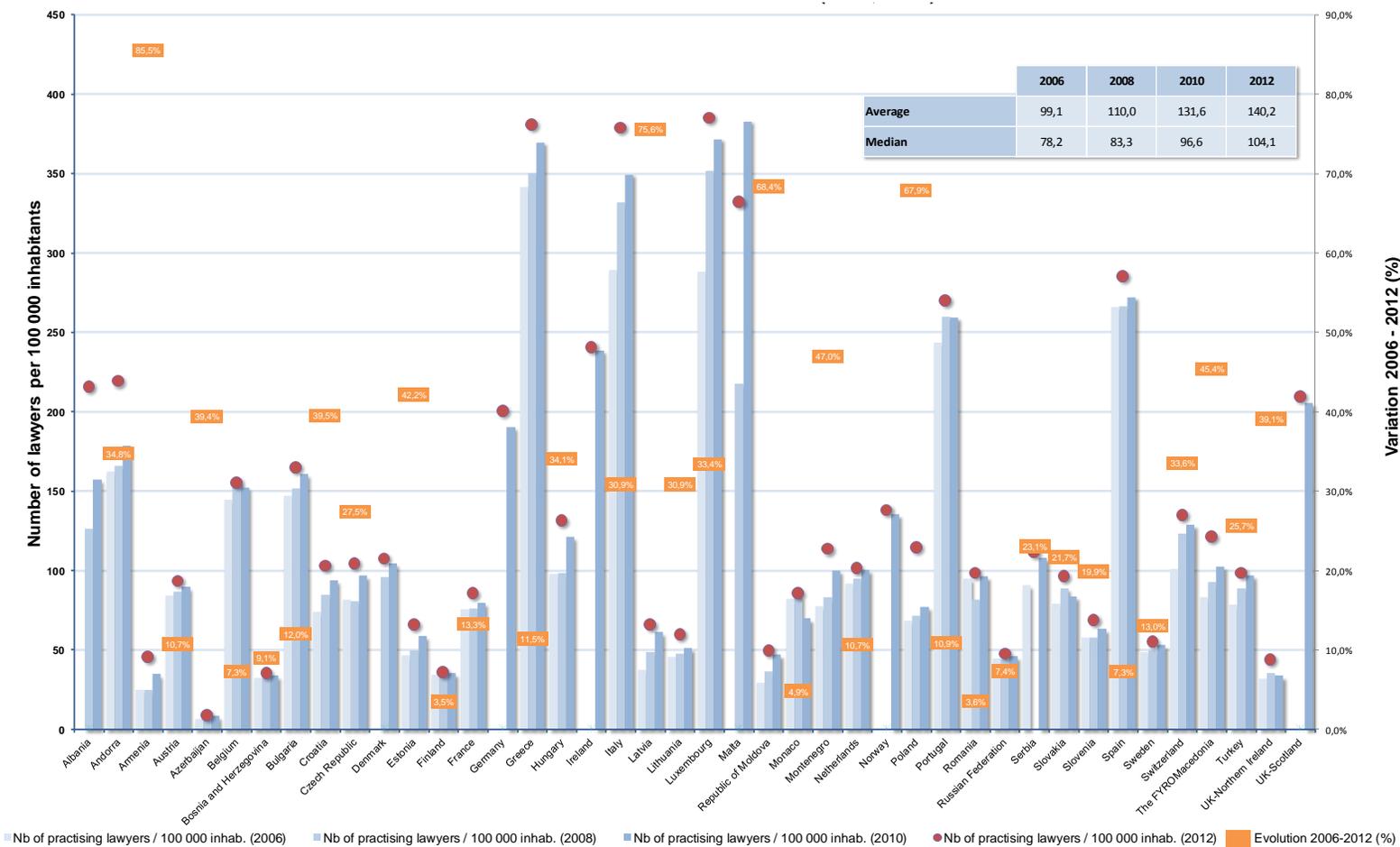
When analysing the numbers of lawyers with and without legal advisors, it can be noted that several Eastern and Northern European states have a low number of lawyers, whereas Southern states tend to have larger bar associations: **Cyprus, Greece, Italy, Malta, Spain** and **Portugal** have more than 250 lawyers per 100.000 inhabitants. In these states, individuals are more prone to go to court than in other parts of Europe (see chapter 9). The figures for **Luxembourg** must be related to the small number of inhabitants, which might distort the ratios, though the specific banking activity in **Luxembourg**, and the fact of it being the location for the headquarters of the Court of Justice of the European Union might partly explain the relatively high number of lawyers.

Figure 12.3 Number of lawyers per professional judge in 2012 (Q46, Q146, Q147, Q148)



The number of lawyers per professional judge varies considerably across the member states or entities. . The common law entities (**UK-England and Wales, UK-Scotland and Ireland**) cannot be compared to the other countries because they have a small number of professional judges (90% of cases are dealt with by magistrates) which alters the ratio significantly. When legal advisors are not counted in the same category as lawyers, one can observe that there are states which have less than, or equal to, 2 lawyers per professional judge (**Slovenia, Monaco, Bosnia and Herzegovina, Finland, Azerbaijan**). In comparable countries, the highest numbers (more than 16 lawyers per one professional judge) can be found in the countries of Southern Europe: **Spain, Malta, Italy, Greece, Albania**. However, in these states, lawyers may also have professional activities that go well beyond activities directly related to courts.

Figure 12.4 Average variation of the number of practicing lawyers (without legal advisors) per 100.000 inhabitants between 2006 and 2012 (Q146, Q147)



## Comments:

**Poland:** a major increase in the number of lawyers resulted from by the recent implementation of the reform of the legal profession.

**UK-Northern Ireland:** there are a number of influencing factors explaining the increase in the number of lawyers compared to 2010 – an increase in the number being called to the Bar, an increase in the number of applications from solicitors to transfer to the Bar, an increase in the number of temporary call applications from outside the jurisdiction (i.e. Republic of Ireland, England and Wales), and a different administrative system now in operation for recording the issue of practicing certificates.

In most of the member states or entities, the number of lawyers increased between 2006 and 2012. The most important increases (around 20 %) can be noted in **Andorra, Luxembourg, Azerbaijan, Czech Republic, Montenegro, Croatia, Estonia, Hungary, Armenia, Italy, Latvia, Lithuania, Serbia, Slovakia, Switzerland, Poland, Turkey, UK-Northern Ireland, "the former Yugoslav Republic of Macedonia"** and **Republic of Moldova**. For the states which have organised their legal systems more recently, such as **Azerbaijan, Armenia** and the **Republic of Moldova** (where the number of lawyers remains limited) this increase can be explained by the on-going development of new legal and judicial systems. The situation is different for **Luxembourg**, which is a small state with developed consulting and legal activities which could explain the increase in the number of lawyers – though, once again, the evolution in figures must be interpreted with care when relating the number of lawyers to a small number of inhabitants. States with an average annual variation value between 5 and 10 % or lower can be considered as relatively stable: **Belgium, Bosnia and Herzegovina, Finland, Monaco, Russian Federation, Spain** and **Romania**.

## 12.2 Organisation of the profession and training

While the training and qualification in member states or entities may differ, in general, to become a lawyer, the persons concerned must obtain the relevant diploma, pass the relevant examinations and be admitted to a bar association.

Figure 12.5 Types of compulsory training required to accede to, and to perform the profession of lawyer (Q151, Q152, Q153)

States/entities	Specific initial training	In-service professional training	Training for specific specialisation in some legal fields
Albania	Yes	Yes	No
Andorra	No	No	No
Armenia	Yes	Yes	No
Austria	Yes	Yes	No
Azerbaijan	Yes	Yes	No
Belgium	Yes	Yes	Yes
Bosnia and Herzegovina	Yes	Yes	No
Bulgaria	Yes	Yes	No
Croatia	Yes	Yes	Yes
Cyprus	Yes	No	No
Czech Republic	Yes	Yes	No
Denmark	Yes	Yes	No
Estonia	Yes	Yes	No
Finland	Yes	Yes	No
France	Yes	Yes	Yes
Georgia	Yes	Yes	No
Germany	No	Yes	Yes
Greece	Yes	No	No
Hungary	Yes	Yes	Yes
Iceland	Yes	No	No
Ireland	Yes	Yes	No
Italy	Yes	Yes	Yes
Latvia	Yes	Yes	No
Lithuania	Yes	Yes	No
Luxembourg	Yes	Yes	No
Malta	Yes	Yes	No
Republic of Moldova	Yes	Yes	Yes
Monaco	Yes	No	No
Montenegro	Yes	Yes	No
Netherlands	Yes	Yes	Yes
Norway	Yes	Yes	No
Poland	Yes	No	No
Portugal	Yes	Yes	Yes
Romania	Yes	Yes	Yes
Russian Federation	Yes	No	No
Serbia	Yes	Yes	Yes
Slovakia	Yes	No	No
Slovenia	Yes	No	Yes
Spain	Yes	No	Yes
Sweden	Yes	Yes	No
Switzerland	Yes	No	No
The FYROMacedonia	Yes	No	No
Turkey	Yes	No	No
Ukraine	Yes	No	Yes
UK-England and Wales	Yes	Yes	Yes
UK-Northern Ireland	Yes	Yes	Yes
UK-Scotland	Yes	Yes	Yes
<b>Number of countries</b>	<b>45</b>	<b>31</b>	<b>20</b>
Israel	Yes	Yes	No

Yes
No

**Comment:**

**Spain:** a recent reform of the law on legal aid obliges lawyers to undergo specific training to assist victims of gender violence.

Almost all the states or entities (45 out of 47) require of the person to complete an initial training before starting legal practise. This usually involves passing the relevant university exams and qualifications (stage, internship etc.). Most of the states or entities (36) require also a continuous training and/or a specific training for a specialisation. 14 states or entities ask lawyers to attend trainings at all three levels (initial, continuous and for the specialisation). Only **Andorra** does not require any specific initial or mandatory continuous professional training to practise as a lawyer. In **Germany**, there is no special training for lawyers and solicitors have the same training as the other classical legal professions of judge and public prosecutor; the

qualification for judicial office is acquired by anyone who completes law studies at a university (at least four years) with a first examination and a subsequent preparatory service (two years) with a second State examination.

With effect from 2012, lawyers in Latvia have been obliged to attend in-service training of 16 hours per year. In the **Republic of Moldova**, lawyers must attend at least 40 hours of in-service training each year, in accordance with the training plan approved by the Lawyers' Union Council and write a final report. In some countries, there is no mandatory in-service training (**Andorra, Cyprus, Czech Republic, Greece, Iceland, Monaco, Montenegro, Poland, Russian Federation, Slovakia, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine**). In **Belgium**, in certain legal fields, in-service training has an influence on the recognition of a specialisation.

There are three possibilities with regard to specialisation. Some member states or entities do not recognise any specialisation. In others, such recognition may be based on two different principles: learning through practice or specialist training. Recognition of learning through practice is to be found, for example, in **Belgium** (for the Bar Association of French-speaking and German-speaking lawyers), **Croatia** and **France** where a lawyer wishing to specialise in a particular branch of law, recognised by the Bar association, must fulfil certain conditions. Most of the time, these are the length of practice as an attorney, the prevailing engagement in a certain branch of law, and the publication of professional and scientific papers. In order to specialise in a particular field in **Switzerland**, it is necessary to attend specialist training. In **Italy**, reform of specialisation and training was introduced in 2012. The Minister of Justice is currently working on the specifications for a two-year specialisation programme which lawyers must follow in order to obtain official recognition.

Figure 12.6 Organization of the profession of lawyer (Q150)

States/entities	National bar	Regional bar	Local bar
Albania	Yes	Yes	No
Andorra	Yes	No	No
Armenia	Yes	No	No
Austria	Yes	Yes	No
Azerbaijan	Yes	Yes	No
Belgium	No	Yes	Yes
Bosnia and Herzegovina	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes
Croatia	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes
Czech Republic	Yes	Yes	No
Denmark	Yes	Yes	Yes
Estonia	Yes	Yes	Yes
Finland	Yes	Yes	Yes
France	No	Yes	Yes
Georgia	Yes	Yes	No
Germany	Yes	Yes	No
Greece	No	Yes	Yes
Hungary	Yes	Yes	Yes
Iceland	Yes	Yes	No
Ireland	Yes	Yes	Yes
Italy	Yes	Yes	Yes
Latvia	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes
Luxembourg	No	Yes	Yes
Malta	Yes	Yes	No
Republic of Moldova	Yes	Yes	No
Monaco	Yes	Yes	No
Montenegro	Yes	Yes	No
Netherlands	Yes	Yes	Yes
Norway	Yes	Yes	Yes
Poland	Yes	Yes	Yes
Portugal	Yes	Yes	Yes
Romania	Yes	Yes	Yes
Russian Federation	Yes	Yes	Yes
Serbia	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes
Spain	Yes	Yes	Yes
Sweden	Yes	Yes	Yes
Switzerland	Yes	Yes	Yes
The FYROMacedonia	Yes	Yes	No
Turkey	Yes	Yes	Yes
Ukraine	Yes	Yes	Yes
UK-England and Wales	Yes	Yes	Yes
UK-Northern Ireland	Yes	Yes	Yes
UK-Scotland	Yes	Yes	Yes
<b>Number of countries</b>	<b>42</b>	<b>14</b>	<b>14</b>
Israel	Yes	Yes	No

Yes	Yes
No	No

In all member states, the profession is regulated by bar associations (which can be national, regional or local).

Lawyers are, in a large majority of states or entities (42), organised in national bars. Exceptions are **Belgium, Bosnia and Herzegovina, France, Greece** and **Luxembourg**, where the bar associations are regional and/or local. Additionally, more than half of the states or entities (26 out of 47) consider the presence of one bar association as sufficient. Yet, there are several other states or entities that have, in addition to the national or regional bar, a local and/or regional bar. In **Ukraine** and **Spain**, lawyers are organised in national, regional and local bar associations at the same time.

## 12.3 Practice of the profession

### 12.3.1 Monopoly of representation before a court

Although the monopoly of lawyers before the courts is regularly discussed in some states, most of the member states or entities grant lawyers a monopoly in order to ensure a high degree of protection and knowledge of individuals' rights. It may also be a guarantee for a smoother and more efficient progress of the judicial proceedings. Nevertheless, mandatory representation by a lawyer can also be seen as a financial obstacle to an open access to court, at least in small cases. Therefore, the correlation between the monopoly of lawyers and the scope of the legal aid system is particularly relevant (see Chapter 3).

In 9 states, such a monopoly is effective in civil, criminal and administrative matters, at least for most of the procedures: **Belgium, Cyprus, Luxembourg, France, Greece, Italy, Malta, Monaco and Turkey**. Thirteen other states indicated that they do not impose a monopoly in any of the examined fields: **Albania, Austria, Bosnia and Herzegovina, Bulgaria, Finland, Germany, Estonia, Ireland, Romania, Spain, Sweden, UK-England and Wales and UK-Northern Ireland**. **Belgium** has indicated that family members and spouses can represent a client before the justice of the peace. **Denmark, Estonia and Sweden** also reported that under certain circumstances, this kind of possibility exists in their legislation in civil cases, criminal cases (both defendant and victim) and administrative cases: family members, trade unions, NGOs and others can represent a client.

The monopoly of lawyers is particularly important in criminal matters as they concern sensitive domains and fundamental rights and values. A legal representation of the defendant is generally necessary in 34 states or entities and the representation of the victim in 18 states, as for civil matters. Twelve states or entities have in place a monopoly in administrative cases.

The monopoly of legal representation may vary depending on the issues involved (**Belgium, France, Luxembourg and Portugal**), the amount subject to litigation (for instance, in **Austria** a mandatory representation in civil matters is requested when the litigation value exceeds 5 000 €, in **Croatia** when the litigation value exceed 6 500 € or in **Italy** when it exceeds 1 100 €) or the instance concerned (for instance, in **Austria, Azerbaijan, Estonia, Georgia, Hungary, Czech Republic and Slovenia**, a mandatory representation is not requested at first or second instance courts). Similarly, in **Monaco and Portugal**, a party is not obliged be assisted by a lawyer before the justice of the peace. In **Norway**, it is possible according to the law, as a legal advisor and representative (not a lawyer), to apply for a special permission to represent someone in court. Such an application is rarely approved. As a consequence, there is *de facto* a monopoly of representation for the lawyers in Norway.

Table 12.7 Monopoly of legal representation (Q149)

States/entities	Civil cases	Criminal cases		Administrative cases
		Defendant	Victim	
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Number of countries</b>	<b>18</b>	<b>34</b>	<b>19</b>	<b>12</b>
Israel				

Yes  
 No

**Comments:**

**Albania:** there is no monopoly representation before courts by lawyers in criminal, civil and administrative matters in Albania. Nevertheless, in criminal matters for minors accused of a criminal offense representation is mandatory.

**Andorra:** in criminal cases, the prosecutor may also represent victims.

**Austria:** representation by a lawyer is mandatory in civil cases, before district courts (only when the litigation value exceeds 5 000 €), higher courts, in appeal cases and before the Civil Supreme Courts. It is possible to be represented by a family member, trade union, NGO, the Economic Chamber, the Labour Chamber, and the Consumer Protection Association (*Verein für Konsumenteninformation*). In criminal cases, it is possible to be represented by a family member; in qualified criminal cases listed in the Code of Criminal Procedure only by defence counsels (i.a. lawyers, other persons authorised by law to provide representation in criminal proceedings or university professors for criminal and criminal procedural law); in other cases also by the defendant him-/herself or a by legal representative. In administrative cases, there is a monopoly only for appeals against decisions of last instance. For applications and complaints lodged before the constitutional court and before the higher administrative court representation by a lawyer is mandatory.

**Azerbaijan:** everybody has the right to represent the client in court upon the power of attorney. However, there is a monopoly of legal representation for an accused person before the Supreme Court and the Constitutional Court.

**Belgium:** the parties may appear in person. Before the Court of Assizes, a relative or friend may plead with the permission of the President; before the justice of the peace, the commercial court and the labour courts, parties may be represented by their spouse, a blood relative or relative by marriage. Before the labour courts, the delegate of a workers' or employees' organisation may represent a worker or employee. Before the same bodies, self-employed persons may, in disputes relating to their own rights and obligations in that capacity or as persons with disabilities, also be represented by the delegate of an organisation representing the interests of the self-employed. In disputes concerning the minimum level of subsistence or the right to social integration and social assistance, the persons concerned may be represented by a delegate of a social organisation defending the interests of the groups of persons covered by the relevant legislation. Applicants may also be represented by the public prosecutor in cases concerning the protection of custody and cross-border visiting rights. In tax matters, the state may be represented by officials of the tax authorities. With regard to disciplinary matters for judges, the person concerned may be represented before the authorities by the person of his or her choice.

**Bosnia and Herzegovina:** according to the legislation on criminal proceedings, a defendant has the right to present his/her own defense. If the legal preconditions for mandatory defense are met, then the court must appoint a defence attorney for him/her. In criminal cases brought before the Court of Bosnia and Herzegovina and in other entities (i.e. Republika Srpska) only lawyers who are members of the Bar Association are eligible to act as defense attorneys. According to the legislation on civil proceedings procedure, both plaintiff and defendant are entitled to present their own cases. A party's agent in civil proceedings may be an attorney, a law firm or an employee of the service for free legal aid, as well as - for legal entities - an employee of that legal entity, or - for natural persons - the party's spouse, life partner or relative by blood or by marriage.

**Bulgaria:** parents, children, spouse can be appointed as representative in any litigation. In labour matters, trade unions can be appointed as representatives.

**Croatia:** the parties can undertake procedural actions either personally or through agents in civil cases. Only a lawyer may represent a party as an agent, if not otherwise prescribed by the law. A party may be represented by a blood relative in a legal line, a brother, sister or marriage partner – if he/she has full capacity and if he/she is not illegally practicing law. In criminal cases, defence counsels may only be lawyers. In case of petty criminal offences, the defendant may represent him/herself without the assistance of a lawyer.

**Czech Republic:** before the Court of Cassation and the Constitutional Court, only a lawyer may represent a party. Before the Supreme Court in proceedings on appellate review of a decision (an extraordinary remedial measure), the appellant has to be represented by a lawyer or a notary, except for cases when an appellant is a physical person with education in law, or where an appellant is a legal entity, the state, a municipality, or a higher self-administrative unit on behalf of which a person with education in law is acting. Before the Supreme Administrative Court, a party may be represented by a lawyer or possibly by another person practicing special legal consultancy according to special Acts, by a trade union organization, by a legal entity established on the basis of the Act on Association of Citizens or by a physical person.

**Denmark:** regarding civil cases, family members and others can under certain circumstances be representatives. Anyone can represent in cases under app. 7 000 € .

**Estonia:** in civil proceedings, the representative may be a lawyer, a person who has acquired a Master's Degree in law (in civil proceedings) or who possesses a higher legal education (in administrative court proceedings), a plaintiff on the authorisation of the co-plaintiffs or a defendant on the authorisation of the co-defendants, ascendants, descendants and spouses of participants in proceedings, a public servant or employee of a participant in the proceeding if the court considers him or her to have sufficient expertise and experience to represent the participant in the proceeding or other persons whose rights to act as a contractual representative are provided by law. When state legal aid is granted for representation in civil or administrative court proceedings, the representative is always a lawyer (appointed by the Estonian Bar Association). In civil proceedings in the Supreme Court, the representation of a sworn lawyer is mandatory. However, it is possible to participate personally or through a lawyer in a non-litigious civil proceedings in the Supreme Court. In criminal proceedings, an accused person can have a contractual counsel or an appointed counsel.

**Finland:** an advocate, a public legal aid attorney or counsel who has obtained the license referred to in the Licensed Counsel Act, is allowed to represent a client in court.

**France:** legislative or regulatory provisions provide for special exceptions to monopoly. Trade unions or their representatives can provide representation before the labour courts (labour courts at first instance).

**Georgia:** an NGO or a family member may represent the client in civil cases and administrative cases in courts of first instance.

**Germany:** in civil cases, parties can be represented by persons employed by the party, adult family members, consumer advice centres and publicly recognised consumer associations, as well as collection services. In criminal cases, lawyers and law lecturers at German universities with qualification for judicial office can be selected as defence counsel or other individuals with the approval of the court.

**Hungary:** lawyers have a monopoly of representation in civil cases before the appeal courts and the Curia (Supreme Court), but not before local and county courts. Victims of criminal cases can be represented by their family members.

**Ireland:** revenue Officials, Trade Union Officials and family members may appear in certain types of proceedings in limited circumstances. While solicitors are engaged in all cases, a barrister will appear as an advocate for the client when instructed by the client's solicitor to do so.

**Italy:** in taxation cases, in first and second instance proceedings legal representation can be offered also by accountants and other professional figures indicated by law.

**Latvia:** a victim (natural person of legal age) may be represented by any natural person of legal age with the capacity to act, if authorised by the victim. If harm has been caused to a minor, the victim shall be represented by a mother, father, or guardian; one of the grandparents, a brother or sister of legal age, if the minor has lived together with one of such persons and the relevant kinsperson takes care of the minor; a representative of an authority protecting the rights of children or a representative of a non-governmental organisation that performs the function of protecting the rights of children. As a general rule, any natural person may be an authorised representative in civil proceedings. Participants in

administrative proceedings may participate in the proceedings with the assistance of or through their representative. The representative may be any natural or legal person with capacity to act.

**Luxembourg:** before the labour court, the criminal courts, the courts dealing with urgent applications, and justices of the peace with jurisdiction to deal with cases in which the amount in dispute does not exceed 10 000 €, defendants can defend themselves without being represented by a lawyer. Before the administrative courts, in certain cases, individuals can be represented by an accountant or a company auditor.

**Malta:** before any Court of Law, a party may be assisted in Court, however always by a Lawyer in the Superior Courts and by a Lawyer or Legal Procurator, in the Inferior Courts.

**Monaco:** the Code of Criminal Procedure authorises accredited associations whose statutes include the aim of combating violence to exercise, with the consent of the victim, the rights recognised to the civil party. There is a monopoly of lawyers in cases where representation is mandatory. Before the justices of the peace, parties may be represented by a blood relative or relative by marriage and before the labour courts an employee or employer operating in Monaco. Before the criminal courts, parties may defend themselves. The President of the criminal court may authorise the accused to be defended by a foreign lawyer, a relative or a friend. Foreign lawyers may assist the accused only if the latter is present. The victim and the person held civilly liable can be represented only by a counsel for the defence or by a lawyer.

**Norway:** in the Supreme court, only lawyers who are entitled to conduct cases before the Supreme court can be engaged. In the lower courts, any advocate may represent a party. With special permission from the court, some other suitable person (who is not a lawyer) may also represent the party. Even though the court may approve representation by other than lawyers, the number of such approvals is very low compared to representation by lawyers.

**Portugal:** lawyers are mandatory for every law case except: labour cases and administrative Court Cases. There is no monopoly when it comes to civil law cases, solicitors can also represent their clients. However, petitioners must be represented by a lawyer in the following cases: proceedings that exceed a specific value and that admit appeal; in proceedings that always admit appeal regardless of their value; and proceedings in superior courts. Some credit injunctions require representation by a lawyer; in certain execution proceedings, depending on their value, representation by lawyer can be mandatory. Before the "Peace Courts", petitioners may represent themselves under certain conditions.

**Russian Federation:** in cases concerning less serious crimes (that are dealt with by justices of the peace), professional lawyers do not have the monopoly at the stage of court proceedings. Individuals and organizations are allowed to invite (almost) any legally capable person as their representative in civil, commercial and administrative proceedings. The citizens have the right to conduct their affairs in court personally or through representatives.

**Serbia:** in civil and administrative proceedings, a party who is not a legal person may be represented by attorney who has full disposing capacity. A party to proceedings on extraordinary legal remedies must be represented by an attorney.

**Slovakia:** in civil cases, a litigant can be represented before the court by trade unions in labour law disputes, by special legal persons (e.g. the consumer associations), or by any individual who has full capacity to perform legal acts. Such a representation is not possible in the proceedings on extraordinary appeals (or extraordinary remedies). The litigant bringing the extraordinary appeal (remedy) must be represented by a lawyer in court unless he/she or his/her employee (staff member) who acts on his/her behalf holds a degree in law. In criminal cases, victims can be represented in criminal proceedings by a lawyer or by any individual with the full legal capacity, or by an NGO. In administrative cases lawyers have the monopoly only in certain types of administrative cases.

**Slovenia:** in civil procedures at first instance, a party can be represented before local courts by everyone who has the capacity to contract. At district courts and in second instance procedures at higher courts, as well as at the Supreme Court, there is a lawyers' monopoly on legal representation. An exception applies for individuals who passed the Legal State Exam. A party can submit exceptional legal remedies only with the representation of a lawyer. In proceedings at the Administrative court, a party can be represented by everyone who has the capacity to contract.

**Spain:** in civil cases, the legal representation is mainly for Court Attorneys (*Procuradores*). In criminal cases, lawyers can assume legal representation until a *Procurador* is appointed for the case. In administrative cases legal representation is mostly assumed by lawyers.

**Sweden:** members of family, trade unions, NGOs and others may represent a client before a court in both civil and criminal cases (both defendant and victim), as well as in administrative cases. A public defence counsel must, however, in principle be an advocate.

**Switzerland:** for administrative cases, lawyers are granted a monopoly in only 12 cantons; in the other cantons, making up the majority, parties may be represented by a person of trust or an organisation (family member, trade union, etc.). In addition, some cantons make provision for exceptions to the monopoly of lawyers in civil and criminal cases.

**"the former Yugoslav Republic of Macedonia":** in civil procedure, an authorized representative of a party may be: a lawyer, a law-graduated employed by the party and a blood relative on straight line, brother, sister or a spouse – if he or she has full legal capacity.

**Turkey:** in some cases provided and the law, military officers, accountants and advisors, spouses, liquidators, agencies, chairmen of trade unions, brands and patent representatives may carry out the functions of a lawyer.

**Ukraine:** In civil, commercial and administrative cases, a person can be represented by a family member (i.e for minors) or by any other person (even without education in law) whose powers to provide representation in court are duly certified.

**UK-Northern Ireland:** NGO, Personal Litigants, Solicitors, Solicitor Advocates.

**UK-Scotland:** only advocates and solicitor-advocates can conduct cases in the Court of Session (civil) and in the High Court (criminal). In the Sheriff Court, representation of third parties is generally restricted to solicitors and advocates. Lay representation is limited to the various tribunals that consider matters related to employment, mental health, land disputes, small claims before the Sheriff Court, etc.

**Israel:** in civil and administrative cases, there is no obligation to be represented by a lawyer before the courts, and litigants can choose to represent themselves. However, the monopoly on legal representation is such that if a party chooses to be represented, it must be by a registered lawyer. An exception to this rule is in small claims proceedings (civil cases with a low monetary value), where self-representation is mandated. In some small claims cases, claimants

may be represented by an organization approved by the Minister of Justice (such as the Israel Consumer Council) or by another person.

### 12.3.2 Lawyers' fees

In most of the states or entities (42), the lawyers' remuneration is freely negotiated. This is not the case in **Cyprus, Germany, Serbia, Slovenia** and **UK-Northern Ireland**.

Generally, in many states or entities, basic principles exist and the remuneration has to be adequate and proportionate to the value and complexity of the case. Often, hourly rates are applied. In some member states, there is also the possibility for lump-sum agreements, conditional fee arrangement ("no win, no fee") or agreements "paid on result".

The initial information provided to the defendant as regards lawyers' fees is deemed transparent and loyal by the national correspondents in 36 states or entities. However, some improvements concerning the information on fees still remain to be made. **Andorra, Armenia, Lithuania, Poland, Romania, the Russian Federation, Spain, Sweden, Ukraine, UK-Northern Ireland** and **UK-Scotland** mention that clients cannot easily establish the lawyers' fees.

**Table 12.8 Lawyers' fees (Q154, Q155, Q156)**

States/entities	Lawyers' fees regulated by			Users can easily establish lawyers' fees
	Law	Bar association	Freely negotiated	
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Number of countries</b>	<b>31</b>	<b>23</b>	<b>42</b>	<b>36</b>
Israel				

Yes  
No

## Comments:

**Armenia:** the Board of Chamber of Advocates has adopted standards that apply only to cases provided by the Civil Code. According to the Law on Advocacy, the Board of Chamber of Advocates may adopt average prices of legal services which can be taken into consideration only by the courts when the making a decision on determining the amount of reasonable compensation of a lawyer.

**Austria:** usually hourly rates, lump-sum agreements, caps or fees according to the lawyers' tariff act (*Rechtsanwaltstarifgesetz*) are agreed. The latter is a federal law providing fee schedules, which are necessary as a basis for the court's decision on the procedural fees the losing party has to reimburse to the winning party.

**Belgium:** lawyers' fees must be calculated with the discretion to be expected of them in the exercise of their function. Any agreement on fees exclusively related to the outcome of the case is prohibited.

**Bosnia and Herzegovina:** the legislation on the lawyers' profession prescribes that the tariffs on fees for their services are determined by the Ministry of Justice, upon the proposal of the Bar Association.

**Bulgaria:** in the case of free negotiation, their remuneration cannot be lower than the regulatory minimum, as set out in the Ordinance of the Supreme Bar Council.

**Czech Republic:** the mode and amount of the fee and reimbursement of a lawyer practising law as a sole lawyer or jointly with other lawyers, and/or their rates, shall be set by the Ministry of Justice in its executive regulation, with the Bar's expressing its opinion on the matter.

**Denmark:** there are a number of cases, for which guiding tables/charts for lawyers' fees have been provided by the courts. For the remaining cases, lawyers' fees are freely negotiated but bound by the Danish Code of Conduct providing that fees should be fair and in good keeping with e.g. the size and importance of the case.

**Finland:** the Lawyer is obliged to give an estimate of his/her fee to the client. Fees are regulated by the Bar only through the code of conduct for advocates which states that the lawyer's fee must be reasonable.

**France:** lawyers are obliged to conclude an agreement with their clients on fees (specifying a fixed sum or hourly rate) only with regard to an additional fee which shall depend on the outcome of their intervention.

**Hungary:** as a general rule, an attorney's fee is set by agreement between the party and the attorney. If no settlement is reached, the fee is decided by the court on the basis provided in law (5 % of the claimed amount and at least 10 000 HUF). As a general rule, the legal fees shall be agreed upon between the client and the lawyer before accepting the mandate. Excessive legal fees may be subject to a disciplinary procedure.

**Italy:** a recent reform of 2012 of the legal profession provides for a decree of the Ministry of Justice with general provisions addressed to judges, in order to assist them in establishing lawyers' fees when determining litigation expenses. Those general "parameters" are not binding though. The draft decree is currently under examination by the Parliamentary Commissions.

**Malta:** the Code of Organisation and Civil Procedure clearly stipulates that lawyers may not agree fees on a '*quotae litis*' basis.

**Slovakia:** the lawyers' fees are regulated by a Regulation of the Ministry of justice. The fees can be either negotiated as the contractual fee or the tariff fee according to the regulation is applicable. The contractual fee can be negotiated between the lawyer and the client as follows: a/ depending on the number of hours spent on a case (time fee), b/ single payment (lump-sum), c/ share of the value of the case, d/ tariff fee. The basic tariff fee is determined according to the tariff value of the case and the number of legal aid actions of the lawyer.

**Switzerland:** lawyers must comply with the FSA deontology code and the law on legal professions.

**"the former Yugoslav Republic of Macedonia":** lawyers' fees are clearly established in the Tariff for reward and expenses for lawyers' work

**UK-Northern Ireland:** this varies between criminal and civil practice. In publically funded work, fees are increasingly laid out in statutory rules / practice directions / guidelines as standardised or scale fees. In privately funded work, fees are open to negotiation. Practicing barristers are subject to the Bar Council Code of Conduct and Constitution of Bye Laws of the Inn of Court of Northern Ireland - Fitness to Practice Rules

**UK-Scotland:** when tendering for business or at the earliest practical opportunity upon receiving instructions to undertake any work on behalf of a client, the solicitor must provide an estimate of the total fee to be charged for the work, including VAT and outlays which may be incurred in the course of the work; or the basis upon which a fee will be charged for the work, including VAT and outlays which may be incurred in the course of the work.

**Israel:** the National Council of the Bar Association enacts rules recommending minimum and maximum tariffs.

### 12.3.3 Quality standards and supervision of lawyers

The quality of the service provided by lawyers is fundamental for the protection of individuals' rights of citizens. Some minimum quality standards are therefore necessary, the breach of which can lead to disciplinary sanctions.

A significant part of the states or entities (36 out of 47) apply written quality standards when evaluating lawyers' activity. In almost all these states or entities (except **Monaco, Republic of Moldova, Ukraine** and **UK-Northern Ireland**), the Bar association is entrusted (partially or exclusively) with formulating quality standards.

Figure 12.9 Quality standards for lawyers (Q157, Q158)

States/entities	Quality standards determined	Responsible for formulating quality standards		
		Bar association	Parliament	Other
Albania	Yes	Yes	Yes	No
Andorra	No	No	No	No
Armenia	Yes	Yes	Yes	No
Austria	Yes	Yes	Yes	No
Azerbaijan	Yes	Yes	Yes	No
Belgium	No	No	No	No
Bosnia and Herzegovina	No	No	No	No
Bulgaria	No	No	No	No
Croatia	Yes	Yes	Yes	No
Cyprus	No	No	No	No
Czech Republic	Yes	Yes	Yes	No
Denmark	No	No	No	No
Estonia	Yes	Yes	Yes	No
Finland	Yes	Yes	Yes	No
France	No	No	No	No
Georgia	Yes	Yes	Yes	No
Germany	Yes	Yes	Yes	No
Greece	No	No	No	No
Hungary	No	No	No	No
Iceland	No	No	No	No
Ireland	Yes	No	No	Yes
Italy	Yes	Yes	Yes	No
Latvia	Yes	Yes	Yes	No
Lithuania	Yes	Yes	Yes	No
Luxembourg	Yes	Yes	Yes	No
Malta	Yes	Yes	Yes	No
Republic of Moldova	Yes	No	No	Yes
Monaco	Yes	Yes	Yes	No
Montenegro	Yes	Yes	Yes	No
Netherlands	Yes	Yes	Yes	No
Norway	Yes	Yes	Yes	No
Poland	Yes	Yes	Yes	No
Portugal	Yes	Yes	Yes	No
Romania	Yes	Yes	Yes	No
Russian Federation	No	No	No	No
Serbia	Yes	Yes	Yes	No
Slovakia	Yes	Yes	Yes	No
Slovenia	Yes	Yes	Yes	No
Spain	Yes	Yes	Yes	No
Sweden	Yes	Yes	Yes	No
Switzerland	No	No	No	No
The FYROMacedonia	No	No	No	No
Turkey	Yes	Yes	Yes	No
Ukraine	Yes	No	Yes	No
UK-England and Wales	Yes	Yes	Yes	Yes
UK-Northern Ireland	Yes	No	No	Yes
UK-Scotland	Yes	Yes	Yes	No
<b>Number of countries</b>	<b>35</b>	<b>31</b>	<b>15</b>	<b>7</b>
Israel	Yes	Yes	No	No

Yes
No

**Comments:**

**Ireland:** the Bar Association of Ireland sets standards of practice and procedures for barristers and barristers operate under a code of conduct and disciplinary code which covers all areas of practice. The Incorporated Law Society of Ireland sets standards of practice and procedures for solicitors.

**Italy:** quality standards (e.g. independence of the lawyer, integrity and good reputation of the lawyer, professional competence) are set out in the rules of the Code of Professional Conduct for lawyers approved by the Lawyer National Bar Association. The Code of Professional Conduct for lawyers is approved by the National Bar Association. A recent reform of the legal profession (2012) required the National Bar Association to approve a new Code of Professional Conduct, with a clear indication of the sanctions provided for every kind of professional misconduct or breach of professional rules.

**Monaco:** lawyer firms may use the services of a private control body (Bureau VERITAS) which delivers certificates.

**Portugal:** lawyers have no quality standards as such but follow professional duties and a Code of Conduct which, if breached, may give rise to disciplinary responsibility (on account of professional misconduct) and even tort (civil professional) responsibility covered by professional insurance.

**Romania:** there are no concretely established quality standards but there are professional obligations of lawyers stipulated by the law and by the Statute of the profession of lawyer, whose non-accomplishment attracts disciplinary liability and by the norms of professional ethics, including those contained in the European Union Lawyers' Deontological Code, adopted by CCBE, as subsequently amended and completed, approved by decision of the Parliamentary Commission of the National Association of Romanian Bars.

**Serbia:** the Code of Professional Ethics is in accordance with the European Code of Professional Ethics.

**Spain:** the General Council of Bar Associations implemented a quality management system in accordance with Norm UNE-EN ISO 9001:2008.

**UK-England and Wales:** quality standards are being developed for advocates (barristers/solicitors advocates and legal executives) by the Bar Standards Board, Solicitors Regulation Authority and ILEX Professional Standards.

12 states and entities answered that they do not have quality standards. However, even in the absence of specific standards, the quality of the legal representation provided may nevertheless be ensured by the obligation in some member states for lawyers to go through a rigorous qualification procedure. In fact, 7 of the 12 states and entities that do not have quality standards request a high qualification (continuous and/or specialised trainings) for lawyers: **Belgium, Bosnia and Herzegovina, Bulgaria, "the former Yugoslav Republic of Macedonia", France, Switzerland** (see figure 12.5).

**Table 12.10 Number of disciplinary proceedings initiated against lawyers (without legal advisors) (Q161)**

States/entities	Total	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Albania	NA	NA	NA	NA	NA
Andorra	11	11	0	0	0
Armenia	29	23			6
Austria	NA	NA	NA	NA	NA
Azerbaijan	41	10	18	1	12
Belgium	NA	NA	NA	NA	NA
Bosnia and Herzegovina	4	NA	NA	NA	NA
Bulgaria	259	NA	NA	NA	NA
Croatia	88	86	0	2	0
Cyprus	NA	NA	NA	NA	NA
Czech Republic	165	165	0	47	0
Denmark	1 280	725	299	NA	256
Estonia	42	NA	NA	NA	NA
Finland	421	NA	NA	NA	NA
France	NA	NA	NA	NA	NA
Georgia	118	118	NAP	NAP	0
Germany	NA	NA	NA	NA	NA
Greece	640	NA	NA	NA	NA
Hungary	1 218	60	0	158	1 000
Iceland	4	2	NA	NA	2
Ireland	NA	NA	NA	NA	NA
Italy	305	NA	NA	NA	NA
Latvia	6	3	3	0	0
Lithuania	113	NA	NA	NA	84
Luxembourg	31	23	0	8	0
Malta	NA	NA	NA	NA	NA
Republic of Moldova	13	11	0	2	0
Monaco	0	0	0	0	0
Montenegro	5	5	NAP	NAP	0
Netherlands	1 400	NA	NA	NA	NA
Norway	NA	NA	NA	NA	NA
Poland	NA	NA	NA	NA	NA
Portugal	4 773	4 773			
Romania	NA	NA	NA	NA	NA
Russian Federation	4 708	NA	NA	NA	NA
Serbia	108	108	NA	NA	NA
Slovakia	119	119	0	NAP	0
Slovenia	40	NA	NA	NA	NA
Spain	6 377	NA	NA	NA	NA
Sweden	862	862	NAP	NAP	NAP
Switzerland	139	86	3	3	47
The FYROMacedonia	5	5	0	0	0
Turkey	2 835	788	147	477	1 423
Ukraine	441	309	NA	NA	132
UK-England and Wales	310	69	0	21	27
UK-Northern Ireland	2	2			
UK-Scotland	NA	NA	NA	NA	NA
Average	769	348	31	55	142
Median	118	65	0	2	0
Minimum	0	0	0	0	0
Maximum	6 377	4 773	299	477	1 423
Israel	353	NA	NA	NA	NA

**Comments:**

**Belgium:** only disciplinary sanctions that are delivered are made known.

**Czech Republic:** the “criminal offence” category indicates the number of criminal prosecutions of lawyers or legal trainees notified to the Czech Bar Association and afterwards heard by the Board of directors. The figure 47 is not included in the total number of disciplinary proceedings.

**Denmark:** professional inadequacy is regarded as a breach of the guidelines regarding the size of a fee. The category "other" concerns a category in the Danish statistics covering cases on breach of fee and conduct.

**France:** any breach of legislation, regulations or professional rules, any breach of integrity, honour or propriety, even where they relate to non-professional matters, will make the lawyer in question liable to disciplinary sanctions.

**Ireland:** there are two categories of lawyer, Solicitor and Barrister. The data is not consistent from each of the bodies. 116 complaints about solicitors to the Law Society were referred to the Disciplinary Tribunal. It does not include proceedings taken against solicitors due to financial irregularities. This figure covers the period 1<sup>st</sup> September 2011 to 31 August 2012. The Society does not take disciplinary proceedings arising out of complaints of inadequate professional services. The statistic above does not include service complaints or complaints of a minor nature. There were 48 Complaints against barristers in 2013 as follows: 1. Breach of professional ethics: 20; 2. Professional Inadequacy: 15; 3. Criminal offence: 2; 4. Other 11.

**Lithuania:** in 2012, Advocates Court of Honor received 113 disciplinary cases for consideration from which 84 were initiated for failure to pay the Lithuanian Bar Association a membership fee, for not having valid advocates' professional liability insurance and/or health medical certificate. The increase in the number of disciplinary proceedings can be explained by the increase in the number of advocates in Lithuania.

**Malta:** proceedings are held in closed chambers and are private, as a result of which, no data is published.

**Monaco:** lawyers are placed under the supervision of the Attorney General and sanctions are delivered in the Council Chamber of the Court of Appeal, on application by the Attorney General. Three warnings have been sent by the Attorney General to lawyers, but no disciplinary measures have been initiated.

**Montenegro:** in 2012, 35 disciplinary charges were filed, and 5 disciplinary proceedings were initiated against lawyers. The Statute of the Bar Association prescribes that the reasons for disciplinary responsibility are: breach of duty and damaging the reputation of the legal profession.

**Norway:** the Norwegian statistics use other categories than those mentioned in the table.

**Slovakia:** the criminal offence of a lawyer (who was found guilty by the criminal court in final judgment) is reason for suspension or disbarment; however it is not an issue of disciplinary proceedings.

**Slovenia:** breaches of duties in the practice of the legal profession are divided into minor and serious. In 2012, there were 40 breaches in which the disciplinary prosecutor began disciplinary procedures. In 56 cases the proposal to start a disciplinary procedure was rejected.

**Sweden:** the data indicates cases initiated with the Disciplinary Committee in 2012. The number of cases finalized in 2012 was 552. There are currently no subgroups of disciplinary measures aimed at 'professional inadequacy', 'criminal offence' or 'other.' Consequently, there are no such subgroups of disciplinary penalty processes. However, an attorney convicted for a crime in court can also receive a disciplinary sanction if the criminal offence was committed within the law practice.

**Switzerland:** "other" refers to violations of professional secrecy.

**Ukraine:** 142 disciplinary proceedings were initiated for the reason of non-appearance before the court in a hearing.

**UK-England and Wales:** the total is the sum of 193 proceedings initiated against solicitors and 117 against barristers. The data concerning the subcategories is the following: breach of professional ethics: Solicitors = NA / Barristers = 69; professional inadequacy: Solicitors = NA / Barristers = 0; criminal offence: Solicitors = NA / Barristers = 21; other: Solicitors = NA / Barristers = 27

As to the barristers, "Other" refers to breaches of the practising requirements (failure to comply with Continuous Professional Development, failure to renew practising certificate, failure to obtain insurance).

**UK-Scotland:** the Scottish Legal Complaints Commission (SLCC) investigates complaints about the service provided by solicitors. It also acts as the gateway for all complaints. Between 1<sup>st</sup> November 2011 and 30 October 2012, the SLCC received 1 264 complaints. Of those, 614 were ineligible for investigation or withdrawn before an eligibility decision was made. 144 were referred to the Law Society of Scotland and 289 were dealt with and closed by the SLCC. The Law Society of Scotland investigates complaints against solicitors about conduct issues. For more serious cases, the Society has the power to prosecute the solicitor before the Scottish Solicitors' Discipline Tribunal. The Society received 364 complaints between 1<sup>st</sup> November 2011 and 31 October 2012.

**Israel:** three out of the five Bar Association districts provided information for the time period of 1<sup>st</sup> September 2012 until 31 August 2012. The Jerusalem District provided information for the year 2012, and the Tel Aviv District for the period between 1<sup>st</sup> January 2012 and 8 November 2012.

35 states or entities were able to provide figures on disciplinary proceedings initiated against lawyers.

Most disciplinary proceedings have been initiated for breach of professional ethics, whereas only a few proceedings were opened for criminal offences and professional inadequacy.

In all member states, it is possible to complain about the performance of lawyers, and in 41 states or entities, complaints are also possible in respect of the amount of lawyers' fees. This complaint about the amount of lawyers' fees is not possible in 6 states/entities: **Armenia, Azerbaijan, Georgia, Russian Federation, Ukraine and UK- Scotland.**

**Table 12.11 Possibility to file a complaint about the performance of the lawyers and/or the amount of the fees (Q159). Authority responsible for disciplinary procedures (Q160)**

States/entities	Possibility to file a complaint		Authority responsible for disciplinary procedures			
	Performance of lawyers	Amount of fees	Judge	Ministry of justice	Professional authority	Other
Albania	Yes	Yes	No	No	Yes	No
Andorra	Yes	No	Yes	No	No	No
Armenia	Yes	No	No	No	Yes	No
Austria	Yes	No	No	No	Yes	Yes
Azerbaijan	Yes	No	No	No	Yes	No
Belgium	Yes	No	No	No	Yes	No
Bosnia and Herzegovina	Yes	No	No	Yes	Yes	No
Bulgaria	Yes	No	No	No	Yes	No
Croatia	Yes	No	Yes	No	Yes	No
Cyprus	Yes	No	No	No	Yes	No
Czech Republic	Yes	No	No	No	Yes	No
Denmark	Yes	No	No	No	Yes	No
Estonia	Yes	No	No	No	Yes	No
Finland	Yes	No	No	No	Yes	No
France	Yes	No	No	No	Yes	No
Georgia	Yes	No	No	No	Yes	No
Germany	Yes	No	Yes	No	No	No
Greece	Yes	No	No	No	Yes	No
Hungary	Yes	No	Yes	No	Yes	No
Iceland	Yes	No	No	No	Yes	No
Ireland	Yes	No	Yes	No	Yes	No
Italy	Yes	No	No	No	Yes	No
Latvia	Yes	No	No	No	Yes	No
Lithuania	Yes	No	No	No	Yes	No
Luxembourg	Yes	No	No	No	Yes	No
Malta	Yes	No	No	No	Yes	No
Republic of Moldova	Yes	No	No	No	Yes	No
Monaco	Yes	No	Yes	No	No	No
Montenegro	Yes	No	No	No	Yes	No
Netherlands	Yes	No	No	No	Yes	No
Norway	Yes	No	No	No	Yes	No
Poland	Yes	No	No	No	Yes	No
Portugal	Yes	No	No	No	Yes	No
Romania	Yes	No	No	No	Yes	No
Russian Federation	Yes	No	No	No	Yes	No
Serbia	Yes	No	No	No	Yes	No
Slovakia	Yes	No	No	No	Yes	No
Slovenia	Yes	No	No	No	Yes	Yes
Spain	Yes	No	No	No	Yes	No
Sweden	Yes	No	No	No	Yes	No
Switzerland	Yes	No	No	No	Yes	No
The FYROMacedonia	Yes	No	No	No	Yes	No
Turkey	Yes	No	No	No	Yes	No
Ukraine	Yes	No	No	No	Yes	No
UK-England and Wales	Yes	No	No	No	Yes	Yes
UK-Northern Ireland	Yes	No	No	No	Yes	Yes
UK-Scotland	Yes	No	No	No	Yes	Yes
<b>Number of countries</b>	<b>47</b>	<b>41</b>	<b>6</b>	<b>1</b>	<b>37</b>	<b>13</b>
Israel	Yes	No	No	No	Yes	No

Yes  
 No

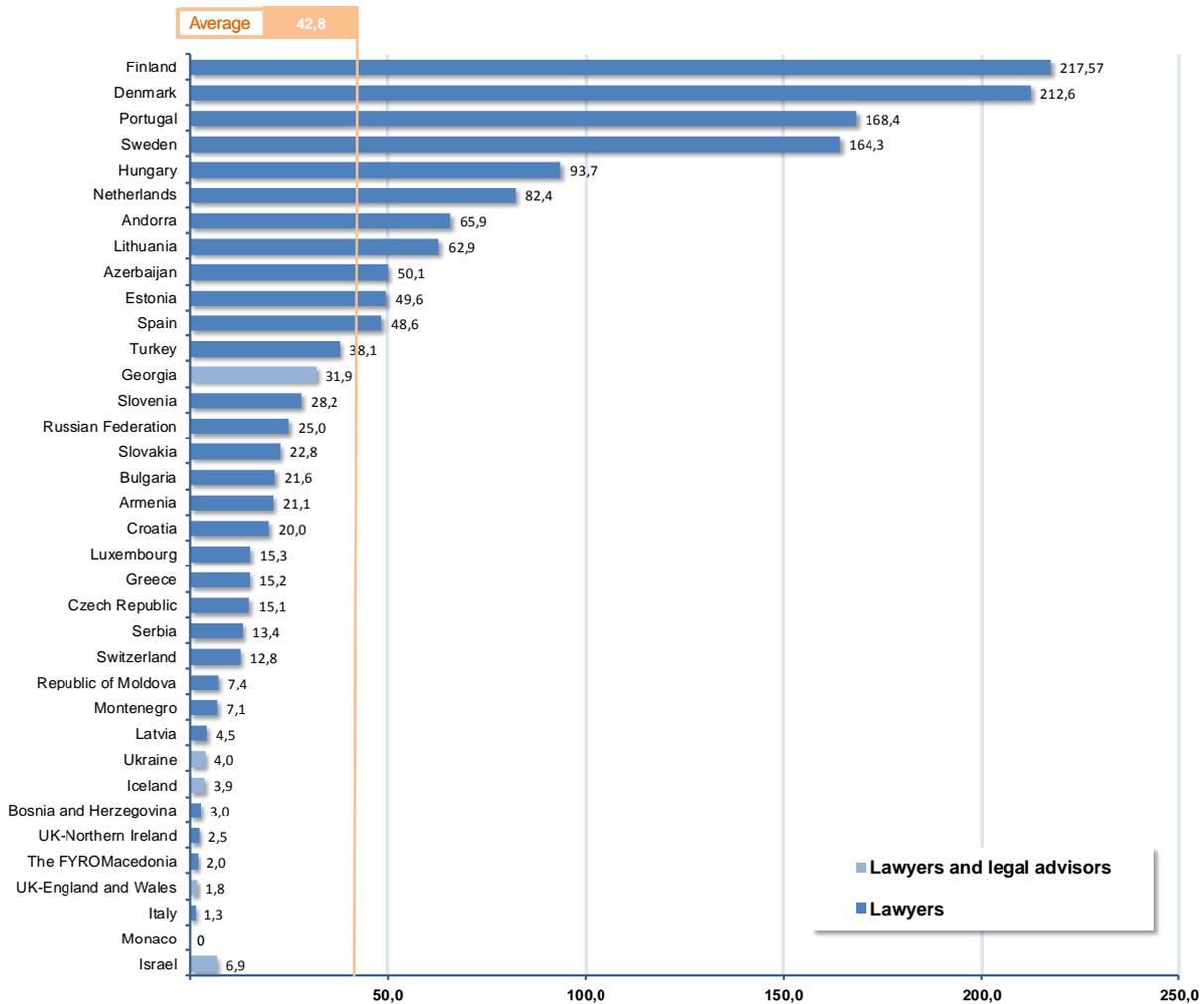
It appears that the complaints which are filed against lawyers are always related to the performance of lawyers; however, complaints focused solely on the performance are relatively rare (less than 15%) because financial aspects are taken into consideration. It means that most of the time, it is not the performance itself which is problematic, but the performance delivered compared to the fees paid. In other words, it seems that complaints reflect less a problem of competence than a problem of efficiency.

In almost all the states, the supervision and control of the lawyer's profession lie with the Bar association. The latter can, independently of all judicial proceedings, order an inquiry following a complaint or *ex officio*. It is its responsibility to defer to the disciplinary bodies in case of professional fault.

In 28 states or entities, the professional authority is the only authority responsible for disciplinary proceedings. In other states, the control is divided between the professional authority and a judge (**Andorra, Hungary and Ireland**), the professional authority and the Ministry of Justice (**Bosnia and Herzegovina**) or professional and other authorities (**Austria, Slovenia, Georgia and UK-Scotland**). The judge is the only authority responsible for disciplinary proceedings in **Germany**. Other authorities than a professional authority, the judge and the Ministry of Justice are responsible for disciplinary procedures in **Croatia,**

Cyprus, Greece, Iceland, Montenegro, Norway, "the former Yugoslav Republic of Macedonia" and UK-England and Wales.

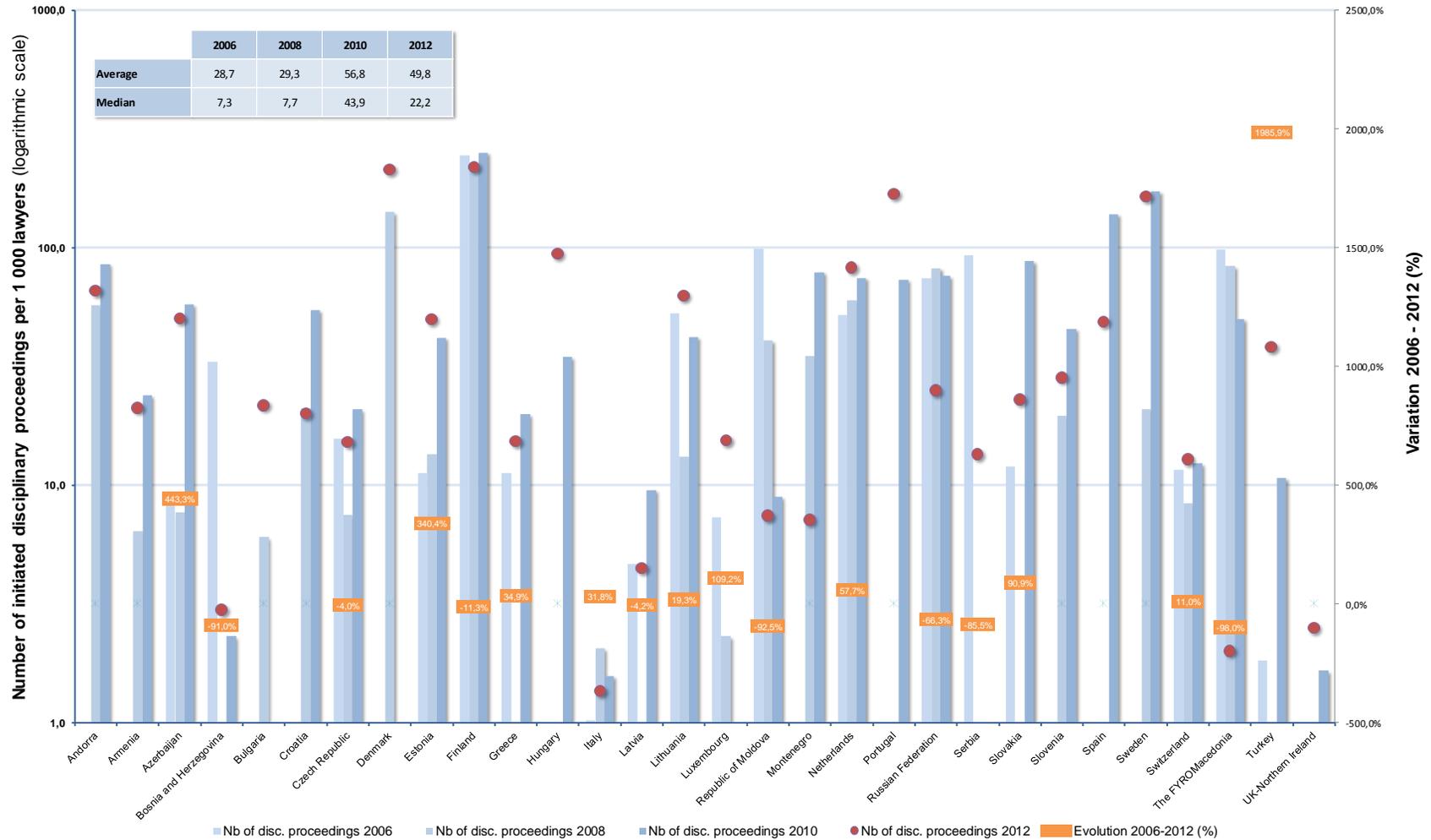
Figure 12.12 Number of disciplinary proceedings initiated per 1.000 lawyers in 2012 (Q146, Q147, Q161)



The measuring of proceedings must be interpreted with caution. A high level can measure for example a very controlled profession with standards of higher quality, or (and) a high possibility to be challenged by clients. It is important to compare this data with the number of actually imposed disciplinary penalties, which is a more significant data (see below).

**Finland** and **Denmark** indicated a significant number of proceedings initiated against lawyers (with a number of proceedings initiated higher than 20 % of the number of lawyers), whereas this number remains very low in other countries, with a number of proceedings initiated lower than 1 % of the number of lawyers (**Republic of Moldova, Montenegro, Ukraine, Iceland, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", UK-England and Wales, UK-Northern Ireland, Latvia, Italy, Monaco** and **Israel**).

Figure 12.13 Evolution of the number of disciplinary proceedings initiated per 1.000 lawyers (without legal advisors) between 2006 and 2012 (Q146, Q147, Q161)



## Comments:

**Montenegro:** 2010 data refers to the number of disciplinary charges filed, not to the number of disciplinary proceedings. So, in 2010 - 49 disciplinary charges were filed, but no disciplinary proceedings were initiated, due to the fact that all of the charges were rejected as unfounded.

**Turkey:** there is no a significant increase between 2010 and 2012. 2010 data has been collected from the bar associations directly. Therefore 2012 data is much more accurate than the figures of previous years.

**UK-England and Wales:** the reason for the difference between data provided for 2010 and 2012 is that data provided in 2010 only included barristers and did not include solicitors. For 2012, data for both solicitors and barristers is provided giving a fuller and larger total that differs substantially from the 2010 cycle.

The figure 12.13 shows that, between 2006 and 2012, the evolution of the number of proceedings per 1 000 lawyers (without legal advisors) varies considerably from one state (or entity) to another. Indeed, some states or entities are relatively stable (**Czech Republic, Finland, Latvia, Lithuania** and **Switzerland** remain between -20 % and +20 %), whereas in other states or entities a decrease in the number of complaints initiated against lawyers can be noted (**Bosnia Herzegovina, Republic of Moldova, Serbia** and "**the former Yugoslav Republic of Macedonia**"). An increase can be stressed in particular for **Azerbaijan, Estonia, Luxembourg, Slovakia, Turkey** and **Russian Federation**).

The figure 12.13 shows also that within the same State or entity, the variation from one year to another is significant.

**Table 12.14 Number of sanctions pronounced against lawyers (without legal advisors) in 2012 (Q162)**

States/entities	Total	Reprimand	Suspension	Removal	Fine	Other
Albania	NA	NA	NA	NA	NA	NA
Andorra	1	0	0	0	1	0
Armenia	23	21			2	
Austria	NA	NA	NA	NA	NA	NA
Azerbaijan	20	15	0	3	NAP	2
Belgium	NA	NA	NA	NA	NA	NA
Bosnia and Herzegovina	0	0	0	0	0	0
Bulgaria	NA	NA	NA	NAP	NA	NA
Croatia	34	18	2	0	14	0
Cyprus	NA	NA	NA	NA	NA	NA
Czech Republic	82	16	4	3	22	37
Denmark	341	47	NA	4	184	106
Estonia	8	6	1	0	1	
Finland	99	62	30	NAP	4	3
France	NA	NA	NA	NA	NAP	NA
Georgia	54	18	9	NAP	NAP	27
Germany	NA	NA	NA	NA	NA	NA
Greece	111	NA	NA	NA	NA	NA
Hungary	496	156	115	44	181	0
Iceland	4	1	2	0	0	1
Ireland	NA	NA	NA	NA	NA	NA
Italy	136	61	58	5	NAP	12
Latvia	5	4	1	0	0	0
Lithuania	33	33	0	0	0	0
Luxembourg	8	2	2	0	0	4
Malta	NA	NA	NA	NA	NA	NA
Republic of Moldova	13	2	0	4	7	0
Monaco	0	0	0	0	0	0
Montenegro	0	0	0	0	0	0
Netherlands	382	288	81	13	NA	NA
Norway	NA	NA	NA	NA	NA	NA
Poland	177	103	17	10	39	8
Portugal	NA	NA	NA	NA	NA	NA
Romania	682	NA	682	NA	NA	NA
Russian Federation	NA	NA	NA	NA	NA	NA
Serbia	37	NA	NA	NAP	33	4
Slovakia	38	3	0	0	34	1
Slovenia	29	14	0	NAP	15	NAP
Spain	1 012	NA	NA	NA	NA	450
Sweden	146					
Switzerland	36	11	1	1	18	5
The FYROMacedonia	0	0	0	0	0	0
Turkey	1 155	243	13	29	60	810
Ukraine	99	NA	NA	NA	NA	NA
UK-England and Wales	364	36	63	77	133	55
UK-Northern Ireland	NA	1	NA	NA	1	NA
UK-Scotland	12	2	0	0	4	6
Average	166	40	40	8	29	59
Median	37	14	1	0	4	3
Minimum	0	0	0	0	0	0
Maximum	1 155	288	682	77	184	810
Israel	NA	NA	NA	NA	NA	NA

## Comments:

**Azerbaijan:** one lawyer committed a crime and was excluded from the Bar

**Belgium:** only one of the two Bar associations (OVb) provided the number of sanctions imposed: 49 in total, (16 reprimands, 23 suspensions and 10 dismissals) out of 64 decisions delivered in 2012 by the three Flemish disciplinary boards.

**Czech Republic:** "other" includes 16 discharges from disciplinary punishment, 8 discontinuances of proceedings, 11 acquittals of disciplinary charges, 2 suspensions of the proceedings.

**Denmark:** the Disciplinary Board decided in 2012 on a total number of 1533 cases. Of these, 341 cases resulted in a sanction as indicated.

**Estonia:** the significant difference between the number of disciplinary proceedings initiated in 2012 and the number of sanctions imposed in 2012 can be explained with the following: in 24 cases the disciplinary proceeding was terminated because the elements of a disciplinary offence were not found (however, in 7 cases the attention was drawn by the court of honour to the need for compliance with requirements professional ethics), in 1 case the complaint was withdrawn, in 1 case a compromise was found and in 8 cases the decision was not made in 2012 but in 2013.

**Finland:** in 2012, 70 % of the cases handled in the Disciplinary Board did not call for any action. Three lawyers were disbarred from the Bar.

**France:** disciplinary sanctions are warning, reprimand, temporary prohibition to practise and being struck off the list. In addition, the publication of any disciplinary sanction may be ordered as an additional sanction. There may be a stay of execution for temporary prohibitions. Fines are not among the disciplinary sanctions provided for by law.

**Georgia:** in 15 cases the commission decided not to impose disciplinary responsibility and in 26 cases disciplinary proceedings are not finished yet.

**Hungary:** under Hungarian rules, 'Removal' and 'Disbarment' are the same disciplinary sanctions.

Hungarian rules distinguish between disciplinary procedures (for misconduct and malpractice, mainly initiated by clients, courts or authorities) and procedures initiated for ethical complaints (mainly initiated by a lawyer against the objected lawyer complaining of unethical professional behaviour).

**Iceland:** the "other" is the repayment of fees to the client. In 2012 the disciplinary committee, working under the auspices of the Icelandic Bar Association, reprimanded 1 lawyer and decided that 1 lawyer should repay fees to his/her client. "Other" refers to 2 lawyers, who had their licences suspended by the Ministry of the Interior because they did not have the required insurance.

**Ireland:** of the 48 complaints against barristers in 2013, 4 were upheld. The following sanctions were imposed: Reprimand: 1; Fine: 2; Other (disbarment): 1.

**Italy:** "other" includes 12 proceedings concerning disbarment sanctions. Out of the 61 reprimand cases, 36 concerned private reprimand, and 25 public censure. Not listed are 9 precautionary suspension cases, since it cannot be considered as a sanction, even though it temporarily removes the lawyer's right to practice law. The difference between the number of initiated disciplinary proceedings (305) and the number of sanctions (136) is due to the fact that the proceedings concluded in 2012 were 210 while the others are still pending.

**Lithuania:** the total number of 33 reprimands includes reprimands and public reprimands.

**Luxembourg:** there was as well 1 removal and 1 reprimand.

**Malta:** proceedings are held in closed chambers and are private, as a result of which, no data is published.

**Montenegro:** from a total of five disciplinary proceedings that were conducted against a lawyer in 2012 three proceeding were combined into one, because all of them were against the same lawyer and the charges were related to the same events. In this process, disciplinary measures - removal from the list of lawyers for a period of one year - were imposed. In the other two disciplinary proceedings the indictment was dismissed.

**Netherlands:** the total number of sanctions includes 47 cases in which no specific sanction was pronounced. They could be considered as cases of "reprimand".

**Norway:** the Norwegian statistics system uses other categories than those mentioned in the table.

**Serbia:** there were 4 cases of disbarment

**Slovenia:** in disciplinary proceedings the following sanctions can be pronounced: warning, reprimand, fine and denial of the right to practise the legal profession (for max 5 years).

**Spain:** over the 450 sanctions, 100 are a written provision, and 350 are disciplinary sanctions.

**Sweden:** the number indicates sanctions pronounced in 2012 exclusively in cases of breach of professional ethics. The sanctions are the following, sorted by level of gravity: reprimand, warning, warning combined with a fine and disbarment. In 2012 the number of actions taken were the following: Statement: 21; Reprimand: 55; Warning: 10; Warnings + Fine: 8; Disbarment: 0; Total: 94 (statements included).

**Turkey:** there is not a significant increase between 2010 and 2012. Unlike 2010, the figures have been collected from the bar associations directly. Therefore 2012 data are much more accurate than the figures of previous years.

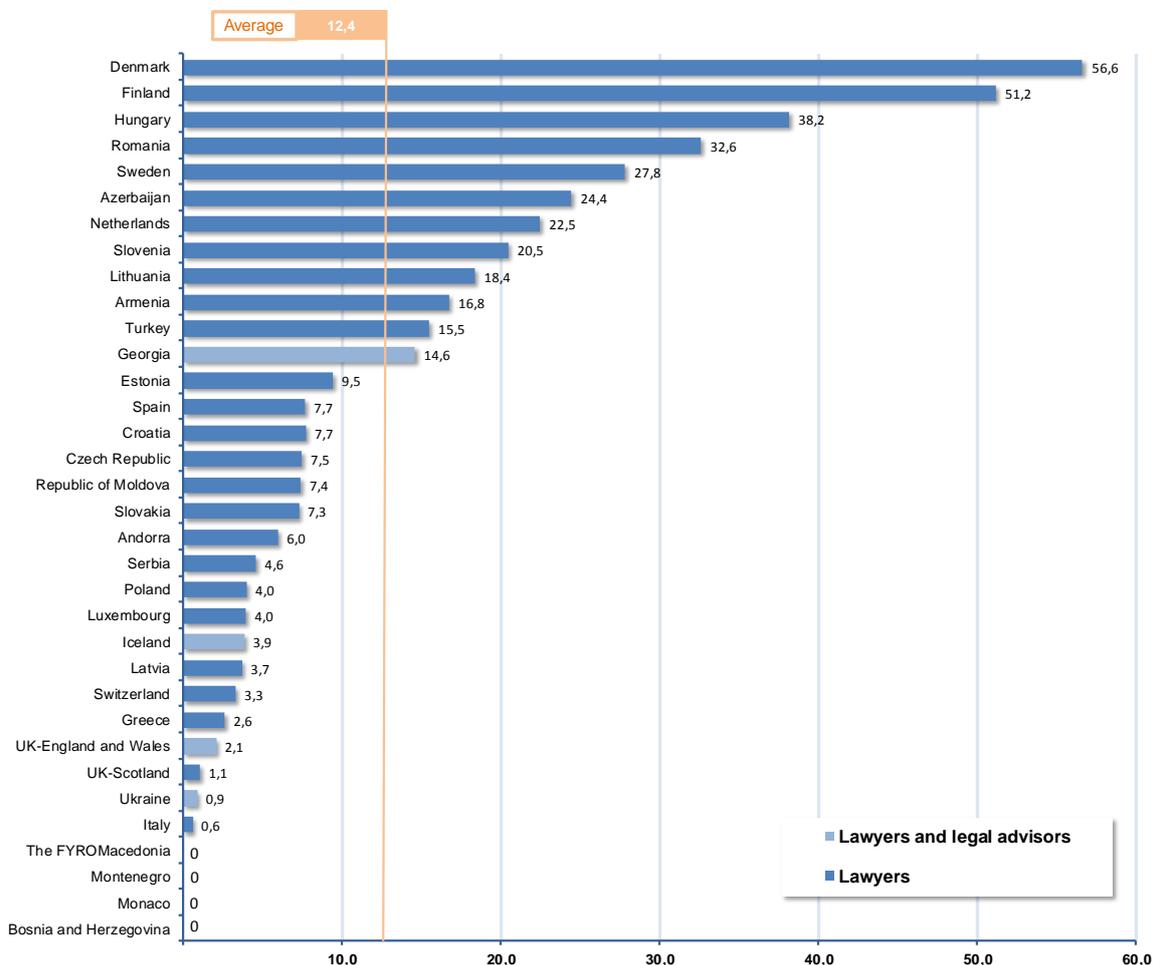
**UK-England and Wales:** 282 Solicitors + 82 Barristers = total of 364; 23 Solicitors + 13 Barristers = total of 36; 56 Solicitors + 7 Barristers = total of 63; 77 Solicitors + 0 Barristers = total of 77; 94 Solicitors + 39 Barristers = total of 133; 32 Solicitors + 23 Barristers = total of 55. As to the solicitors, the above figures relate specifically to disciplinary proceedings heard at the Solicitors Disciplinary Tribunal. This does not include reprimands and fines issued directly by the SRA. The statistics relate to decisions made at the SDT during 2012. It should be noted that one set of proceedings issued can end in multiple sanctions against multiple individuals. This means the number of sanctions will be higher than matters being heard at the SDT. As to the barristers, "other" are as follows: Disbarred 13, Advised 8, Other 2.

The reason for the difference between data provided for 2010 and 2012 is that data provided in 2010 only included barristers and did not include solicitors. This was noted in the comments sections of these two questions in the 2010 cycle. For 2012, data for both solicitors and barristers is provided giving a fuller and larger total that differs substantially from the 2010 cycle.

While knowledge of rules concerning penalties is improving in each state, the figures about the different sanctions pronounced against lawyers are still very fragmentary.

The most common imposed sanction is reprimand, followed by suspension.

**Figure 12.15 Number of sanctions pronounced per 1.000 lawyers in 2012 (Q162)**



The highest level of sanctions concerns, on the one hand, northern Europe countries (**Denmark, Finland and Sweden**) and on the other hand, **Hungary and Romania**, probably in different ways. While comparing the number of proceedings initiated with the number of sanctions pronounced, it can be highlighted that states which initiate a significant number of proceedings against lawyers do not often pronounce the highest number of sanctions.

The fact that, in a state, within the same year, there were more sanctions than proceedings (**UK- England and Wales**) can be explained by the fact that one proceeding may finally lead to several sanctions and also by the fact that the proceedings initiated at the end of the year can lead to sanctions pronounced only the following year.

#### **12.4 Trends and conclusions**

Between 2006 and 2012, the number of lawyers has increased in Europe in almost all the member states, which confirms the trend already observed in the previous exercises. The financial and economic crisis has – until now – no measurable consequences on this variable at European level. The development of the rule of law in Eastern Europe and the role of law in economic regulation contribute to this trend.

The number of lawyers is characteristic of various geographical zones in Europe. The states of Southern Europe have the highest number of lawyers compared to the population. Societies are more prone to litigation in such states than in the states of Northern Europe. It is not possible to establish a direct link between the number of lawyers per capita and the volume and lengths of proceedings. However, there are correlations between this number and judicialization within states, measured for example by the number of civil cases per capita, the rate of appeals and cassation, which have a significant impact on the workload of the courts or not.

The sole presence of a sufficient number of lawyers is not enough to ensure an effective protection of individuals' rights. The organization of the profession, the quality of training, the respect of ethical rules, the transparency of fees allow the improvement of the quality of the entire judicial system.

## Chapter 13. Execution of court decisions

The effective execution of court decisions is an integral part of compliance with Article 6 of the European Convention on Human Rights. Having regard to the volume of cases currently before the Court and the recent instruments adopted by the Council of Europe in the field of execution, the CEPEJ has decided to pay particular attention to this issue in this Report<sup>29</sup>.

In non-criminal matters, the Committee of Ministers of the Council of Europe has adopted two relevant Recommendations in the area of enforcement. Enforcement is defined in Recommendation Rec(2003)17 on enforcement as "*the putting into effect of judicial decisions, and also other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged*". This Recommendation is primarily oriented towards the civil law area, whilst Recommendation Rec(2003)16 is focused on the execution of judicial decisions in administrative matters.

The CEPEJ has adopted its Guidelines for a better implementation of the existent Council of Europe Recommendation on enforcement (CEPEJ(2009)11REV2).

It is difficult to assess the smooth execution of court decisions in civil or commercial matters on the basis of relevant statistics, as execution is not automatic: it is up to the parties who have won the case to decide, where appropriate, whether to request or not the execution of the court decision. Therefore, this report does not focus on the rate of execution of court decisions, but mainly on the organisation of the execution and the role of enforcement agents. The CEPEJ has, however, tried to assess the length of enforcement procedures, which is counted within the principle of "reasonable time of proceedings" considered by the case-law of the European Court of Human Rights.

In Recommendation Rec(2003)17, the tasks and duties of the enforcement agents are described, as well as the enforcement procedure and the rights and duties of the claimant and the defendant. The enforcement agent is defined in this Recommendation as "*a person authorised by the state to carry out the enforcement process irrespective of whether that person is employed by the state or not*". This definition is used for the purposes of this report. The definition includes the fact that enforcement agents can be public officials (i.e. judges) or private officers (i.e. bailiffs). Moreover, both statuses may coexist within a state or entity (mixed system).

The enforcement of sentences in criminal matters is of a different nature. It concerns the state authority, often under the supervision of the judges and depends on the choices of criminal policies.

The International Union of Bailiffs (UIHJ) was consulted for the drawing up of this chapter.

### 13.1 Enforcement of court decisions in civil, commercial and administrative law

#### 13.1.1 Organisation of the profession

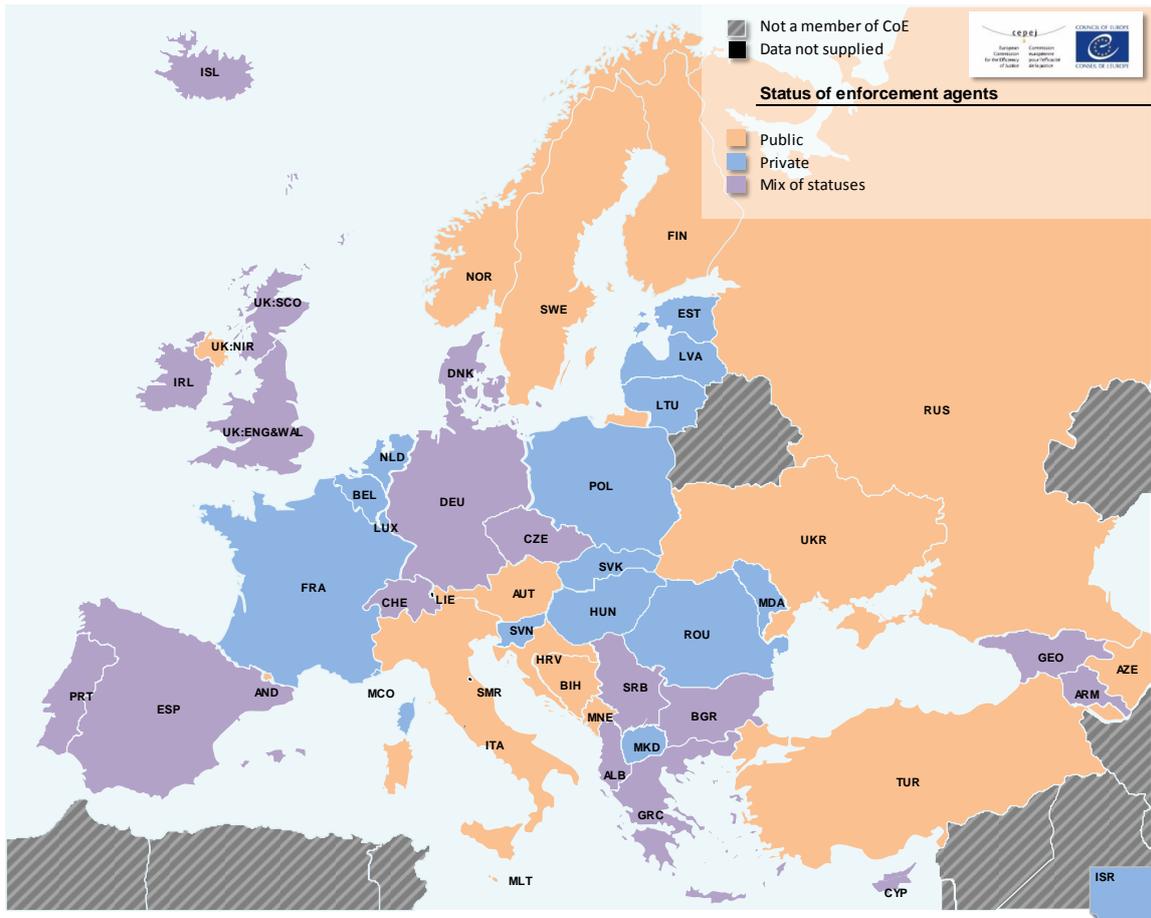
##### *Status of enforcement agents*

Almost all the member states or entities have defined a status for their enforcement, including bailiffs. However, in several states, enforcement agents are clerks and deputy judges (**Denmark**), juridical secretaries (**Spain**) or lawyers (**Iceland**). In **Switzerland**, all systems exist, and they vary from one canton to another.

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<sup>29</sup> The CEPEJ has also carried out a specific study on this issue: J. LHUILLIER, D. SOLENIK, G. NUCERA, J. PASSALACQUA, *Enforcement of court decisions in Europe*, CEPEJ Studies No. 8, 2009.

Figure 13.1 Status of enforcement agents in civil matter (Q171)



In some states, the enforcement agents practice exclusively within a private profession governed by public authorities. In other states or entities, bailiffs work in a public institution. The rest of the member states or entities combine the status of bailiffs working in public institutions with bailiffs practicing within a private profession, or combine private or public status with other enforcement agents who could themselves have public or private status, such as in **Belgium** (notaries, enforcement agents in tax affairs), in **France** (*huissiers du Trésor*, responsible for the collection of taxes), in **Germany** (Senior Judicial Officers), in **Ireland** (sheriff/solicitor and revenue sheriffs responsible for the collection of taxes), in **Portugal** (Court officials) and in **UK-Scotland** (Sheriff Officers and Messengers at Arms).

To conclude, the status of enforcement agents can be public, private or mixed. Enforcement agents have private status in 15 states or entities; in 15 states or entities, they have a public status and there is a mix of statuses in 17 states or entities. A comparison with the previous CEPEJ study confirms clearly the trend already noticed between 2006 and 2010: state enforcement agents still exist in many states and entities, but the European trend is in favour of reducing their existence, sometimes in favour of a mix of statuses (where private and state statuses coexist) but mainly in favour of a private status.

## Skills required to enter the profession of enforcement agent

The professional training of enforcement agents is important for the proper administration of enforcement itself. It is essential to instruct future execution agents on their responsibilities in order to guarantee a uniformity of skills.

In Europe, candidates for enforcement agent posts are often required to have completed a practical traineeship and/or hold a law degree. The prerequisite skills for enforcement agents should place them at the same level of expectation and training as judges and lawyers.

**Table 13.2 Status and initial training or examination to enter the profession of enforcement agent in civil matter (Q171, Q172)**

States/entities	Status					Specific initial training or examination
	Type of status	Judges	Bailiffs practising as private professionals under the authority (control) of public authorities	Bailiffs working in a public institution	Other enforcement agents	
Albania	Mix of statuses					
Andorra	Public status					
Armenia	Mix of statuses					
Austria	Public status					
Azerbaijan	Public status					
Belgium	Private status					
Bosnia and Herzegovina	Public status					
Bulgaria	Mix of statuses					
Croatia	Public status					
Cyprus	Mix of statuses					
Czech Republic	Mix of statuses					
Denmark	Mix of statuses					
Estonia	Private status					
Finland	Public status					
France	Private status					
Georgia	Mix of statuses					
Germany	Mix of statuses					
Greece	Mix of statuses					
Hungary	Private status					
Iceland	Mix of statuses					
Ireland	Mix of statuses					
Italy	Public status					
Latvia	Private status					
Lithuania	Private status					
Luxembourg	Private status					
Malta	Public status					
Republic of Moldova	Private status					
Monaco	Private status					
Montenegro	Public status					
Netherlands	Private status					
Norway	Public status					
Poland	Private status					
Portugal	Mix of statuses					
Romania	Private status					
Russian Federation	Public status					
Serbia	Mix of statuses					
Slovakia	Private status					
Slovenia	Private status					
Spain	Mix of statuses					
Sweden	Public status					
Switzerland	Mix of statuses					
The FYROMacedonia	Private status					
Turkey	Public status					
Ukraine	Public status					
UK-England and Wales	Mix of statuses					
UK-Northern Ireland	Public status					
UK-Scotland	Mix of statuses					
<b>Number of countries</b>		<b>4</b>	<b>25</b>	<b>26</b>	<b>9</b>	<b>36</b>
Israel	Private status					
<b>Specific initial training or examination</b>						
Public status		15		8		
Private status		15		15		
Mix of statuses		17		13		

Regarding the training provided to future agents and the possible existence of a final selection procedure, different systems can be noted among the member states. Around 80% of the responding states or entities (37 out of 47) indicated that there was specific initial training (as opposed to the “in-service training” provided to already practising agents) or an examination for entry into the profession of enforcement agent. It is noticeable that there is a slight increase in this trend (75% in 2012) and that initial training in the field of enforcement is becoming a European standard.

There appears to be a link between the status of agents (public or private) and the existence of initial training or a final selection process.

The states or entities with no specific initial training or examination often entrust the enforcement of court decisions to civil servants working in the administration of justice under the authority of a competent judge (**Andorra**) or to court employees (**Denmark, Montenegro**); when they use the service of bailiffs, such bailiffs usually work directly in a public institution (**Bosnia and Herzegovina, Denmark, Finland, Ireland, Norway, Serbia**), or at least, within a system mixing statuses (private and public), like in **UK-England and Wales** or **Switzerland**.

Conversely, initial trainings or final selection procedures are requested in all the states where the enforcement agents have exclusively a private status.

### ***Organisational structure***

Whether national, regional and/or local, the degree of centralisation of the professional body – where one exists – varies greatly among member states or entities, without any relevant link to the status of the profession.

In a majority of European states (27), the structure is purely national. The obvious preference for a national structure could be explained by the fact that there is a great interest in creating a group dynamic by establishing a feeling of professional identity while homogenizing competences and practices. A national structure can also be more relevant for a state primarily seeking an official spokesperson for the whole profession. It can also be more relevant for the profession, which makes economies of scale regarding communication with its members, in particular when the number of bailiffs is reduced or depending on the size of the country: in this way, the profession can speak to the state with a single voice. This is the most widespread system.

The profession can also be organised only at a regional level (**Austria**) or at a local level (**UK-Northern Ireland**). A low degree of centralisation probably fosters the presence at the local level. Such proximity makes it easier to take into account the problems enforcement agents encounter and thus, communicate such problems upwards. However, it is certainly also more difficult to have an overall view of the difficulties encountered by the profession.

Some member states choose neither a purely national body nor a purely regional or local body. They tend to have multiple levels, either to combine the advantages of systems or because of the number of enforcement agents, the structure or the size of the state (**Azerbaijan, Belgium, France, Germany, Greece, Poland, Switzerland, Ukraine**).

**Table13.3 Bodies organising the profession of enforcement agents (Q173)**

States/entities	National body	Regional body	Local body	Not organised
Albania	Yes	No	No	No
Andorra	No	No	No	Yes
Armenia	Yes	No	No	No
Austria	No	Yes	No	No
Azerbaijan	Yes	Yes	No	No
Belgium	Yes	No	Yes	No
Bosnia and Herzegovina	No	No	No	Yes
Bulgaria	Yes	No	No	No
Croatia	No	No	No	Yes
Cyprus	Yes	No	No	No
Czech Republic	Yes	No	No	No
Denmark	No	No	No	Yes
Estonia	Yes	No	No	No
Finland	Yes	No	No	No
France	Yes	Yes	Yes	No
Georgia	Yes	No	No	No
Germany	Yes	Yes	No	No
Greece	Yes	Yes	No	No
Hungary	Yes	No	No	No
Iceland	Yes	No	No	No
Ireland	No	No	No	Yes
Italy	Yes	No	No	No
Latvia	Yes	No	No	No
Lithuania	Yes	No	No	No
Luxembourg	Yes	No	No	No
Malta	No	No	No	Yes
Republic of Moldova	Yes	No	No	No
Monaco	No	No	No	Yes
Montenegro	No	No	No	Yes
Netherlands	Yes	No	No	No
Norway	No	No	No	Yes
Poland	Yes	Yes	No	No
Portugal	Yes	No	No	No
Romania	Yes	No	No	No
Russian Federation	Yes	No	No	No
Serbia	Yes	No	No	No
Slovakia	Yes	No	No	No
Slovenia	Yes	No	No	No
Spain	Yes	No	No	No
Sweden	Yes	No	No	No
Switzerland	Yes	Yes	Yes	No
The FYROMacedonia	Yes	No	No	No
Turkey	Yes	No	No	No
Ukraine	Yes	Yes	Yes	No
UK-England and Wales	No	No	No	Yes
UK-Northern Ireland	No	No	Yes	No
UK-Scotland	Yes	No	No	No
<b>Number of countries</b>	<b>35</b>	<b>8</b>	<b>5</b>	<b>10</b>
Israel	No	No	No	Yes

Yes	Yes
No	No

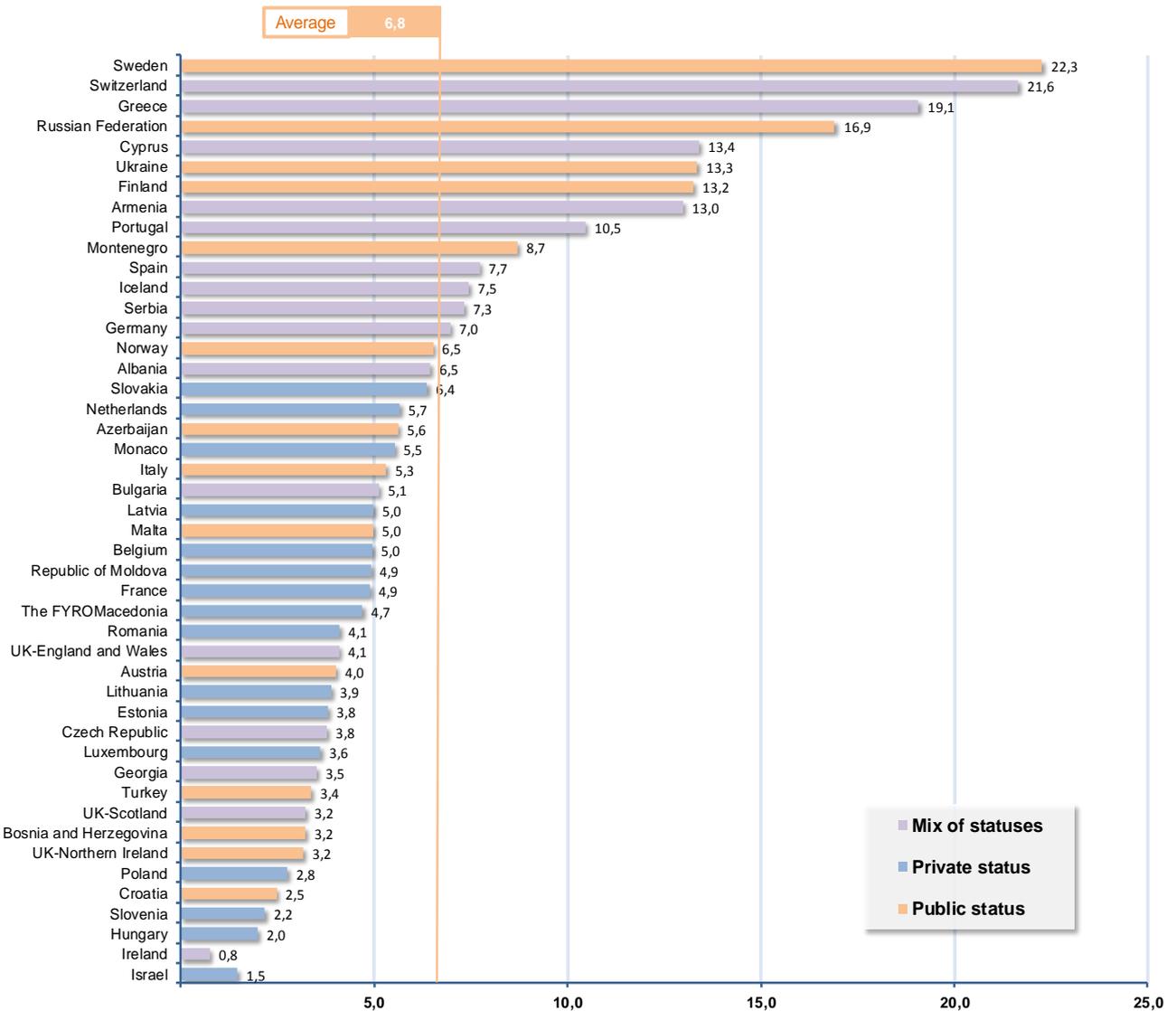
## Number of enforcement agents

In 2012, all member states provided the number of their enforcement agents. This information is presented in Table 13.4. In order to increase comparability, the status of enforcement agents in each state or entity is also reported, along with a curve of the evolution between 2004 and 2012.

**Table 13.4 Number of enforcement agents according to their status. Evolution in absolute values between 2004 and 2012 (Q170)**

States/entities	Status	2004	2006	2008	2010	2012	Evolution 2004-2012
Albania	Mix of statuses	114		114	180	182	
Andorra	Public status	5	5	6	NAP	NAP	
Armenia	Mix of statuses	225	249	281	349	393	
Austria	Public status	369	364	356	358	340	
Azerbaijan	Public status	400	480	500	500	520	
Belgium	Private status	525	534	534	530	553	
Bosnia and Herzegovina	Public status		142	124	115	124	
Bulgaria	Mix of statuses	255	399	385	379	374	
Croatia	Public status				71	106	
Cyprus	Mix of statuses	184	129	50	169	116	
Czech Republic	Mix of statuses	553	539	539	484	398	
Denmark	Mix of statuses		251				
Estonia	Private status	51	48	47	48	49	
Finland	Public status	758	735	734	736	719	
France	Private status	3256	3281	3263	3237	3209	
Georgia	Mix of statuses	116	130	137	137	158	
Germany	Mix of statuses	4995	4920		5862	5596	
Greece	Mix of statuses		2119	2108	2110	2110	
Hungary	Private status	193	197	197	183	198	
Iceland	Mix of statuses	26	24	24	24	24	
Ireland	Mix of statuses	40	40	40	40	35	
Italy	Public status	5366	4609	3550	3365	3177	
Latvia	Private status	114	137	97	116	102	
Lithuania	Private status	124	129	127	118	117	
Luxembourg	Private status	19	19	19	19	19	
Malta	Public status	17	19	25	20	21	
Republic of Moldova	Private status	304	365	303	177	175	
Monaco	Private status	2	2	2	2	2	
Montenegro	Public status	26	44	51	54	54	
Netherlands	Private status	363	768	939	949	950	
Norway	Public status	355	362	356	330	330	
Poland	Private status	590	644	663	845	1066	
Portugal	Mix of statuses	486	534	835	706	1097	
Romania	Private status	333	385	440	504	876	
Russian Federation	Public status	18625	24586	24468	23986	24244	
Serbia	Mix of statuses	NA	591	31	413	528	
Slovakia	Private status	262	270	278	305	345	
Slovenia	Private status	49	42	45	46	45	
Spain	Mix of statuses				4456	3559	
Sweden	Public status	1200	800	2321	2098	2127	
Switzerland	Mix of statuses		1094	1489	1892	1740	
The FYROMacedonia	Private status		56	67	79	97	
Turkey	Public status	1113	1138	1932	2606	2558	
Ukraine	Public status	5661	7089		6357	6069	
UK-England and Wales	Mix of statuses	4000		2971	2915	2321	
UK-Northern Ireland	Public status	15	15	16	16	58	
UK-Scotland	Mix of statuses	200	200		25	172	
Average		1315	1360	1231	1509	1490	
Median		262	362	281	349	345	
Minimum		2	2	2	2	2	
Maximum		18625	24586	24468	23986	24244	
Israel	Private status					118	

**Figure 13.5 Number of enforcement agents per 100.000 inhabitants in 2012 (Q1, Q170, Q171)**



The evolution of the number of bailiffs is very different from country to country and this is independent of their status being private, public, or mixed.

**Comments:**

**Albania:** the number of bailiffs increased due to the implementation of reforms undertaken by the Ministry of Justice to improve the system of execution of court decisions through the establishment and functioning of the Institute of private bailiff service.

**France:** the number of bailiffs has been relatively stable for the last ten years. On the other hand, the number of offices for bailiffs has been constantly decreasing during the same period, (approximately 2500 offices in 2002 and approximately 1900 in 2012), due to the suppression of posts and the regrouping of bailiffs.

**Republic of Moldova:** the new law on bailiffs adopted in 2010 introduced a new private system for enforcement agents. Their number has considerably decreased from 303 in 2008 to 175 in 2012.

**Poland:** Poland is currently trying to decrease the length of enforcement proceedings conducted by bailiffs. This data is not disclosed in the CEPEJ evaluation reports because enforcement cases statistics include only court cases. Therefore, the fight to reduce the length of proceedings by the bailiffs undertaken by the Ministry of Justice should lead to an increase of the number of bailiffs (research undertaken by the Ministry of Justice showed that an increase in the number of bailiffs would resolve the problem). The increase rate is high because of the low initial number of bailiffs.

**Romania:** the high increase in the number of bailiffs between 2008 and 2012 (nearly 100% increase) is mainly due to the bank enforcement agents' merger to the profession in 2010.

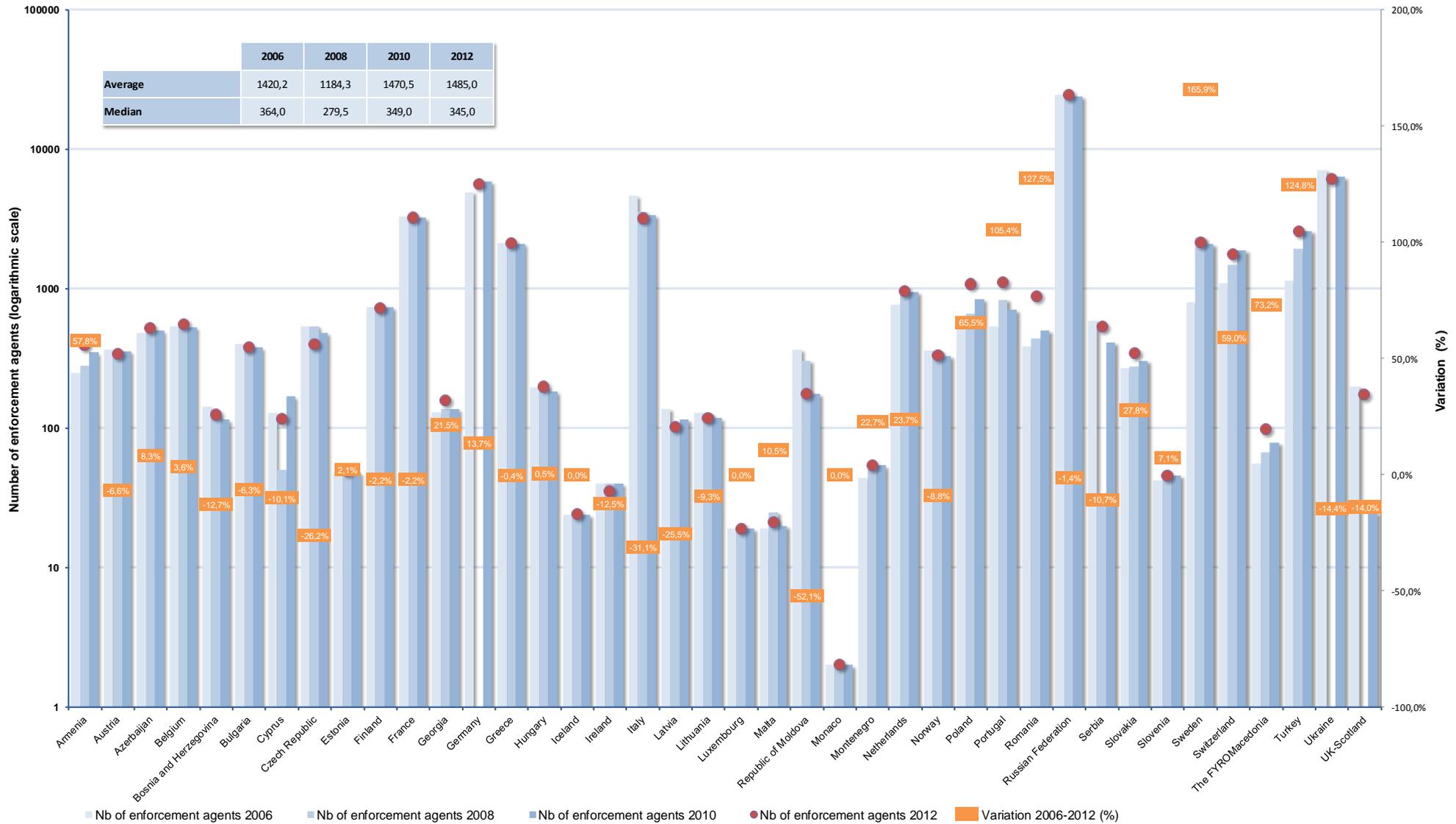
**UK England and Wales :** total – 2 321, in which 378 County courts bailiffs, 62 enforcement agents, 299 civil enforcement agents, 1 582 certified bailiffs. We can note a constant decrease of near 20% of the number of bailiffs compared to 2010. This decrease concerns essentially the bailiffs of the public sector.

**Russian Federation:** the figure reflects the number of bailiffs responsible for enforcement proceedings employed at the end of 2012.

**Switzerland:** the variation is calculated from data extrapolated from 18 to 19 cantons, according to the years considered:  
2008: 1489 (extrapolation from data from 19 cantons)  
2010: 1892 (extrapolation from data from 18 cantons)  
The increase can be explained because the agents within the prosecution services are explicitly included in the statistics as from 2010 only; in previous years, only some cantons had included them.

**Turkey:** the number of enforcement agents was increased in order to fill the needs caused by the existing workloads (approximately 13 million files), shortage of staff and the established new enforcement offices. The figures provided reflect the actual rate of increase (34,89% in 2010). The situation became more stable in 2012.

Figure 13.6 Variation in the number of enforcement agents between 2006 and 2012 (Q170)



In 2012, 29 States or entities were below the European average (6,81 agents per 100.000 inhabitants, a number that increased from 5,2 in 2010). Only 9 states (**Portugal, Armenia, Finland, Ukraine, Cyprus, the Russian Federation, Greece, Switzerland and Sweden**) had more than 10 agents per 100.000 inhabitants in 2012.

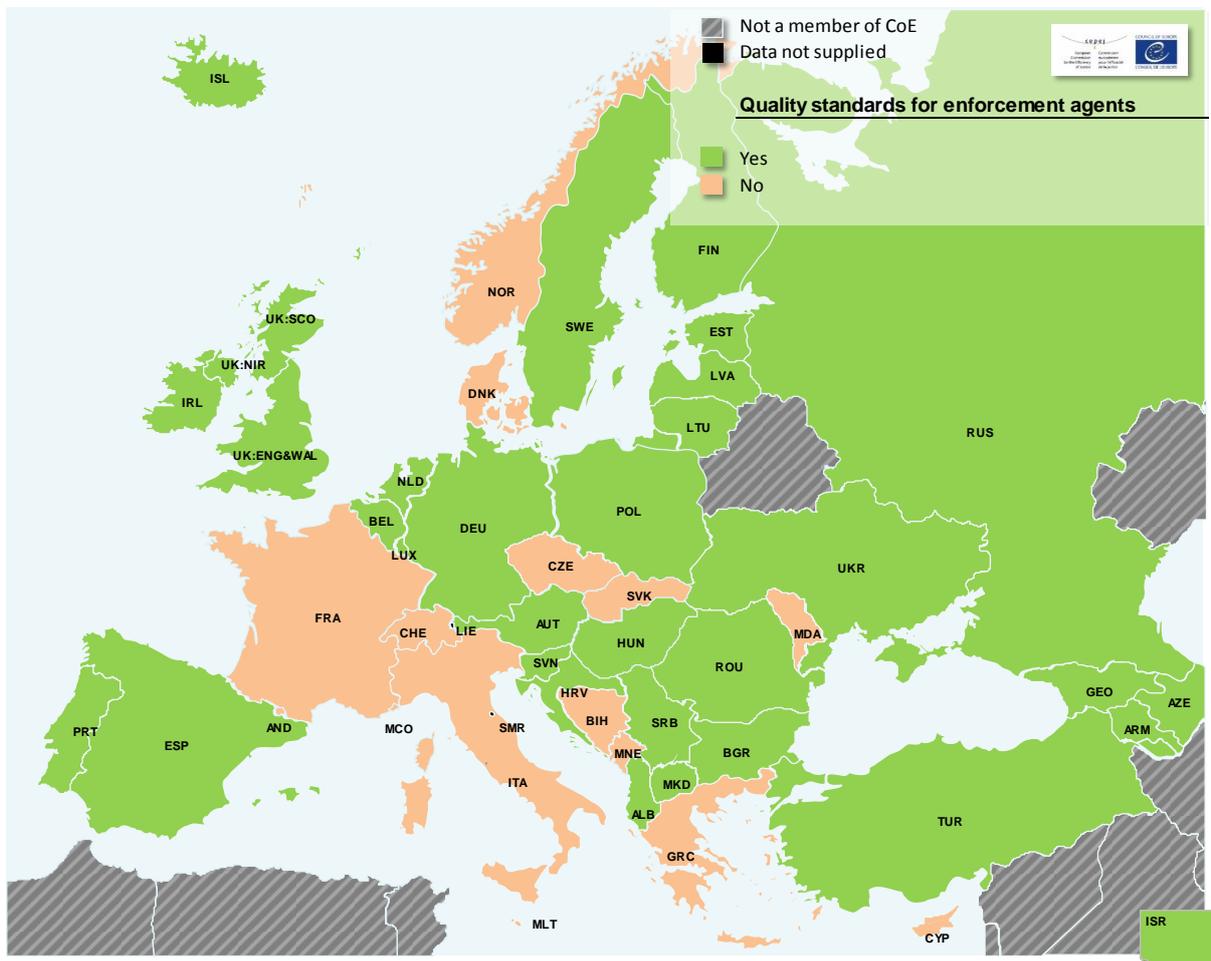
Taking into account only states where enforcement agents are bailiffs practicing exclusively as private professionals and states or entities where bailiffs work exclusively in public institutions (states or entities with a mix of statuses being excluded), a correlation becomes visible between the status and the number of bailiffs. For several states or entities, it was possible to calculate the number of bailiffs according to their status. In Figure 13.5, three groups of states or entities are presented: the median in the group of “public bailiffs” is clearly higher (8 bailiffs per 100.000 inhabitants) than the median in the group of “private bailiffs” (4,3 bailiffs per 100.000 inhabitants), while the median in the group with mix of statuses is the highest (8,4 bailiffs per 100.000 inhabitants).

It is interesting to compare these values with the 2010 evaluation. The median has slightly increased for the private bailiffs (3,8 bailiffs for 100.000 inhabitants in 2010). This can partly be explained by the increase in the number of bailiffs in certain countries (**Poland, Romania**). The median has significantly increased for the public bailiffs (6,2 bailiffs for 100.000 inhabitants in 2010). The increase of nearly 50% in the states or entities with a mix of statuses (5,7 bailiffs for 100.000 inhabitants in 2010) may seem surprising. This can be explained by the changes of statuses between 2010 and 2012. **Armenia, UK-Scotland, Spain, Ireland, Iceland** and **Serbia** appeared in the public sector in 2010. In the 2012 data, two countries which presented low averages changed sector in 2010: **Croatia** (1,6 bailiff for 100.000 inhabitants in 2010) appears today in the public status sector, while the **Netherlands** (5,7 bailiffs for 100.000 inhabitants in 2010) appears today in the private status sector.

### 13.1.2 Efficiency of enforcement services

#### The existence of quality standards

Figure 13.7 Quality standards formulated for enforcement agents (Q179)



Quality standards for enforcement agents exist in more than half of the states or entities which have enforcement agents. In Europe, the variation between 2008 and 2012 shows clearly that the trend is to adopt this type of standards.

The existence of quality standards is an important guarantee for the proper enforcement of court decisions. Through their dissemination, these standards help ensure greater efficiency of the enforcement services and equality before the law<sup>30</sup>. For example, in **Germany**, they are used to standardise the procedure and for quality assurance. There are different kinds of quality standards:

- the most frequent ones are Codes of Ethics / Manual of Deontology / *etc.* (**Albania, Azerbaijan, Belgium, etc.**). These standards are most of the time quite similar from one country to another: for example, in **Georgia**, the criteria are professionalism, respectability, managerial and communication skills in line with the Code of Conduct.
- some standards are based on the collection of statistical data, determined in advance and harmonised to increase comparability. They can be discussed with the enforcement agents themselves. For example, in **Finland**, there are annual negotiations between the local enforcement authorities and the National Administrative Office for Enforcement. These negotiations are part of the method called “Management by results”. The quality standards are defined in the course of negotiations. The main standards used are length of proceedings and the efficiency of the special collecting. Targets defined for the long term are for example the following: reduction of the number of debtors, reduction of the collection charges.
- some States mix the two aspects, such as **Poland**, where there are procedural standards of quality (timeframe, time limits, *etc.*), stipulated by law, and ethical standards (professionalism, proficiency, secrecy, *etc.*), established by the body, which handles the development of dignity and ethical standards.
- some standards are less common among member states, and it is not obvious to consider them as quality standards of enforcement. For example, in **Armenia**, standards are standards of health.
- some standards are based on the proposition of standards made by the CEPEJ to member states<sup>31</sup>, for example in **Portugal**.

There appears to be a link between the status of agents (public or private) and the existence of quality standards. The states or entities where enforcement of court decisions is entrusted to public agents, had no significant differences between agents subject to standards and agents having none. In states where enforcement agents have an exclusively private status, the proportion of quality standards has always been noticeably higher. Indeed, since 2010 the proportion of states having standards is increasing.

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<sup>30</sup> On the European Standards on execution, please see: CEPEJ, Guidelines for a better implementation of the existing Council of Europe Recommendation on enforcement, CEPEJ(2009)11REV2.

<sup>31</sup> See CEPEJ, Guidelines for a Better Implementation of the Existing CEPEJ Recommendations on Enforcement - Rec (2009)11.

**Authorities responsible for the supervision or control of activities**

**Table 13.8 Authority responsible for the supervision and the control of enforcement agents (Q178)**

States/entities	Professional body	Judge	Ministry of justice	Public prosecutor	Other
Albania	No	No	Yes	No	No
Andorra	No	Yes	No	No	No
Armenia	No	No	Yes	No	No
Austria	Yes	No	No	No	No
Azerbaijan	No	Yes	Yes	No	No
Belgium	Yes	Yes	No	Yes	No
Bosnia and Herzegovina	No	Yes	No	No	No
Bulgaria	Yes	No	Yes	No	No
Croatia	No	Yes	No	No	No
Cyprus	No	No	No	No	Yes
Czech Republic	Yes	Yes	Yes	No	No
Denmark	No	No	No	No	Yes
Estonia	Yes	No	Yes	No	No
Finland	No	No	No	No	Yes
France	Yes	Yes	Yes	Yes	No
Georgia	No	No	Yes	No	Yes
Germany	No	No	No	No	Yes
Greece	No	Yes	Yes	Yes	No
Hungary	Yes	Yes	Yes	No	No
Iceland	No	No	Yes	No	No
Ireland	No	Yes	No	No	No
Italy	No	No	Yes	No	No
Latvia	Yes	Yes	Yes	No	No
Lithuania	Yes	Yes	Yes	No	No
Luxembourg	Yes	Yes	No	Yes	No
Malta	No	No	No	No	Yes
Republic of Moldova	Yes	Yes	Yes	No	No
Monaco	No	Yes	No	Yes	No
Montenegro	No	Yes	No	No	No
Netherlands	Yes	No	Yes	No	Yes
Norway	No	No	No	No	Yes
Poland	Yes	Yes	Yes	No	No
Portugal	No	No	Yes	No	Yes
Romania	Yes	No	No	No	No
Russian Federation	No	No	Yes	No	Yes
Serbia	Yes	No	Yes	No	No
Slovakia	No	No	Yes	No	No
Slovenia	Yes	No	Yes	No	Yes
Spain	No	No	Yes	No	No
Sweden	No	No	No	No	Yes
Switzerland	No	Yes	Yes	No	No
The FYROMacedonia	Yes	No	Yes	No	No
Turkey	No	No	Yes	Yes	No
Ukraine	No	No	Yes	No	No
UK-England and Wales	Yes	Yes	Yes	No	No
UK-Northern Ireland	No	No	No	No	Yes
UK-Scotland	Yes	No	No	No	No
<b>Number of countries</b>	<b>19</b>	<b>22</b>	<b>29</b>	<b>6</b>	<b>13</b>
Israel	Yes	No	Yes	No	No

Yes	Yes
No	No

Supervision of activities means the process whereby an authority makes observations to the enforcement agent on his or her working methods (scheduling problems, lack of courtesy, etc.); it is a sort of simplified control that does not involve actual examination of a complaint, but the aim of which is to guarantee the proper administration of justice. Control of activities means control of the lawfulness of the actions carried out by enforcement agents.

Supervision and control of the activities of enforcement agents are almost systematic.

In civil matters, prosecutors are responsible for the supervision and control of enforcement agents in 6 states, but they are never the sole responsible body. In all cases, prosecutors share this task with a judge. They also share this task with a professional order (**Belgium, France, Luxembourg**) or with the Ministry of Justice (**France, Greece, Turkey**).

The very existence of a professional body leads to the assumption that states use it to supervise and control enforcement agents. Indeed, 19 states or entities have chosen a professional body as the competent authority. This may seem a low proportion in view of the large number of member states or entities having a professional body (37 states). The proportion of professional bodies with powers to supervise and control enforcement agents appears to be linked to the status of enforcement agents: a professional body is more likely to be the competent authority when enforcement agents have a private status.

In 29 states or entities, the Ministry of Justice is entrusted with the supervision of the activity of enforcement agents. The proportion is higher where enforcement agents are bailiffs working in a public institution (14 states out of 29). 22 states or entities (14 in the previous exercise) have decided to entrust judges with the responsibility to supervise and control the activities of enforcement agents.

In practice, supervisions are often supported by the analysis of statistical data or by inspections. In **Portugal**, a specific Commission (Commission for the Efficiency of the Enforcement Procedures) was set up in 2009: the aim is to create a system for monitoring the execution and to gather information useful for issuing recommendations on the efficiency of the system and the training of enforcement agents.

## Complaints against enforcement agents

Table 13.9 Quality standards and reasons for complaints concerning enforcement procedures (Q179, Q183)

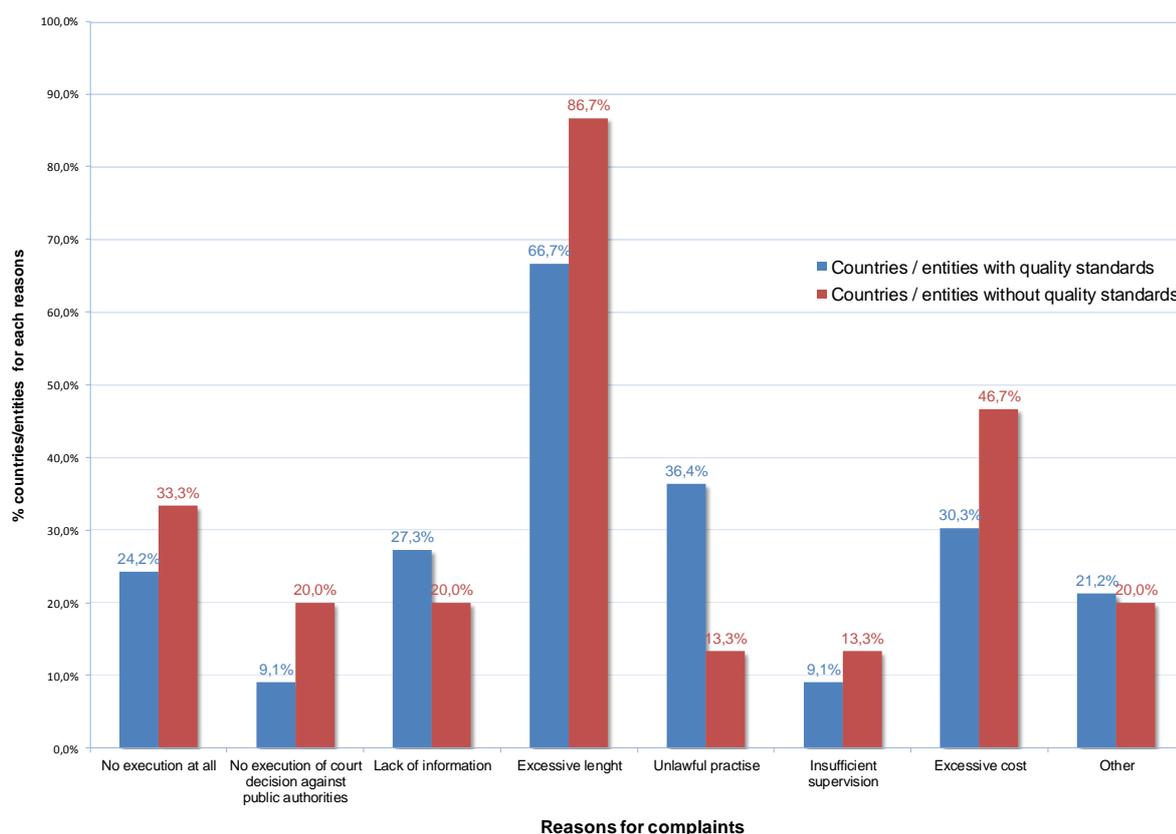
States/entities	Quality standards in State / entitie	Reason of complaints							
		No execution at all	No execution of court decision against public authorities	Lack of information	Excessive lenght	Unlaw ful practise	Insufficient supervision	Excessive cost	Other
Albania									
Andorra									
Armenia									
Austria									
Azerbaijan									
Belgium									
Bosnia and Herzegovina									
Bulgaria									
Croatia									
Cyprus									
Czech Republic									
Denmark									
Estonia									
Finland									
France									
Georgia									
Germany									
Greece									
Hungary									
Iceland									
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Luxembourg									
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Netherlands									
Norway									
Poland									
Portugal									
Romania									
Russian Federation									
Serbia									
Slovakia									
Slovenia									
Spain									
Sweden									
Switzerland									
The FYROMacedonia									
Turkey									
Ukraine									
UK-England and Wales									
UK-Northern Ireland									
UK-Scotland									
<b>Number of countries</b>	<b>32</b>	<b>13</b>	<b>6</b>	<b>12</b>	<b>34</b>	<b>14</b>	<b>5</b>	<b>17</b>	<b>10</b>
Israel									

Yes  
 No

“Excessive length of enforcement procedures” is the main ground for complaint in the member states (34 states or entities). This number is the same as in 2010. The second most frequent ground for complaint concerns “excessive cost of enforcement procedures”; 17 states or entities declared that they are confronted with this problem (20 in 2010). Compared to 2010, in 2012 there has been a slight decrease of complaints for “unlawful practices” (14 in 2012 to 17 in 2010) and “non-execution” (13 in 2012 to 14 in 2010). On the contrary, there is a slight increase of the following complaints: “lack of information” (12 in 2012 to 10 in 2010), “other” (10 in 2012 to 7 in 2010), “non-execution of court decisions against public authorities” (6 in 2012 to 5 in 2010) and “insufficient supervision” (5 in 2012 to 4 in 2010).

It is also interesting to relate the complaints with the existence of quality standards (see figure 13.10).

**Figure 13.10 Reasons emphasized by states or entities for complaints concerning enforcement procedures, according to presence - or not - of quality standards (Q179, Q183)**



The absence of quality standards aggravates the phenomenon for five out of eight reasons for complaints: complete non-execution, non-execution of court decisions against public authorities, excessive length, insufficient supervision and excessive cost.

It can be observed that the absence of quality standards has no impact on the reasons for complaints for unlawful practices. This can be explained by the fact that the existence of quality standards can help identify certain unacceptable behaviour, which would be reflected in an increase in the number of complaints due to these behaviours.

If the most common grounds of complaint are taken into consideration, it is notable that the states with quality standards give the “main complaints” in the following order: 1) excessive length, 2) unlawful practices, 3) excessive cost. The states that do not have quality standards give the “main complaints” in a different order: 1) excessive length; 2) excessive cost, 3) no execution at all.

### ***Disciplinary proceedings and disciplinary sanctions***

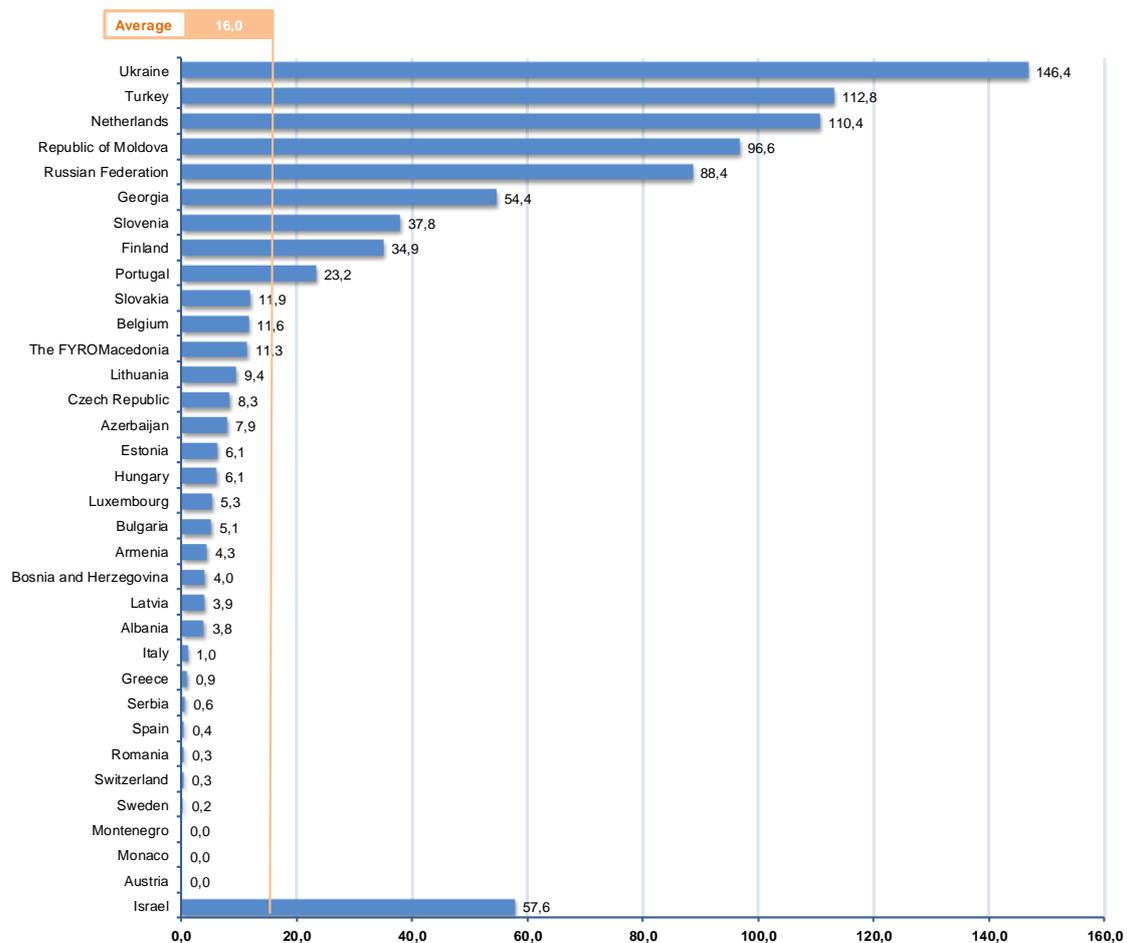
The number of complaints lodged against enforcement agents seems to be a useful indicator. It should, however, be analysed with extreme caution for two reasons. Firstly, the number of complaints is to some extent increased by proceedings that have nothing to do with breaches of discipline (proceedings concerning the principle of the enforcement itself or the principle of the court decision, proceedings to apply for postponement of enforcement and payment). Secondly, disciplinary proceedings and efficiency of services are not synonymous: the larger or smaller number of proceedings – including in relative terms compared with the number of enforcement agents working – can in no case be interpreted as a lack of competence or honesty on behalf of enforcement agents, since the number of proceedings may equally well be an indication of a more litigious society or simply of greater zeal or suspicion on the part of the disciplinary authorities.

It is interesting to compare the proceedings for breach of professional ethics and for professional inadequacy with the existence of quality standards. The proportion of states with these sorts of proceedings is higher in member states that have quality standards. These findings are not surprising: quality standards can help define the concepts (professional ethics and professional inadequacy) and may be used to justify proceedings when the objective is not reached.

Table 13.11 Number of disciplinary proceedings initiated against enforcement agents in 2012 (Q187)

States/entities	Total	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Albania	7		6	1	
Andorra	0	0	0	0	0
Armenia	17				
Austria	0	0	0	0	0
Azerbaijan	41	12	27	2	0
Belgium	64			0	0
Bosnia and Herzegovina	5	0	5	0	0
Bulgaria	19				19
Croatia					
Cyprus					
Czech Republic	33	3	30		
Denmark					
Estonia	3	2	1	0	0
Finland	251				251
France					
Georgia	86				86
Germany					
Greece	20	0	15	5	0
Hungary	12		10	2	
Iceland					
Ireland					
Italy	33	11	0	22	0
Latvia	4		4		
Lithuania	11	1	10	0	0
Luxembourg	1	1			
Malta					
Republic of Moldova	169	169	0	0	0
Monaco	0	0	0	0	0
Montenegro	0	0	0	0	0
Netherlands	1049				
Norway					
Poland					
Portugal	255			22	35
Romania	3	1	1	1	0
Russian Federation	21427				8864
Serbia	3	3			
Slovakia	41	0	41		0
Slovenia	17	2	15	0	0
Spain	13	10	3		
Sweden	5	4	0	1	0
Switzerland	5	0	4	1	0
The FYROMacedonia	11	0	11	0	0
Turkey	2886				
Ukraine	8884				
UK-England and Wales					
UK-Northern Ireland					
UK-Scotland					
<b>Average</b>	<b>1040</b>	<b>10</b>	<b>8</b>	<b>3</b>	<b>402</b>
<b>Median</b>	<b>15</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>0</b>
<b>Minimum</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Maximum</b>	<b>21427</b>	<b>169</b>	<b>41</b>	<b>22</b>	<b>8864</b>
Israel	68				

**Figure 13.12 Number of disciplinary proceedings initiated against enforcement agents per 100 agents in 2012 (Q170, Q187)**



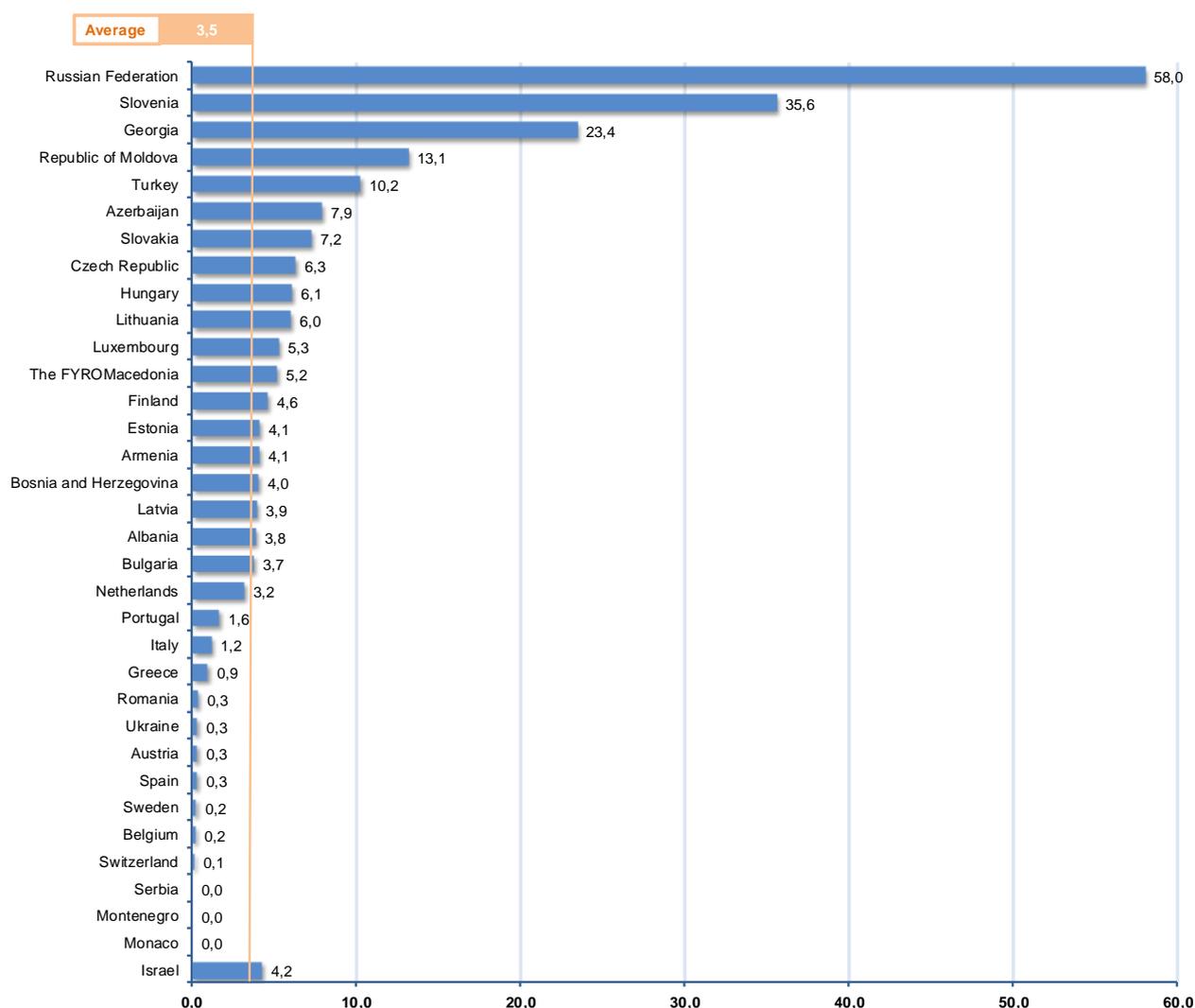
The number of disciplinary measures against enforcement agents cannot be considered a sufficient indicator of the system's efficiency, and neither can the number of proceedings. A large number of measures in a state – including measures in relation to the number of working enforcement agents – may equally well reflect a society's high tendency to litigate or to be more rigorous.

Considering the 35 states or entities which were able to provide figures on the sanctions pronounced, reprimand appears to be the main sanction for 9 of them; the second main sanction is a fine (7 states: **Albania, Bulgaria, the Czech Republic, Greece, Hungary, Republic of Moldova and Slovakia**); then come suspensions and dismissals. Five other states (**Finland, Georgia, Lithuania, the Russian Federation and Turkey**) report that other types of measures are the most frequent.

**Table 13.13 Number of sanctions pronounced against enforcement agents in 2012 (Q188)**

States/entities	Total	Reprimand	Suspension	Dismissal	Fine	Other
Albania	7		1		6	
Andorra	0	0	0	0	0	0
Armenia	16	11		5		
Austria	1	0	0	0	0	1
Azerbaijan	41	25	4	8		4
Belgium	1	1	0	0	0	
Bosnia and Herzegovina	5	5	0	0	0	0
Bulgaria	14		2		8	4
Croatia						
Cyprus						
Czech Republic	25	4	0	0	12	9
Denmark						
Estonia	2	1	0	0	1	0
Finland	33	1	0	0	0	32
France						
Georgia	37	9			1	27
Germany						
Greece	20	0	0	5	15	0
Hungary	12	3	3	1	5	0
Iceland						
Ireland						
Italy	37	13	16	3	5	0
Latvia	4	2				2
Lithuania	7	3	0	0	0	4
Luxembourg	1	0	1	0	0	0
Malta						
Republic of Moldova	23	3	1	4	12	3
Monaco	0	0	0	0	0	0
Montenegro	0	0	0	0	0	0
Netherlands	30	28	0	2	0	0
Norway						
Poland						
Portugal	18	3	2	6	3	4
Romania	3	0	1	2	0	0
Russian Federation	14055	2994	0	99	0	10962
Serbia	0					
Slovakia	25	10	0	3	12	0
Slovenia	16	12	0	0	4	0
Spain	10	2	7			1
Sweden	5	4	0	0	0	1
Switzerland	2	0	0	1	0	1
The FYROMacedonia	5	1	0	0	4	
Turkey	262	58		17	41	146
Ukraine	18	11				7
UK-England and Wales						
UK-Northern Ireland						
UK-Scotland						
<b>Average</b>	<b>433</b>	<b>103</b>	<b>1</b>	<b>6</b>	<b>5</b>	<b>386</b>
<b>Median</b>	<b>11</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Minimum</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Maximum</b>	<b>14055</b>	<b>2994</b>	<b>16</b>	<b>99</b>	<b>41</b>	<b>10962</b>
Israel	5	0	5	0	0	0

**Figure 13.14 Number of sanctions pronounced against enforcement agents per 100 agents in 2012 (Q170, Q188)**



### 13.1.3 Efficiency of enforcement measures

The efficiency of enforcement measures is assessed in terms of systems for monitoring the execution, timeframes for the enforcements and costs.

#### **Systems for monitoring the execution**

32 states or entities have a system for monitoring the procedures, and nearly half of them have a system for monitoring the enforcement of court decisions against public authorities (most of them have systems of statistical data or inspections, please see above).

Some states or entities (15) have specific mechanisms for executing court decisions rendered against public authorities. It is interesting to compare these mechanisms with the systems for monitoring the execution: 13 states or entities do not have any specific mechanisms for executing court decisions rendered against public authorities, nor any systems of monitoring the execution; 13 states have a specific mechanism for executing court decisions rendered against public authorities and also have a system for monitoring the execution; 20 states or entities do not have a specific mechanism for executing court decisions rendered against public authorities, but have a system for monitoring the execution; 2 states have a specific mechanism for executing court decisions rendered against public authorities, but do not dispose of any system for monitoring the execution (**Greece** and **Romania**).

**Table 13.15 Specific mechanisms for executing court decisions rendered against public authorities and systems for monitoring the execution (Q181, Q182)**

States/entities	Specific mechanisms for executing court decisions against public authorities	Systems for monitoring the execution
Albania	No	Yes
Andorra	No	No
Armenia	No	No
Austria	Yes	Yes
Azerbaijan	No	Yes
Belgium	Yes	Yes
Bosnia and Herzegovina	Yes	Yes
Bulgaria	Yes	Yes
Croatia	Yes	Yes
Cyprus	No	No
Czech Republic	No	Yes
Denmark	No	No
Estonia	No	No
Finland	No	Yes
France	Yes	Yes
Georgia	Yes	Yes
Germany	Yes	Yes
Greece	Yes	No
Hungary	No	Yes
Iceland	No	Yes
Ireland	No	No
Italy	No	No
Latvia	No	Yes
Lithuania	No	Yes
Luxembourg	No	Yes
Malta	No	No
Republic of Moldova	Yes	Yes
Monaco	No	Yes
Montenegro	No	Yes
Netherlands	No	No
Norway	No	No
Poland	No	Yes
Portugal	Yes	Yes
Romania	Yes	No
Russian Federation	Yes	Yes
Serbia	No	Yes
Slovakia	Yes	Yes
Slovenia	No	Yes
Spain	No	Yes
Sweden	No	Yes
Switzerland	No	No
The FYROMacedonia	No	Yes
Turkey	No	Yes
Ukraine	No	Yes
UK-England and Wales	No	No
UK-Northern Ireland	Yes	Yes
UK-Scotland	No	No
<b>Number of countries</b>	<b>15</b>	<b>32</b>
Israel	No	Yes
	Yes	Yes
	No	No

### ***Notification timeframes***

It is difficult to determine a foreseeable timeframe for enforcing decisions, as, in a number of states or entities, the enforcement depends not only on the steps taken by the creditor, but also on the solvency of the debtor. However, the timeframe for notification, which depends also on its procedural form, may be approached in a concrete way either through an enforcement agent or in a simplified form by registered mail. So the timeframe depends either on the diligence of the enforcement agent or on the more or less proper operation of the postal service. Each state or entity in such a situation evaluates an average timeframe as an indicator of efficiency, as it is in the interest of credibility of justice that the litigant who has obtained a decision sees it notified and enforced in a timely manner.

**Table 13.16 Estimated timeframe for the notification of a court decision on debt recovery to a person living in the city where the court is sitting (Q186)**

States/entities	Between 1 and 5 days	Between 6 and 10 days	Between 11 and 30 days	More than 30 days
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
Yes	19	10	6	1
No	17	26	30	35
Not available (NA)	9	9	9	9
Not applicable (NAP)	2	2	2	2
Israel				

Of the 37 states or entities having provided the information, 29 stated that it is possible to notify the relevant person within a timeframe of between 1 and 10 days. Only **Greece** indicated needing more than 30 days to notify the decision to the concerned party. Compared to 2010, 5 states have reduces these timeframes: **Croatia, Latvia, Lithuania, Netherlands** and **Serbia**. Two states (**Bulgaria** and **Greece**) declared that these timeframes had increased.

### **Enforcement costs**

In matters other than criminal ones, it is generally up to the creditor to estimate the cost of enforcing a decision with respect to the costs of the enforcement. Out of 47 states or entities, 3 have replied that users

cannot easily establish what the fees of the enforcement agents will be (**Andorra, Bosnia and Herzegovina and Montenegro**).

**Table 13.17 Enforcement fees (Q174, Q175 and Q176)**

States/entities	Transparency of the enforcement fees for court users	Enforcement fees may be freely negotiated	Enforcement fees are regulated by law
Albania	Yes	No	No
Andorra	No	No	No
Armenia	Yes	No	Yes
Austria	Yes	No	Yes
Azerbaijan	Yes	No	Yes
Belgium	Yes	No	Yes
Bosnia and Herzegovina	No	No	Yes
Bulgaria	Yes	No	Yes
Croatia	Yes	No	Yes
Cyprus	Yes	No	Yes
Czech Republic	Yes	No	Yes
Denmark	Yes	No	Yes
Estonia	Yes	No	Yes
Finland	Yes	No	Yes
France	Yes	No	Yes
Georgia	Yes	No	Yes
Germany	Yes	No	Yes
Greece	Yes	No	Yes
Hungary	Yes	No	Yes
Iceland	Yes	No	Yes
Ireland	Yes	No	Yes
Italy	Yes	No	Yes
Latvia	Yes	No	Yes
Lithuania	Yes	No	Yes
Luxembourg	Yes	No	Yes
Malta	Yes	No	Yes
Republic of Moldova	Yes	No	Yes
Monaco	Yes	No	Yes
Montenegro	No	No	No
Netherlands	Yes	Yes	Yes
Norway	Yes	No	Yes
Poland	Yes	No	Yes
Portugal	Yes	No	Yes
Romania	Yes	No	Yes
Russian Federation	Yes	No	Yes
Serbia	Yes	No	Yes
Slovakia	Yes	No	Yes
Slovenia	Yes	No	Yes
Spain	Yes	No	Yes
Sweden	Yes	No	Yes
Switzerland	Yes	No	Yes
The FYROMacedonia	Yes	No	Yes
Turkey	Yes	No	Yes
Ukraine	Yes	No	Yes
UK-England and Wales	Yes	No	Yes
UK-Northern Ireland	Yes	No	Yes
UK-Scotland	Yes	No	Yes
<b>Number of countries</b>	<b>44</b>	<b>3</b>	<b>44</b>
Israel	Yes	No	Yes

Yes	Yes
No	No

The enforcement costs consist of the enforcement expenses *stricto sensu* (cost of the procedures) and of the fee of the enforcement agent, which can depend – when it exists – on the result obtained. In questions 174 and 175, states were invited to indicate whether the fees were regulated by law or freely negotiated between the enforcement agent and the creditor. In almost all states (45), procedural costs are strictly regulated by the state. Only **Ireland, the Netherlands** and **UK-England and Wales** indicated that the fees are freely negotiated, but even in these circumstances, it is in reality an intermediary situation: enforcement costs are mainly regulated by law; however, they may also be negotiated. This question is very important, as, whether in private or mixed systems, enforcement agents are paid in part or in total by enforcement fees, or by bonuses resulting therefrom. It must be noted in addition that when the fees are freely negotiated, it should be only for the creditor: debtors' fees should be determined by law.

Where procedural costs are regulated by the state, this allows a relevant supervision of the cost of the act, but does not make it possible to check its expediency. It therefore often comes with the possibility of lodging a complaint against the enforcement agent and/or allowing the judge to decide on the payment of unjustified costs by the enforcement agent.

### 13.2 Execution of court decisions in criminal matters

The CEPEJ has deliberately excluded the prison system from its evaluation of justice systems, since it is addressed by other bodies of the Council of Europe (for instance, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT, the Council for Penological Co-operation – PC-CP<sup>32</sup>). Therefore this chapter is limited to a few data directly linked with the functioning of courts.

The enforcement of decisions in criminal matters is, in almost all the member states, in the hands of a public structure. However, there is great disparity among the competent authorities.

In 25 states, execution is entrusted to a judge specifically in charge of the enforcement of decisions in criminal matters. Other bodies may intervene, apart from the judge: prosecutors (**Albania, France, Germany, Greece, Italy, Lithuania, Luxembourg, Monaco, the Netherlands, Poland** and **Turkey**), prison and probation services (34 states or entities), police (**Cyprus, Ireland, Malta, Norway, Sweden, UK-Northern Ireland**), a specialised entity from the Ministry of Justice (**Finland, Serbia, Slovenia**) or a bailiff (**Albania, Spain** (in exceptional cases), **France, Georgia, Latvia, the Russian Federation**).

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<sup>32</sup> AEBI M.F., DELGRANDE N., Council of Europe Annual Penal Statistics SPACE I: Survey 2009. 111 p., Council of Europe, 2011.

Table 13.18 Authority in charge of the enforcement of decisions in criminal matters (Q189)

States/entities	Judge	Public prosecutor	Prison and probation services	Other authority
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Number of countries</b>	<b>25</b>	<b>11</b>	<b>34</b>	<b>18</b>
Israel				

	Yes
	No

It should be noted that only 15 states or entities have carried out studies on the effective collection of fines. In all these states, fines are imposed by a criminal jurisdiction: **Azerbaijan, Belgium, Estonia, Finland, France, Ireland, Netherlands, Poland, Ireland, Romania, Russian Federation, Sweden, UK-England and Wales, UK-Northern Ireland and UK-Scotland**. In states where the fines are not imposed by a judge, there are no studies on this topic. Where such studies exist, they are generally carried out annually. Generally, these studies are done out annually. **Ireland and UK-Scotland** have reported a recovery rate of between 80% and 100% (very high) for fines recovered by criminal courts. In **Estonia, France, the Netherlands, Poland, UK-England and Wales and UK-Northern Ireland** the reported recovery rate was between 50% and 79% (moderate). No country reported a low rate (less than 50%).

**Table 13.19 Evaluation by studies of recovery rates of fines decided by a criminal court (Q190, Q191)**

States/entities	Studies evaluating recovery rates of fines decided by a criminal court	80-100%	50-79%	Less than 50%	Not estimated
Albania	No	No	No	No	No
Andorra	No	No	No	No	No
Armenia	No	No	No	No	No
Austria	No	No	No	No	No
Azerbaijan	Yes	No	No	No	No
Belgium	Yes	No	No	No	No
Bosnia and Herzegovina	No	No	No	No	No
Bulgaria	No	No	No	No	No
Croatia	No	No	No	No	No
Cyprus	No	No	No	No	No
Czech Republic	No	No	No	No	No
Denmark	No	No	No	No	No
Estonia	Yes	No	Yes	No	No
Finland	Yes	No	No	No	Yes
France	Yes	No	Yes	No	No
Georgia	No	No	No	No	No
Germany	No	No	No	No	No
Greece	No	No	No	No	No
Hungary	No	No	No	No	No
Iceland	No	No	No	No	No
Ireland	Yes	Yes	No	No	No
Italy	No	No	No	No	No
Latvia	No	No	No	No	No
Lithuania	No	No	No	No	No
Luxembourg	No	No	No	No	No
Malta	No	No	No	No	No
Republic of Moldova	No	No	No	No	No
Monaco	No	No	No	No	No
Montenegro	No	No	No	No	No
Netherlands	Yes	No	Yes	No	No
Norway	No	No	No	No	No
Poland	Yes	No	Yes	No	No
Portugal	No	No	No	No	No
Romania	Yes	No	No	No	Yes
Russian Federation	Yes	No	No	No	Yes
Serbia	No	No	No	No	No
Slovakia	No	No	No	No	No
Slovenia	No	No	No	No	No
Spain	No	No	No	No	No
Sweden	Yes	No	No	No	Yes
Switzerland	No	No	No	No	No
The FYROMacedonia	No	No	No	No	No
Turkey	No	No	No	No	No
Ukraine	No	No	No	No	No
UK-England and Wales	Yes	No	Yes	No	No
UK-Northern Ireland	Yes	No	Yes	No	No
UK-Scotland	Yes	Yes	No	No	No
<b>Number of countries</b>	<b>14</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>6</b>
Israel	Yes	No	No	No	Yes

Yes  
No

### 13.3 Trends and conclusions

The organisation of the profession, the efficiency of the enforcement services and the efficiency of the enforcement measures all contribute to the effective execution of court decisions. Considering Article 6 of the European Convention on Human Rights, this is a relevant indicator of fair administration of justice.

Since 2004, the overall number of enforcement agents has continued to grow.

The status of enforcement agents in civil matter is highly variable in the different member states or entities. Judges can play a role in the enforcement procedure, but in most cases their role is limited to the supervision of such procedures. However, a clear trend is noticeable since 2006: the proportion of countries using only state enforcement agents is decreasing while the proportion of countries using private enforcement agents only – or at least a mix of statuses – is growing constantly.

It is essential that enforcement agents be provided with reliable and suitable training. Therefore, it can be noticed that the proportion of countries where a specific initial training exists (as opposed to the “in-service training” given to already practising agents) has increased since 2008. Entrance exams and initial training in the field of enforcement are clearly becoming European standards. These should be highlighted as essential in order to provide enforcement agents with adequate qualifications for applying enforcement proceedings efficiently and reasonably, while safeguarding the fundamental rights and individual freedoms.

In Europe, the variation between 2008 and 2012 shows clearly that the trend is to adopt standards of quality for enforcement within the member states.

It is therefore coherent that the control of such activity applies not only to the consistency of the proceedings undertaken according to the law, but also to the opportunity of the acts taken by the enforcement agent. To this end, the CEPEJ European Standards on execution<sup>33</sup> are now unanimously recognized as a reference point among practitioners.

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<sup>33</sup> CEPEJ, Guidelines for a better implementation of the existing Council of Europe's Recommendation on enforcement, CEPEJ(2009)11REV2.

## Chapter 14. Notaries

A notary is a legal official who has been entrusted by the public authority with the safeguarding of the freedom of consent and the protection of the rightful interests of individuals. A signature by the notary confers authenticity to legal acts. Furthermore, notaries have duties that exceed the simple authentication of acts and, indeed, often advise citizens about the different possibilities available regarding the adoption of acts and their legal consequences.

As a guarantor of legal security, the notary has an important role to play in limiting litigation between parties. Thereby, he/she is a major actor in preventive justice.

A notary is generally in charge of drawing up and receiving legal deeds, acknowledging signatures and statements, providing evidence, ensuring that documents comply with the law and, in some states or entities, issuing subpoenas or executing court decisions.

### 14.1 Status, number and functions

Notarial offices are widespread in member states. Out of the 47 responding states or entities, only **Serbia** reported that this office was not yet a separate profession within its legal system, but a reform on notaries, adopted in 2011, will enter into force on 1 September 2014.

In most states or entities (28), notaries are private professionals. Most of the time, the exercise of the profession is governed by public authorities (27), which implies that they practice an independent function, although supervised by a public authority. However, in some countries there is no control from the public authorities, as is the case in **Sweden** and **UK-England and Wales**. The second most common status of notaries (11 states or entities) is a public one.

In the light of this, it is important to make a distinction between the Latin notaries and the “public notaries”, who do not have the same competencies. The Latin notaries are public officers who are tasked by the state authority to authenticate legal deeds. They practice their profession as liberals such as in **Belgium, France, Luxembourg** or. The public notaries, for their part, are officials who are not authorized to authenticate legal deeds and can only certify signatures.<sup>34</sup>

In **Denmark**, the function of notary is an integrated function of the district courts. In **Iceland**, the 24 district commissioners act as *notarius publicus* (Public Notaries). In **Bosnia and Herzegovina, Estonia, Georgia, Greece, Hungary** and **Slovakia** notaries are directly appointed by the Minister of Justice. In the **Russian Federation**, there are notaries who are employed in public notary offices, as well as private practitioners.

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<sup>34</sup> The notion of authentication of legal deeds is specific to the Latin system.

**Table 14.1 Status of notaries (Q193)**

States/entities	Private professionals (without control from public authorities)	Private professionals under the authority (control) of public authorities	Public agents	Other
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Iceland				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
<b>Yes</b>	<b>3</b>	<b>27</b>	<b>12</b>	<b>6</b>
<b>No</b>	<b>24</b>	<b>10</b>	<b>20</b>	<b>21</b>
<b>Not available (NA)</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>Not applicable (NAP)</b>	<b>17</b>	<b>7</b>	<b>13</b>	<b>19</b>
Israel				

	Yes
	No
	Not available (NA)
	Not applicable (NAP)

**Table 14.2 Status and number of notaries in 2010 and 2012 (Q193). Evolution between 2010 and 2012 (in %)**

States/entities	Private professionals (without control from public authorities)		Private professionals under the authority (control) of public authorities		Public agents		Other		Total number		Evolution 2010-2012
	2010	2012	2010	2012	2010	2012	2010	2012	2010	2012	
Albania			320	443					320	443	↑ 38,44%
Andorra				4						4	NC
Armenia			79	92					79	92	↑ 16,46%
Austria*			491						491	492	↔ 0,20%
Azerbaijan			3	82		149	84		152	166	↗ 9,21%
Belgium					1231	1471			1231	1471	↑ 19,50%
Bosnia and Herzegovina			173	176					173	176	↔ 1,73%
Bulgaria							647	615	647	615	↘ -4,95%
Croatia			308	322					308	322	↔ 4,55%
Cyprus											NC
Czech Republic			450	448					450	448	↘ -0,44%
Denmark											NC
Estonia			97	95					97	95	↘ -2,06%
Finland					136	136			136	136	↔ 0,00%
France			9147	9501					9147	9501	↔ 3,87%
Georgia			207	247					207	247	↑ 19,32%
Germany					7934	7560			7934	7560	↘ -4,71%
Greece											NC
Hungary			315	315					315	315	↔ 0,00%
Iceland											NC
Ireland			196	219					196	219	↑ 11,73%
Italy			4750	4750					4750	4750	↔ 0,00%
Latvia					125	125			125	125	↔ 0,00%
Lithuania			264	268					264	268	↔ 1,52%
Luxembourg					36	36			36	36	↔ 0,00%
Malta						320				320	NC
Republic of Moldova			276	307					276	307	↑ 11,23%
Monaco			3	3					3	3	↔ 0,00%
Montenegro			34	44					34	44	↑ 29,41%
Netherlands			3347	3206					3347	3206	↘ -4,21%
Norway					68	68			68	68	↔ 0,00%
Poland							2188	2348	2188	2348	↗ 7,31%
Portugal			381	370	65	72			446	442	↘ -0,90%
Romania			2191	2476					2191	2476	↑ 13,01%
Russian Federation			7357	7712	55			28	7412	7740	↔ 4,43%
Serbia											NC
Slovakia			335	339					335	339	↔ 1,19%
Slovenia			93	93					93	93	↔ 0,00%
Spain							2986	2955	2986	2955	↘ -1,04%
Sweden	127	195							127	195	↑ 53,54%
Switzerland			1952	2004	670	675			2622	2679	↔ 2,17%
The FYROMacedonia			171	178					171	178	↔ 4,09%
Turkey			1694	1771					1694	1771	↔ 4,55%
Ukraine			5466	5684	1368	1198			6834	6882	↔ 0,70%
UK-England and Wales	845	858							845	858	↔ 1,54%
UK-Northern Ireland				29						29	NC
UK-Scotland								8000		8000	NC
<b>Average</b>	<b>486</b>	<b>527</b>	<b>1485</b>	<b>1471</b>	<b>1076</b>	<b>1068</b>	<b>1940</b>	<b>2789</b>	<b>1546</b>	<b>1629</b>	
<b>Median</b>	<b>486</b>	<b>527</b>	<b>315</b>	<b>311</b>	<b>136</b>	<b>136</b>	<b>2188</b>	<b>2348</b>	<b>318</b>	<b>321</b>	
<b>Minimum</b>	<b>127</b>	<b>195</b>	<b>3</b>	<b>3</b>	<b>36</b>	<b>36</b>	<b>647</b>	<b>28</b>	<b>3</b>	<b>3</b>	
<b>Maximum</b>	<b>845</b>	<b>858</b>	<b>9147</b>	<b>9501</b>	<b>7934</b>	<b>7560</b>	<b>2986</b>	<b>8000</b>	<b>9147</b>	<b>9501</b>	
Israel											

\* These categories are not applicable in Austria, only a total value is available

**Comments:**

**Azerbaijan:** the increase in the number of private notaries results from the trend of the public notaries to adopt the statute of the private ones.

**Belgium:** the total number of notaries in 2012 (1471) includes notaries that are tenured, partners or alternates.

**Bulgaria:** there are 647 open positions for notaries but only 619 are actually occupied.

**Germany:** data as of 1 January 2013.

**Netherlands:** the 3206 notaries include 1807 junior notaries. The number of junior notaries decreased because of the decreasing number of real estate and mortgage deeds.

**Norway:** the calculation of the number of public notaries has also taken into consideration 66 district courts, East-Finmark Chief of Police and the District Governors Office at Svalbard. However, Norwegian Embassies or Consulates abroad and certain public offices with limited notary authority have not been included.

**Sweden:** the substantial increase of the number of notaries is due to the fact that out of 195 notaries, 71 are alternate notaries who were not included in the 2010 data.

**Switzerland:** in many cantons, it is possible to cumulate the professions of notaries and lawyers. Data are from 24 cantons only.

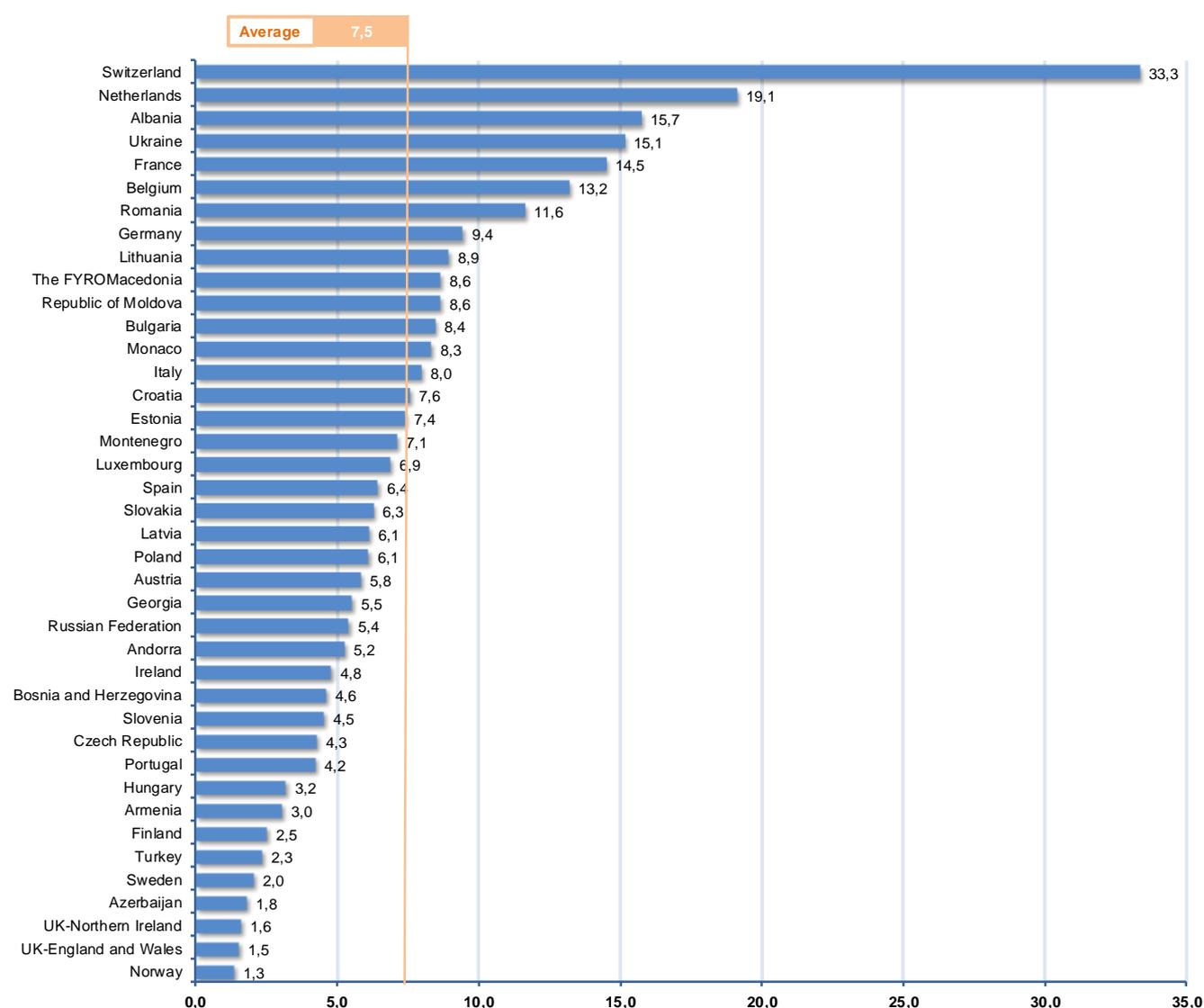
**Russian Federation:** the category “Other” concerns state notaries under the authority of the Ministry of Justice of the Russian Federation.

**UK-England and Wales:** on 1 April 2013, the number of notaries was 812.

**UK-Scotland:** the high number of notaries is due to the fact that some lawyers, members of the Scotland Bar, were appointed as both notaries and lawyers. There is no clear distinction between these two professions explaining the significant number of notaries (about 8000).

The evolution of the total number of notaries between 2010 and 2012 is stable (2,3 %) <sup>35</sup> and the values of many states and entities are in a range between - 5 % and + 5 %. The total number of notaries rose in 23 states or entities, decreased in 7 states or entities, and remained stable in 8 others. A significant increase (more than 10 %) can be noticed in **Albania, Armenia, Belgium, Georgia, Ireland, Republic of Moldova, Montenegro, Romania**, whereas no significant decrease (less than – 10 %) is to be observed. The increase noticed for **Sweden** can be explained by the fact that the number of alternate notaries has been taken into account in the 2012 data, which was not the case for the 2010 data.

**Figure 14.3 Number of notaries per 100.000 inhabitants in 2012 (Q193)**



Considering the diversity in the status and roles of notaries in Europe, it would not be relevant to make comparisons between the member states. For example, the very high number of notaries in **Switzerland** is

<sup>35</sup> To determine this data, the columns of the total number of notaries in 2010 and 2012 (table 14.2) have been taken into consideration. The total number of notaries in 2010 on the one hand, and on the other hand the total number of notaries in 2012 has been added only when the data were available for both years (for example, considering Andorra, the 2012 data has not been included). Then the formula used for this case is:  $\frac{2012\ data - 2010\ data}{2010\ data} \times 100$

due to the fact that in many cantons lawyers may cumulate their functions with those of notaries, such as in **Malta** or **UK-Scotland**. In order to have a consistent picture of the situation of notaries, it has been decided not to include the latter two countries in the graph. Their ratio is 75,9 notaries for 100.000 inhabitants in **Malta** and 150,6 in **UK-Scotland**.

Moreover, it should be borne in mind the status of the notary in each Member State (table 14.1) and his functions (table 14.4) before establishing any correlation with the number of practicing notaries.

**Table 14.4 Functions of notaries – number of states/entities (Q194)**

States/entities	Civil procedure	Legal advice	Authentication of legal deeds and certificates	Other
Albania	Yes	Yes	Yes	Yes
Andorra	Yes	Yes	Yes	No
Armenia	Yes	Yes	Yes	Yes
Austria	Yes	Yes	Yes	Yes
Azerbaijan	Yes	Yes	Yes	No
Belgium	Yes	Yes	Yes	Yes
Bosnia and Herzegovina	Yes	No	Yes	Yes
Bulgaria	Yes	Yes	Yes	Yes
Croatia	Yes	Yes	Yes	No
Cyprus	No	No	Yes	No
Czech Republic	Yes	Yes	Yes	Yes
Denmark	No	No	Yes	No
Estonia	Yes	Yes	Yes	Yes
Finland	No	No	Yes	Yes
France	No	Yes	Yes	No
Georgia	No	Yes	Yes	Yes
Germany	No	No	Yes	Yes
Greece	Yes	No	Yes	No
Hungary	Yes	Yes	Yes	Yes
Iceland	Yes	Yes	Yes	No
Ireland	No	No	Yes	No
Italy	Yes	Yes	Yes	Yes
Latvia	Yes	Yes	Yes	No
Lithuania	No	Yes	Yes	Yes
Luxembourg	Yes	Yes	Yes	No
Malta	Yes	No	Yes	Yes
Republic of Moldova	Yes	Yes	Yes	Yes
Monaco	Yes	Yes	Yes	No
Montenegro	No	No	Yes	Yes
Netherlands	Yes	Yes	Yes	Yes
Norway	No	No	Yes	Yes
Poland	Yes	No	No	Yes
Portugal	No	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes
Russian Federation	No	Yes	Yes	Yes
Serbia	No	No	No	No
Slovakia	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes
Spain	No	Yes	Yes	Yes
Sweden	No	No	Yes	Yes
Switzerland	No	Yes	Yes	Yes
The FYROMacedonia	No	No	Yes	Yes
Turkey	No	No	Yes	Yes
Ukraine	No	No	Yes	Yes
UK-England and Wales	Yes	Yes	Yes	Yes
UK-Northern Ireland	No	No	Yes	No
UK-Scotland	Yes	Yes	Yes	No
<b>Nb of countries</b>	<b>27</b>	<b>30</b>	<b>45</b>	<b>32</b>
Israel	No	No	Yes	No

	Yes
	No

Like in other sectors, the functions of notaries vary considerably according to the various states or entities. Obviously, the main duty notaries provide is the authentication of legal deeds (almost all European states). Only **Israel** indicated that the notary's duty is limited to such authentication of legal deeds and certificates.

In more than half of the states or entities (30), notaries can also provide legal advice. 27 states or entities entrust notaries with the performance of duties within the framework of civil procedures. 32 of the responding states or entities also stated that "other" functions may be performed by notaries. For example, notaries may often receive money and other objects in deposit in order to deliver them to third parties (**Estonia, Hungary, Republic of Moldova, Montenegro, Romania, Russian Federation, Slovenia, Turkey and Ukraine**). In a few states or entities, they can handle complaints regarding bills, cheques, promissory notes or bills of exchange (**Finland, Lithuania, Republic of Moldova, Norway, Romania, Slovenia, Turkey, and Ukraine**). In other states or entities, notaries may be executors of wills, administrators of estates (**Bulgaria, France, Netherlands**) or trustees in bankruptcy and composition proceedings (**Czech Republic**). They provide various services within the framework of real estate transactions and corporate affairs (**Austria, Bosnia and Herzegovina, Denmark, France, Germany, Greece, Netherlands**) and perform different commercial activities (especially in **Spain and Switzerland**). They can also be in charge of the authentication of the contraction of marriage or civil partnerships (**France, Hungary, Netherlands**) and divorce (**Estonia, Hungary, Latvia, Romania**). In **Belgium, Bosnia and Herzegovina and Netherlands**, notaries have the monopoly on the organisation of public sales of property, rents and mortgages. The public notary working in a local register office handles the notarisation of, amongst other things, signatures, copies of certificates and the authentication of *curriculum vitae* and of factual situations (**Finland, Poland, Portugal, Spain**). In addition, they handle the opening and closing of safe-deposit boxes as well as the monitoring of lotteries (**Finland, Sweden, Netherlands**). Sometimes, they can also divide the sales price in enforcement proceedings (**Bosnia and Herzegovina**) or be in charge of mediation and arbitration (**Georgia, Germany, Slovakia, Netherlands**). Some specific tasks can be assigned to them such as translations or the storage of official documents as is the case in **Greece, Hungary, Lithuania, Romania, Russian Federation or Ukraine**. In **Italy** notaries are very often tasked by the courts in the proceedings of real estate auctions, inventories and the distribution of assets of a deceased person.

In several countries, authentic instruments can be set up electronically (**Austria, Azerbaijan, Estonia, France**). In **Austria**, notaries play a major role as regards e-government, in particular in the field of electronic archives. In **Estonia** and **France**, completely dematerialised legal deeds are stored in an electronic centralized archive.

## 14.2 Supervision and control of the profession of notary

The control and supervision of notaries is often shared between several bodies. One of the main authorities which supervises and controls notaries in the European states is the Ministry of Justice (31 states or entities). For more than half of the states or entities (24), professional bodies are entrusted with this role. In one third of the states (15), the supervision is entrusted to judges. The role of prosecutors and "other authorities" in the supervision is relatively limited.

Some states mentioned that the supervision and control are conducted on a regular basis and occasionally upon a complaint. In **Cyprus**, this role belongs to the Ministry of Interior.

In several countries where the profession of notary is supervised by the Minister of Justice, individuals can challenge the notarial deeds in common law courts (especially in **France, Republic of Moldova, Russian Federation**).

Table 14.5 Authority entrusted with the supervision and the control of notaries in 2012 (Q196)

States/entities	Professional body	Judge	Ministry of Justice	Public prosecutor	Other
Albania					
Andorra					
Armenia					
Austria					
Azerbaijan					
Belgium					
Bosnia and Herzegovina					
Bulgaria					
Croatia					
Cyprus					
Czech Republic					
Denmark					
Estonia					
Finland					
France					
Georgia					
Germany					
Greece					
Hungary					
Iceland					
Ireland					
Italy					
Latvia					
Lithuania					
Luxembourg					
Malta					
Republic of Moldova					
Monaco					
Montenegro					
Netherlands					
Norway					
Poland					
Portugal					
Romania					
Russian Federation					
Serbia					
Slovakia					
Slovenia					
Spain					
Sweden					
Switzerland					
The FYROMacedonia					
Turkey					
Ukraine					
UK-England and Wales					
UK-Northern Ireland					
UK-Scotland					
<b>Nb of countries</b>	<b>25</b>	<b>16</b>	<b>30</b>	<b>8</b>	<b>15</b>
Israel					

	Yes
	No

## Comments:

**Denmark:** the president of a given court has the overall responsibility for the operation of the court.

**Finland:** in generic matters, public notaries are under the administration of Ministry of the Interior, but in legal matters under that of the Ministry of Justice. Authorities are also supervised by the Chancellor of Justice and the Parliamentary Ombudsman.

**Germany:** the supervision of notaries is carried out by the Land administrations of justice and the court presidents of the Higher Regional Courts and the Regional Courts which report to them.

**Ireland:** the Chief Justice appoints public notaries.

**Italy:** the local Notarial Chamber (that corresponds approximately to one for each local civil court of first instance) has the power of inspection and the right to undertake disciplinary proceedings. Notaries are also subject to the supervision of the public prosecutors of the local courts of first instance.

**Latvia:** sworn notaries are supervised by the Regional Courts in the district of which their office is located. Since the entry into force of the law on notaries, on 1 February 2011, the competence of the Latvian Council of Sworn Notaries was extended to the register of notaries and the storage of books.

**Luxembourg:** the Land Registration and Estates Department is in charge of the formal legality of the notarial deeds.

**Malta:** the Court of Revision of Notarial supervises the notaries, the Notarial Archives and the Public Registry.

**Monaco:** notaries are under the authority of the Commission of the Notarial Studies Control.

**Netherlands:** notaries and junior notaries are under the authority of disciplinary boards (which cover the same geographic areas as the judicial districts). The "Financieel Toezicht Bureau", a disciplinary board, checks and investigates the financial situation and administration of notary offices.

**Portugal:** notaries are under the administration of the Ministry of Justice and the Order of notaries.

**Romania:** the Board of the National Union of Notaries Public supervises the notaries.

**Slovenia:** the Ministry of Justice and the Chamber of Notaries supervise the notaries. The category "others" refers to the President of the Higher Court who does not act as a judge and is in charge of supervising the legality in operating as a notary office. The President of the Court acts in the jurisdiction in which the notarial office is located.

**Spain:** notaries belong to professional associations (« *colegios notariales* ») which supervise their activities.

**Sweden:** the County Administrative Board has a limited control over notaries meaning that the Board can dismiss notaries.

**Turkey:** the Minister of Justice and the National Union of Notaries supervise the notaries.

**UK-England and Wales:** the Faculty Office on behalf of the Archbishop of Canterbury carries out the admission to and the regulation of the notarial profession, under direction of the "Master of the Faculties".

**UK-Northern Ireland:** the College of Notaries supervises the notaries.

## 14.3 Trends and conclusions

Notarial offices are widespread in the member states even if the functions and the status of notaries vary considerably from one state to another.

Notaries might be granted a public status, but the European trend goes toward a more regulated private status; the private professionals being authorised by the public authority and supervised by the latter.

The number of notaries, between 2010 and 2012, remains stable in Europe.

The control and supervision of notaries are often shared between several bodies. Among these bodies, one of the main authorities which supervises and controls notaries in the European states is the Ministry of Justice. For most countries with a professional body in charge of supervising notaries, it is the Chamber of Notaries as in **Croatia, Hungary, Slovakia, "the former Yugoslav Republic of Macedonia"**.

In many states, the profession of notaries is at the forefront of electronic processing services, such as in **Austria, Azerbaijan, France, Georgia, Slovakia, Slovenia**.

## Chapter 15. Judicial experts

This chapter concerns *judicial experts*, which means experts certified or accredited by a court or another authority to provide their expertise to the judicial administration.

Given the importance of judicial experts in many cases, the CEPEJ has decided to present this topic in a separate chapter. The role of experts contributes to improving judicial efficiency by providing judges with clear and substantiated replies on specific and complex issues they are called upon to assess. The method of implementation and the monitoring of expertise in adversarial also conditions the quality and the delay of decisions.

There is neither consensus, nor European standards on what a judicial expert is. It is true that, in 1959, the European Convention on mutual assistance in criminal matters dealt with such matters as letters rogatory for the examination of experts, summoning of experts, but this part of the document is short and limited to criminal matters. As part of the CEPEJ working group on the quality of justice (CEPEJ-GT-QUAL), this issue is being addressed. The study defined judicial expertise as an "investigative measure assigned to a technician by, or with the approval of, a court or a prosecuting or adjudicatory authority, in order to contribute to the judicial settlement of present or future litigation by adducing technical or factual evidence. A court expert is a technician (doctor, plumber, architect, medical laboratory, etc.) appointed by the judge to carry out this investigative measure." (Taken from paragraph 1 of recommendations from Proceedings of the Symposium on Judicial Expertise, recommendations." Brussels, 16 March 2012)

### 15.1 Different kinds of judicial experts

Different kinds of judicial experts, whose missions are of a wide variety, exist in the member states of the Council of Europe, and in particular:

- *Technical experts*: who put their scientific and technical knowledge on issues of fact at the court's disposal.
- *Expert-witnesses*: who are requested by the parties to bring their expertise to support their arguments, primarily in common-law systems.
- *Law experts*: who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (they do not take part in the decision).

**Table 15.1 Mission of the experts in judicial procedures (Q202)**

States/entities	"Expert witnesses", who are requested by the parties to bring their expertise to support their argumentation	"Technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal	"Law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).
Albania	Yes	Yes	No
Andorra	Yes	Yes	No
Armenia	Yes	Yes	No
Austria	Yes	Yes	No
Azerbaijan	Yes	Yes	No
Belgium	Yes	Yes	No
Bosnia and Herzegovina	No	Yes	No
Bulgaria	No	Yes	No
Croatia	No	Yes	No
Cyprus	NAP	NAP	NAP
Czech Republic	Yes	Yes	No
Denmark	Yes	Yes	No
Estonia	Yes	Yes	Yes
Finland	Yes	Yes	No
France	No	Yes	No
Georgia	Yes	Yes	No
Germany	Yes	Yes	Yes
Greece	Yes	Yes	No
Hungary	Yes	Yes	No
Iceland	Yes	Yes	No
Ireland	Yes	Yes	Yes
Italy	Yes	Yes	No
Latvia	Yes	Yes	No
Lithuania	Yes	Yes	No
Luxembourg	No	Yes	No
Malta	Yes	Yes	Yes
Republic of Moldova	Yes	Yes	No
Monaco	No	Yes	No
Montenegro	No	Yes	No
Netherlands	Yes	Yes	Yes
Norway	Yes	Yes	No
Poland	Yes	Yes	No
Portugal	No	Yes	No
Romania	Yes	Yes	No
Russian Federation	Yes	Yes	Yes
Serbia	Yes	Yes	No
Slovakia	Yes	Yes	No
Slovenia	No	Yes	No
Spain	No	Yes	No
Sweden	Yes	Yes	No
Switzerland	No	Yes	No
The FYROMacedonia	Yes	Yes	No
Turkey	No	Yes	Yes
Ukraine	No	Yes	No
UK-England and Wales	Yes	No	No
UK-Northern Ireland	Yes	No	No
UK-Scotland	No	No	No
<b>Number of countries</b>	<b>32</b>	<b>44</b>	<b>10</b>
Israel	Yes	Yes	No

Yes
No
NAP

**Comment:**

**UK-Scotland:** the term 'judicial expert' is not used in Scotland.

In a majority of states or entities there are at least 2 types of judicial experts: *technical experts* and *expert-witnesses*. **UK-Northern Ireland** knows only *expert-witnesses*.

*Technical expertise* is the form of expertise which is used by the highest number of European states or entities (44 states or entities). Only 2 states or entities do not use this kind of expertise: **UK-Northern**

**Ireland and UK-Scotland.** *Expert-witnesses* (32 states or entities) provide a kind of expertise which looks to be more developed in the common Law systems and in Northern Europe. *Law expertise* (10 states) is used in **Estonia, Germany, Greece, Ireland, Malta, Netherlands, Norway, Poland, Russian Federation, Turkey.**

In **Ireland**, the parties to a case employ expert and technical witnesses. The Courts Service provides legal researchers and judicial assistants ("Judicial Fellows") to assist the judge in researching the law which (s)he may require to apply in coming to a decision.

In **Romania**, concerning the judicial technical expertise approved by the court, experts chosen by the parties and approved by the court may attend with quality advisers of the parties (expert witnesses), unless the law provides otherwise. In this case, these experts can formulate questions and comments and, if appropriate, prepare a separate report on the issue subject to expertise. Provisions relating to the participation of the expert chosen by the parties (expert witnesses) to conduct the judicial technical expertise existed in the former civil procedural regulation (applicable in 2012).

The **Slovak** legal order uses the term "expert" without any adjective relating to a court. The Ministry of Justice of the Slovak Republic discloses the list of experts on its website. The court or any other public authority can select the expert from the list and ask them to provide a technical report. Any natural or legal person can also ask the expert to provide the expertise.

In **UK-England and Wales**, "expert witnesses" are those requested by the parties to bring their expertise to support their argumentation. "Technical experts" are those who put their scientific and technical knowledge on issues of fact at the court's disposal. Courts may in certain circumstances be assisted by an advocate to the court (previously known as an *amicus curiae*), who presents arguments in relation to the nature and content of the legal background to, and issues in, a particular case.

## 15.2 Selection of judicial experts

Table 15.2 Selection of the judicial experts by the courts (Q 207)

States/entities	Recruitment and/or appointment for a specific term of office	Recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings	Selection not made by the Court
Albania	Yes	Yes	No
Andorra	No	No	No
Armenia	Yes	No	No
Austria	Yes	No	No
Azerbaijan	No	No	Yes
Belgium	No	Yes	No
Bosnia and Herzegovina	No	Yes	No
Bulgaria	No	No	No
Croatia	Yes	No	No
Cyprus	No	No	Yes
Czech Republic	No	Yes	No
Denmark	No	No	Yes
Estonia	No	Yes	No
Finland	No	No	No
France	Yes	No	No
Georgia	No	No	Yes
Germany	No	Yes	No
Greece	Yes	No	No
Hungary	No	No	Yes
Iceland	No	Yes	No
Ireland	No	No	Yes
Italy	No	Yes	No
Latvia	No	Yes	No
Lithuania	No	Yes	No
Luxembourg	Yes	No	No
Malta	No	Yes	No
Republic of Moldova	No	Yes	No
Monaco	No	Yes	No
Montenegro	No	Yes	No
Netherlands	No	No	Yes
Norway	Yes	No	No
Poland	Yes	No	No
Portugal	No	Yes	No
Romania	No	No	Yes
Russian Federation	No	Yes	No
Serbia	No	No	Yes
Slovakia	No	Yes	No
Slovenia	No	No	Yes
Spain	No	Yes	No
Sweden	No	Yes	No
Switzerland	No	Yes	No
The FYROMacedonia	No	No	Yes
Turkey	No	Yes	No
Ukraine	No	No	Yes
UK-England and Wales	No	No	Yes
UK-Northern Ireland	No	Yes	No
UK-Scotland	No	No	Yes
<b>Number of countries</b>	<b>9</b>	<b>32</b>	<b>14</b>
Israel	No	Yes	No
	Yes	<b>Yes</b>	
	No	<b>No</b>	

Judicial experts can be recruited and/or appointed by a court. 14 states or entities do not consider that the courts must be responsible for selecting judicial experts.

When experts are not recruited and/or appointed by the court, their selection is ensured most of the time by the Ministry of Justice directly or through one of its components (**Azerbaijan, Hungary, Romania, Serbia, Slovakia, Slovenia**).

Experts can also be selected directly by the parties (**Cyprus, Denmark, Ireland, UK-England and Wales**) or even in other ways, by the head of the State Forensic Agency (**Russian Federation**). As an example, in **Romania**, the quality of judicial technical expert is acquired based on an exam/interview, organised by the Ministry of Justice. The person acquiring this capacity is registered in a nominal table, drawn up according to specialities and counties, by the Central Office for Judicial Technical Expertise within the Ministry of Justice. The local offices for judicial technical and accounting expertise within law courts communicate to the courts, to the criminal prosecution bodies and to other bodies with jurisdiction attributions the list of the experts and specialists who may perform judicial expertise.

Judicial experts are recruited and/or appointed by a court in 33 states or entities. The recruitment and/or nomination can be either for a specific term of office (9) – for instance, they can be registered on a list from which the judge can choose the experts for a given proceeding – or on an *ad hoc* basis, according to the specific needs of the proceeding, as it is the case in most states or entities (32).

There are only a few states or entities where experts are selected exclusively for a specific term of office. In the **Netherlands**, no courts are responsible for appointment. Recruitment and selection is done by the prosecutor and professional associations of the judicial experts.

In **Finland**, the appellate authority may obtain an opinion from an individual expert on a matter requiring special expertise. If a party calls an expert not appointed by the appellate authority, the provisions on the hearing of witnesses shall apply.

Experts are mainly selected on an *ad hoc* basis, according to the specific needs of the given procedures. Then, courts select them from an official list provided by the Ministry of Justice (**Bosnia and Herzegovina, Luxembourg, Slovakia, Sweden**) or from a list of persons recognised for their competence (**Portugal**), sometimes with the agreement of the parties (**Luxembourg, Portugal**).

It could also happen that the decision of the judge only identifies an expertise institution, and it is the director of that institution who decides which employee is available and the most qualified to be the expert assigned to the case (**Republic of Moldova**). Sometimes, the court is supposed to preferably choose from the list provided by the Ministry but can also select and appoint an *ad hoc* expert if there is no expert on the list for the desired field of activity or the registered expert is not able to act (**Slovakia**).

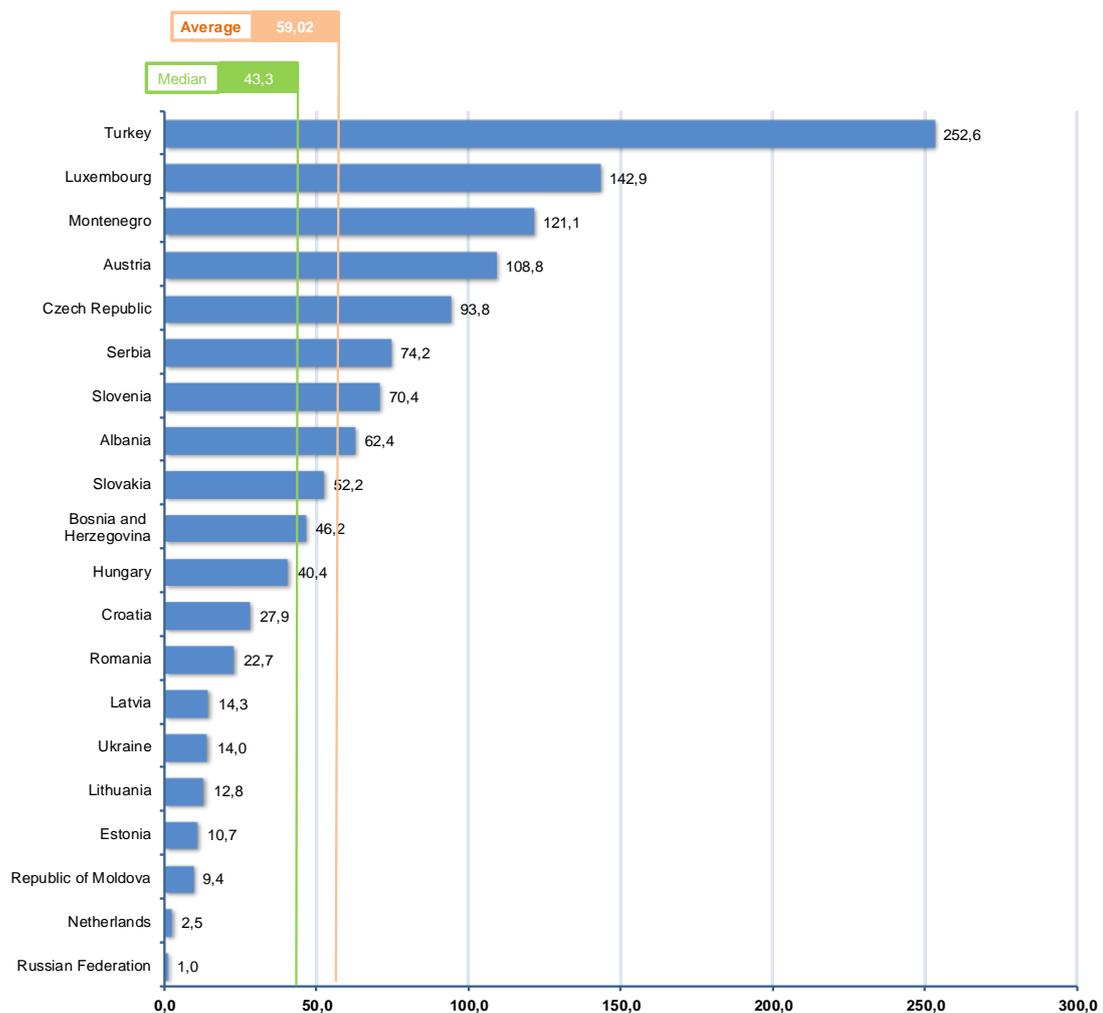
As an example, in **Finland**, the court shall obtain a statement on this question from an agency, a public official or another person in the field who is known to be honest and competent. Before an expert witness is appointed, the parties shall be heard on this. In **Montenegro**, the party proposing the expert evaluation shall indicate the subject and scope of the evaluation in the proposal and shall also propose the person from the list of certified expert witnesses who shall provide expert evaluation. The opposing party shall make a statement on the proposed expert witness. If the parties fail to reach an agreement on the person to be appointed as the expert witness and on the subject and scope of the expert evaluation, the court shall make a decision thereon. Regardless of the agreement between the parties, the court may designate another expert if it considers the examination a complex one.

Expert witnesses shall predominantly be appointed from among certified court experts for a specific type of expert evaluation. A more complex expert evaluation may also be entrusted to professional institutions (hospital, chemical laboratory, university, etc.).

### 15.3 Number of judicial experts (technical experts)

This chapter concerns *technical experts* only. In this type of expertise, the expert is putting his/her scientific and technical knowledge on issues of fact at the court's disposal.

**Figure 15.3 Number of accredited or registered technical judicial experts per 100.000 inhabitants in 2012 (Q205)**



**Comments:**

**Croatia:** in 2010, the courts did not regularly enter all appointed judicial experts (technical experts) in the electronic data base; In 2012, the courts had updated the list of appointed judicial experts (technical experts) in the electronic database and thus the number seems higher although in reality there is no difference.

**Czech Republic:** data as of 30 September 2013.

**Estonia:** the number of accredited or registered judicial experts given for question nr 205 includes the number of forensic (judicial) experts and officially certified experts.

**Luxembourg:** the number of experts - physical persons - is inferior to the total number of experts as they are counted several times if they have double specialties. There was no decrease in number, but the number 750 may have contained experts and interpreters that are named in the same way and governed by the same law.

**Netherlands:** in 2010 the Netherlands Register of Court Experts started its activities. Its register started from scratch with 0 experts. Every court expert wanting to subscribe is tested individually. This takes time. Also regularly new expert domains are standardized, and therefore experts on these new domains will also be tested and subscribed in the register. Therefore in the coming years an increase in the number of court experts may be expected.

**Russian Federation:** the data concerns only state judicial experts and is provided by the Russian Federal Center for Forensic attached to the Ministry of Justice of the Russian Federation.

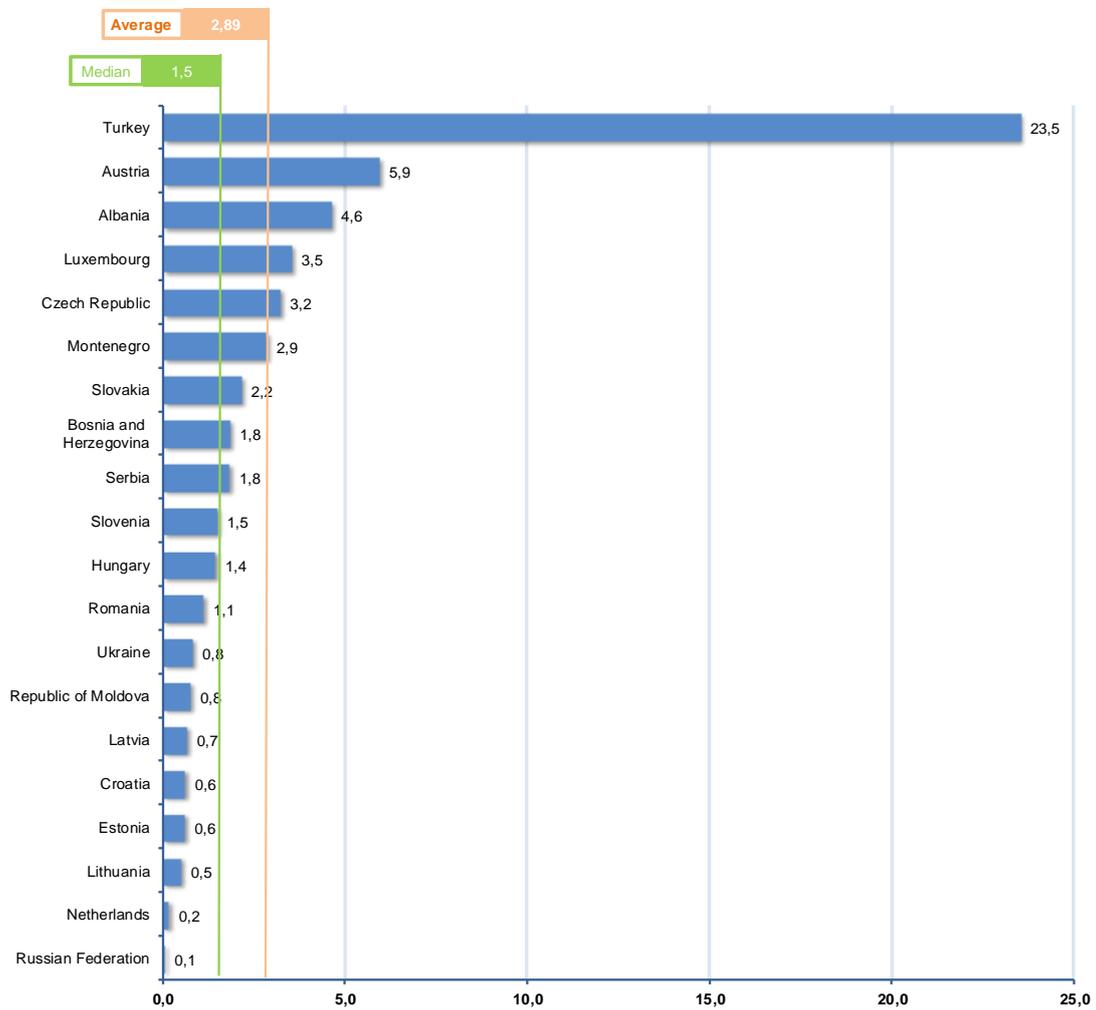
**Spain:** in 2012, the number of judicial experts contracted by the Ministry of Justice was 67, but no data is available for the external professionals.

**Turkey:** the number of experts increased due to the implementation of certified judicial experts, as their number was very limited during the reporting period for 2010.

44 states or entities stated that they use technical experts, but only 20 of them have been able to provide the number of accredited technical judicial experts in 2012.

The absence of data for some other countries may be explained in different ways: in “the Former Yugoslav Republic of Macedonia”, for example, there is no data for registered judicial experts due to the fact that the register for experts has still not been established.

**Figure 15.4 Number of judicial experts (technical experts) per judge in 2012 (Q46, Q205)**

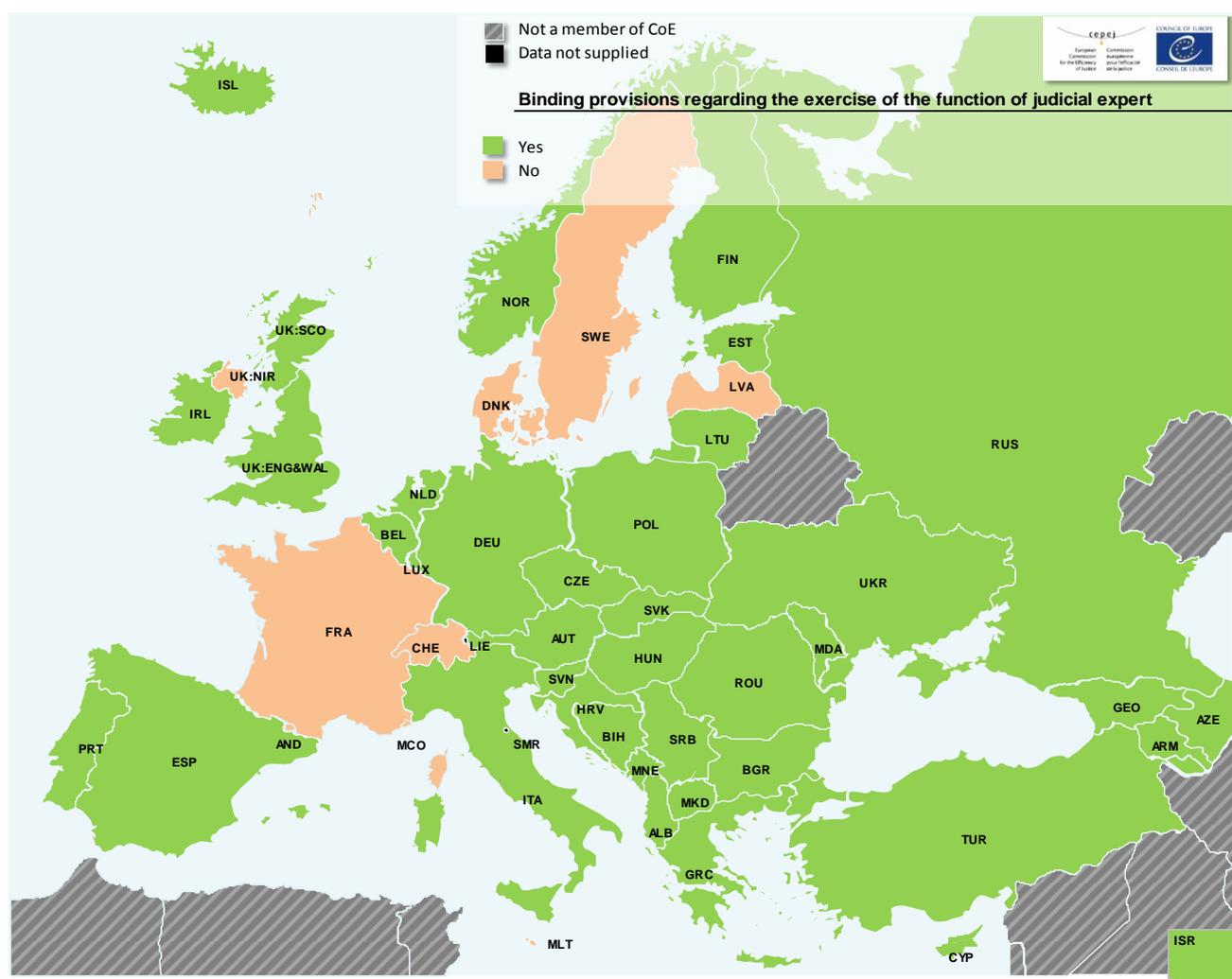


## 15.4 Quality of judicial experts and protection of the title and the function of judicial expert

The comparative study has taken into consideration not only binding provisions regarding to the exercise of the function of judicial experts but also the protection of the title and the function of judicial expert.

### 15.4.1 Procedural provisions governing the exercise of the function of judicial expert

Figure 15.5 Procedural provisions governing the exercise of the function of judicial expert in 2012 (Q206)



39 states or entities indicated having procedural provisions governing the quality of judicial experts during proceedings. Often, these requirements are provided for by the law (**Albania, Georgia, Germany, Iceland, Lithuania, Montenegro, Netherlands, Norway, Portugal, Romania, Spain, “the former Yugoslav Republic of Macedonia”, Turkey**).

In most cases, binding provisions specify time limits to carry out their mission and submit their report (**Albania, Austria, Bosnia and Herzegovina, Bulgaria, Finland, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Monaco, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovenia, Spain, “the former Yugoslav Republic of Macedonia”, Turkey, UK-England and Wales**).

However, this is not the case in all countries: in **Slovakia**, the law does not stipulate a limited period of time for providing the expertise. The judge assigns to the expert the proper time limit in his/her ruling; in the **Russian Federation**, the time limits for expert examinations are set by the judges and there are no binding provisions in the law in this regard; in **Ukraine**, there are no binding provisions on this issue either.

Concerning the time limits, more or less flexibility can be attached to the exercise of the function of judicial expert. There are three main options:

- the time limit can be imposed by the law with a maximum threshold: in **Albania**, if there is a large number of facts and the expert cannot answer immediately, the proceeding authority gives him a period of time not exceeding sixteen days. In case he/she needs to carry out some very complex verification, this term may be extended more than once for periods of not more than thirty days, but in any case without exceeding a maximum of six months; in **Italy**, the maximum is 60 days; in **Portugal**, 30 days, in “**the former Yugoslav Republic of Macedonia**” between 45 and 60 days, in **Turkey** between 3 and 6 months;
- the maximum delay can be fixed by the judge as it is the case for example in **Russian Federation, Serbia, Slovakia, UK-England and Wales**;
- the time limit can result from an agreement allowed by law, as it is the case in the **Netherlands** where the commissioner and the expert agree upon the timeframe.

Non-respect of a time limit can have financial consequences for the expert: in **Montenegro**, if the expert does not submit his/her findings and opinion within a given time limit, he/she may be punished by a fine of up to 500 Euros; in **Slovenia**, there are sanctions for the judicial expert who does not provide his/her technical report within the time limit set by the Court: his/her remuneration is reduced by one per cent for each day of delay, up to a maximum of 50 per cent, unless the judicial expert proves that the delay was due to legitimate and justifiable reasons.

Binding provisions may also specify situations in which an agreement is needed (in **Belgium**, concerning DNA expertise), deontology (**UK-Northern Ireland**) or conditions necessary in order to be registered as an expert (**Slovakia**).

## 15.4.2 Protection of the title and function of judicial expert

Table 15.6 Title, function and number of judicial experts in 2012 (Q203, Q204, Q205)

States/entities	Is the title of judicial experts protected?	Is the function of judicial experts regulated by legal norms?	Number of accredited or registered judicial experts (technical experts)
Albania	Yes	Yes	1 757
Andorra	No	No	NA
Armenia	Yes	Yes	NA
Austria	Yes	No	9 193
Azerbaijan	Yes	Yes	NA
Belgium	No	No	NA
Bosnia and Herzegovina	Yes	Yes	1 772
Bulgaria	Yes	Yes	NA
Croatia	Yes	Yes	1 191
Cyprus	Yes	No	NAP
Czech Republic	Yes	Yes	9 857
Denmark	No	No	NA
Estonia	Yes	Yes	138
Finland	No	No	NAP
France	Yes	Yes	NAP
Georgia	Yes	Yes	NA
Germany	No	Yes	NA
Greece	No	Yes	NA
Hungary	Yes	Yes	4 000
Iceland	No	Yes	NAP
Ireland	No	No	NA
Italy	Yes	Yes	NA
Latvia	Yes	Yes	293
Lithuania	Yes	Yes	385
Luxembourg	Yes	Yes	750
Malta	No	No	NAP
Republic of Moldova	Yes	Yes	335
Monaco	No	Yes	
Montenegro	Yes	Yes	751
Netherlands	No	Yes	412
Norway	No	Yes	NAP
Poland	Yes	Yes	NA
Portugal	No	Yes	NA
Romania	Yes	Yes	4 836
Russian Federation	Yes	Yes	1 501
Serbia	Yes	Yes	5 342
Slovakia	Yes	Yes	2 825
Slovenia	Yes	Yes	1 450
Spain	Yes	Yes	NA
Sweden	No	No	NAP
Switzerland	No	No	NA
The FYROMacedonia	Yes	Yes	NA
Turkey	No	Yes	191 013
Ukraine	Yes	Yes	6 350
UK-England and Wales	No	Yes	NA
UK-Northern Ireland	No	No	NAP
UK-Scotland	Yes	Yes	NA
<b>Number of countries</b>	<b>29</b>	<b>36</b>	
Israel	Yes	Yes	
	Yes	Yes	
	No	No	

In 29 states or entities, the judicial expert is granted a protected title; pre-conditions exist in order to be appointed as a judicial expert (often related to skills and moral behaviour) and the expert's work is followed by the authorities (often judicial authorities). In some member states, there are expert associations (boards) which might be placed under the authority of the courts. Experts are guided by standards in 36 member states (see above).

## 15.5 Trends and conclusions

This is the second time that the CEPEJ has introduced a chapter on judicial experts in its Evaluation Report. When observing the missions of judicial experts, it can be noticed that technical experts are used in almost all member states and that expert-witnesses are often requested. Only 10 states appeal to law experts. Experts play an important role in the quality of the legal debate, but the implementation of expertise in a poorly organised framework can also have a negative impact on the length of proceedings.

Three quarter of the member states consider that the courts must be in charge of the selection process. When experts are not recruited and/or appointed by the court, their selection is most often ensured by the Ministry of Justice or by the parties. When experts are recruited and/or appointed by a court, they are mainly selected according to the specific needs of the given procedures. In several states or entities, not only natural persons but also legal persons can be registered as experts.

A procedural framework exists in a large proportion of states or entities when it comes to organising the missions of judicial experts. These provisions can be provided for by law (a majority of states or entities), or decided by the judges depending on cases.

In many cases, the procedural provisions specify time limits, with more or less flexibility for the expert. In certain States, the non-respect of a time limit can have financial consequences for the expert.

## Chapter 16. Court interpreters

Court interpreters play a major role in guaranteeing access to justice for court users. The European Convention on Human Rights guarantees the right for everyone who is arrested to “*be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him*” (Article 5 § 2), and specifies the right of persons charged with a criminal offence to “*have the free assistance of an interpreter if he cannot understand or speak the language used in court*” (Article 6 § 3). The fair trial and equality of arms principles of the ECHR include the right to understand and actively participate in the proceedings, as well as the right to be informed of the evidence presented and thus, to reply with any necessary observations and to organise one’s defense. This is even more important in such a linguistically rich environment as the one of the member states of the Council of Europe.

However, the comparison of court interpreters between countries should be handled with care, because there is no consensus between the member states on what the requirements applied to court interpreters and translators should be. Only EU members have set up common European standards for judicial interpretation and translation, through a directive<sup>36</sup> that entered into force on November 2010, but it is limited to criminal proceedings. EU member states had a 3-year period for the transposition of this directive (until 27 October 2013).

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<sup>36</sup> Directive on the right to interpretation and translation in criminal proceedings.

## 16.1 Number of court interpreters

All states indicated having court interpreters. However, only 22 states were able to indicate the total number of accredited or registered court interpreters. In some states, it is difficult to distinguish which of all the interpreters-translators are dedicated to justice, in particular in **Albania, Sweden, UK-England and Wales**. Moreover, **Switzerland** based its numbers on data obtained from 4 cantons only (out of 26).

For all these reasons, one must be very careful when making comparisons between the states.

**Figure 16.1 Number of accredited or registered court interpreters in 2012 (Q199)**

States/entities	Number of court interpreters
Albania	262
Andorra	NA
Armenia	NA
Austria	812
Azerbaijan	NA
Belgium	NA
Bosnia and Herzegovina	1 005
Bulgaria	NAP
Croatia	3 062
Cyprus	NA
Czech Republic	3 377
Denmark	NA
Estonia	NAP
Finland	NAP
France	NAP
Georgia	21
Germany	11 084
Greece	NA
Hungary	NA
Iceland	177
Ireland	NA
Italy	NA
Latvia	NAP
Lithuania	NA
Luxembourg	1 074
Malta	NAP
Republic of Moldova	317
Monaco	NA
Montenegro	544
Netherlands	1 668
Norway	NAP
Poland	NA
Portugal	NA
Romania	35 166
Russian Federation	NAP
Serbia	2 100
Slovakia	835
Slovenia	680
Spain	177
Sweden	NAP
Switzerland	1 232
The FYROMacedonia	4 298
Turkey	NAP
Ukraine	NA
UK-England and Wales	1 382
UK-Northern Ireland	400
UK-Scotland	NA
Average	3 318
Median	1 005
Minimum	21
Maximum	35 166
Israel	NA

**Comments:**

**Albania:** 262 is the total number of interpreters in courts and related bodies.

**Czech Republic:** data as of 30 September 2013.

**Luxembourg:** 1074 is the total number of translators-interpreters in all languages. Since some professionals are carrying out the translation in several languages, they are recorded as many times as the number of languages that they translate. Moreover, the total number of legal persons translators-interpreters (490) merges with that of judicial experts.

**Romania:** the high number of court interpreters is due to the flexible procedure of access to the profession.

**Russian Federation:** the profession of court interpreter does not exist; it is only a *de facto* qualification.

**Slovakia:** a distinction is to be made between translators and interpreters. The number above is the number of translators (835). The number of interpreters is 247.

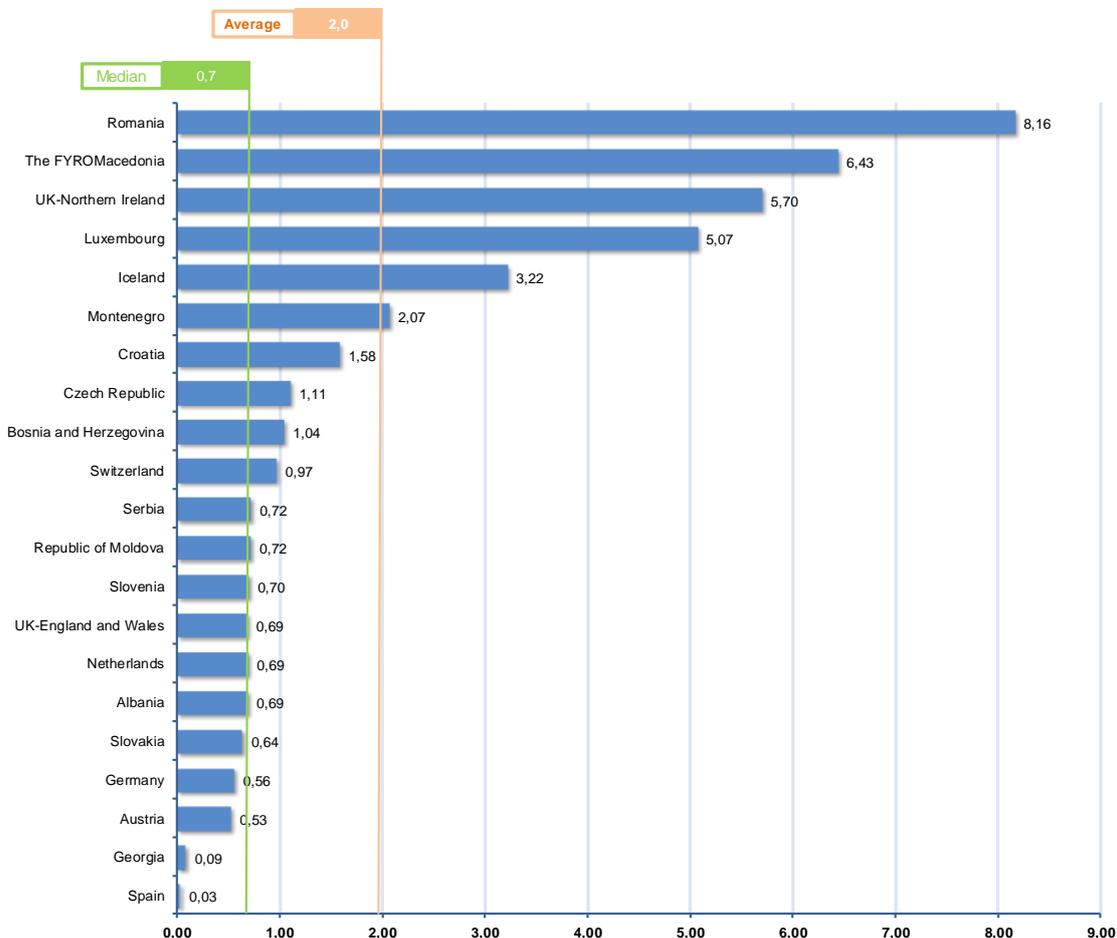
**Switzerland:** only 4 cantons have provided the number of accredited court interpreters.

**“the former Yugoslav Republic of Macedonia”:** a new interpreters’ selection system has been introduced in 2008. Among the 4298 interpreters identified, 1137 are court interpreters appointed after having passed the exam established by the new procedure and the 3161 remaining interpreters depend on the old procedure (data from the end of 2012).

**UK-England and Wales:** 1382 interpreters are classified as tier 1 or 2 in “Capita TI’s books” which means that they are able to work in courts.

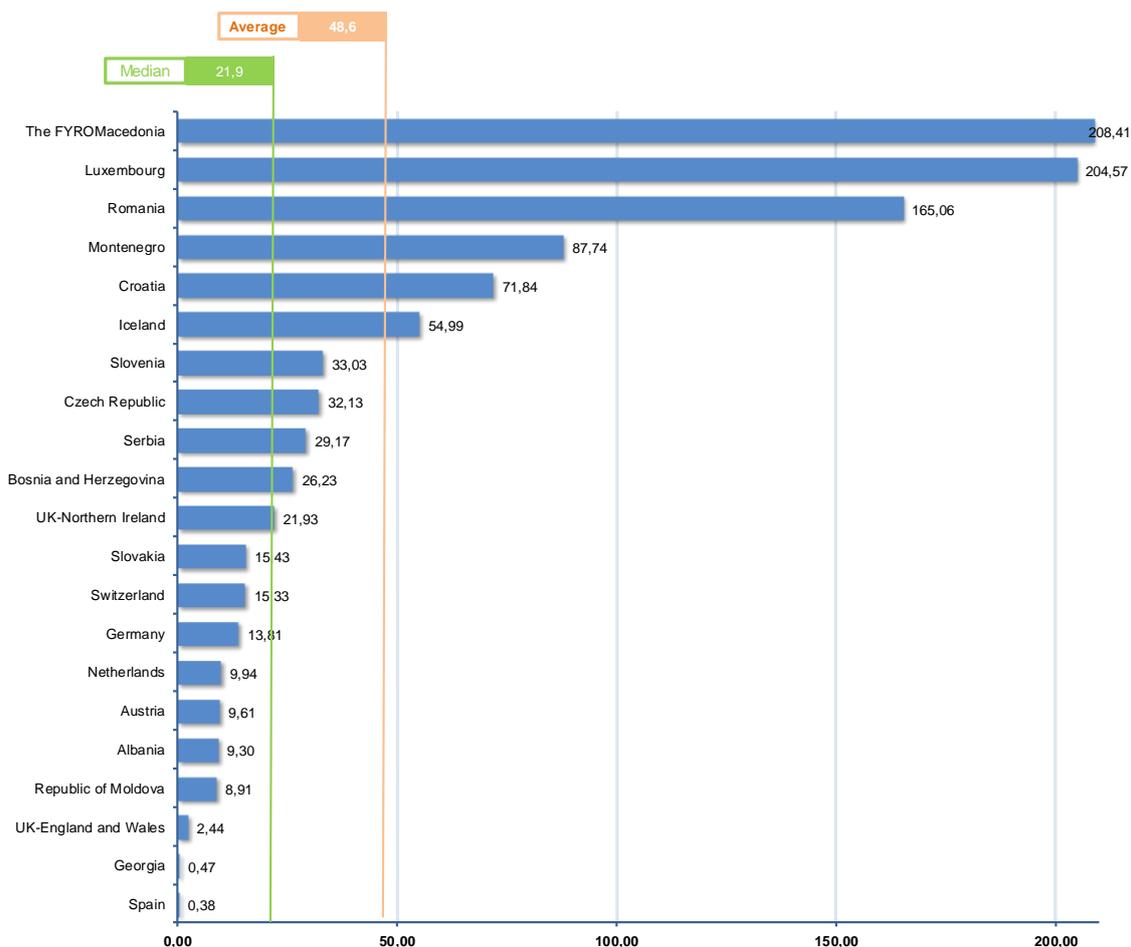
The evolution between 2010 and 2012 is particularly variable from one state or entity to another. The number of certified court interpreters remains stable (- 10 % to + 10 %) in several countries (**Switzerland, Slovenia, Slovakia, Serbia, Germany, Czech Republic, Austria**). In **Albania, Bosnia and Herzegovina, Republic of Moldova**, and the **Netherlands**, the number of interpreters increased by more than half (50 % to 100 %). In **Luxembourg**, the strong evolution (more than 100 %) results only from the method of calculation used for 2012 because interpreters have been recorded as many times as the number of languages that they translate. In **Croatia**, the evolution can be explained by the fact that in 2010, the list of court interpreters had not been updated in the electronic data base. In reality, the 2010 data should have been similar to the 2012 data. As far as the **Netherlands** is concerned, the evolution reflects the entry into force of a law concerning interpreters and translators which mandates the latter to subscribe to the register in order to be able to practice their profession for the police or in the justice field.

**Figure 16.2 Number of accredited or registered court interpreters per professional judge in 2012 (Q46, Q199)**



"The former Yugoslav Republic of Macedonia" and Romania report a very high number of court interpreters (in absolute numbers and per professional judge). In Romania, as noted since the 2008 exercise, the situation can be explained by the entry into force in 2007 of a law promoting access to the profession of court interpreter. As regards "the former Yugoslav Republic of Macedonia", before the introduction in 2008 of an exam allowing access to the profession of interpreter, everyone fulfilling the conditions (citizenship and any proof of knowledge of the foreign language) was able to be appointed interpreter. Thus, the high number of interpreters can be explained by the fact that it includes the ones that have passed the exam and the ones appointed before the introduction of the new system.

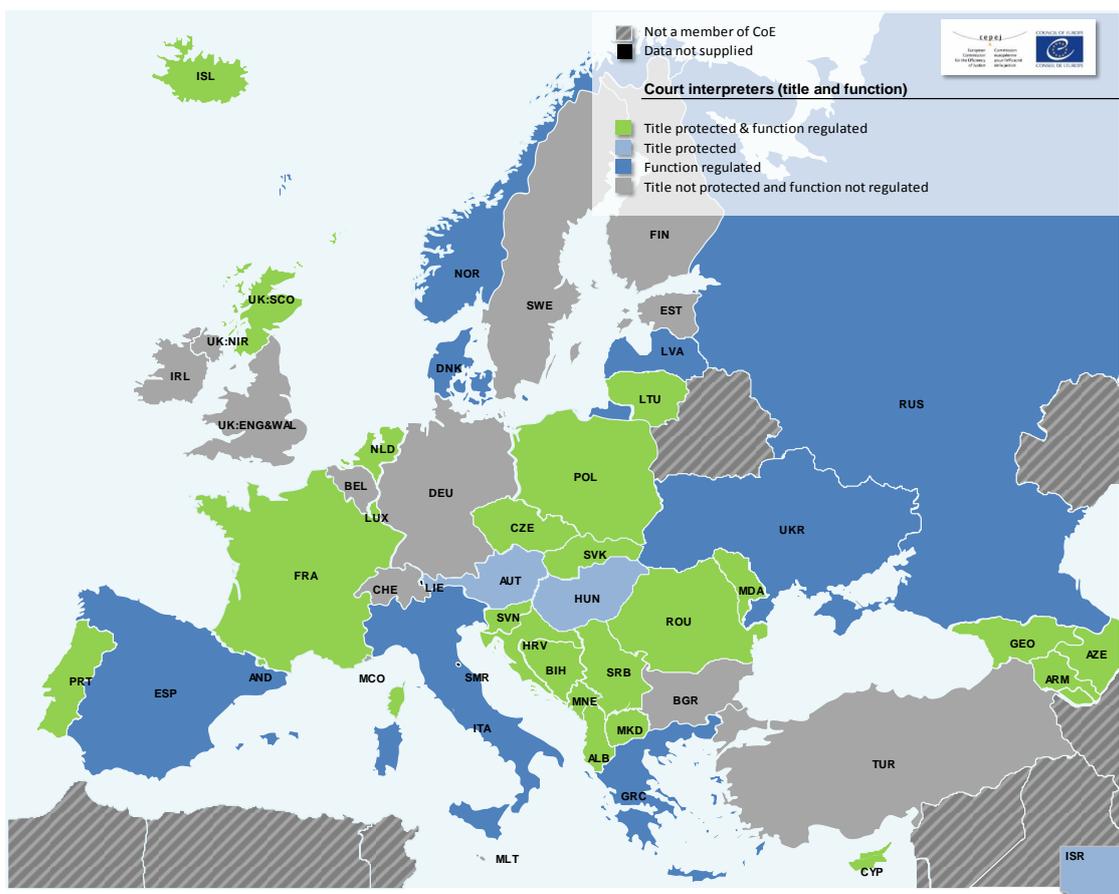
**Figure 16.3 Number of accredited or registered court interpreters per 100.000 inhabitants in 2012 (Q199)**



As stated previously, the comparison of court interpreters between countries should be handled with care. However, the number of court interpreters is an aspect of access to justice and a fair trial. The need for interpreters also varies according to the presence or not of a strong immigration, diversified in its origins, as well as linguistic communities that can exist in each state. Luxembourg, "the former Yugoslav Republic of Macedonia" and Romania have more than 150 interpreters per 100.000 inhabitants.

## 16.2 Title and function of court interpreters

Figure 16.4 Title and function of court interpreters (Q197, Q198)



**Andorra:** the court interpreter title is protected and the function is regulated.

**Malta and Monaco:** the court interpreter title is not protected and the function is not regulated.

Most states or entities regulate the function of court interpreters through legal norms (32). However, the title is protected in only 26 states. 13 other states or entities neither protect the title nor regulate the function.

**Table 16.5 Title and function of court interpreters (Q197, Q198)**

States/entities	Is the title of court interpreters protected?	Is the function of court interpreters regulated by legal norms?	The title of court interpreters protected and the function of court interpreters regulated by legal norms
Albania	Yes	No	No
Andorra	Yes	Yes	Yes
Armenia	Yes	No	No
Austria	Yes	No	No
Azerbaijan	Yes	Yes	Yes
Belgium	No	Yes	Yes
Bosnia and Herzegovina	Yes	Yes	Yes
Bulgaria	No	No	Yes
Croatia	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes
Czech Republic	Yes	Yes	Yes
Denmark	No	Yes	Yes
Estonia	No	No	Yes
Finland	No	Yes	Yes
France	Yes	Yes	Yes
Georgia	Yes	Yes	No
Germany	No	Yes	Yes
Greece	No	Yes	Yes
Hungary	Yes	No	No
Iceland	Yes	Yes	No
Ireland	No	No	Yes
Italy	No	Yes	Yes
Latvia	No	Yes	Yes
Lithuania	Yes	Yes	Yes
Luxembourg	Yes	Yes	Yes
Malta	No	No	Yes
Republic of Moldova	Yes	Yes	No
Monaco	No	Yes	Yes
Montenegro	Yes	Yes	Yes
Netherlands	Yes	Yes	No
Norway	No	Yes	Yes
Poland	Yes	Yes	No
Portugal	Yes	Yes	Yes
Romania	Yes	Yes	Yes
Russian Federation	No	Yes	No
Serbia	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes
Spain	No	Yes	Yes
Sweden	No	No	Yes
Switzerland	No	Yes	Yes
The FYROMacedonia	Yes	Yes	No
Turkey	No	No	Yes
Ukraine	Yes	Yes	No
UK-England and Wales	No	No	Yes
UK-Northern Ireland	No	No	Yes
UK-Scotland	Yes	Yes	No
<b>Nb of countries</b>	<b>26</b>	<b>32</b>	<b>13</b>
Israel	Yes	No	No
	Yes	Yes	Yes
	No	No	No

**Comments:**

**Estonia:** the profession of court interpreter is not regulated by legal norms. In 2012, there were 47 interpreters working in the courts of first and second instances. As far as the translating profession is concerned, it is regulated and those practicing it can propose interpretation services as an additional activity.

**Sweden:** the interpreting profession as used in the court is regulated only in the sense that the law provides that the court can use an interpreter if needed, under the condition that the interpreter has no particular ties with the parties.

**Table 16.6 Binding provisions regarding the quality of court interpretation in judicial proceedings (Q200)**

States/entities	Are there binding provisions regarding the quality of court interpretation within judicial proceedings?	
	Yes	No
Albania		
Andorra		
Armenia		
Austria		
Azerbaijan		
Belgium		
Bosnia and Herzegovina		
Bulgaria		
Croatia		
Cyprus		
Czech Republic		
Denmark		
Estonia		
Finland		
France		
Georgia		
Germany		
Greece		
Hungary		
Iceland		
Ireland		
Italy		
Latvia		
Lithuania		
Luxembourg		
Malta		
Republic of Moldova		
Monaco		
Montenegro		
Netherlands		
Norway		
Poland		
Portugal		
Romania		
Russian Federation		
Serbia		
Slovakia		
Slovenia		
Spain		
Sweden		
Switzerland		
The FYROMacedonia		
Turkey		
Ukraine		
UK-England and Wales		
UK-Northern Ireland		
UK-Scotland		
<b>Nb of countries</b>	<b>24</b>	<b>23</b>
Israel		
		<b>Yes</b>
		<b>No</b>

**Comment:**

**Sweden:** in 2012, there were no provisions regarding the quality of court interpretation within judicial proceedings. On 1 October 2013, new rules concerning interpretation entered into force. One of them is the obligation for courts, if possible, to use interpreters approved by the government.

24 states or entities have binding provisions regarding the quality of court interpreters. Often, these requirements are provided by the law, especially in **Finland, Georgia, Latvia, Lithuania, Malta, Netherlands, Portugal, the Russian Federation, Slovenia, Spain, “the former Yugoslav Republic of Macedonia”, Ukraine**. In **UK-Northern Ireland**, the Code of Conduct of the National Register of Public Service Interpreters applies to interpreters of the Crown court, and the other interpreters are bound by their agency’s code of practice and by the terms of reference agreed between the Northern Ireland Court and Tribunals Service and the interpreting agency.

Several states or entities require the interpreters to pass an exam in order to evaluate their skills (**Albania, Bosnia and Herzegovina, Croatia, Czech Republic, Montenegro, Poland, Serbia, Slovakia, Slovenia, Russian Federation, and “the former Yugoslav Republic of Macedonia”**). In other countries, having at least a diploma is required (**Azerbaijan, Luxembourg, Romania, Croatia, UK-England and Wales**). In a few countries, knowledge of the language (**Monaco, Ireland**) or a curriculum vitae certifying knowledge of the language (**Belgium**) is sufficient. In **Ireland**, one of the languages must mandatorily be the native language of the interpreter or translator. Often a certain level of experience is necessary (**Austria, Belgium, Czech Republic, Russian Federation, Serbia, Slovakia, UK-England and Wales and UK-Northern Ireland**) and the accreditation is limited in duration (**Iceland**). It is also common to require a high level of confidentiality and very accurate interpretation (**Albania**).

These criteria are sometimes combined in order to achieve a higher quality of interpretation.

### 16.3 Selection of court interpreters by the courts

Courts are often responsible (35 states or entities) for the selection of court interpreters. The nature of the participation of the court may vary. In some countries, the court is competent for the recruitment and/or appointment of court interpreters for a specific term of office, and in other states, the court is competent to select a court interpreter on an *ad hoc* basis in a given proceeding.

**Table 16.7 Selection of court interpreters by the courts (Q201)**

States/entities	Courts are responsible for recruitment and/or appointment for a specific term of offices of court interpreters	Courts are responsible for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings of court interpreters	Courts are not responsible for selecting court interpreters
Albania			
Andorra			
Armenia			
Austria			
Azerbaijan			
Belgium			
Bosnia and Herzegovina			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Georgia			
Germany			
Greece			
Hungary			
Iceland			
Ireland			
Italy			
Latvia			
Lithuania			
Luxembourg			
Malta			
Republic of Moldova			
Monaco			
Montenegro			
Netherlands			
Norway			
Poland			
Portugal			
Romania			
Russian Federation			
Serbia			
Slovakia			
Slovenia			
Spain			
Sweden			
Switzerland			
The FYROMacedonia			
Turkey			
Ukraine			
UK-England and Wales			
UK-Northern Ireland			
UK-Scotland			
<b>Nb of countries</b>	<b>13</b>	<b>30</b>	<b>12</b>
Israel			

	Yes
	No

**Comment:**

**Netherlands:** courts can only select interpreters and translators from the National register.

The 12 states or entities that do not charge the courts with the responsibility of selecting court interpreters are: **Cyprus, Finland, Hungary, Iceland, Monaco, Serbia, Slovenia, "the former Yugoslav Republic of**

**Macedonia", Ukraine, UK-England and Wales, UK-Northern Ireland, UK-Scotland**). In most of these countries, the Ministry of Justice is responsible for the selection of court interpreters. In **Iceland**, the Minister of the Interior appoints a Test committee of three persons for 4 years (the Minister appoints such a Test committee for each language). In **UK-Northern Ireland** and **UK-England and Wales**, interpreters are recruited by a private company and bound by a contract with the court.

Frequently, certified court interpreters are appointed from an official list (**Albania, Austria, Bosnia and Herzegovina, Denmark, Iceland, Netherlands, Montenegro, Poland, Slovakia, Slovenia, and Sweden**). This list is often made public. In several countries, in particular in **Slovakia** and **Spain**, when the official list does not have a qualified interpreter for a specific language, it is then possible to refer to an external professional.

In **Cyprus**, in criminal cases, interpreters are selected from a list, whereas for civil cases, the parties choose their own interpreter. In **Finland**, every jurisdiction (civil, criminal, and administrative) has its own rule. In **Montenegro**, interpreters are chosen by the parties, but if they cannot reach an agreement, the court takes the final decision. In case of complex translations, the court can choose to appoint the interpreters. In **Denmark**, courts must first select an interpreter-translator recognized by the state, but if this appears impossible, the courts can decide to use an interpreter who has not been recognized. In **Latvia**, courts are responsible for selecting interpreters; the Court administration is responsible for recruiting them, whereas the Supreme Court takes care of both the selection and the recruitment. In **Israel**, the courts conclude contracts for private interpreting services through tenders.

#### **16.4 Trends and conclusions**

Even more today in a global society where the movement of people accelerates, the organisation of an efficient court interpretation system is part of a fair trial and a high quality court system. The promotion of efficient access to translation and interpretation and the quality of these services are a European priority. In criminal matters, the right to a quality of translation is an integral part of the rights of the defence.

The comparison between member states and entities is difficult because of the absence of a consensus on what the requirements for being an interpreter should be and the terms for the accreditation and appointment system.

There are only a few European countries where, in order to be selected as an interpreter, an exam is mandatory and a quality check has been established. The title and the function of court interpreters are not protected in all European countries and it is also not a European standard to give to courts the responsibility to select their own interpreters; thus the Ministry of Justice usually plays an important role in the process of selection of interpreters.

## Chapter 17. Judicial Reforms

The quality of justice remains a priority for all member states of the Council of Europe. Numerous institutional and legislative reforms aiming to create a modern, accessible and efficient justice system have been undertaken by all member states that responded to question 208. These changes are summarized below. They cover a diverse spectrum of areas – (comprehensive) reform plans, budget, courts and judges, public prosecution, management and working methods of the courts, reforms in civil, criminal and administrative law, judicial efficiency and cases backlogs, legal aid, mediation and other ADR, judicial training and schools and more.

For more details on these reforms, we invite the reader to visit the country profiles and the states' answers to the Evaluation scheme on [www.coe.int/cepej](http://www.coe.int/cepej).

### (COMPREHENSIVE) REFORM PLANS

ALBANIA	Approval of sectorial strategy of Justice (2011-2013) under a decision of 2011 to improve the system of appointment, evaluation, promotion and transfer of judges and prosecutors. The implementation of this new strategy will be valid from 2014 to 2020.
ARMENIA	Approval of the strategic programme for legal and judicial reforms (2012-2013) by an Executive order of 2012. Legal acts prescribed by this Executive order have been partially approved by the National Assembly (2012-2013).
AZERBAIJAN	Judicial-legal reforms concerning physical infrastructure and capacity building of the court system (construction of modern court complexes, E-library services, etc.) are carried out in order to bring into line the court system in accordance with the international and European standards.
BELGIUM	Reform concerning the organisation started in 2013 on three areas: districts, mobility and management of the justice system. New law providing for a transfer of the management of the justice system from the Ministry of Justice to the judiciary with support of two national management bodies: one for the Ministry of Justice and another one for courts.
BOSNIA AND HERZEGOVINA	New Justice Reform Strategy (2014-2018) under preparation and expected to be adopted in 2014. Interim Agreement is still going on: sectorial cooperation with the EU in order to bring the judicial reforms into line with the EU standards. Structured Dialogue on Justice set up by the EU (2011).
BULGARIA	Reorganization of the judicial map. Closing of two military courts and the relevant prosecutor's offices. Approval of a project on E-justice.
CROATIA	Adoption by the Parliament in 2012 for the strategy of development of the judiciary 2013-2018.
FINLAND	Approval in 2013 of a programme for legal and judicial reforms 2013-2025.
ICELAND	Reform plans regarding the judicial system are under preparation. Two bills presented to the National Parliament (Althingi) concerning the district commissioners and the police districts. A bill concerning the set-up of a three tier system is under preparation and will be presented to the Parliament in 2014.
LATVIA	Reducing the length of proceedings in courts. Reducing the balance of the case redistribution. Improving alternative dispute resolution.
LUXEMBOURG	Publication of the governmental programme in 2013 (extract devoted to justice).
REPUBLIC OF MOLDOVA	Adoption of the strategy for the justice reform 2011-2016 by the Parliament in 2011 and the Action plan was adopted by the Parliament in 2012.
MALTA	Presentation of a report by the Commission on Justice Reform to the Government in 2013 and is now under revision in the Parliament.
MONACO	Adoption in 2013 of the Law on the judiciary administration and organisation. This law represents the second component of the justice modernisation. The first part was about the status of the judiciary.
MONTENEGRO	Strategy for the Reform of the Judiciary 2014-2017 is under preparation. It will provide guidance for the judicial institutions for their contribution to the process of European and Euro-Atlantic integration of Montenegro. An action plan will be developed.
NORWAY	Debate on whether the jury system should be maintained. A proposal concerning this matter is under preparation to be presented to the Parliament. In 2014 a report is to be presented to the Ministry of Justice and Public Security to

	<p>evaluate the provisions in the General Civil Penal Code, regarding psychotic and unconscious persons. It includes also the resort to forensic psychiatrists as expert witnesses in criminal proceedings.</p> <p>A report on reforms of the police force was presented to the Ministry of Justice and Public Security in 2013.</p>
PORTUGAL	<p>Beginning of the operation of the new justice organisation in 2014.</p> <p>Law on the Reorganisation of the Judicial System is still expected to be approved.</p>
ROMANIA	<p>On-going discussion on a new Strategy for the Development of the Judicial System (2014-2018).</p>
RUSSIAN FEDERATION	<p>Federal Programme concerning the Development of the Russian Court System 2013-2020.</p>
SERBIA	<p>The National Judicial Reform Strategy 2013-2018 as well as an action plan were adopted.</p>
SLOVENIA	<p>Adoption of amendments to the Courts Act and the Judicial Service Act in 2013 in order to shorten the duration of proceedings and to transfer powers from the Ministry of Justice to the Supreme Court.</p> <p>Proposals for improvements for the operation of the courts were developed by the Judicial Council on the basis of the annual report on efficiency and effectiveness of courts for 2012.</p>
SWEDEN	<p>Reorganisation of the Swedish Police Force.</p> <p>Information Management Project between law enforcement authorities (the Police, the Courts of Sweden, etc.).</p>
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	<p>Adoption of a framework for the development of the judiciary 2014-2017 by the government in 2013.</p>
TURKEY	<p>Amendments of the Judicial Reform Strategy are under preparation. Main revisions:</p> <ul style="list-style-type: none"> <li>- Human rights issues designed as a separate goal;</li> <li>- the courthouses should prepare annual activity reports to ensure transparency;</li> <li>- judicial timeframes will be established.</li> </ul>
UK-ENGLAND AND WALES	<p>Amendments to the department and the justice system by the Ministry of Justice (transforming rehabilitation, youth custody and legal aid...)</p>
UK-NORTHERN IRELAND	<p>Elaboration of a program of procedural and legislative reforms aimed at improving processing times in criminal cases is under preparation by the department of justice.</p>
UK-SCOTLAND	<p>Many are taking place under a four year programme entitled “Making justice work”.</p>

## BUDGET

ALBANIA	<p>Approval of the Law (dated 2013) on the budget of 2014.</p>
ANDORRA	<p>Presentation of several bills to the Parliament related to judicial career, civil proceedings, reorganisation of the criminal jurisdiction and independence in the budget implementation.</p>
AUSTRIA	<p>Adoption of the Law on federal budget (“<i>Bundeshaushaltsgesetz</i>”) and entry into force of the Order on federal budget (“<i>Bundeshaushaltsverordnung</i>”) 2013.</p>
BOSNIA AND HERZEGOVINA	<p>Debate whether separate judicial budgets should be introduced in order to allow for more autonomy for courts and prosecution offices.</p>
BULGARIA	<p>Project entitled “Introducing modern, reliable and effective procedures for planning and implementation of the budget of the judiciary”.</p> <p>Supreme Judicial Council has proposed:</p> <ul style="list-style-type: none"> <li>- an amendment to the Law on judiciary to regulate the use of the transitional balance of the budget of the judiciary.</li> </ul>
ITALY	<p>Plan aimed at reducing costs initiated. The most relevant is the electronic filing of pleadings, which will become mandatory in 2014.</p> <p>Rules concerning the criminal procedures which are now in the process of being approved are expected to lead to a reasonable reduction of appeals.</p>
REPUBLIC OF MOLDOVA	<p>Adoption of Law on judges’ remuneration – which provides an increase in the salaries of judges from 2014 – by the Parliament.</p>
MONTENEGRO	<p>Strategy for the Reform of the Judiciary will foresee activities for strengthening the financial independence of the judiciary.</p>
NETHERLANDS	<p>Reforms on budget cuts concerning the justice system are under preparation and to be realized before 2016.</p> <p>Budget cuts concerning the judicial system 2012-2016 apply mainly to the legal aid and the prosecution office. Court fees will be increased in 2014 by an average of 15 %.</p>

SERBIA	Coordination of activities between the Ministry of Justice and the Public Administration, the High Judicial Council and the State Prosecutorial Council regarding the budget.
UK-ENGLAND AND WALES	As part of the 2013 spending review the Ministry of Justice committed to a 10 % reduction in its budget.

**COURTS AND PUBLIC PROSECUTION SERVICES (E.G. POWERS AND ORGANISATION, STRUCTURAL CHANGES – E.G. REDUCTION OF THE NUMBER OF THE COURTS –, MANAGEMENT AND WORKING METHODS, INFORMATION TECHNOLOGIES, BACKLOGS, EFFICIENCY, COURT FEES, RENOVATIONS AND CONSTRUCTION OF NEW BUILDINGS)**

ALBANIA	<p>Draft law on amendments to the organization of the judiciary was submitted to the Council of ministers in 2014. It aims at involving a legal assistant position at the judicial district court and the courts of appeal.</p> <p>Instruction was approved on the determination of a fee for the acts and services of legal professionals in order to reduce court fees for those in need.</p> <p>Amendment to the Law on the Centre of Official Publications was submitted to the Council of Ministers in 2014. It aims at guaranteeing the level of security of the publication of acts.</p> <p>Two decisions handed down in 2014:</p> <ul style="list-style-type: none"> <li>- on rules for the internal electronic database of acts. It aims at improving access to legislation for citizens.</li> <li>- on the creation of a state database as regards the notary profession.</li> </ul>
ANDORRA	<p>Reform of the information systems. Creation of the electronic file. An international convention on the acquisition of an integral electronic management system will soon be signed.</p> <p>Establishment of a programme for a new courthouse.</p>
AUSTRIA	<p>Merging of small district courts in three Austrian states (2013-2014). Plans for mergers of district courts in the remaining states.</p> <p>Major reform regarding administrative proceedings in order to establish an administrative court system (2014).</p>
BELGIUM	<p>Establishment of two disciplinary courts and two appeal disciplinary courts in 2014.</p> <p>Creation of a family court. Cases concerning family matters will be presented before one same judge.</p>
BOSNIA AND HERZEGOVINA	<p>Regulation on the timeframes for the most common cases adopted by the High Judicial Council (and implemented in 2014).</p>
BULGARIA	<p>Reorganization of the judicial map. Closing of two military courts and the relevant prosecutor's offices.</p>
CROATIA	<p>Acts concerning the rationalization of the judicial bodies' network will be adopted in 2014. Assignment of the cases through the management case system will be fully implemented after the courts rationalization.</p>
CYPRUS	<p>Establishment of an administrative court.</p>
ESTONIA	<p>Elaboration of 3-phase quality standards (management of the court, administration of the court and the court proceedings). The quality standards for the management of the courts have been approved by the Council for the Judiciary and introduced to the Court en banc (in 2014).</p> <p>Proposals for an external evaluation system are ready for the amendment of the Courts Act.</p> <p>The new Court Information System (KIS2) should be implemented in 2014.</p> <p>New IT project should be started by the Ministry of Justice in 2014 (E-file).</p>
FINLAND	<p>The next reform concerns the structure of the Appeal Court and the Administrative Court networks.</p>
GEORGIA	<p>Amendments introduced in the Law on Prosecution Service (2013).</p> <p>Draft amendments to the Organic Law on Courts of General Jurisdiction were adopted in 2013.</p>
GERMANY	<p>Debate on combining the specialised jurisdictions that are governed by public law and strengthening electronic legal transactions with the courts.</p>
GREECE	<p>Scaling down of about half of the courts of peace as part of the reorganisation of the judicial map. With the adoption of a legislative disposition, the "transitional seats" of the jurisdictions from mainland Greece are removed.</p> <p>Awarding of a public service and public supply contract leading to the computerisation of the procedure before the State Council and the administrative jurisdictions and before the civil and criminal jurisdictions.</p> <p>On-going project of transferring the administrative courts and the courts devoted to civil</p>

	and criminal cases to more modern buildings (2014).
IRELAND	Amendment to the Constitution to enable the establishment of a Court of Appeal approved by referendum in 2013.
ITALY	Bill approved in 2013, not enacted into law yet.
LATVIA	Increase in the number of judges and administrative staff planned in the courts of Riga region. Enhancement of the role of the Chairman of the Court according to the Law on Judicial Power.
LITHUANIA	Procedure of strategic planning established and constantly improved to guide the activities of the Prosecution Service towards results. Development of information technologies to simplify the collection and processing of statistical data.
REPUBLIC OF MOLDOVA	Presentation of projects of Prosecution Service reorganisation to the Parliament by the end of 2014.
MONACO	Creation of a new courtroom in 2013 for the hearings of the highest jurisdictions and a room called "State Council Room" allocated to this body.
MONTENEGRO	Adoption of the Analysis towards Rationalization of the Judicial Network and the Analysis of the Network of Misdemeanour Bodies by the government.
NETHERLANDS	Reorganisation of the judicial map in 2013. Beginning in 2012 of the programme concerning strengthening the performance of the criminal chain (police, prosecution, judges, and prisons). Elaboration of a bill to create a digital criminal file from 2016. Reorganisation of the courts structures by mergers in 2012. On-going elaboration of program called Quality and Innovation to introduce electronic processing of all types of court cases. Entry into force of a law aimed at raising court fees in civil and administrative cases. Court fees in civil cases have been raised from 2010 onwards.
NORWAY	Initiatives launched by the new government since October 2013: assessment of the number of first instance courts; assessment of fast track courts, administrative courts related to immigration cases, and special courts.
POLAND	It is planned to computerize the appointment system of candidates running for vacancies of judges and to maximize simplification of procedures to requested information on-line especially for land and mortgage registries. In 2014 creation of the national criminal register on-line and the judiciary portal. On-going discussion on the problem of unequal workload distribution between courts.
ROMANIA	A specialised court in Bucharest, whose field of expertise will extend to laws concerning companies, competition, insolvency, is expected to be finalised during the first half of 2015.
SERBIA	Information technologies, renovations and construction of new buildings. Entry into force in 2014 of the new Law on the Headquarters and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.
SLOVAKIA	Reorganisation of the first instance courts expertise is planned (with regard to the re-codification of the Civil Procedural Law). Electronic collection of laws and E-files are in the process of implementation.
SLOVENIA	Amendments to the State Prosecutor Act.
SPAIN	Project on creating "Friendly Spaces" (" <i>Proyecto de Salas Amigables</i> ") 2014. The aim is to create spaces in courts buildings where minors could be heard in an appropriate way.
SWEDEN	The jurisdiction of the Economic Crime Authority is nationwide (2013). A new Migration Court was established (2013). A reform entered into force in 2013 changing the procedural provisions regarding administrative courts.
SWITZERLAND	Rationalisation measures for courts. Cantons have various reorganisation projects of the judiciary.
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	New Basic Court Skopje 1 – Criminal Court was built; New building for Public Prosecutor's Office of the Republic of Macedonia, High Public Prosecutor's Office Skopje and Basic Public Prosecutor's Office Skopje was finished. Introduction of electronic delivery and tone recording of hearings in civil cases.
UK - ENGLAND AND WALES	Closing of the consultation on proposals to increase fees in the civil courts in 2014, and the Government intends to respond by Spring.
UK - NORTHERN IRELAND	Current public consultations include revisions of: time limits in youth courts; Police and Criminal Evidence Code of Practice; custodial arrangements for children.

## ACCESS TO JUSTICE AND LEGAL AID

ALBANIA	Adoption of amendments to the Law on legal aid by the Council of Ministers in 2014.
BELGIUM	Reform programme for a balance between access to justice for the parties and a fair remuneration of lawyers i.e. according to the services actually provided.
BOSNIA AND HERZEGOVINA	Access to selected case-law relevant for judges and prosecutors was provided to attorneys in 2012 and to all interested parties in 2013. Draft Framework Law on Legal Aid has been revised and is in discussion.
CZECH REPUBLIC	Entry into force of the Act on Victims of Crimes in 2013.
GEORGIA	Draft Law on Legal Aid Service guarantees the independence of the Legal Aid Service (LAS) and its accountability before the Parliament. A new case-processing software is being piloted and should be expanded nationwide.
HUNGARY	Amendments to the system of legal aid mainly focus on immigration and the asylum procedure. Project of the development of electronic administration will be established.
IRELAND	A new Criminal Legal Aid Bill is planned.
ISRAEL	Conduct of evening court hearings in small claims cases is currently being tested and is planned to be extended to more courts. Amendment to the Public Defender Regulations in effect since 2012: defendants are required to pay a participation fee to the Public Defender's Office. Draft bill which discusses broadening the extent of representation and legal advice granted to indigent suspects (only to detained suspects).
ITALY	The so-called "Financial Stability Law" (reduction of the fees of legal professionals, increase of the financial penalties in cases of inadmissibility of appeals, increase of the lump sum payable for judicial office communications).
LATVIA	Process of impersonalizing and publishing court decisions on court portal (2013).
MONTENEGRO	Strategy for the Reform of Judiciary prescribes guidelines for access to justice and legal aid.
NETHERLANDS	Project of restructuring the system of legal aid to limit the increasing costs.
NORWAY	Presentation of amendments to the Law of Legal Aid by the government. Proposal of a new service system, in which all citizens can get first-line legal aid from a lawyer or a private legal helper free of charge. The Ministry of Justice and Public Security is currently assessing the proper follow-up. A report on the evaluation of the regulations concerning lawyers and others who provide legal aid will be delivered to the Ministry of Justice and Public Security in 2015.
ROMANIA	Adoption of a Government Emergency Ordinance on the judicial stamp duties, establishing a special system of taxation for a series of newly regulated situations and procedures such as the regularization of the request for suing at law, the order for payment procedure, etc.
RUSSIAN FEDERATION	Natives' right to access to the court system guaranteed by the Federal Law on providing access to courts' activities. Adoption of the draft Federal Law on the Code of Administrative Justice. Entry into force of the Federal Law on Free Legal Aid in 2012.
SERBIA	Adoption of a new Law on Free Legal Aid is planned.
SLOVAKIA	Change in the status of the Legal Aid Centre is planned.
SPAIN	Reform on the Act on Legal Aid by a Royal Decree-law of 2013. New Law on Legal Aid is planned.
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	Plans to adopt amendments on the Law on free legal aid in order to redefine eligibility for using free legal aid.
UK - ENGLAND AND WALES	Presentation of two legal aid reforms to the Parliament in 2013, under the Legal Aid Transformation (LAT) programme and should be implemented in 2014. The LAT programme will continue to implement further proposed changes throughout 2014.
UK – NORTHERN IRELAND	On-going series of legal aid reforms and prison service reforms.

## HIGH JUDICIAL COUNCIL

ALBANIA	Two draft laws under revision: - on judicial evaluation system (professional assessment skill of judges). - on the organization and functioning of the High Judicial Council.
BOSNIA-HERZEGOVINA	Discussion on the Draft Law on Amendments to the Law on High Judicial Council by the High Judicial Council, the Parliament and the Ministry of Justice.

HUNGARY	Annual report 2012 of the President of the National Office for the Judiciary (NOJ).
IRELAND	Preparation and publication of a Judicial Council Bill early in 2014.
MONTENEGRO	Modifications are planned during the further period for the implementation of the Strategic guidelines for the Judicial Council.
SERBIA	The adoption of a new Law on the High Judicial Council is planned. The transfer of the judiciary budget to the jurisdiction of the High Judicial Council is also planned.
SLOVENIA	Recent (2013) legislative changes of the Courts Act and the Judicial Service Act reduced some powers of the Judicial Council. Proposal for the Judicial Council Act sent to the Ministry of Justice but not adopted yet.
SPAIN	Act of the General Council of the Judiciary has been reformed (2013). The reform of the Organic Law of the Judiciary is under preparation.
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	Procedure for adoption of Constitutional Amendments taking out from the Court Council Minister of Justice and President of the Supreme Court as ex officio members.

**LEGAL PROFESSIONALS (JUDGES, PUBLIC PROSECUTORS, LAWYERS, NOTARIES, ENFORCEMENT AGENTS, ETC.): ORGANISATION, EDUCATION, ETC.**

ALBANIA	Approval of the Law concerning the role of the notary in 2013. “One Stop Shop - Notary system” had been applied in pilot courts (2012) to avoid direct contact with the citizen registration office and to reduce the phenomenon of long queues, lost time and corrupt actions. Approval of instruction on the determination of tariffs for services provided by private bailiffs in 2014. Draft laws on amendments to the Criminal Procedure Code and Civil Procedure Code in particular regarding sanctions against lawyers were sent to the Venice Commission and their opinion is expected.
AUSTRIA	Amendments regarding the appeal bodies for lawyers and trainee lawyers (2013).
BELGIUM	Bill to reform the status of the bailiff is under preparation.
BOSNIA AND HERZEGOVINA	Entry into force of reforms concerning competitive written examination of first-time applicants for judge and public prosecutorial positions, and the guidelines for interviewing candidates will be applied as of 2014.
BULGARIA	Proposal of the Supreme Judicial Council of amendments on the provisions regarding the competitions for appointment in the bodies of the judiciary, the rules for assessment and the responsibilities of the magistrates.
ESTONIA	Entry into force of amendment to the Courts Act in 2013 establishing a new position among the court staff: judicial clerk.
FRANCE	Since the enactment of a law of 2013, the Ministry of Justice sends to the Public Prosecutor general circulars of criminal policy but he cannot carry out any examination concerning individual cases.
GEORGIA	Prosecution Service plans to conduct training courses for public prosecutors. Legal Aid Service plans to conduct training courses for lawyers. Mortgage reforms: it is planned to increase the role of the notaries by enabling the certifying of notarial instruments electronically. The National Bureau of Enforcement plans to develop a Human Resources Management System. Project of the revision of the labour division in enforcement business process (implemented in 2013).
GREECE	Adoption of a Law on the new Code of Lawyers.
IRELAND	Elaboration of a Legal Services Regulation Bill. The Office of the Legal Costs Adjudicator will take over the duties of the existing Office of the Taxing-Master. On-going discussion on how the judicial appointments process might be enhanced.
ISRAEL	Approval for the establishment of an overseer institution to the state prosecution and advocacy services by the government in 2013.
ITALY	Introduction in the financial “stability law” for 2014 of a contribution to be paid by aspiring judges, lawyers and notaries.
LATVIA	Reform of the professional evaluation of judges (started in 2013). Project of training programmes for professionals belonging to the legal sphere (2012-2014) is under preparation by the Ministry of Justice. It is also planned to implement the training programmes of organizational management for the court presidents.
LITHUANIA	Concept of a single and common examination for judges, prosecutors, lawyers, notaries

		and enforcement agents is under discussion. Entry into force of new amendments on the Law on the Bar in 2013.
REPUBLIC OF MOLDOVA		Adoption by the Parliament in first reading of the bill on the disciplinary responsibility of judges (2013). Adoption by the Parliament of the bill on professional integrity (2013). Adoption by the Parliament of the obligation for candidates to the judge profession to pass the polygraph test. Adoption of Law on judges' remuneration – which provides an increase in the salaries of judges from 2014 – by the Parliament.
MONACO		Adoption of the law on the judiciaries' administration and organisation (2013). Law concerning specific violence is the topic of a specific training for professionals.
MONTENEGRO		Laws on courts, on Judicial Council and on Public State Prosecutor's Office will be amended. New Law on Education in Judiciary will be adopted.
NETHERLANDS		Likely entry into force of a bill on supervision of lawyers by 2014.
PORTUGAL		Amendments on the statute of legal professionals (judges, prosecutors, bailiffs and enforcement agents) by the government.
SERBIA		Strengthening the position of judges and public prosecutors and the capacities of the Judicial Academy as an educational centre. Establishment of the notary system.
SLOVAKIA		On-going elaboration of amendments to the law regarding the disciplinary procedures against judges, notaries and enforcement agents by the Ministry of Justice.
SLOVENIA		Amendments to the Inheritance Act are ready to be implemented but the act has not been submitted to legislative procedure yet. Amendments to the Notary Act shall become topical in 2014. Proposals from the government to equalize notarizations with administrative certifications but the justice professionals have been strongly opposed to them.
SPAIN		The Draft Law on Voluntary Jurisdiction has not been approved yet by the Parliament. The reform of the Act on Legal Aid will affect the profession of lawyer (under preparation).
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”		Public prosecutors responsible for investigation in criminal cases since December 2013; fifth generation of candidates for judges and prosecutors in September 2014 finished theoretical part of initial training in the Academy for judges and public prosecutors.
UKRAINE		Law on the enhancement of the guarantee of the judges' independence voted in the first reading by the Parliament in 2013. Provisions of the law are expected to be implemented in 2014.
UK-ENGLAND AND WALES		Reform concerning enforcement agents introduced in 2014 which clarifies the role and responsibilities of all parties.
UK - NORTHERN IRELAND		Foreseen reforms: - Regulation of the Bar. Possible upcoming legislative changes as a result of the proposed Draft on Legal Complaints and Regulation Bill 2013. - Launch of the Bar Mediation Service. - Extension of the Advocacy Training Programme. - Development of quality assurance / accreditation mechanism.

#### REFORMS REGARDING CIVIL, CRIMINAL AND ADMINISTRATIVE LAWS, INTERNATIONAL CONVENTIONS AND COOPERATION ACTIVITIES

ALBANIA	Amendments to the Criminal Code were approved which aim at responding to the recent increase of criminality and to balance the workload of courts. Amendment to the Criminal Procedure Code associated with an amendment to a law on prevention and fight against organized crime (in order to include corruption offences) were proposed by the Ministry of Justice in 2014. Draft law on Administrative Procedure Code was submitted for approval to the Council of Ministers in 2014. It provides legal capacity for public administrations to resolve conflicts in the most efficient way and it provides tools to citizens for the protection of their rights. Adoption of the Law on Ratification of the Agreement on the Transfer of Sentenced Persons (2013). Adoption of the Law on Accession to the Fourth Additional Protocol to the European Convention on Extradition (2013). Adoption of the Law on Jurisdictional Relations with Foreign Authorities in criminal matters (2013).
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	Signature of agreements with Bosnia and Herzegovina on Mutual Enforcement of Judicial Decisions in criminal matters (in order to develop cooperation in the field of assistance in criminal and civil matters) and on extradition. A consultation process was launched by the Ministry of Justice on three agreements with Serbia on the same matters.
ANDORRA	Presentation of several bills to the Parliament related to judicial career, civil proceedings, reorganisation of the criminal jurisdiction and independence in the budget implementation.
AUSTRIA	Appointment of experts in investigation proceedings is under discussion. Reform of the Intellectual Property Law (2014) foresees the courts in civil matters as an instance of appeal against decisions of the patent office. A modernization of Copyright Law is envisaged in 2015. After a reform of Cartel Law in 2013, a follow-up is envisaged to strengthen the transparency of rulings in this field.
BOSNIA-HERZEGOVINA	Adoption of the Law on Criminal Proceedings in the Bosnian Serb Republic. Adoption of the Law on special treatment of juvenile offenders and juvenile victims within criminal proceedings in the Federation of Bosnia and Herzegovina.
CROATIA	Consumer Bankruptcy Act will be released in public debate in 2014. Analysis of the impact of the amendments of Civil Procedure Act (2013). Reform of the civil procedure (2014).
FRANCE	Adoption of a draft law by the Parliament and providing the introduction of a class action for consumer disputes and in terms of competition law violations. It will be revised in a second reading by the Senate in 2014.
GEORGIA	Criminal justice reform strategy and Action plan. Reform of the Criminal Code is being carried out. The revision process of the Criminal Code is planned to be finalized by the end of 2014. Draft of the general part of the Code on Administrative Offences is being elaborated. The revision of the whole Code is planned to be finalised by the end of 2014. Establishment of the Consultative Council of the Private Law Reform (2013). Signature and ratification in the near future of the Third Protocol to the European Convention on Extradition from 13 December 1957 by Georgia. Elaboration of amendments to the Law on International Cooperation in criminal justice.
GREECE	Draft law on amendments to the Civil Procedure Code will be submitted to the Parliament in 2014. It concerns mostly the procedure for trial courts which will be essentially written and the number of appeals as part of the enforcement procedure of decisions which will be now limited to two. Ongoing projects of the new Criminal Code and the new Criminal Procedure Code which will be submitted to the Ministry of justice in the next months and to the Parliament at the end of 2014. Review of the Law on modernisation and unification of the system of mandatory prior administrative remedies by a commission. Ongoing discussion (2014) related to the substantial stock of pending tax affairs in administrative jurisdictions. A study related to indebted households will shortly be submitted to the Ministry of Justice in order to amend the existing legislation on those types of cases (2014).
HUNGARY	Entry into force of a New Civil Code (2014).
ITALY	Proposals involving the civil procedure and the execution process within the civil framework were presented in 2013. A draft law concerning the reform of the criminal procedure is under preparation. A law has introduced the figure of the auxiliary judge. In addition, young law graduates can now spend 18 months of training in both courts and courts of appeal.
LATVIA	Amendments to the Civil Procedure Law : - to introduce the possibility to redistribute case files (2014). - to hand over civil claims exceeding LVL150 000 to the district courts. - to improve the process of approval of a Statement of auction of immovable property (2014). Amendments to the determination of the executive document force for contracts drafted in a certain form of notarial deed (2013).
REPUBLIC OF MOLDOVA	Adoption by the Parliament of a bill completing the provisions of the Criminal code on a new safety measure ("the confiscation of assets") and new elements concerning offence ("the illicit enrichment")
MONACO	Laws adopted since the last evaluation report (2012 edition):

	<p>Law of 2013 on reform of the Criminal Proceeding Code in the field of custody. Law of 2012 on reform of the Criminal Code and the Code of criminal proceeding in the field of corruption and special investigation methods.</p> <p>Law of 2013 on Approval of the Ratification of the Cyber Crime Convention of the Council of Europe.</p> <p>Draft laws submitted since the last evaluation report (2012 edition):</p> <p>Draft Law on the Modernisation of the Economic Law (first part).</p> <p>Draft Law on the Modernisation of the Economic Law (second part).</p> <p>Draft Law on the Private International Law.</p> <p>Draft Law on harassment and violence at work.</p>
MONTENEGRO	<p>Law on Civil Procedure will be amended in terms of regulating hearings.</p> <p>Family law will be amended in terms of prescription of the principles of prohibition of corporal punishment of children.</p> <p>Reform of enforcement procedure following the adoption of two new laws: on enforcement and security proceedings and on public bailiffs. The first public bailiffs were introduced in the legal system in 2013. In the next period, results of the new system will be monitored and revised if needed.</p> <p>Adoption of a Law on Private International Law in order to achieve the criteria for EU membership.</p>
NETHERLANDS	<p>Programme about strengthening the performance of the criminal chain started in 2012. Programme called "Quality and Innovation" launched in 2012. In 2015, all civil and administrative procedures in courts will be simplified, standardized and digitalized.</p>
NORWAY	<p>Entry into force of a new Law on Guardianship in 2013 which led to a renewal of the guardianship administration and consistency of the rules with international human rights provisions.</p> <p>A report on the new Criminal Procedure Act aimed at replacing the current Act of 1981 shall be submitted to the Ministry of Justice by 2016.</p> <p>Debate on whether the jury system should be maintained. A proposal concerning this matter is under preparation to be presented to the Parliament.</p> <p>In 2014 a report is to be presented to the Ministry of Justice and Public Security to evaluate the provisions in the General Civil Penal Code, regarding psychotic and unconscious persons. It includes also the resort to forensic psychiatrists as expert witnesses in criminal proceedings.</p>
POLAND	<p>Elaboration of a forthcoming reform which implements the principle of an adversarial process in the criminal procedure.</p> <p>Preparation of the new Insolvency Law in the area of civil law.</p>
PORTUGAL	<p>Assessment of the implementation of the new Civil Procedural Code is planned (2013).</p> <p>Ongoing reforms on the revision of the Administrative Procedural Code, the Statute of Administrative and Tax Courts, and the Expropriations Code.</p> <p>Revision of the Civil Code governing disqualifications of civil rights especially with regard to the elderly.</p> <p>Revision of the Penal Code and the Code of Criminal Procedure is planned in order to effectively implement the summary procedure in the case of persons who are detained in flagrante delicto, and broaden the imposition of remand in custody for crimes that are punishable by prison terms of more than three years.</p> <p>Revision of the status of the professionals of the Criminal Police and implementation of a new headquarters.</p> <p>Adoption of the law against unjust enrichment.</p>
ROMANIA	<p>Entry into force of a new Civil Procedure Code in 2013.</p> <p>The new Criminal Code and the new Criminal Procedure Code shall enter into force in 2014.</p> <p>Five pieces of legislation which should enter into force are aimed at facilitating the implementation of these two codes and covering aspects that concern the enforcement of sanctions or custodial and noncustodial measures and the organization of the probation system.</p>
RUSSIAN FEDERATION	<p>Amendment to the law on the Supreme Court which establishes the latter as the only highest judicial instance for civil, criminal and administrative cases and other cases under the jurisdiction of all courts. It also establishes the supervision of the courts' activities by the Supreme Court. The Supreme Arbitration Court is abrogated; its jurisdiction is delegated to the Supreme Court.</p>
SERBIA	<p>Adoption of the Law on Amendments to the Civil Procedure Code. Implementation of a new Criminal Procedure Code.</p>

SLOVAKIA	The existing Civil Procedure Code should be replaced in the coming years by 3 separate codes (contentious civil procedure, non-contentious civil procedure and the administrative civil procedure) and it is planned to revise the Penal Code.
SLOVENIA	Improvements of the Assets of Illicit Origin Forfeiture Act.
SPAIN	Preparation of projects of updating the Law on Childhood Protection, the Law on Parental Co-responsibility, the Reform of the Civil Status Register, the Law on Voluntary Jurisdiction, and the Reform of the Civil Procedure Code. Preparation of reform of the Criminal Code. Discussions on a possible pre-project on the efficiency of the contentious administrative jurisdiction. Preparation of a Law on Judicial Cooperation is under preparation.
SWEDEN	Amendments to the Code of Judicial Procedure (with the implementation of the directive on the right to interpretation and translation in criminal proceedings of the European Parliament and the Council). Amendments to the Assets of Illicit Origin Forfeiture Act (adopted in 2012). In 2013, entered into force: - New Law on Intrusive Photography through an Amendment to the Penal Code. - Amendments to the legislation on Sexual Crimes in the Penal Code. - Amendments to the legislation on Violation of Integrity in particular for Women. - Amendments to the legislation on Crimes of Falsification. Law concerning the carrying of firearms was reformed in 2012. There is an on-going review of the rules regarding illegal weapons.
SWITZERLAND	Introduction since 2012, of new provisions to the Civil Code on the protection measures for adults (formerly guardianship and curatorship) which led to the reorganisation of the judiciary operated by the cantonal authorities.
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	Signature of the Forth Protocol on Convention for Extradition in 2015.
UKRAINE	Adoption of the Law on Advocacy and Legal Practice by the Supreme Council (2012).
UK - SCOTLAND	Elaboration of reforms concerning the criminal, civil and administrative justice by the government.

#### ENFORCEMENT OF COURT DECISIONS

AUSTRIA	Reform of the law of enforcement is planned including the establishment of access of lawyers and authorities to a directory of certain pending enforcement proceedings of a debtor.
BOSNIA AND HERZEGOVINA	Discussions on amendments to the enforcement of court decisions between the High Judicial Council and the Ministry of Justice to relieve courts from enforcement cases being initiated for unpaid utility bills.
FINLAND	The next reform planned is the developing of the enforcement offices structure.
ISRAEL	In 2013, the Knesset (Israeli Parliament) approved: - Amendment to the Enforcement Law establishing an alimony enforcement track which comes into effect in 2014. - Amendment to the Centre for Collection of Debts and Fees Law concerning compensation decided in favour of a minor victim of a crime.
ITALY	Approval of a bill in 2013 but not enacted into law yet to simplify the enforcement procedures and to allow the judge to effectively monitor the schedule and the expenses of both enforcement and insolvency proceedings.
LITHUANIA	Discussions on a disposal on the function allocated to the Prosecution Service to supervise the submission of the judgments for enforcement.
SERBIA	Further implementation of the Law on Enforcement and Security. Adoption of a Law on Execution of Criminal Sanctions.
SLOVAKIA	Entry into force of a first amendment regarding the status of enforcement agents in 2013. A second amendment should be adopted in 2014.
SLOVENIA	Announcement of a general overhaul of the enforcement procedure in 2013 which is expected to be enacted in 2014.
SPAIN	Reform of the Law on Civil Procedure Code, which is under preparation, will add to the prosecutors' tasks cooperation with the Justice Administration in the enforcement of judicial decisions.
UKRAINE	Adoption of the Draft Law on State Guarantees of Enforcement of the Courts' Judgements by the Parliament in a first reading in 2011.

## MEDIATION AND OTHER ADR

ALBANIA	Setting of the Mediators licensing commission. The Ministry of Justice has published on its official website, a register of intermediaries who are registered in the National Registration Centre (NRC). Establishment of the National Chamber of Mediators.
BOSNIA AND HERZEGOVINA	On-going implementation by the High Judicial Council of the project with several pilot courts aiming at increasing the number of cases resolved through mediation or court settlements.
GREECE	On-going process of the accreditation procedure in order to train as many mediators as possible (2014). As regards civil and commercial cases, the first mediators have been authorised.
HUNGARY	Legislation to encourage the parties to choose the mediation procedure (main reforms are related to the Civil Procedure Code, the Act on Charges, the Act on the Service of the Judicial Employees). The Civil Code - which includes the rules of court mediation in cases of divorce, child custody and guardianship authority - entered into force in 2014.
ITALY	Reintroduction of a law of 2013 of mandatory mediation for some specific matters in both civil and commercial procedures (including inheritance, family agreements, lease, loan, etc.).
LATVIA	Adoption by the Parliament in the first reading of the Draft Law on Mediation and the second reading is expected every moment. The Ministry of Justice and NORDEN (Nordic Council of Ministers) organized an international seminar ("Mediation in Latvia and Nordic countries") in 2013. Draft Law on Arbitration was elaborated and submitted to the Cabinet of Ministers (2013).
LITHUANIA	The possibility of conciliatory mediation to solve a dispute is to be applicable starting from 2014.
MONTENEGRO	Mediation training will be organized for mediators, judges, public prosecutors and lawyers. Arbitration rules are now placed within the Civil Procedure Code. In the next period a special Law on Arbitration will be adopted and will be in line with the UNCITRAL (United Nations Commission on International Trade Law) rules.
NETHERLANDS	Expected introduction of register for mediators.
NORWAY	Review of a report on assessing possible ways to increase the use of mediation boards in civil and criminal cases by the Ministry of Justice.
ROMANIA	Amendments of the Law of 2006 on Mediation aimed at popularizing the mediation institution.
RUSSIAN FEDERATION	Proposal of amendments of the Draft Federal Law on mediation and other conciliation procedures establishing: the dispute resolution with the assistance of court mediator, the principles of conciliation procedures and the conditions for an active role by the court in dispute resolution.
SERBIA	The adoption of a Law on Mediation is planned.
SLOVAKIA	Amendment to the Act on the Arbitration Procedure to separate the consumer arbitration from the general arbitration.
SPAIN	Recent development of a Royal Decree for the Law on Mediation (2011) in civil and commercial matters.
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	Adoption in December 2013 of a new Law on mediation. Establishment in September 2014 of a Board for assessment and evaluation on the quality of mediation.
UKRAINE	Implementation of mediation measures with pilot projects introduced in some regions. The Ukrainian-Canadian project concerning the introduction of pre-settlement procedure of disputes is pending (since 2012).
UK - ENGLAND AND WALES	On-going discussions through Parliament on a bill in order to establish mediation before applying to bring a case to the family court.

## FIGHT AGAINST CRIME

ALBANIA	Creation of the National Anti-corruption Coordinator; other measures related to corruption were taken (2013). Elaboration of a draft for amendments to the Draft Code of Criminal Procedure by the Ministry of Justice and approval by the government. Extension of the jurisdiction of the
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	<p>Court of serious crimes.</p> <p>Amendments to the Code of Criminal Procedure, in order to finalize the immunity reform, to limit the powers of the High Court and to establish penalties against lawyers who miss hearings.</p>
BOSNIA AND HERZEGOVINA	Elaboration of a draft Law on Fight Against Corruption, Organized Crime, Money Laundering, and Seeking Funds and Property Obtained by Committing Criminal Acts.
HUNGARY	<p>Elaboration of a draft of a penal law by the Ministry of Interior for the new Criminal Code.</p> <p>Replacement of the Decree Law of 1979 on the Execution of Punishments and Measures by the new Prison Law which enters into force in 2014.</p>
ITALY	The higher efficiency of the criminal justice system - due to the reduction of criminal cases length which is to be expected from the simplification of criminal procedures - is expected to represent a form of deterrence to criminal acts.
MONTENEGRO	<p>Process of aligning Montenegrin legislation with the standards of the EU acquis is going on. Normative changes will include the following:</p> <ul style="list-style-type: none"> <li>- Adoption of a law that includes procedural and enforcement provisions for the conduct of financial investigations and confiscation of proceeds of crime;</li> <li>- Adoption of a law that will govern the organization and jurisdiction of the Special State Prosecutor's Office for the fight against organized crime and corruption;</li> <li>- Amendment to the Law on Protection of Witnesses in terms of enhancing its application. Jurisdictions concerning organised crime, corruption, terrorism and war crimes will be centralized by forming one special department at the High Court in Podgorica.</li> </ul>
NETHERLANDS	Raising court fees, limiting access to subsidized legal aid, limiting forensic care in prisons, criminal law specifically for adolescents, and mutual recognition of EU-member states' sentences (EU-law).
PORTUGAL	<p>Revision of the Penal Code and the Code of Criminal Procedure is planned in order to effectively implement the summary procedure in the case of persons who are detained in flagrante delicto, and broaden the imposition of remand in custody for crimes that are punishable by prison terms of more than three years.</p> <p>Revision of the status of the professionals of the Criminal Police and implementation of a new headquarters.</p> <p>Adoption of the law against unjust enrichment.</p>
RUSSIAN FEDERATION	Draft Federal Law on Amendments to Certain Legal Acts due to the accession of the Russian Federation to the convention on international child abduction. It aims at establishing cooperation between the Russian Federation and other states on this matter.
SLOVAKIA	Law on the Criminal Responsibility of the Legal Persons to Fight Against Organized and Economic Crimes should be adopted in 2014.
SLOVENIA	Resolution on the National Program of Preventing and Suppressing Criminality 2012-2016.
SWEDEN	<p>On-going projects based on the commitments to the EU of Sweden including cross-border exchange of information on DNA, fingerprints and information on vehicles, and the possibility to give law enforcement authorities access to the Visa Information Systems (VIS) and EURODAC.</p> <p>Project set up to investigate the possibilities to increase the exchange of information between law enforcement authorities.</p>
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	Drafting the Law on determining sanctions (Law on sentencing)
UKRAINE	Preparation of a draft resolution of the Cabinet of Ministers on Approval of an Action Plan to implement the concept of state policy in the field of fight against organized crime by the Ministry of Justice and the Ministry of Internal Affairs.

#### PRISON SYSTEM

ALBANIA	<p>Approval of amendments to the Law on the Rights and Treatments of Prisoners and Pre-trial Detainees in 2014 by the Parliament.</p> <p>Approval of amendments to the Law on Prison Police in 2014 by the Parliament.</p> <p>Adoption of a Law on Amnesty in 2014 in order to improve the conditions in the penitentiary system.</p>
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ITALY	A recent bill on criminal matters provides the Government with the opportunity to reform the penitentiary system. Some parts of this bill have already been introduced by an emergency law (Decree-Law approved by the Council of Ministers in 2013).
NORWAY	Introduction of alternative sanctions in order to reduce the number of children in custody. Legislation on the new sanction called “juvenile sentence” (social control will replace the physical control that would be exercised in prison) has not yet entered into force. A pilot project in two cities has been initiated to try out the new sanction. Creation of special prison units for juveniles in order to separate minors and adults. The Ministry of Justice and Public Security is working on an Amendment to the Execution and Sentences Act limiting the use of solitary confinements for juveniles. It should enter into force as soon as possible.
PORTUGAL	Implementation of the Investment Plan for the Rehabilitation and Expansion of Prisons and Education Centres (2012-1016).
SLOVAKIA	Elaboration of a new system of electronic control of the persons convicted to house arrest. Plans for the construction of new prisons in distant regions to increase the prisons’ capacity.
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	Adoption and implementation of: strategy for re-socialisation and social reintegration, strategy for introducing probation service and strategy for health protection of prisoners adopted. Construction of a new prison in Kumanovo; On-going reconstruction and building of new buildings in Prison Idrizovo and Correctional institution for juvenile; building of new premises in Prison Skopje is going to start in 2015.
UK – NORTHERN IRELAND	On-going series of legal aid reforms and prison service reforms.

#### CHILD FRIENDLY JUSTICE

ALBANIA	Strategy of juvenile justice should be approved in 2014.
HUNGARY	The Government of Hungary has appointed the year of the Child-centred Justice in 2012.
NORWAY	Introduction of alternative sanctions in order to reduce the number of children in custody. Legislation on the new sanction called “juvenile sentence” (social control will replace the physical control that would be exercised in prison) has not yet entered into force. A pilot project in two cities has been initiated to try out the new sanction. Creation of special prison units for juveniles in order to separate minors and adults. The Ministry of Justice and Public Security is working on an Amendment to the Execution and Sentences Act limiting the use of solitary confinements for juveniles. It should enter into force as soon as possible.
RUSSIAN FEDERATION	National strategy of activities for the benefit of children (2012-2017) was adopted. It aims at improving the court system when minors are involved. Draft Federal Law on Amendments to Certain Legal Acts due to the accession of the Russian Federation to the convention on international child abduction. It aims at establishing cooperation between the Russian Federation and other states on this matter.
SPAIN	Preparation of a reform of the Criminal Code is under preparation. Project on creating “Friendly Spaces” (“ <i>Salas amigables</i> ”) and the pre-project of the childhood protection.
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	The Law on Justice for Children adopted in 2013 encompasses international standards of Council of Europe for child friendly justice. According to the mentioned law, the Program for reimbursement of damages for child victim of crime was adopted.
UK - ENGLAND AND WALES	New Victims Code, launched in 2013, sets out the information, support and services that victims can expect to receive from criminal justice agencies.

#### VIOLENCE AGAINST PARTNERS

ITALY	A recent legislation has increased the penalties for all crimes related to domestic violence and has enriched the range of emergency measures which can be adopted by the police to prevent the continuation of violent conduct within the family.
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	On-going adoption procedure for a new Law on Prevention and Protection of Domestic Violence.

UK - ENGLAND AND WALES	Publication of the government strategy to tackle violence against women and girls which includes a number of gender neutral policies (2013).
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#### OTHER

ALBANIA	Amendment to the Law on People's Advocate was submitted in 2014. Elaboration of an amendment to the Law on Personal Data Protection. They aim at giving new powers for the Commissioner as regards personal data protection in connection with the protection of the right to information.
GREECE	Two laws recently adopted on the new Code of Lawyers and on the compensation for the persons subject to trial for undue length of proceedings.
HUNGARY	The Act on Justice Information is under preparation to determine what data/documents can be disclosed at the hearing and at an earlier stage of the proceedings.
LATVIA	A study has been commissioned with a view to evaluating the effectiveness of proceedings and finding a court cost methodology for 2013. The results have been submitted to the Ministry of Justice. A report on project results and recommendations proposed by the project contractors/team is being drafted. The recommendations will be used by the Ministry of Justice to develop its policy.
PORTUGAL	Implementation of the National Plan for Rehabilitation and Reintegration and the National Plan for Rehabilitation and Reintegration - Juvenile Justice (2013-2015).

## Chapter 18. Towards greater efficiency and quality within the European judicial systems

From the analysis of the judicial data between 2004 and 2012, it can be noted that the European judicial landscape has evolved. The CEPEJ has tried, on the basis of the statistical data and qualitative information which appear in this report, to describe this landscape and its main trends.

The Commission was created in 2002 with the aim of improving the efficiency and quality of justice in the European member states or entities of the Council of Europe. Key areas of interest include the protection of the independence of judges and the status and role of legal professionals, the safeguarding of the principles of a fair trial within a reasonable time, the promotion and protection of access to justice, efficient and effective court organisation, adequate judicial proceedings adapted to the needs and expectations of the society, as well as the development of the public service of justice aimed at court users.

Looking at these key areas and confronting them with the facts and figures addressed in this report, it is possible to draw some conclusions and highlight certain main trends for the European judicial systems. It is understood that these various issues deserve to be studied further, within the framework of an in-depth analysis that the CEPEJ will carry out in a second phase of this evaluation process.

### 18.1 Access to justice

#### Legal aid is being generalised and extended

Access to justice is directly linked to the measures taken by the states to remove financial barriers for persons who do not have sufficient means to initiate court proceedings. In practice, this involves the introduction of a legal aid system. Several Central and Eastern European states which did not have legal aid systems a few years ago are clearly committed to developing such systems, so that today all member states have legal aid mechanisms for both criminal and civil procedures. This is to be welcomed in light of the requirements and the spirit of the European Convention on Human Rights.

26 states or entities have increased their budget for legal aid. Only 8 states have decreased it, indicating that the decrease was within the context of overall budgetary cuts. A higher priority is given to legal aid systems in common law countries and in Northern European systems. It is possible to distinguish various policy options for legal aid among the member states: **Norway** and to a lesser extent **Netherlands** and **Ireland** implement the most generous legal aid policies in Europe both as regards the number of cases concerned and the amount allocated per case. Other member states extend legal aid to a large number of cases while granting relatively substantial amounts (**Finland, Monaco, Belgium, France, Germany, Portugal, Estonia**). A third group of states remains generous as to the eligibility of cases, but allocate more modest financial means (**Bulgaria, Lithuania, Republic of Moldova**). Other states have made the opposite choice to grant relatively large amounts to individual cases, while also limiting the number of cases eligible (**Austria, Italy, Slovenia, Turkey**). Finally, others restrict the eligibility of cases while limiting the amount of public budget allocated per case (**Azerbaijan, Hungary, Malta, Georgia, Romania, "the former Yugoslav Republic of Macedonia"**).

In most states, legal aid is provided for legal representation, legal advice or other (judicial) assistance. Legal aid can be granted to victims of offences in 37 member states or entities. Outside the criminal law field, legal aid can be more or less granted according to the types of cases concerned. In most of the member states and entities, legal aid can take the form of an exemption from court fees. 30 states or entities foresee the possibility of granting legal aid as regards the enforcement of judicial decisions.

Moreover, 18 member states indicate explicitly granting legal aid outside the judicial field, to prevent judicial procedures or to facilitate access to law. Some systems for instance enable the granting of legal aid within the framework of ADR or transactional procedures. These policies, which make it possible for individuals to find solutions to some litigations thanks to the provision of appropriate legal advice, should be developed further.

#### Fewer courts in Europe

Access to justice is not limited to financial resources, but is also concerned with the time required to meet with a judge (geographical access to justice). A shift in recent years clearly highlights the trend of reducing the number of courts in Europe - the number of geographic locations decreased in 22 states or entities and increased in 8. The largest decrease in the number of geographic locations (over 10%) between 2008 and

2012 can be observed in **Bulgaria, Croatia, Finland, France, Georgia, Ireland, Serbia** and **Sweden**. This trend appears to continue if we are to judge by the announced reforms of the judiciary.

### **E-justice in progress**

The consequences regarding proximity and geographical access to courts may be partly compensated by other measures. A significant evolution as concerns ICT in courts may be noted through globally measured elements, as well as through the data provided by the Member States. The development of e-justice and of e-courts is a significant European trend. A large number of states mention recent or on-going reforms in fields such as electronic files, electronic databases of jurisprudence, electronic registers, electronic signature or case management systems. The results of these reforms are clearly visible in the improvement of computer facilities for direct assistance to judges and court clerks, as well as for communication between courts and the parties. Several States have now developed and implemented ICT systems in order to support simplified procedures such as payment orders or small claims. In some cases, the creation of a single national electronic jurisdiction for the management of such claims has resulted in reduced complexity and a more efficient use of resources.

The use of video-conferencing is increasing in European judicial systems mainly for criminal cases. However, it is necessary to develop norms in order to define the range of application of these new video tools and govern their use. There are no European standards on this issue at this stage.

It is foreseeable that ICT will keep being used in the judicial systems in order to increase effectiveness and quality. As long as the judicial debate can always take place and that the rights of the defence are safeguarded, the development of e-justice may have a positive effect on access to justice; it should contribute to reducing backlogs and to shortening court proceedings – or at least to improve their foreseeability in terms of timeframes.

### **Information to court users is being developed**

Easy access to certain types of information seems to gradually become a European standard. Indeed, individuals and legal professionals can access information about the most important relevant laws, courts' jurisdiction and functioning, and about follow up to the proceedings that involves them easily and free of charge via the internet. The availability of specific information intended for victims of crime seems to be growing as it is foreseen in 43 states or entities. Another trend is apparent: specific arrangements are developing in Europe in order to inform the (potential) users of the courts about the foreseeability of procedures (6 states in 2008, 17 in 2012).

### **More and more lawyers**

Lawyers have an essential role in guaranteeing access to justice. The number of lawyers has increased in Europe in the recent years in almost all member states. The financial and economic crisis has not had - until now - measurable consequences on that.

The number of lawyers is characteristic of various geographical zones in Europe. The states of Southern Europe have the highest number of lawyers compared to the populations. Societies are more prone to litigation in such states. It would be a premature shortcut to establish from this report a correlation between the number of lawyers and the volume and lengths of proceedings. Nevertheless, it might be worth studying further this issue, in order to see whether the number of lawyers and the organisation of the profession have a relevant impact on court workload or not.

The sole presence of a sufficient number of lawyers is not a guarantee in itself of the effective protection of individuals' rights. The profession needs to be regulated by an appropriate organisation. While it is difficult to present a full panorama of all the duties and obligations that lawyers have in each state or entity, it can be said that the profession is generally well organised and the training of lawyers ensures a good performance of their functions.

### **Alternative Dispute Resolution (ADR) is being developed**

Access to justice may also be facilitated through the promotion of Alternative Dispute Resolution (ADR). Such measures contribute to limiting the need to bring issues before a court and to involving professionals other than judges in the process. Mediation (recommended, carried out or approved by justice) is growing in Europe: several states are considering legislative reforms in terms of ADR, for example on the obligation of a mediation attempt prior to judicial proceedings in some case categories (family law for instance). Mediation is

used successfully in many states in family law (divorce), commercial litigation and criminal matters (procedures for compensating victims). A growing number of states grant legal aid to pursue mediation and this trend appears to be accelerating. States should be encouraged to further develop mediation procedures. It should also be noted that other ADR are widely implemented in some member states, such as arbitration or conciliation.

## 18.2 Effective functioning of the judicial systems

### Contrasting effects of the economic crisis on the budgets of the judicial systems

Despite the economic and financial crisis that has affected or affects a significant number of countries, the European trend is still upward as regards the budgets of judicial systems: their development remains a priority of public funds for a majority of governments. In half of the states, justice seems to have been protected in terms of budget from the effects of the crisis, especially in **Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Finland, France, Italy, Luxembourg, Malta, Republic of Moldova, Netherlands, Norway, Poland, Russian Federation, Serbia, Slovakia, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine**: a continuous and often homogeneous increase in the budgets of the judicial systems, excluding inflation, can be highlighted for the last ten years. The crisis has had a clear impact on the development of the budgets in other states that have taken restrictive measures, sometimes at different periods (especially **Spain, Greece, Croatia, Ireland, Portugal, Lithuania, Slovenia, UK-Northern Ireland, UK-Scotland** and, to a lesser extent, **Romania**). For these countries, the effects of the crisis often affect human resources (mainly in terms of workforce reduction). Some states have begun to reduce their budgets already between 2008 and 2010, others more recently. Some of them continue the trend of budgetary cuts, while others have been able to reverse this trend and to start to increase their budgets again (**Albania, Estonia, Iceland, Hungary, Latvia**).

At the same time, the crisis has had an indirect effect on the budgets: litigation in the social, commercial and labour law fields is affected by the deteriorating economic situation (bankruptcies, layoffs, unpaid, foreclosures, etc.). This increase in litigation causes additional costs for justice. Some states have focused on recent costs related to the legislation which involves the courts in controlling migration policy (asylum seekers, illegal immigration).

### An uneven investment in judicial systems

Strong disparities are still to be stressed as regards the level of investment in judicial systems: the European states spend on average 60 € per capita and per year on the functioning of the judicial system, the median level being at 46,60 €, but with significant differences - 8 states or entities at less than 23 € and 8 at more than 100 €. This observation is to be weighted by relating it to the respective levels of wealth of these states (GDP per capita).

On average, 65% of the budgets allocated to the judicial systems are dedicated to the functioning of the courts, 25% to the prosecution services and 10% to the legal aid system. For the budget allocated to salaries, some countries that had devoted significant efforts to reach a level of salary for the judiciary which is in line with European standards, have now entered a "cruising speed". The common law countries, based in particular on non-professional court staff (except for **Ireland**) and a smaller number of judges (usually much more experienced), devote a smaller share of their resources to salaries, while this budget item is the largest in continental law countries. The funds allocated to the prosecution services in some Eastern and South-Eastern European states correspond to historical traditions. The budget for the prosecuting authorities is relatively stable in Europe. Recent reforms of criminal procedures which extend the powers of the public prosecutors during the investigation phase and which have dropped the investigative judge (**Austria, Switzerland**) have also had an impact on internal budget reconstructions. The systems that rely on a wide access to justice can be identified: public justice policies are guided by the principles of Habeas Corpus and are generous on legal aid, particularly in the entities of the United Kingdom and in Northern Europe.

The computerization of the judicial systems remains a growing priority in Europe (representing more than 3% of the budget of the courts), despite the differences between the member states. ICT remain a priority area in which the states should be encouraged to invest in the coming years. Regarding judicial training, the financial effort is limited to less than 1% of the budget of the courts on average; judicial training should be a higher priority for the European states (although some of them, individually, have made significant efforts).

## **An increased participation of the users in the funding of the public service of justice**

Payment of court fees is now a key characteristic of the justice system in Europe: the tax payer is not the only one to finance the system, as the court user is requested to contribute too. Only **France** and **Luxembourg** foresee access to court free of fees. The revenues generated by court fees vary from less than 1% to over 50 % of the court budget, and even, in some member states, more than half of the budget of the judicial system. For the majority of member states, this revenue accounts for a significant resource covering a major part of their court operating costs, and in the case of **Austria**, being in the position of generating a revenue that far exceeds the operating cost of the whole judicial system. These resources come in particular from proceeds related to the handling of commercial and land registries. Such a system is part of the current trend in public management of balancing, to a certain extent, the load of the operating costs of public services between the users and the tax payers. However, in this area, it is important to distinguish between the fees required to obtain information, make changes in land matters or for business registries or other registries and the fees requested for the court proceedings proper: to ensure effective access to justice it is important that court fees are not a barrier to the effectiveness of the individual's right to go to court.

## **A stabilised but uneven number of judges according to the states**

There has been a trend in Europe towards stability in the number of judges for several years. In general, the judicial systems of the states of Central and Eastern Europe operate with a ratio of judges per capita higher than in the states of Western Europe.

The composition of the judiciary as between professional judges, occasional judges and lay judges reflects strongly the different types of judicial systems. Some systems are fully professionalized, while other systems (Northern Europe and the countries of the *common law*) rely widely on lay judges who can either intervene in autonomy or as members of panels chaired by professional judges. For states experiencing the coexistence of professional and lay judges, the evolution tends mainly towards an emphasis of the professionalization of the judiciary. Sometimes occasional judges may assist permanent judges in order to cope with an increase in caseload. The use of occasional judges to overcome specific (vacancies) or structural (judicial backlogs difficult to eliminate) difficulties, but this does not constitute a strong trend.

Europe is divided on the use of juries which exist in a little bit less than half of the states. Even if this mechanism remains essentially a characteristic of Western Europe, the division is no longer so clear.

## **Europe is characterized by diversity in the organisation and in the status of the prosecution services**

The functions and status of the prosecution services and of their composite staff can vary according to member state. The function of bringing proceedings before the courts against persons suspected of being the perpetrator of an offence is nevertheless central in all countries. Significant reforms have occurred to extend the prerogatives of the prosecution in the investigation phase (**Austria** and **Switzerland**).

At European level, the number of prosecutors has not changed significantly for several years. The largest number of prosecutors per capita is found in the states of Central and Eastern Europe. There is a relative stability in the evolution of the number of prosecutors in recent years, although the situation varies by state. The states or entities with the highest numbers of cases received per prosecutor (**Austria**, **France**, and **Germany**) have the lowest numbers of prosecutors. States and entities with the lowest numbers of cases per prosecutor can be found in Eastern European states, which, however, have a high number of prosecutors (in particular **Lithuania**, **Latvia**, **Russian Federation**, **Republic of Moldova**).

Prosecutors' workload depends on their area of intervention in the criminal sphere (half the member states assign them competence for the enforcement of penalties) but also in external matters. In almost half of the states, they intervene to uphold compliance with the law in civil or administrative proceedings. In 18 states, in civil litigation, they defend the interests of vulnerable persons (minors, the legally incapacitated...) and perform a role in cases concerning personal status and family law (civil status, nationality, parental rights, adoption...), or in certain fields of public interest (bankruptcies, immigration...).

## **The salaries of judges and prosecutors are increasing globally, but the crisis has an impact in some states**

Several Eastern European states or entities have increased considerably judges' and prosecutors' salaries since 2004, not only to make these professions more attractive but also to ensure (regarding judges) their impartiality and independence, to prevent corruption and guarantee sufficient respect from society. The economic and financial crisis has forced some states to freeze or reduce the salaries of judges and

prosecutors, often in line with restrictive measures affecting the entire public service. Variations can be noted as regards the respective salaries of prosecutors and judges, mainly for the benefit of judges.

### **A trend towards outsourcing non-judicial tasks within the courts**

Generally speaking, data on non-judge staff in courts have been rather stable for several years, including for the distribution among the different categories of staff and as regards the ratio between the number of staff and the number of judges. For *Rechtspfleger*-type staff, with specific quasi-judicial powers (which may influence the organisation of the judiciary), there are significant variations in certain countries, particularly in Eastern Europe, resulting in either an increase in staff responsible for such tasks, or a reduction. The trend towards outsourcing non-judicial activities within the courts can be noted in a majority of states and reveals, in some states, that some tasks usually assigned to the public service are removed to the judicial staff.

## **18.3 Quality of the public service of justice delivered to the users**

### **Budgetary resources and court efficiency**

Although it is not for the CEPEJ at this stage to define the proper level of financial resources to be allocated to the justice system, a correlation can be noted between the lack of performances and efficiency of some judicial systems and the weakness of their financial resources. However, the opposite is not always true: high financial resources do not always guarantee the good performance and efficiency of judicial systems. Other elements must be considered here (efficient organisation of judicial systems, the relevance of the procedures, management of human and financial resources, the increased responsibilities given to the players in the judicial system, training, etc.).

### **The court users better taken into consideration**

Increasing attention is paid in Europe to the needs and expectations of the court users. In a large majority of states or entities, courts draft annual reports and have monitoring systems to measure and manage case flows and the timeframes of proceedings. It can be noticed that techniques and methods inspired by *new public management* and by *case management* are increasingly implemented and imply the definition of quantified objectives and the evaluation of performances. Sometimes resources are allocated to courts according to the results achieved. Performance and quality indicators are increasingly used. More and more European states implement global quality systems. The introduction and use of specific instruments (surveys) is thus developed to assess the level of satisfaction and the confidence of the users in courts. In many countries it is common practice to conduct such surveys regularly at national level and in the courts. In addition, these models take into account other factors such as court administration, management of resources (human, financial, material), access to law and justice, the processes applied in the courts, etc. This should be developed further in the coming years.

Individual evaluation of judges and prosecutors is growing in European practice (except for states or entities where judges and prosecutors are elected), which should be seen as a positive aspect as it contributes to identifying problems, preventing disciplinary proceedings by intervening before difficulties arise, and, when necessary, to initiating more disciplinary proceedings.

In order to protect court users against dysfunctions of the courts, judicial systems have implemented compensation procedures: in 34 countries or entities, there is a compensation mechanism for excessively long proceedings and in 24 countries or entities, compensation for non-enforcement of a court decision exists. Almost all countries have provisions for compensating a person in cases of wrongful arrest or wrongful conviction.

Rape victims, child victims and child perpetrators are the most protected categories in judicial proceedings. This is done mostly by providing these categories with special hearing arrangements during the investigation and the organization of the hearing. In 40 states or entities, public prosecutors have a particular role to play in assisting the victims of crimes. Most countries also have procedures for compensating victims - this is mainly a public fund system.

Even more today in a global society where the movement of people is accelerating, the organisation of an efficient court interpretation system is part of a fair trial and a high quality court system. The promotion of efficient access to translation and interpretation and the quality of these services are a European priority. In criminal matters, the right to a good quality of translation is an integral part of the rights of the defence.

### **Excessive length of judicial proceedings must remain a major concern**

For the time being, violations of Article 6 of the European Convention on Human Rights due to the excessive length of judicial proceedings remain the primary reason for the European Court of Human Rights to find a violation of the Convention by European states. Member states continue their efforts towards a more detailed knowledge of the activity of their courts in monitoring compliance with fundamental principles as enshrined in the Convention and managing workflow and length of proceedings. A larger number of states or entities are able to collect the necessary data to analyse timeframes of judicial procedures. The CEPEJ encourages states and entities to continue on this path, following in particular the recommendations in the CEPEJ's "GOJUST Guidelines".

### **The courts are generally able to cope with the volume of cases**

In general, considering the number of litigious cases per capita, Europeans seem to be more litigious in Central and Eastern European states, South Eastern Europe and Southern European states than in the states of Northern Europe and the Caucasus.

Having to address a high volume of cases is not as such an obstacle to the proper functioning of the courts, as some states can deal relatively quickly with a high volume of cases.

When considering all the cases to be handled by the courts, it may be noted that in 2012, a large majority of the member states were able to deal with incoming and pending cases in first instance courts without increasing their backlogs. Variations may be underlined, depending on the case categories involved. This could encourage the states where the courts have difficulties to manage case flows to review the organisation of the judiciary in order to balance the judicial management of the various case categories. Several factors may be involved, including the reallocation of financial and human resources among different legal areas and among the courts, so as to balance the case flow management according to the volume and the categories of cases, or the diversification of judicial procedures (ADR, simplified or negotiated procedures).

### ***Contrasting results between the states in civil, commercial and administrative matters***

In civil and commercial matters, the activity of first instance courts varies between the states, as some states address to a great extent non-litigious cases, essentially when the courts are responsible for land or business registries. In general, non-litigious matters can increase the workload of the courts but they are rarely responsible for a lack of efficiency of the courts. On average in Europe, first instance courts are able to resolve the same number of contentious cases as the number of incoming cases. However, at the state or the entity level, significant variations can be noted. In at least one third of European states, the efficiency of the courts can be considered satisfactory (**Austria, Azerbaijan, Czech Republic, Denmark, Estonia, Georgia, Hungary, Lithuania, Luxembourg, Republic of Moldova, Norway, Russian Federation, Sweden, Turkey, Ukraine**); the courts in these countries should not expect major problems in dealing with the volume of civil cases that they will receive. The situation deserves careful monitoring, in order not to see the situation deteriorating, in **Andorra, Bosnia and Herzegovina, Croatia, Portugal, and Slovakia**. Other states are experiencing still high case management timeframes but can expect an improvement due to a better ability to absorb the incoming cases, which could have a positive impact on the duration of proceedings if the trend was confirmed (**France, Germany, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Armenia, Finland, Italy, Latvia, Malta, Montenegro**). The situation is more critical in other states that cannot cope with the volume of incoming cases and already experience high case management timeframes (**Greece, Poland**).

For litigious divorces, in most member states and entities analysed, the courts are able to manage case flows without increasing their backlogs. Lengths of procedures for litigious divorces in first instance courts vary between the states and entities according to the family law procedures and the volume of cases addressed by the courts. However, improving case flow management does not necessarily mean that the processing times are improved, because the cases reaching the courts are sometimes fewer, but more complex. In terms of employment dismissals, although the average Clearance Rate for the states studied is higher than 100%, a number of courts are struggling to cope with the volume of cases, which leads to delays and backlogs. In these proceedings, the length of court proceedings can also be explained by the fact that some states, through their legal proceedings, have established procedural guarantees and negotiation procedures to strike a balance between the functioning of the economic system and the individual protection of employees. It is in respect of insolvency proceedings for companies that European states experience the greatest difficulties in managing cases. The economic crisis is certainly one of the main reasons for this situation, together with the specificity of the procedures that varies according to the national systems.

The same analysis can be made in administrative law matters. Case management does not seem to be a problem in half of the member states. **Finland, Lithuania, Netherlands** and **Poland** are able to cope with the volume of incoming cases without increasing their backlogs. A steady increase in the Clearance Rate is encouraging in **Bosnia and Herzegovina, Estonia, France, Georgia, Hungary, Latvia, Republic of Moldova, Slovenia, Spain, Sweden, Turkey, and Ukraine**. On the contrary, case flow management is/can become difficult for the courts in 15 states or entities. This seems especially critical in **Cyprus**, and to a lesser extent, **Luxembourg, Monaco, Serbia, Romania, and Slovakia**.

### ***Difficulties in processing criminal cases lay mainly at the level of the prosecution services***

As regards criminal cases, the lengths of procedure for handling judicial cases is of particular importance for the protection of fundamental rights, including serious criminal cases where deprivation of liberty may be at stake. The caseload of the courts depends greatly on the possibilities afforded to the prosecution to hold or not to hold the power to non-suit a case or to propose a negotiated sanction, with or without the intervention of a judge.

It is at the level of the prosecution service that the main difficulties in the handling of criminal cases reside. At the European level, the number of cases which prosecutors receive and bring before the courts can be a good indication, requiring qualification in the light of the foregoing remarks, as to the respective workloads of judges and prosecutors by comparison with the ratio of their respective number to the population. It is clear that in some countries the burden on the prosecution is heavy. In most member states, prosecutors are not able to cope with the volume of cases to be addressed. Only in 7 states or entities was the number of completed cases higher than the number of new cases. Very positive performance was to be seen in the **Russian Federation**. 17 states have a ratio of completed to received cases below 90%. In particular, **Romania, Northern Ireland (UK), and the Republic of Moldova** are the states experiencing the greatest difficulties in finding a balance between completed and received cases.

As regards criminal case management by the judges, on average in Europe, the courts can handle the volume of cases without increasing backlogs. The average Disposition Time is 142 days for all criminal law cases and 189 days for serious offenses. The most efficient criminal justice systems that can quickly resolve a complaint (less than 100 days) are to be found in **Azerbaijan, Czech Republic, Denmark, Georgia, Lithuania, Norway, Poland, Ukraine, UK-England and Wales**. The indicators also show that **Armenia, Austria, Germany, Slovakia, Sweden**, as well as **Israel** have first instance criminal courts which function with acceptable timeframes. **Estonia, Hungary, Netherlands** must be vigilant in their case handling, when considering the evolution in their Clearance Rates. The courts have difficulties managing the case flows in **Andorra, Cyprus, Italy, Latvia, Montenegro and Turkey**.

For robberies, case flow management in first instance courts is improving in **Azerbaijan, Bosnia and Herzegovina, Estonia, Lithuania, Slovenia, Ukraine**. **Albania, Armenia, Finland, Georgia, Republic of Moldova, UK-England and Wales** experience an increasing trend as regards the backlogs in first instance courts. Regarding the procedures for intentional homicides, court efficiency is improving in **Albania, Finland, Latvia, Lithuania, Republic of Moldova, Ukraine**. It must be specially monitored in **Bulgaria, Montenegro**, and the **Russian Federation**. It is an issue of concern for **Turkey, UK-England and Wales, Romania, Georgia, Armenia**.

### **Development of simplified procedures**

A very large majority of the member states have specific emergency procedures for civil and criminal cases. Simplified procedures, which are often less expensive and faster, are being developed in a majority of member states both in civil (especially for uncontested claims) and criminal (for minor offenses) matters. Such procedures are also being developed in administrative law in almost half of the member states. Furthermore, in 26 states or entities, systems permit the parties and their lawyers to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to present their findings or on the hearing dates).

### **Experts play a significant role in the proceedings**

Experts play an important role in the quality of the legal debate, but the implementation of expertise in a poorly organized framework can also have a negative impact on the length of proceedings.

Three quarters of the member states consider that the courts must be in charge of the selection process for experts. When experts are not recruited and/or appointed by the court, their selection is most often ensured by the Ministry of Justice or by the parties. When experts are recruited and/or appointed by a court, they are

mainly selected according to the specific needs of the given procedures. In several states or entities, not only natural persons but also legal persons can be registered as experts.

### **Towards a privatisation and a greater professionalization of the execution of judgments**

For a limited number of states the non-execution of judicial decisions remains a significant problem, given the relatively high number of ECHR violations referring specifically to this issue. However, the evolution shows that the trend is to adopt standards of quality for enforcement within the states. One of the solutions lies in the improvement of the execution mechanisms and the development of the role of the enforcement agents.

The status of enforcement agents in civil matter is highly variable in the different member states or entities. Judges can play a role in the enforcement procedure, but in most cases their role is limited to the supervision of such procedures. For several years, the global number of enforcement agents has grown constantly.

It is essential that enforcement agents be provided with reliable and suitable training. Therefore, it can be noticed that the proportion of countries where a specific initial training exists continues to increase. Entrance exams and initial training in the field of enforcement are clearly becoming European standards. These should be highlighted as essential in order to provide enforcement agents with adequate qualifications for applying enforcement proceedings efficiently and reasonably, while safeguarding fundamental rights and individual freedoms.

### **Judicial systems under reconstruction**

Many states are undertaking court reforms. Courts are being restructured, court locations have been changed and other working methods have been introduced, including for ensuring a better follow-up of the court activities. This should result in an improvement of the efficiency and quality of judicial proceedings and a reduction in the number of cases received by the European Court of Human Rights.

### **18.4 Protection of the independence of the judiciary and the status of judges and prosecutors**

Recommendations from the Council of Europe are fundamental principles in the protection and strengthening of judges' independence (in particular Recommendation Rec(2010)12 on judges: independence, efficiency and responsibilities). They also aim to guide member states in guaranteeing the statutory protection of prosecutors (Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system). These elements are mainly defined by recruitment mechanisms, training, promotion and financial remuneration.

### **Functional independence of prosecutors is not a principle shared by all states**

Judges are independent of the executive and legislative powers. The situation is more complex with regard to prosecutors, whose status differs significantly according to the state. The main trend is that, in the majority of states or entities, prosecutors have an independent status; however the functional reality is sometimes different. In many states, prosecutors are under the authority of the Minister of Justice. In some states where the statutory independence is not assured, the functional independence of prosecutors can be achieved through various types of guarantees.

### **The salaries of judges and prosecutors are increasing globally, in spite of notable impacts of the crisis in some states**

Generally, several Eastern European countries have increased judges and prosecutors' salaries significantly since 2004. The objective has not only been to make these professions more attractive, but also to preserve the independence and impartiality (of judges), to avoid corruption and to give more social recognition to the professions. At the same time, at the European level, although the judges' salaries have increased in absolute value for several years, it can be stressed that they have decreased considering the evolution of the overall salaries in the member states. The effect of the financial and economic crisis, which has had an impact on the salaries of public officials, remains significant.

### **Towards a reconciliation of the recruitment procedures for judges and prosecutors**

The recruitment procedures for judges and prosecutors are becoming increasingly similar in Europe for a majority of states (they are very close in 24 states): this recruitment is most often based on a competition and / or documented experience. In the recruitment, appointment and promotion of judges and prosecutors, there

is in many states a strong participation of representatives of judges and prosecutors in the appropriate bodies. As regards prosecutors, most of the states entrust the recruitment of prosecutors to joint authorities composed of prosecutors and non-prosecutors.

### **The training of judges and prosecutors is being developed**

The budget allocated to training, which is indispensable for improving the functioning of justice, is increasing significantly in several central and eastern European states. The member states continue to implement reforms in this area, mainly the countries of Eastern Europe where judicial training was reinforced as recommended by the Council of Europe. Many states have institutions for the training of judges and, to a lesser extent, of prosecutors. The number of states with joint institutions for the training of judges and prosecutors has increased (22). In most states, an initial training for judges or prosecutors is required and its duration can vary from a few months to several years. The training of judges and prosecutors is developing gradually in European countries, confirming the trend observed since 2010. To a lesser extent, a trend towards the development of training in the field of administration and management of courts and in the field of ICT can be observed. However, in general, the member states could be encouraged to invest more financial and human resources in the training of judges and prosecutors.

### **The “glass ceiling” remains a reality in the judiciary**

From a general point of view, it is possible to see a progressive feminisation of the judiciary resulting in 2012 in gender equality in staffing numbers, yet with significant differences between the states. However, this equality does not yet ensure equal access to the judicial hierarchy, in which men are by far the majority (only 9 states have more female presidents of first instance courts, and 5 states have more female presidents of courts of appeal): the “glass ceiling” remains a reality among the European judges and prosecutors.

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**The aim of this Report is to present a detailed review of the public service of justice and to facilitate an evaluation of its operation within the member states of the Council of Europe and beyond. Its ultimate objective is to improve the efficiency and quality of the judicial system to serve the interests of the European public. For this purpose, the CEPEJ designs tools for analysing and improving the court activities. This evaluation must take fully into account the specificity of the public service of justice: it must be based on the essential principles of the independence of the judiciary and the impartiality of judges, which are pillars in any state governed by the Rule of Law. Policy-makers and judicial practitioners shall work towards a greater efficiency of their judicial systems only while fully complying with these fundamental principles.**

# Scheme for evaluating judicial systems (2012-2014 cycle)

## Contents

### 1. Demographic and economic data

#### 1.1 Inhabitants and economic information

1. Number of inhabitants (if possible on 1 January 2013)
2. Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €) - (If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP).

State or federal level

Regional / federal entity level (total for all regions / federal entities)

3. Per capita GDP (in €)
4. Average gross annual salary (in €)
5. Exchange rate of national currency (non-Euro zone) in € on 1 January 2013

\*\*\*

- A.1 Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

#### 1.2. Budgetary data concerning judicial system

6. Annual approved public budget allocated to the functioning of all courts, in € (if possible without the budget of the public prosecution services and without the budget of legal aid):

	Amount (in €)
<b>TOTAL annual approved budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)</b>	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. Annual public budget allocated to (gross) salaries	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
4. Annual public budget allocated to court buildings (maintenance, operating costs)	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
5. Annual public budget allocated to investments in new (court) buildings	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
6. Annual public budget allocated to training and education	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
7. Other (Please specify)	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP

7. If you cannot separate the budget of the public prosecution services and the budget of legal aid from the budget allocated to all courts, please indicate it clearly. If "other", please specify:

8. Are litigants in general required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

for *criminal* cases?

Yes

No

for *other than criminal* cases?

Yes

No

If yes, are there exceptions to the rule to pay court a tax or fee? Please provide comments on those exceptions:

- 8.1. Please briefly present the methodology of calculation of courts fees?

8.2 Please indicate, if possible, the amount of court fees to commence an action for 3000€ debt recovery?

9. Annual income of court taxes or fees received by the State (in €)

12. Annual approved public budget allocated to legal aid, in €. - If one or several data are not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. (Question modified)

	Amount (in €)
<b>Total annual approved public budget allocated to legal aid (12.1 + 12.2)</b>	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
12.1 Annual public budget allocated to legal aid for cases brought to court	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
12.1.1 in criminal law cases	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
12.1.2 in other than criminal law cases	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
12.2 Annual public budget allocated to legal aid for non litigious cases or cases not brought to court (legal consultation, ADR, etc)	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If your system enables to be granted legal aid for cases which are non litigious or not brought to court, please specify:

13. Total annual approved public budget allocated to the public prosecution services, in €

Please indicate any useful comment to explain the figures provided:

14. Authorities formally responsible for the budgets allocated to the courts (multiple options possible):

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the courts	Evaluation of the use of the budget at a national level
Ministry of Justice	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Other ministry	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Parliament	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Supreme Court	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
High Judicial Council	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Courts	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Inspection body	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Other	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP

15. If any other Ministry and/or inspection body and/or other, please specify (considering question 14):

\*\*\*

A.2 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available, an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Please indicate the sources for answering questions 6, 9, 10, 11, 12 and 13:

### 1.3. Budgetary data concerning the whole justice system

The following data would be useful for information.

15.1 Former question 10. Annual approved public budget allocated to the whole justice system, in € (this global budget does not include only the court system as defined under question 6, but also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.)

NA

**15.2 Former question 11. Please indicate the budgetary elements that are included in the whole justice system:**

Court (see question 6)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Legal aid (see question 12)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Public prosecution services (see question 13)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Prison system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Probation services	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Council of the judiciary	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Constitutional court	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Judicial management body	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
State advocacy	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Enforcement services	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Notariat	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Forensic services	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Judicial protection of juveniles	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Functioning of the Ministry of Justice	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Refugees and asylum seekers services	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP
Other	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> NA	<input type="checkbox"/> NAP

If "other", please specify:

**2. Access to Justice and to all courts**

**2.1 Legal aid**

**16. Does legal aid apply to:**

	Criminal cases	Other than criminal cases
Representation in court	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP
Legal advice	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP

**17. Does legal aid include the coverage of or the exemption from court fees?**

Yes  
 No

If yes, please specify:

**18. Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?**

Yes  
 No

If yes, please specify:

**19. Can legal aid be granted for other costs (different from questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc.)?**

Criminal cases	Other than criminal cases
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> NAP

If yes, please specify:

**20. Number of cases referred to the court for which legal aid has been granted. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

This question concerns only the annual number of cases for which legal aid has been granted to those referring a case to a court. It does not concern legal advice provided for cases that are not brought before the court.

<b>Total</b>	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Criminal cases	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Other than criminal cases	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP

Please specify when appropriate:

20.1 Number of cases not brought to court (see 12.2 above) for which legal aid has been granted. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

21. In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?

Accused individuals  Yes  No  
Victims  Yes  No

If yes, please specify:

22. If yes, are individuals free to choose their lawyer within the framework of the legal aid system?  Yes  No

23. Does your country have an income and assets evaluation for granting legal aid to the Applicant. If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.

for criminal cases	<input type="checkbox"/> Yes amount of annual income (if possible for one person) in € <input type="checkbox"/> NA <input type="checkbox"/> NAP amount of assets in € <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> No
for other than criminal cases?	<input type="checkbox"/> Yes amount of annual income (if possible for one person) in € <input type="checkbox"/> NA <input type="checkbox"/> NAP amount of assets in € <input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> No

Please provide comments to explain the figures provided:

24. In *other than criminal cases*, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?

Yes  
 No

If yes, please explain the exact criteria for denying legal aid:

25. In *other than criminal cases*, is the decision to grant or refuse legal aid taken by:

- the court?
- an authority external to the court?
- a mixed authority (court and external bodies)?

26. Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?

Yes  
 No

If appropriate, please inform about the current development of such insurances in your country; is it a growing phenomenon?

27. Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in :

	Yes	No
criminal cases?	<input type="checkbox"/>	<input type="checkbox"/>
other than criminal cases?	<input type="checkbox"/>	<input type="checkbox"/>

\*\*\*

B.1 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Please indicate the sources for answering questions 20 and 23:

2.2 Users of the courts and victims

**2.2.1 Rights of the users and victims**

28. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for which the general public may have free of charge access to the following:

- legal texts (e.g. codes, laws, regulations, etc.)?  Yes  No  
Internet address(es):
- case-law of the higher court/s?  Yes  No  
Internet address(es):
- other documents (e.g. downloadable forms, online registration)?  Yes  No  
Internet address(es):

The websites mentioned could appear in particular on the internet website of the CEPEJ. Please specify what documents and information the addresses for “other documents” include:

29. Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?

- Yes
- No
- Yes only in some specific situations

If yes only in some specific situations, please specify:

30. Is there a public and free-of-charge specific information system to inform and to help victims of crime?

- Yes
- No

If yes, please specify:

31. Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

This question does not concern the police investigation phase of the procedure and does not concern compensation mechanisms for victims of criminal offences, which are addressed under questions 32 to 34.

	Information mechanism	Special arrangements in court hearings	Other
Victims of sexual violence/rape	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Victims of terrorism	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Minors (witnesses or victims)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Victims of domestic violence	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Ethnic minorities	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Disabled persons	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Juvenile offenders	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other (e.g. victims of human trafficking, forced marriage, sexual mutilation)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If “other vulnerable person” and/or “other special arrangements”, please specify:

31.1 Is it possible for minors to be a party to a judicial proceedings :

- Yes
- No

If yes, please specify which procedure can be concerned (civil, criminal, administrative/normal or accelerated procedure) and at which conditions (can children benefit from legal aid, be represented by a lawyer, etc.) :

32. Does your country allocate compensation for victims of crime?

- Yes  
 No

If yes, for which kind of offences?

33. If yes, does this compensation consist in:

- a public fund?  
 damages to be paid by the responsible person (decided by a court decision)?  
 a private fund?

34. Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?

- Yes  
 No

If yes, please illustrate with available data concerning the recovery rate, the title of the studies, the frequency of the studies and the coordinating body:

35. Do public prosecutors have a specific role with respect to the victims (protection and assistance)?

- Yes  
 No

If yes, please specify:

36. Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case?

Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a decision by a judge".

- Yes  
 No  
 NAP (the public prosecutor cannot decide to discontinue a case on his/her own. A decision by a judge is needed).

If necessary, please specify:

### 2.2.2 Confidence of citizens in their justice system

37. Is there a system for compensating users in the following circumstances:

- |                                     |                              |                             |
|-------------------------------------|------------------------------|-----------------------------|
| • excessive length of proceedings?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • non execution of court decisions? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • wrongful arrest?                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • wrongful condemnation?            | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

38. Does your country have surveys aimed at legal professionals and court users to measure their trust and/or satisfaction with the services delivered by the judicial system? (multiple options possible)

- (Satisfaction) surveys aimed at judges  
 (Satisfaction) surveys aimed at court staff  
 (Satisfaction) surveys aimed at public prosecutors  
 (Satisfaction) surveys aimed at lawyers  
 (Satisfaction) surveys aimed at the parties  
 (Satisfaction) surveys aimed at other court users (e.g. jurors, witnesses, experts, interpreters, representatives of governmental agencies)

(Satisfaction) surveys aimed at victims

If possible, please specify their titles, object and websites where they can be consulted:

39. If possible, please specify:

	Surveys at a regular interval (for example annual)	Occasional surveys
Surveys at national level	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Surveys at court level	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

40. Is there a national or local procedure for making complaints about the functioning of the judicial system? (for example the handling of a case by a judge or the duration of a proceeding)

Yes  
 No

41. Please specify which authority is responsible for dealing with such complaints and inform whether there is or not a time limit to respond and/or a time limit for dealing with the complaint (multiple options possible):

	Time limit to respond (e.g. to acknowledge receipt of the complaint, to provide information on the follow-up to be given to the complaint, etc.)	Time limit for dealing with the complaint
Court concerned	<input type="checkbox"/>	<input type="checkbox"/>
Higher court	<input type="checkbox"/>	<input type="checkbox"/>
Ministry of Justice	<input type="checkbox"/>	<input type="checkbox"/>
High Council of the Judiciary	<input type="checkbox"/>	<input type="checkbox"/>
Other external bodies (e.g. Ombudsman)	<input type="checkbox"/>	<input type="checkbox"/>

Please give information concerning the efficiency of this complaint procedure:

41.1. Please indicate the number of complaints that are upheld and the amount of compensation given to users in 2012 for complaints about the functioning of the judicial system

### 3. Organisation of the court system

#### 3.1 Courts

42. Number of courts considered as *legal entities* (administrative structures) and *geographic locations*. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

42.1 First instance courts of general jurisdiction ( <i>legal entities</i> )	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
42.2 First instance specialised courts ( <i>legal entities</i> )	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
42.3 All the courts ( <i>geographic locations</i> ) (this includes 1 <sup>st</sup> instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts)	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP

43. Number (legal entities) of first instance specialised courts (or specific judicial order). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. (*modified question*)

<b>Total</b> (must be the same as the data given under question 42.2)	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Commercial courts (excluded insolvency courts)	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Insolvency courts	

Labour courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Family courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Rent and tenancies courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Enforcement of criminal sanctions courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Fight against terrorism, organised crime and corruption	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Internet related disputes	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Administrative courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Insurance and / or social welfare courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Military courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
Other specialised 1 <sup>st</sup> instance courts	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If "other specialised 1<sup>st</sup> instance courts", please specify:

44. Is there a foreseen change in the structure of courts [for example a reduction of the number of courts (geographic locations) or a change in the powers of courts]?

- Yes  
 No

If yes, please specify:

45. Number of first instance courts (*geographic locations*) competent for a case concerning:

a debt collection for small claims	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
a dismissal	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
a robbery	<input type="checkbox"/> NA / <input type="checkbox"/> NAP

If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Please give the definition for small claims and indicate the monetary value of a small claim:

\*\*\*

Please indicate the sources for answering questions 42, 43 and 45:

### 3.2 Judges and non-judge staff

Please make sure that public prosecutors and their staff are excluded from the following figures (they will be part of questions 55-60). If a distinction between staff attached to judges and staff attached to prosecutors cannot be made, please indicate it clearly.

Please indicate the number of posts that are actually filled at the date of reference and not the theoretical budgetary posts.

46. Number of professional judges sitting in courts (if possible on 31 December 2012). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

(please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts )

	Total	Males	Females	
Total number of professional judges (1 + 2 + 3)	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP
1. Number of first instance professional judges	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP
2. Number of second instance (court of appeal) professional judges	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP
3. Number of supreme court professional judges	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP

Please provide any useful comment for interpreting the data above :

47. Number of court presidents (professional judges). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Total	Males	Females	
Total number of court presidents (1 + 2)	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP

+ 3)				
1. Number of first instance court presidents	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP
2. Number of second instance (court of appeal) court presidents	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP
3. Number of supreme court presidents	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> / NA	<input type="checkbox"/> NAP

48. Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December 2012):

Gross figure	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
If possible, in full-time equivalent	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If necessary, please provide comments to explain the answer under question 48:

49. Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December 2012) (e.g. lay judges and "juges consulaires", but not arbitrators and persons sitting in a jury): (**modified question**)

Gross figure	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
--------------	---

If such non-professional judges exists in your country, please specify:

50. Does your judicial system include trial by jury with the participation of citizens?

- Yes  
 No

If yes, for which type of case(s)?

51. Number of citizens who were involved in such juries for the year of reference:

NA  NAP

52. Number of non-judge staff who are working in courts for judges (if possible on 31 December 2012) (this data should not include the staff working for public prosecutors; see question 60) (**modified question**) (please give the information in full-time equivalent and for permanent posts actually filled)

<b>Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)</b>	<input type="checkbox"/> among which <input type="checkbox"/> women / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. <b>Rechtspfleger</b> (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal	<input type="checkbox"/> among which <input type="checkbox"/> women / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. <b>Non-judge staff whose task is to assist the judges</b> (case file preparation, assistance during the hearing, court recording, helping to draft the decisions) <b>such as registrars</b>	<input type="checkbox"/> among which <input type="checkbox"/> women / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. <b>Staff in charge of different administrative tasks and of the management of the courts</b> (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)	<input type="checkbox"/> among which <input type="checkbox"/> women / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
4. <b>Technical staff</b>	<input type="checkbox"/> among which <input type="checkbox"/> women / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
5. <b>Other non-judge staff</b>	<input type="checkbox"/> among which <input type="checkbox"/> women / <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If "other non-judge staff", please specify:

53. If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and duties:

54. Have the courts delegated certain services, which fall within their powers, to private providers (e.g. IT services, training of staff, security, archives, cleaning)?

- Yes  
 No

If yes, please specify:

\*\*\*

C.1 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- *the characteristics of your judicial system and the main reforms that have been implemented over the last two years*

Please indicate the sources for answering questions 46, 47, 48, 49 and 52

**3.3 Public prosecutors and staff**

- 55. Number of public prosecutors (if possible on 31 December 2012). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**  
*(please give the information in full-time equivalent and for permanent posts actually filled, for all types of courts – ordinary and specialised jurisdictions)*

	Total	Males	Females	
Total number of prosecutors (1 + 2 + 3)	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP
1. Number of prosecutors at first instance level	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP
2. Number of prosecutors at second instance (court of appeal) level	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP
3. Number of prosecutors at supreme court level	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP

Please provide any useful comment for interpreting the data above :

- 56. Number of heads of prosecution offices. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total	Males	Females	
Total number of heads of prosecution offices (1 + 2 + 3)	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP
1. Number of heads of prosecution offices at first instance level	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP
2. Number of heads of prosecution offices at second instance (court of appeal) level	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP
3. Number of heads of prosecution offices at supreme court level	<input type="text"/> / NA	<input type="text"/> / NA	<input type="text"/> / NA	NAP

Please provide any useful comment for interpreting the data above :

- 57. Do other persons have similar duties to public prosecutors?**

Yes Number (full-time equivalent)  /  NA  
 No

- 58. If yes, please specify their title and function:**

- 59. If yes, is their number included in the number of public prosecutors that you have indicated under question 55?**

Yes  
 No

- 59.1 Do all prosecution offices have specially trained prosecutors in domestic violence and sexual violence etc.?**

Yes  
 No

- 60. Number of staff (non-public prosecutors) attached to the public prosecution service (if possible on 31 December 2012) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).**

NA  among which  women

\*\*\*

- C.2 You can indicate below:**

- *any useful comments for interpreting the data mentioned in this chapter*
- *the characteristics of your judicial system and the main reforms that have been implemented over the last two years*

Please indicate the sources for answering questions 55, 56 and 60

**3.4 Management of the court budget**

**61. Who is entrusted with responsibilities related to the budget within the court?**

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court President	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court administrative director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Head of the court clerk office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If "other", please specify:

**3.5 Use of Technologies in courts**

**62. For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?**

	100% of courts	≥ 50% of courts	≤ 50% of courts	≤ 10 % of courts	0 % of courts
Word processing	<input type="checkbox"/>				
Electronic data-base of case-law	<input type="checkbox"/>				
Electronic files	<input type="checkbox"/>				
E-mail	<input type="checkbox"/>				
Internet connection	<input type="checkbox"/>				

**63. For administration and management, what are the computer facilities used within the courts?**

	100% of courts	≥ 50% of courts	<50% of courts	≤ 10 % of courts	0 % of courts
Case registration system	<input type="checkbox"/>				
Court management information system	<input type="checkbox"/>				
Financial information system	<input type="checkbox"/>				
Videoconferencing	<input type="checkbox"/>				

**64. For the electronic communication and exchange of information between the courts and their environment, what are the computer facilities used by the courts?**

	100% of courts	≥ 50% of courts	<50% of courts	≤ 10 % of courts	0 % of courts
Electronic web forms	<input type="checkbox"/>				
Website	<input type="checkbox"/>				
Follow-up of cases online	<input type="checkbox"/>				
Electronic registers	<input type="checkbox"/>				
Electronic processing of small claims	<input type="checkbox"/>				
Electronic processing of undisputed debt recovery	<input type="checkbox"/>				
Electronic submission of claims	<input type="checkbox"/>				

Videoconferencing	<input type="checkbox"/>				
Other electronic communication facilities	<input type="checkbox"/>				

If there are “other electronic communication facilities”, please specify:

65. The use of videoconferencing in the courts (details on question 63):

65.1 In *criminal cases*, do courts or prosecution offices use videoconferencing for hearings in the presence of defendants, witnesses or victims?  Yes  No

65.2 If yes, can such court hearing be held in the police station and/or in the prison?  
 Yes  No

65.3 Is there any specific legislation on the conditions for using videoconferencing in the courts / prosecution offices, especially in order to protect the rights of the defence?  Yes  No

65.4 Is videoconferencing used in *other than criminal cases*?  Yes  No

Please give any clarification on the legal framework and the development of videoconferencing in your country

\*\*\*

C.3 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

### 3.6 Performance and evaluation

66. Is there a centralised institution that is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

- Yes  
 No

If yes, please indicate the name and the address of this institution:

66.1 Does this institution publish statistics on the functioning of each court on the internet:

- Yes  
 No, only in an intranet website  
 No

67. Are individual courts required to prepare an annual activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?

- Yes  
 No, only in an intranet website  
 No

68. Do you have, within the courts, a regular monitoring system of court activities concerning:

The *monitoring system* aims to assess the day-to-day activity of the courts (namely, what the courts produce) thanks in particular to data collections and statistical analysis (see also questions 80 and 81).

- Number of incoming cases?  
 Number of decisions delivered?  
 Number of postponed cases?  
 Length of proceedings (timeframes)?  
 Other?

If “other”, please specify:

69. Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?

The *evaluation system* refers to the performance of the court systems with prospective concerns, using indicators and targets. The evaluation may be of more qualitative nature (see questions 69-77). It does not refer to the evaluation of the overall (good) functioning of the court (see question 82).

- Yes. If yes, what is the frequency?  
 No

Please specify:

70. Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 72)

- Yes  
 No

71. Please select the 4 main performance and quality indicators that have been defined:

- incoming cases  
 length of proceedings (timeframes)  
 closed cases  
 pending cases and backlogs  
 productivity of judges and court staff  
 percentage of cases that are processed by a single sitting judge  
 enforcement of penal decisions  
 satisfaction of court staff  
 satisfaction of users (regarding the services delivered by the courts)  
 judicial quality and organisational quality of the courts  
 costs of the judicial procedures  
 other:

If "other", please specify:

72. Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?

- Yes  
 No

73. Who is responsible for setting the targets for each judge? (*modified question*)

- Executive power (for example the Ministry of Justice)  
 Legislative power  
 High Judicial Council)  
 President of the court  
 Other

If "other", please specify:

74. Are there performance targets defined at the level of the court (if no please skip to question 77)?

- Yes  
 No

75. Who is responsible for setting the targets for the courts? (*modified question*)

- Executive power (for example the Ministry of Justice)  
 Legislative power  
 Judicial power (for example High Judicial Council, Higher Court)  
 President of the court  
 Other

If "other", please specify:

76. Please specify the main targets applied to the courts:

77. Who is responsible for evaluating the performance of the courts (see questions 69 to 76)? (multiple options possible)

- High Council of judiciary

- Ministry of Justice
- Inspection authority
- Supreme Court
- External audit body
- Other

If "other", please specify:

78. Are quality standards determined for the whole judicial system (are there quality systems for the judiciary and/or judicial quality policies)?

- Yes
- No

If yes, please specify:

79. Do you have specialised court staff that is entrusted with these quality standards?

- Yes
- No

80. Do you monitor backlogs and cases that are not processed within a reasonable timeframe for:

- civil law cases?  Yes  No
- criminal law cases  Yes  No
- administrative law cases?  Yes  No

81. Do you monitor waiting time during court procedures?

- Yes
- No

If yes, please specify:

82. Is there a system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan (plan of visits) agreed beforehand?

This question does not concern the specific evaluation of performance indicators.

- Yes
- No

Please specify the frequency of the evaluation:

83. Is there a system for monitoring and evaluating the performance of the public prosecution service?

- Yes
- No

If yes, please give further details:

\*\*\*

C.4 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your court monitoring and evaluation systems

## 4. Fair trial

### 4.1 Principles

84. Percentage of first instance criminal *in absentia* judgments (cases in which the suspect is not attending the hearing in person nor represented by a lawyer)?

/  NA /  NAP

85. Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

- Yes      Number of successful challenges (in a year):  /  NA
- No

86. Number of cases regarding Article 6 of the European Convention of Human Rights on duration and non-execution. If data is not available, please indicate NA.

	Cases declared inadmissible by the Court	Friendly settlements	Judgments establishing a violation	Judgments establishing a non violation
Civil proceedings - Article 6§1 (duration)	<input type="checkbox"/> / <input type="checkbox"/> NA			
Civil proceedings - Article 6§1 (non-execution)	<input type="checkbox"/> / <input type="checkbox"/> NA			
Criminal proceedings - Article 6§1 (duration)	<input type="checkbox"/> / <input type="checkbox"/> NA			

Please indicate the sources:

\*\*\*

- D.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter

#### 4.2 Timeframes of proceedings

##### 4.2.1 General information

87. Are there specific procedures for urgent matters as regards:

civil cases?  Yes  No  
 criminal cases?  Yes  No  
 administrative cases?  Yes  No  
 There is no specific procedure

If yes, please specify:

88. Are there simplified procedures for:

civil cases? (small disputes)  Yes  No  
 criminal cases? (small offences)  Yes  No  
 administrative cases?  Yes  No  
 There is no simplified procedure

If yes, please specify:

- 88.1. For these simplified procedures, may judges deliver an oral judgement with a written order and dispense with a full reasoned judgement?

Yes  
 No

89. Do courts and lawyers have the possibility to conclude agreements on arrangements for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

Yes  
 No

If yes, please specify:

##### 4.2.2 Case flow management and timeframes of judicial proceedings

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and timeframes of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only if answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling a useful comparison between the systems.

- 90.

91. First instance courts: number of other than criminal and criminal law cases

Number of *other than criminal* law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. (*modified question*)

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
<b>Total of other than criminal law cases (1+2+3+4+5+6+7)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>1. Civil (and commercial) litigious cases</b> (if feasible without administrative law cases, see category 6)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>2. General civil (and commercial) non-litigious cases</b> , e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>3. Non litigious enforcement cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>4. Non litigious land registry cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>5. Non litigious business registry cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>6. Administrative law cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>7. Other cases</b> (e.g. insolvency registry cases)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

Note 1: the cases mentioned in categories 3 to 5 (*enforcement, land registry, business register*) should be presented separately in the table. The cases mentioned in category 6 (*administrative law cases*) should also be separately mentioned for the countries which have specialised administrative courts or separate administrative law procedures or are able to distinguish in another way between administrative law cases and civil law cases.

Note 2: please check if the figures submitted are (horizontally and vertically) consistent. *Horizontal consistent* data means that: "(pending cases on 1 January 2012 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2012. *Vertical consistency* of data means that the sum of the individual case categories 1 to 7 should reflect the total number of *other than criminal* law cases.

92. If courts deal with "civil (and commercial) non-litigious cases", please indicate the case categories included:

93. If "other cases", please indicate the case categories included:

94. Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
<b>Total of criminal cases (8+9)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>8. Severe criminal cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>9. Misdemeanour and / or minor criminal cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

Note: please check if the figures submitted are (horizontally and vertically) consistent. *Horizontal consistent* data means that: "(pending cases on 1 January 2012 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2012. *Vertical consistency* of data means that the sum of the categories 8 and 9 for criminal cases should reflect the total number of criminal cases.

95. To differentiate between misdemeanour / minor offenses and serious offenses and ensure the consistency of the responses between different systems, the CEPEJ invites to classify as misdemeanour / minor all offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, should be classified as severe offenses all offenses punishable by a deprivation of

liberty (arrest and detention, imprisonment). If you cannot make such a distinction, please indicate the categories of cases reported in the category "serious offenses" and cases reported in the category "minor offenses":

96. Comments on questions 90 to 95 (specific situation in your country e.g. NA-answers and the calculation of the total number of other than criminal law cases, differences in horizontal consistency etc.)

97. Second instance courts: total number of cases  
Number of "other than criminal law" cases.  
If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
<b>Total of other than criminal law cases (1+2+3+4+5+6+7)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> NA <input type="checkbox"/> NAP	<input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
<b>1. Civil (and commercial) litigious cases</b> (if feasible without administrative law cases, see category 6)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>2. General civil (and commercial) non-litigious cases</b> , e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>3. Non litigious enforcement cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>4. Non litigious land registry cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>5. Non litigious business registry cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>6. Administrative law cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>7. Other cases</b> (e.g. insolvency registry cases)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

98. Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
<b>Total of criminal cases (8+9)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>8. Severe criminal cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>9. Misdemeanour and / or minor criminal cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

Comments:

99. Highest instance courts: total number of cases  
Number of "other than criminal law" cases:  
If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
<b>Total of other than criminal law cases (1+2+3+4+5+6+7)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>1. Civil (and commercial) litigious cases</b> (if feasible without administrative law cases, see category 6)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
<b>2. General civil (and commercial)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
3. Non litigious enforcement cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
4. Non litigious land registry cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
5. Non litigious business registry cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
6. Administrative law cases (litigious and non-litigious)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
7. Other cases (e.g. insolvency registry cases)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

99.1 At the level of the Higher court, is there a procedure of manifest inadmissibility?

- Yes. If yes, please indicate the number of cases closed by this procedure?  
 No

100. Number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
Total of criminal cases (8+9)	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
8. Severe criminal cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
9. Misdemeanour and / or minor criminal cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

Comments:

101. Number of litigious divorce cases, employment dismissal cases, insolvency, robbery cases and intentional homicide cases received and processed by first instance courts:

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
Litigious divorce cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
Employment dismissal cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
Insolvency	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
Robbery cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			
Intentional homicide	<input type="checkbox"/> NA / <input type="checkbox"/> NAP			

102. Average length of proceedings, in days (from the date the application for judicial review is lodged). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure.

	% of decisions subject to appeal	% of pending cases for more than	Average length in 1 <sup>st</sup> instance (in days)	Average length in 2 <sup>nd</sup> instance (in days)	Average length in 3 <sup>rd</sup> instance (in days)	Average total length of the total procedure (in days)

		3 years				
<b>Litigious divorce cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP					
<b>Employment dismissal cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP					
<b>Insolvency</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP					
<b>Robbery cases</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP					
<b>Intentional homicide</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP					

103. Where appropriate, please inform about the specific procedure as regards divorce cases (litigious and non-litigious):

104. How is the length of proceedings calculated for the five case categories? Please give a description of the calculation method.

105. Role and powers of the public prosecutor in the criminal procedure (multiple options possible):

- to conduct or supervise police investigation
- to conduct investigations
- when necessary, to request investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise the enforcement procedure
- to discontinue a case without needing a decision by a judge (ensure consistency with question 36!)
- to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision
- other significant powers

If "other significant powers", please specify:

106. Does the public prosecutor also have a role in civil and/or administrative cases?

- Yes
- No

If yes, please specify:

106.1 Does the public prosecutor also have a role in insolvency cases?

- Yes
- No

If yes, please specify:

107. Case proceedings managed by the public prosecutor

Total number of 1<sup>st</sup> instance criminal cases

If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Received by the public prosecutor	Cases discontinued by the public prosecutor (see 108 below)	Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Cases charged by the public prosecutor before the courts
Total number of 1 <sup>st</sup> instance criminal cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> NA / <input type="checkbox"/> NAP

107.1 Among cases charged by the public prosecutor before the courts, how many were brought to court under a guilty plea procedure or similar ?

If possible, please distinguish the number of guilty plea procedure:

- Before the court case:
- During the court case:

108.Total cases which were discontinued by the public prosecutor

<b>Total cases which were discontinued by the public prosecutor (1+2+3)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. Discontinued by the public prosecutor because the offender could not be identified	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. Discontinued by the public prosecutor for reasons of opportunity	<input type="checkbox"/> NA / <input type="checkbox"/> NAP

109.Do the figures include traffic offence cases?

- Yes
- No

\*\*\*

D.2 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

Please indicate the sources for answering questions 91, 94, 97, 98, 99, 100, 101, 102, 107 and 108.

## 5. Career of judges and public prosecutors

### 5.1 Recruitment and promotion

110. How are judges recruited?

- mainly through a competitive exam (for instance, following a university degree in law)
- mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- a combination of both (competitive exam and working experience)
- other

If "other", please specify:

110.1 Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting judges?

- Yes
- No

If "yes", please specify:

111. Authority(ies) in charge

Are judges initially/at the beginning of their career recruited and nominated by: (ex. 102.1)

This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former).

- an authority made up of judges only?
- an authority made up of non-judges only?
- an authority made up of judges and non-judges?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of judges. If there are several authorities, please describe their respective roles:

112. Is the same authority competent for the promotion of judges?

- Yes  
 No

If no, which authority is competent for the promotion of judges?

112.1 Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting judges?

- Yes  
 No

If "yes", please specify:

113. Which procedures and criteria are used for promoting judges? Please specify

114. Is there a system of qualitative individual assessment of the judges' activity?

- Yes. If yes, please indicate the frequency  
 No

115. Is the status of prosecution services:

- independent?  
 under the authority of the Minister of justice ?  
 other

Please specify:

116. How are public prosecutors recruited?

- mainly through a competitive exam (for instance, following a university degree in law)  
 mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)  
 a combination of both (competitive exam and working experience)  
 other

If "other", please specify:

117. Authority(ies) in charge

Are public prosecutors initially/at the beginning of their career recruited by:

This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).

- an authority composed of public prosecutors only?  
 an authority composed of non-public prosecutors only?  
 an authority composed of public prosecutors and non-public prosecutors?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of public prosecutors. If there are several authorities, please describe their respective roles:

117.1 Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting prosecutors?

- Yes  
 No

If "yes", please specify:

118. Is the same authority formally responsible for the promotion of public prosecutors?

- Yes  
 No

If no, please specify which authority is competent for promoting public prosecutors:

119. Which procedures and criteria are used for promoting public prosecutors? Please specify:
- 119.1 Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting prosecutors?
- Yes  
 No
- If "yes", please specify:
120. Is there a system of qualitative individual assessment of the public prosecutors' activity?
- Yes  
 No
121. Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?
- Yes. If yes, please indicate the compulsory retirement age  
 No
- If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify:
- 121.1 Can a judge be transferred to another court without his consent:
- For disciplinary reasons  
 For organisational reasons  
 For other reasons. Please specify modalities and safeguards
122. Is there a probation period for judges (e.g. before being appointed "for life")? If yes, how long is this period? If the situation is not applicable in your country, please indicate NAP.
- Yes      Duration of the probation period (in years):   
 No  
 NAP
123. Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?
- Yes. If yes, please indicate the compulsory retirement age  
 No
- If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify:
124. Is there a probation period for public prosecutors? If yes, how long is this period?
- Yes      Duration of the probation period (in years):   
 No
125. If the mandate for judges is not for an undetermined period (see question 121), what is the length of the mandate (in years)? Is it renewable?
- NA  
 NAP  
For judges :  
length of the mandate (in years):       Renewable?  Yes       No
126. If the mandate for public prosecutors is not for an undetermined period (see question 123), what is the length of the mandate (in years)? Is it renewable?
- NA  
 NAP  
For public prosecutors :  
length of the mandate (in years):       Renewable?  Yes       No

\*\*\*

- E.1 *You can indicate below:*
- *any useful comments for interpreting the data mentioned in this chapter*
  - *the characteristics of the selection and nomination procedure of judges and public prosecutors and the main reforms that have been implemented over the last two years*

## 5.2 Training

### 127. Training of judges:

	Compulsory	Optional	No training offered
<b>Initial training</b> (e.g. attend a judicial school, traineeship in the court)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>General in-service training</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for specialised judicial functions</b> (e.g. judge for economic or administrative issues)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for management functions of the court</b> (e.g. court president)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for the use of computer facilities in courts</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 128. Frequency of the in-service training of judges :

	Annual/Regular (e.g. every 3 months)	Occasional (e.g. at times)	No training proposed
<b>General in-service training</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for specialised judicial functions</b> (e.g. judge for economic or administrative issues)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for management functions of the court</b> (e.g. court president)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for the use of computer facilities in courts</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 129. Training of public prosecutors:

	Compulsory	Optional	No training proposed
<b>Initial training</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>General in-service training</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for specialised functions</b> (e.g. public prosecutor specialised on organised crime)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for management functions of the court</b> (e.g. Head of prosecution office, manager)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for the use of computer facilities in office</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 130. Frequency of the in-service training of public prosecutors:

	Annual/Regular (e.g. every 3 months)	Occasional (e.g. at times)	No training proposed
<b>General in-service training</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for specialised functions</b> (e.g. public prosecutor specialised on organised crime)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for management functions of the court</b> (e.g. Head of prosecution office, manager)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>In-service training for the use of computer facilities in office</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### 131. Do you have public training institutions for judges and / or prosecutors? If yes, what is the budget of such institution(s)?

	Initial training only	Continuous training only	Initial and continuous training	2012 budget of the institution, in €
One institution for judges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
One institution for prosecutors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
One single institution for both judges and prosecutors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP

If your judicial training institutions do not correspond to these criteria, please specify it:

131.1 If there is no initial training for judges and/or prosecutors in such institutions, please indicate briefly how these judges and/or prosecutors are recruited and trained ?

\*\*\*

E.2 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and public prosecutors and the main reforms that have been implemented over the last two years

### 5.3 Practice of the profession

132. Salaries of judges and public prosecutors:

	Gross annual salary, in €, on 31 December 2012	Net annual salary, in €, on 31 December 2012
First instance professional judge at the beginning of his/her career	<input type="checkbox"/>	<input type="checkbox"/>
Judge of the Supreme Court or the Highest Appellate Court (please indicate the average salary of a judge at this level, and not the salary of the Court President)	<input type="checkbox"/>	<input type="checkbox"/>
Public prosecutor at the beginning of his/her career	<input type="checkbox"/>	<input type="checkbox"/>
Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the salary of the Public prosecutor General)	<input type="checkbox"/>	<input type="checkbox"/>

Comments and sources:

133. Do judges and public prosecutors have additional benefits?

	Judges	Public prosecutors
Reduced taxation	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Special pension	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Housing	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other financial benefit	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

134. If "other financial benefit", please specify:

135. Can judges combine their work with any of the following other functions?

	With remuneration	Without remuneration
Teaching	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Research and publication	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Arbitrator	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Consultant	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Cultural function	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Political function	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other function	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

136. If rules exist in your country (e.g. authorisation needed to perform these activities), please specify. If "other function", please specify.

137. Can public prosecutors combine their work with any of the following other functions?

	With remuneration	Without remuneration
Teaching	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Research and publication	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Arbitrator	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Consultant	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Cultural function	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Political function	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other function	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

138. Please specify existing rules (e.g. authorisation to perform the whole or a part of these activities). If "other function", please specify:

139. Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)?

- Yes
- No

If yes, please specify the conditions and possibly the amounts:

\*\*\*

#### 5.4 Disciplinary procedures

140. Who has been authorised to initiate disciplinary proceedings against judges (multiple options possible)?

- Citizens
- Relevant Court or hierarchical superior
- High Court / Supreme Court
- High Judicial Council
- Disciplinary court or body
- Ombudsman
- Parliament
- Executive power
- Other
- This is not possible

If "executive power" and/or "other", please specify:

141. Who has been authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):

- Citizens
- Head of the organisational unit or hierarchical superior public prosecutor
- Prosecutor General /State public prosecutor
- Public prosecutorial Council (and Judicial Council)
- Disciplinary court or body
- Ombudsman
- Professional body
- Executive power
- Other?
- This is not possible

If "executive power" and/or "other", please specify:

142. Which authority has disciplinary power on judges? (multiple options possible)

- Court
- Higher Court / Supreme Court
- Judicial Council
- Disciplinary court or body
- Ombudsman
- Parliament
- Executive power
- Other?

If "executive power" and/or "other", please specify:

143. Which authority has the disciplinary power on public prosecutors? (multiple options possible):

- Supreme Court
- Head of the organisational unit or hierarchical superior public prosecutor
- Prosecutor General /State public prosecutor
- Public prosecutorial Council (and Judicial Council)
- Disciplinary court or body
- Ombudsman
- Professional body
- Executive power
- Other?

If "executive power" and/or "other", please specify:

144. Number of disciplinary proceedings initiated against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.

	Judges	Public prosecutors
<b>Total number (1+2+3+4)</b>	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. Breach of professional ethics	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. Professional inadequacy	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. Criminal offence	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
4. Other	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If "other", please specify:

145. Number of sanctions pronounced in 2012 against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Judges	Public prosecutors
<b>Total number (total 1 to 9)</b>	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. Reprimand	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. Suspension	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. Withdrawal from cases	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
4. Fine	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
5. Temporary reduction of salary	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
6. Position downgrade	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
7. Transfer to another geographical (court) location	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
8. Dismissal	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
9. Other	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP	<input type="checkbox"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If "other", please specify. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons.

\*\*\*

E.3 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- *the characteristics of your system concerning disciplinary procedures for judges and public prosecutors and the main reforms that have been implemented over the last two years*

Please indicate the sources for answering questions 144 and 145

## 6. Lawyers

### 6.1 Status of the profession and training

146. Total number of lawyers practising in your country:  
 /  NA /  NAP
147. Does this figure include “legal advisors” who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?  
 Yes  
 No
148. Number of legal advisors who cannot represent their clients in court:  
 /  NA  NAP
149. Do lawyers have a monopoly on legal representation in (multiple options are possible):
- |  |                              |                             |
|--|------------------------------|-----------------------------|
| <input type="checkbox"/> Civil cases?                | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Criminal cases - Defendant? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Criminal cases - Victim?    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Administrative cases?       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> There is no monopoly        |                              |                             |
- If there is no monopoly, please specify the organisations or persons that may represent a client before a court (for example a NGO, a family member, a trade union, etc) and for which types of cases:
150. Is the lawyer profession organised through? (multiple options possible)
- a national bar?  
 a regional bar?  
 a local bar?
151. Is there a specific initial training and/or examination to enter the profession of lawyer?  
 Yes  
 No
- If not, please indicate if there are other specific requirements as regards diplomas or university degrees :
152. Is there a mandatory general system for lawyers requiring in-service professional training?  
 Yes  
 No
153. Is the specialisation in some legal fields tied with specific training, levels of qualification, specific diploma or specific authorisations?  
 Yes  
 No
- If yes, please specify:

\*\*\*

*F.1 Please indicate the sources for answering questions 146 and 148:*

*Comments for interpreting the data mentioned in this chapter:*

### 6.2 Practising the profession

154. Can court users establish easily what the lawyers’ fees will be (i.e. do users have easy access to prior information on the foreseeable amount of fees, is the information transparent and accountable)?

- Yes
- No

155. Are lawyers' fees freely negotiated?

- Yes
- No

156. Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?

- Yes laws provide rules
- Yes standards of the bar association provide rules
- No, neither laws nor bar association standards provide rules

\*\*\*

F.2 Useful comments for interpreting the data mentioned in this chapter:

**6.3 Quality standards and disciplinary proceedings**

157. Have quality standards been determined for lawyers?

- Yes
- No

If yes, what are the quality criteria used?

158. If yes, who is responsible for formulating these quality standards:

- the bar association?
- the Parliament?
- other?

If "other", please specify:

159. Is it possible to file a complaint about :

- the performance of lawyers?
- the amount of fees?

Please specify:

160. Which authority is responsible for disciplinary procedures?

- The judge
- Ministry of Justice
- a professional authority
- Other

If other, please specify:

161. Disciplinary proceedings initiated against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.

If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.

<b>Total number of disciplinary proceedings initiated (1 + 2 + 3 + 4)</b>	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. Breach of professional ethics	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. Professional inadequacy	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. Criminal offence	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP
4. Other	/ <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If "other", please specify:

**162. Sanctions pronounced against lawyers:.**

<b>Total number of sanctions (1 + 2 + 3 + 4 + 5)</b>	<input type="text"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
<b>1. Reprimand</b>	<input type="text"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
<b>2. Suspension</b>	<input type="text"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
<b>3. Removal</b>	<input type="text"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
<b>4. Fine</b>	<input type="text"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP
<b>5. Other (e.g. disbarment)</b>	<input type="text"/> / <input type="checkbox"/> NA / <input type="checkbox"/> NAP

If "other", please specify. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons.

\*\*\*

**F.3 You can indicate below any useful comments for interpreting the data mentioned in this chapter**

**7. Alternative Dispute Resolution**

**163. Does the judicial system provide for judicial mediation procedures? If no please skip to question 168.**

Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).

- Yes
- No

**163.1 In some fields, does the judicial system provide for mandatory mediation procedures?**

- before going to court                       Yes     No
- ordered by a judge in the course of a judicial proceeding     Yes     No

If there are mandatory mediation procedures, please specify which fields are concerned:

**164. Please specify, by type of cases, the organisation of judicial mediation:**

	<b>Court annexed mediation</b>	<b>Private mediator</b>	<b>Public authority (other than the court)</b>	<b>Judge</b>	<b>Public prosecutor</b>
Civil and commercial cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family law cases (ex. divorce)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employment dismissals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Criminal cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**165. Is there a possibility to receive legal aid for judicial mediation procedures?**

- Yes
- No

If yes, please specify:

**166. Number of accredited or registered mediators who practice judicial mediation:**

/  NA /  NAP

**167. Number of judicial mediation procedures.**

<b>Total number of cases (total 1 + 2 + 3 + 4 + 5)</b>	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
1. civil cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
2. family cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
3. administrative cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
4. employment dismissal cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP
5. criminal cases	<input type="checkbox"/> NA / <input type="checkbox"/> NAP

Please indicate the source

168. Does the legal system provide for the following ADR:

- Mediation other than judicial mediation?  Yes  No  
 Arbitration?  Yes  No  
 Conciliation?  Yes  No  
 Other alternative dispute resolution?  Yes  No

If "other", please specify:

\*\*\*

G.1 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

Please indicate the source for answering question 166:

## 8. Enforcement of court decisions

### 8.1 Execution of decisions in civil matters

#### 8.1.1 Functioning

169. Do you have enforcement agents in your judicial system?

- Yes  No

170. Number of enforcement agents

NA /  NAP

171. Are enforcement agents (multiple options are possible):

- judges?  
 bailiffs practising as private professionals under the authority (control) of public authorities?  
 bailiffs working in a public institution?  
 other enforcement agents?

Please specify their status and powers:

172. Is there a specific initial training or examination to become an enforcement agent?

- Yes  No

173. Is the profession of enforcement agents organised by:

- a national body?  
 a regional body?  
 a local body?  
 NAP (the profession is not organised)

174. Are enforcement fees easily established and transparent for the court users?

- Yes  No

175. Are enforcement fees freely negotiated?

- Yes  No

176. Do laws provide any rules on enforcement fees (including those freely negotiated)?

Yes  No

\*\*\*

Please indicate the source for answering question 170:

**8.1.2 Efficiency of enforcement services**

**177. Is there a body entrusted with supervising and monitoring the enforcement agents' activity?**

Yes  No

**178. Which authority is responsible for supervising and monitoring enforcement agents?**

- a professional body
- the judge
- the Ministry of Justice
- the public prosecutor
- other

If "other", please specify:

**179. Have quality standards been determined for enforcement agents?**

Yes  No

If yes, what are the quality criteria used?

**180. If yes, who is responsible for establishing these quality standards?**

- a professional body
- the judge
- the Ministry of Justice
- other

If "other", please specify:

**181. Is there a specific mechanism for executing court decisions rendered against public authorities, including for supervising such execution?**

Yes  No

If yes, please specify:

**182. Is there a system for monitoring how the enforcement procedure is conducted by the enforcement agent?**

Yes  No

If yes, please specify:

**183. What are the main complaints made by users concerning the enforcement procedure? Please indicate a maximum of 3.**

- no execution at all
- non execution of court decisions against public authorities
- lack of information
- excessive length
- unlawful practices
- insufficient supervision
- excessive cost
- other

If "other", please specify:

**184. Has your country prepared or established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?**

Yes  No

If yes, please specify:

185. Is there a system measuring the length of enforcement procedures:

- for civil cases?  Yes  No  
 for administrative cases?  Yes  No

186. As regards a decision on debts collection, please estimate the average timeframe to notify the decision to the parties who live in the city where the court sits:

- between 1 and 5 days  
 between 6 and 10 days  
 between 11 and 30 days  
 more

If "more", please specify:

187. Number of disciplinary proceedings initiated against enforcement agents.

If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.

- Total number of initiated disciplinary proceedings (1+2+3+4)  /  NA
1. For breach of professional ethics  /  NA /  NAP
2. For professional inadequacy  /  NA /  NAP
3. For criminal offence  /  NA /  NAP
4. Other  /  NA /  NAP

If other, please specify:

188. Number of sanctions pronounced against enforcement agents.

- Total number of sanctions (1+2+3+4+5)  /  NA
1. Reprimand  /  NA /  NAP
2. Suspension  /  NA /  NAP
3. Dismissal  /  NA /  NAP
4. Fine  /  NA /  NAP
5. Other  /  NA /  NAP

If "other", please specify. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons:

\*\*\*

H.1 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in civil matters and the main reforms that have been implemented over the last two years

Please indicate the sources for answering questions 186, 187 and 188:

8.2 Execution of decisions in criminal matters

189. Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)

- Judge  
 Public prosecutor  
 Prison and Probation Services  
 Other authority

Please specify his/her functions and duties (initiative or monitoring functions). If "other authority", please specify:

190. Are the effective recovery rates of fines decided by a criminal court evaluated by studies?

- Yes  No

191. If yes, what is the recovery rate?

80-100%     50-79%     less than 50%     cannot be estimated

Please indicate the source for answering this question:

\*\*\*

H.2 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years

## 9. Notaries

192. Do you have notaries in your country? If no please skip to question 197.

Yes     No

193. Are notaries:

private professionals (without control from public authorities)?

Yes    Number  /  NA /  NAP

private professionals under the authority (control) of public authorities?

Yes    Number  /  NA /  NAP

public agents?

Yes    Number  /  NA /  NAP

Other?

Yes    Number  /  NA /  NAP

If "other", please specify:

194. Do notaries have duties (multiple options possible):

- within the framework of civil procedure?
- in the field of legal advice?
- to certify the authenticity of legal deeds and certificates?
- other?

If "other", please specify:

195. Is there an authority entrusted with supervising and monitoring the notaries' activity?

Yes     No

196. Which authority is responsible for supervising and monitoring notaries:

- a professional body?
- the judge?
- the Ministry of Justice?
- the public prosecutor?
- other?

If "other", please specify:

\*\*\*

I.1 You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

Please indicate the sources for answering question 193:

## 10. Court interpreters

197. Is the title of court interpreters protected?

Yes     No

198. Is the function of court interpreters regulated by legal norms?

Yes     No

199. Number of accredited or registered court interpreters:

/  NA /  NAP

200. Are there binding provisions regarding the quality of court interpretation within judicial proceedings?

Yes  No

If yes, please specify (e.g. having passed a specific exam):

201. Are the courts responsible for selecting court interpreters?

Yes  for recruitment and/or appointment for a specific term of office  
 for recruitment and/or appointment on an *ad hoc* basis, according to the specific needs of given proceedings  
 No

If no, which authority selects court interpreters?

\*\*\*

J.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter:

Please indicate the sources for answering question 199:

## 11. Judicial experts

202. In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):

NA /  NAP

- "expert witnesses", who are requested by the parties to bring their expertise to support their argumentation,  
 "technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal,  
 "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).

203. Is the title of judicial experts protected?

Yes  No

204. Is the function of judicial experts regulated by legal norms?

Yes  No

205. Number of accredited or registered judicial experts (technical experts)

/  NA /  NAP

206. Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?

Yes  No

If yes, please specify, in particular the given time to provide a technical report to the judge:

207. Are the courts responsible for selecting judicial experts?

Yes  for recruitment and/or appointment for a specific term of office  
 for recruitment and/or appointment on an *ad hoc* basis, according to the specific needs of given proceedings

No

If no, which authority selects judicial experts?

\*\*\*

K.1 You can indicate below any useful comments for interpreting the data mentioned in this chapter:

Please indicate the sources for answering question 205:

## 12. Foreseen reforms

**208. Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged at this stage. If possible, please observe the following categories: (*modified question*):** (Comprehensive) reform plans / Budget / Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings) / Access to justice and legal aid / High Judicial Council / Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc. / Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities / Personal status / Enforcement of court decisions / Mediation and other ADR / Fight against crime / Prison system / Child friendly justice / Violence against partners / Other

## Explanatory note to the scheme for evaluating judicial systems

### I. Introduction

#### *Background*

At their 3<sup>rd</sup> Summit, organised in Warsaw on 16 and 17 May 2005, the Heads of State and government of the member states of the Council of Europe "[decided] to develop the evaluation and assistance functions of the European Commission for the Efficiency of Justice (CEPEJ)".

The CEPEJ decided, at its 16<sup>th</sup> plenary meeting, to launch the sixth evaluation cycle 2012 – 2014, focused on 2012 data.

The CEPEJ wishes to use the methodology developed in the previous cycles to get, with the support of the national correspondents, a general evaluation of the judicial systems in the 47 member states of the Council of Europe. This will enable policy makers and judicial practitioners to take account of such unique information when carrying out their activities.

The present Scheme was adapted by the Working group on evaluation (CEPEJ-GT-EVAL) in view of the previous evaluation cycles and considering the comments submitted by CEPEJ members, observers, experts and national correspondents. The Scheme's adaptation was restricted to strengthening the corpus of data collected at regular intervals and to making it easier to draw comparisons and assess trends.

The CEPEJ adopted this new version of the Scheme at its 20th plenary meeting (6 – 7 December 2012).

#### *General recommendations*

The aim of this study is to compare the functioning of judicial systems in their various aspects, to have a better knowledge of the trends of the judicial organisation and to suggest reforms to improve the efficiency of justice. The evaluation Scheme and the analysis of the outcoming results should become a genuine tool in favour of public policies on justice, for the sake of the European citizens.

Most probably, all states will not be able to answer every question, because of the diversity of the judicial systems in the member states concerned. Therefore the objective of the Scheme is also to stimulate the collection of data by the states in those fields where such data are still not available.

**The CEPEJ Guidelines on judicial statistics - GOJUST (CEPEJ(2008)11) should help national correspondents answer the questionnaire and facilitate the collection of homogenous judicial statistics from all member states.**

It must be noted that the Scheme neither aims at including an exhaustive list of indicators nor aims at being an academic or scientific study. It contains indicators which have been considered relevant for states who wish to assess the judicial systems' situation and better understand the functioning of their own systems. At the same time, the data collected will enable to further the work in promising fields in terms of improvement of the quality and efficiency of justice.

In order to make the data collection and data processing easier, the Scheme has been presented in an electronic form, accessible to national correspondents entrusted with the coordination of the data collection in the member states. **National correspondents are kindly requested to provide the national answers to the Scheme by using this electronic questionnaire.**

### II. Comments concerning the questions in the Scheme

This note aims to assist the national correspondents and other persons entrusted with replying to the questions in the Scheme.

#### a. General remarks (alphabetical order)

**Check:** please always check the data inserted. Check, in particular, the figures inserted (for instance the number of zeros!) and compare your answers with the previous evaluation rounds to ensure reliability and comparability of your answers (see "Variations from previous evaluation rounds" below).

**Civil law cases:** for the purpose of this Scheme, and unless specified otherwise in a specific question (see for instance question 80, 90, 147), "civil law cases" refer to other than criminal law cases and include namely family law cases, commercial law cases, employment dismissal cases and administrative law cases.

**Comments:** in the "comments" area, space is given to explain the answers and to give detailed information on the specificity of the domestic judicial system. Such comments will be helpful when analysing the replies and processing data. It is not required to fill in this area systematically, but comments can be added where it is deemed useful. Please indicate the number of the questions concerned by the comments.

**Cut and paste:** when an answer to a specific question remains unchanged from one evaluation process to the other, it is possible to "cut and paste" from the previous evaluation round.

**Euros:** all financial amounts have to be given in Euros. This is essential to avoid any misinterpretations or problems of comparability. For countries outside the euro zone, the exchange rate, on 1<sup>st</sup> January 2013, has to be indicated in question 5.

**Gross figures and full-time equivalent of posts:** the *gross figures* include the total number of persons working independently of their working hours. The *full-time equivalent*, on the other hand, indicates the number of persons working the standard number of hours; the number of persons working part time is converted to full-time equivalent. For instance, when two people work half the standard number of hours, they count for one "full-time equivalent", one half-time worker should count for 0.5 of a full-time equivalent.

**Help desk:** Should you have any question regarding this Scheme and the way to answer it, please send an e-mail to Stéphane Leyenberger ([stephane.leyenberger@coe.int](mailto:stephane.leyenberger@coe.int)) or Muriel Décot ([muriel.decot@coe.int](mailto:muriel.decot@coe.int)).

**NA and NAP:** When answering questions, it may not always be possible to give a number or to choose between Yes or No. If some information is not available ("NA") or not applicable ("NAP") please use the abbreviations indicated within the brackets. The answers NA or NAP are very different from each other, please observe these rules, any mistake will lead to wrong interpretations.

Two examples:

**Question 90: Number of enforcement, land registry, business register and other cases:**

E.g. no. 1. In your country, 1<sup>st</sup> instance courts are not responsible for activities related to business registers or land registers. The correct answer is therefore NAP (= not applicable).

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Enforcement cases	100	30	70	60
Land registry cases	NAP	NAP	NAP	NAP
Business register cases	NAP	NAP	NAP	NAP

E.g. no. 2. In your country, 1<sup>st</sup> instance courts are responsible for activities related to business registers and land registers but you have no figures relating to pending cases on 1 January 2010. The correct answers for pending cases on 1 January 2012 and, therefore, also for pending cases on 31 December 2012, are NA (= not available).

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Enforcement cases	100	30	70	60
Land registry cases	NA	150	200	NA
Business register cases	NA	500	600	NA

**Numbers:** With respect to the numerical information, please provide *only* numbers **without** a blank (1 000), a point (1.000), a comma (1,000) or an apostrophe (1'000). This will avoid misinterpretations and problems regarding the electronic exportation of your data. **The correct number in the example is 1000.** Please always check the figures inserted (especially number of zeros!).

**Rules and exceptions:** Please give answers, if possible, according to the general situation in your country and not according to exceptions. You may indicate exceptions to the rules in the comment.

Example

**Question 8: Are litigants required to pay a court tax or fee to start proceedings before a court of general jurisdiction?**

In your country, for other than criminal cases, litigants have to pay, in general, a court tax. Only in some exceptional cases provided for by the law (for instance: family law cases, dismissal cases and social welfare cases) litigants do not have to pay a court tax or fee. Your correct answer is therefore: Yes. You may indicate the exceptions in the comment box.

**For other than criminal cases?**  Yes  No

**Sources:** please indicate the sources of your data, if possible. The “source” concerns the institution which has provided the information to answer the question (e.g. the National Institute of the Statistics or the Ministry of Justice). This will help check the reliability of the data.

**Variations from previous evaluation rounds:** Please compare the data indicated for the year of reference with the ones provided for the previous evaluation rounds. By this, you ensure the reliability and comparability of your data. Please explain any difference in qualitative answers (e.g. changes in the laws, structural reforms). Avoid choosing a different interpretation for questions, from one evaluation cycle to another, if it does not reflect any real change in the situation in your country; your data will not be comparable nor capable of being validated. For figures, explain if the difference is significant, i.e. more than 20% variations.

Two examples of a qualitative question:

**Question 14: Authorities formally responsible for the budget allocated to the courts: preparation of the total court budget**

	Preparation of the total court budget (2004) (q10)	Preparation of the total court budget (2006) (q18)	Preparation of the total court budget (2008) (q18)	Preparation of the total court budget (2010)
Ministry of Justice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other ministry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parliament	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
High Judicial Council	x	x	x	
Courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inspection body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	x

Comment (ex 1): “The Court Administration is responsible for preparing the court budget. As in our country, it can not be compared to the High Judicial Councils of other countries, we changed our answer for 2010”. → The answers of the successive evaluation periods are not comparable. This is due to a change in the way the question was interpreted rather than a change in the country’s situation. Answers should be harmonised for all the evaluation periods which means that either the 2010 answer or the 2004-2008 answers should be amended.

Comment (ex 2): “Since 1 January 2009, the newly formed Court budget Council is responsible for preparing the total court budget.” → The 2010 answer is reliable and can be validated.

Example with numbers:

**Question 42: Number of first instance courts of general jurisdiction (legal entities)**

First instance courts of general jurisdiction (2004) [q33]	First instance courts of general jurisdiction (2006) (q45)	First instance courts of general jurisdiction (2008) (q45)	First instance courts of general jurisdiction (2010)	Diff 2004-2006 (%)	Diff 2006-2008 (%)	Diff 2008-2010 (%)
1138	1130	1130	484	-1	0	-57

Comment (e.g. no.1): "Reduction of courts on 1<sup>st</sup> January 2009 according to the reorganisation plan adopted by Parliament on 21 June 2008." → 2010 figures and comments are reliable and can be validated.

Comment (e.g. no.2): "The 2008 figure included, unlike to the 2010 figure, all first instance courts (not only first instance courts of general jurisdiction)." → the 2008 figure is not reliable and should be amended (the same is probably true for 2004 and 2006).

**Year of reference:** the year of reference for this Scheme is **2012**. If 2012 data are not available, please use the most recent figures and indicate the year of reference used.

## b. Comments question by question

### 1. *Demographic and economic data*

Regarding the data requested in this Chapter, please use, if possible, the data available at the Council of Europe. In the absence thereof, the OECD may also provide relevant data to ensure a homogenous calculation of the ratios between member states. If the data for your country is not available from both of these organisations, please use another source, which shall be specified.

#### Question 1

The number of inhabitants should be given as of 1 January 2013. If this is not possible, please mention which date has been used in the comment box at the end of the chapter.

#### Question 2

The total annual amount of *public expenditure* includes all expenses made by the (federal) state or (federal) public bodies, including public deficits.

For federal states, please indicate separately the total public expenditure at regional or federal level. UK-England and Wales, UK-Northern Ireland and UK-Scotland must indicate separate figures.

Replies to this question will enable to determine ratios measuring the total investment which member states actually committed to the functioning of justice.

#### Question 3

Please indicate the Gross Domestic Product (GDP) of your country for the reference year (i.e. the total value of goods and services provided in a country during the year). The GDP can be measured by adding up all the economy's incomes (salaries, interests, profits) or expenditures (consumption, investments, public works or supply contracts and net exports - minus imports).

This data is very useful to calculate several ratios that enable to carry out comparative analysis.

#### Question 4

Please indicate the average *gross* annual salary and not the *net* salary in your country. The gross salary is calculated before any social expenses and taxes have been deducted; it is the amount that the employer actually has to pay per employee, but not to the employee.

The annual gross average salary is important information in order to calculate ratios allowing to measure and compare the salaries, for example of judges and public prosecutors.

## Question 5

UK-England and Wales, UK-Northern Ireland and UK-Scotland shall indicate the same exchange rate.

## Question 6

*The annual approved budget allocated to the functioning of all courts covers the functioning of the courts (without the public prosecution services and without legal aid), whatever the source of this budget is. It is defined by the CEPEJ (see categories below) and may differ from the member states' definitions. For comparability reasons, please observe the CEPEJ categories.*

If you cannot separate the budget of the public prosecution services and / or the budget of legal aid from the budget allocated to the functioning of all courts, it is absolutely necessary to indicate it and give an estimate of the budget allocated to the functioning of all courts (compared with the public prosecution budget), if possible.

The figures presented must be the figures of the **approved** budget, e.g. the budget that has been formally approved by the Parliament (or another competent public authority), but not the one effectively executed.

Where appropriate, the annual approved budget allocated to the functioning of all courts must include both the budget at national level and at the level of regional or federal entities.

The total must absolutely equal the sum of the amounts indicated under categories 1-7:

**1. (Gross) salaries** are those of all judicial and non-judicial staff working within courts, excluding, if appropriate, the public prosecution system (and the staff working for the prosecution services). This amount should include the total salary costs for the employer: if, in addition to the gross salary proper, the employer also pays insurances and/or pensions, these contributions should be included.

**2. Computerisation** includes all the expenses for the installation, use and maintenance of computer systems (including the expenses paid to the technical staff).

**3. Justice expenses** borne by the state (or by the justice system) refer to the amounts that the courts should pay out within the framework of judicial proceedings, such as expenses paid for expert opinions or court interpreters. Any expenses to be paid by the parties (court fees and taxes; see question 8-9) or aimed at legal aid should not be indicated here (see question 12).

**4. Court buildings'** budget includes all the costs that are related to the maintenance and operation of court buildings (costs for rental, electricity, security, cleaning, maintenance etc.). It does not include investments in new buildings.

**5. Investments in new court buildings** include all the costs that are connected with investments in new court buildings.

**6. Training and education** includes all the costs that are related to training courses or the education of judges and court staff.

**7. Other** includes all figures that you can not subsume under categories 1 to 6.

Please note that the annual approved budget allocated to all courts **does not include** in particular:

- the budget for the prison and probation systems;
- the budget for the operation of the Ministry of Justice (and/or any other institution which deals with the administration of justice);
- the budget for the operation of other institutions (other than courts) attached to the Ministry of Justice;
- the budget of the prosecution system (see question 13);
- the budget of the judicial protection of youth (social workers, etc);
- the budget of the Constitutional courts;
- the budget of the High Council for the Judiciary (or similar body);
- the annual income of court fees or taxes received by the state (see questions 8 et 9),
- the budget for legal aid (see question 12).

## Questions 8, 8-1, 8-2 and 9

There may be a general rule in some states according to which a party is required to pay a court tax or fee to start a proceeding at a court of general jurisdiction. Court taxes or fees do not concern lawyers' fees. If this general rule has exceptions, please indicate them.

For the purposes of this question, *courts of general jurisdiction* are those courts which deal with civil law and criminal law cases.

A portion of the budget of courts can be financed by an income resulting from the payment by the parties of such court taxes or fees.

As regard the method for calculating the court fees or taxes due upon introduction of court proceedings (question 8-1), in certain countries this can be a set sum whereas in others it can consist of a percentage of the contested amount or of an amount determined by the nature of the proceedings.

For the purposes of comparing the different systems in place in different countries, question 8-2 seeks to give an example of the debt recovery action available for the recovery of a debt of 3000 euros.

## Question 12

*Annual approved public budget allocated to legal aid* refers to the amount of the public budget allocated to legal aid in its widest sense. If possible, should be specified:

- on the one hand the amounts allocated to litigious cases (12.1), in criminal (12.1.1) and non-criminal (12.1.2) matters, that is to say the aid allocated to litigants for cases brought to courts (for example the costs of legal representation in court)
- on the other hand, the amounts spent on other types of aid (12.2), for example, for access to legal consultation, to ADR proceedings (conciliation, mediation, etc. ) or other systems to prevent court action.. In certain countries the majority of public aid given to users before the case comes to court in order to avoid bringing cases to court.

The total amount should include only the sums to be paid to those benefiting from legal aid or their lawyers (excluding administrative costs resulting from such procedures).

The figures presented must be the figures of the **approved** budget, i.e. the budget that has been formally approved by the Parliament (or by another competent body), but not the one effectively executed.

## Question 13

The *Public Prosecutor* should be understood according to the following definition contained in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system: "(...) authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

If there is a single budget for judges and public prosecutors, please indicate, if possible, the proportion of this budget intended for public prosecutors. If part of the public prosecution's budget is allocated to the police budget, or to any other budget, please indicate it.

The figures presented must be the figures of the **approved** budget, namely the budget that has been formally approved by the Parliament (or another competent public authority), but not the one effectively executed.

## Questions 14 and 15

The aim of this question is to identify the bodies involved in the various phases of the process regarding the global budget allocated to the courts. This question does not concern the management of the budget at the level of each individual court, to be addressed under question 61. Various answers are possible, because, in certain countries, the management and the allocation of the budget to the courts is, for example, a combined responsibility of the Ministry of Justice and a Council for the Judiciary. Where applicable, please give a brief description on the way responsibilities related to the allocation of court budgets are organised.

## Question 15-1 ( ex question 10) and 15-2 (ex question 11)

**This question takes into account the approved budget allocated to the whole justice system (contrary to question 6 which concerns only the court system).**

The figures presented must be the figures of the **approved** budget, for instance, the budget that has been formally approved by the Parliament (or another competent public authority), but not the one effectively executed.

*The public annually approved budget allocated to the whole justice system* should include, in particular:

- the budget of the prison system;
- the budget for the functioning of the Ministry of Justice or other bodies,
- the budget for the judicial protection of youth;
- the budget for the public prosecution system;
- the budget for the courts and the judiciary;
- the budget for high councils for the judiciary;
- the budget for legal aid;
- the budget for probation services;
- the budget for refugees and asylum seekers services
- etc. (please specify the other possible elements)

This figure will enable, for instance, to assess the part of this budget dedicated to the functioning of all courts, as stated in question 6.

2. <i>Access to justice and to all courts</i>
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As the European Convention on Human Rights guarantees legal aid in criminal matters, the questionnaire distinguishes legal aid in criminal cases from legal aid in other than criminal cases.
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For the purposes of this Scheme, <i>legal aid</i> is defined as the aid provided by the state to persons who do not have sufficient financial means to defend themselves before a court. For more information on the characteristics of legal aid, please refer to Resolution Res(78)8 of the Committee of Ministers of the Council of Europe on Legal Aid and Advice.
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## Question 17

Certain States consider the coverage or the exemption from court fees (which, in certain countries can consist of a fixed amount, whereas in others this can consist of a percentage of the contested amount or of an amount determined by the nature of the proceedings) as 'legal aid'

## Questions 20 and 20.1

These two questions should in particular allow to calculate more precisely the ratio of the amount of legal aid granted per individual case in the member states, differentiating on the one hand the budgets allocated to litigious cases, brought to court (question 20, reported to question 12.1 ), and, on the other hand, to other cases not brought to court (question 20.1, reported to question 12.2). Indeed, some states spend substantial amounts to prevent litigations before the court. CEPEJ should be able to reflect such efforts in the report.

## Question 21

According to article 6 of the European Convention on Human Rights (fair trial) any accused individual who does not have sufficient financial means has the right to be assisted by a free of charge (or financed by public budget) lawyer in criminal cases. Is this right observed?

This measure can also be applied to victims, if this is the case in your system, please specify.

## Question 22

Regarding legal aid, according to the different systems, lawyers can be appointed *ex officio*, proposed on a list or freely chosen by the parties.

### Question 23

It is possible that legal aid is limited to people with a standard of living that is deemed modest. The threshold below which legal aid is granted may be defined in terms of revenues and / or assets of the parties.

### Question 26

The insurance system might concern for instance bearing court taxes or fees, lawyers' fees and other services related to the settlement of the dispute.

### Question 27

*Judicial costs* include all costs of legal proceedings and other services related to the case paid by the parties during the proceedings (taxes, legal advice, legal representation, travel expenses, etc).

### Question 29

This question can apply to all types of cases.

A mandatory provision of information to individuals on the foreseeable timeframe of the case to which they are parties is a concept to be developed to improve judicial efficiency. It can be simple information to the parties or for instance a procedure requiring the relevant court and the parties concerned to agree on a jointly determined time-limit, to which both sides would commit themselves through various provisions. Where appropriate, please give details on the specific situations and existing specific procedures.

### Question 30

The question aims to specify if the state has established structures which are known to the public, easily accessible and free of charge, for victims of criminal offences.

### Question 31

This question aims to learn how states protect the groups of people who are particularly vulnerable in judicial proceedings.

It does not concern the police investigation phase of the procedure nor compensation mechanisms for the victims of criminal offences, which are addressed under questions 32 to 34.

Definitions of different categories of offences (sexual violence/rape, terrorism, domestic violence etc.), should be in accordance with national legislation of each State.

*Ethnic minorities* must be addressed in line with the Council of Europe's framework convention for the protection of national minorities (CETS N° 157). It does not concern foreigners involved in a judicial procedure. Special measures for these groups can be, for instance: language assistance during court proceedings or special measures to protect the right to a fair trial and to avoid discrimination.

*Information mechanisms* might include, for instance:

- a public, free of charge and personalised information mechanism, operated by the police or the justice system, which enables the victims of criminal offences to get information on the follow-up to the complaints they have launched;
- the obligation to inform beforehand the victim of sexual violence/rape, in case of the release of the offender,
- the obligation **of the judge** to inform the victims of all his/her rights.

*Special arrangements in court hearings* might include, for instance,

- the possibility for a minor to have his/her first declaration recorded so that he/she does not have to repeat it in further steps of the proceedings;
- live audio or videoconferencing of the hearing of a vulnerable person so he/she is not obliged to appear before the accused,
- in camera hearing, excluding the public, of a victim of sexual violence/rape,
- the obligation (or the right to request) that statements of a vulnerable person (e.g. minor) are made in the presence of a probation counsellor,

- the testimony of minors under 16 can not be received under oath.

Please specify if *other specific modalities* are provided, for instance,

- the possibility of an *in camera* proceeding, excluding the public,
- language assistance during a court proceeding for ethnic minorities or disabled persons,
- the obligation to hear the opinion of an association protecting the interest of a minor accused of a crime,
- the right for a woman who is a victim of family violence to enjoy the use of the common house,
- physical protection during the time of the judicial proceeding,
- the right of an association protecting and defending the interest of a group of vulnerable person to exercise the civil rights granted to the plaintiff,
- prohibition on publishing personal details and photographs of minor defendants and witnesses,

### Question 31-1

The aim of this question is to ascertain if minors can participate in court proceedings in their own name and if such participation is of a direct nature (without the intervention of a legal representative), if yes, how.

### Question 35

In certain countries, the public prosecutor can play a role in the assistance to victims of crime (for example, by providing them with information or assisting them during judicial proceedings, etc). If this is the case, please specify it.

### Question 36

This question is related to situations where public prosecutors can discontinue a case, for example due to the lack of evidence, when a criminal offender could not be identified or, in some legal systems, for discretionary reasons. It aims to know whether victims of crime may have the possibility to dispute such a decision, to 'force' the public prosecution services to carry on with a criminal case.

This question does not concern countries where the public prosecutors can not decide whether to discontinue the case without needing a decision by a judge. Anyway, in such countries, victims can dispute the court decision. This is why the correct answer for such countries is NAP ("not applicable").

Please verify the consistency of your answer with that of question 105 regarding the possibility (or impossibility) for a public prosecutor "to discontinue a case without needing a decision by a judge".

### Questions 38 and 39

These questions concern the surveys aimed at persons who were in direct contact with a court and who were directly involved in proceedings. It does not concern general opinion surveys.

### Questions 40 and 41

These questions refer to the existence of a procedure enabling every user of the justice system to complain about a fact that he/she thinks is contrary to the good functioning of the judicial system.

An example of a specific type of complaint could be the (possible) case of a corrupt judge, public prosecutor or court staff and public prosecution offices. If there are situations known in your country (underlined in particular in the reports published by the Group of States against Corruption – GRECO), please specify. Please indicate in particular the number of complaints, the characteristics of the corruption cases and the number of persons convicted for corruption.

### 3. *Organisation of the court system*

For the purposes of this Scheme, a *court* means a body established by law appointed to adjudicate on specific type(s) of judicial disputes within a specified administrative structure where one or several judge(s) is/are sitting, on a temporary or permanent basis.

### Questions 42 and 43

A court can be considered either as a legal entity or a geographical location. Therefore it is required to number the courts according to both concepts, which allow in particular to give information on the accessibility of courts for the citizens.

For the number of *legal entities (administrative structure)*, the possible different divisions of a court shall not be counted individually (for instance it is not correct to indicate "3" for the same court which includes one civil division, one criminal division and one administrative division. The correct answer is "1"). The different court buildings are not counted (contrary to the question regarding the number of courts on a geographic location point of view, see below).

For the purpose of this question, a *court of general jurisdiction* is a court which deals with all the issues which are not attributed to specialised courts owing to the nature of the case.

Please, count as *specialised courts* only the courts which are indeed considered as such in your system. **Are not considered here as specialised courts**, for instance:

- chambers responsible for "family cases" or "administrative law cases" that are under the authority of the same court of general jurisdiction,
- a Supreme Court or a High Court dealing with all types of cases; they belong to the ordinary organisation of the judiciary.

Please note that questions 42.1, 42.2 and 43 (contrary to question 42.3) only concern 1st instance courts.

**The total of question 43 must correspond to the number indicated in question 42.2**

*Courts (geographic locations) (42-3):* For the purposes of this question, please indicate the total number of geographical locations (premises or court buildings) where judicial hearings are taking place, numbering the courts of first instance of general jurisdiction, the specialised courts of first instance, second instance and appeal courts, as well as the premises of the Supreme Court or High Courts. Please include in the data the various buildings, with court rooms, belonging to the same tribunal (for instance, when the same tribunal is split into two buildings, please count "2").

### Question 43

Courts should be included only if they are actually specialised courts. For example, if family law cases are dealt with by ordinary courts, the answer to the 4th row of the table should be: "NAP" (not applicable).

This question concerns only the courts of first instance.

### Question 45

This question aims to compare the number of courts for some specific cases (geographic locations). It should enable a comparison of member states despite the differences regarding judicial organisation.

The notion of "small claims" (i.e. a civil case where the financial value of the claim is relatively low) does not prevent from taking into account the differences in the living conditions in European states. For this reason, please specify the maximum amount included, in your country, within the definition of a "small claim", which is generally used as criteria for procedural jurisdiction.

### Questions 46 to 52

These questions aim at numbering all persons entrusted with the task of delivering or participating in a judicial decision. Please make sure that public prosecutors and their staff are excluded from these figures (if it is not possible, please indicate this clearly).

Please indicate the number of posts that are actually filled at the date of reference (possibly 31 December 2012) and not the theoretical budgetary posts.

For the purposes of this Scheme, a *judge* must be understood according to the case law of the European Court of Human Rights. In particular, the judge decides, according to the law and following an organised procedure, on any issue within his/her jurisdiction. He/she is independent from the executive power.

Therefore, **judges deciding in administrative or financial matters (for instance) must be counted** if they are included in the above mentioned definition.

#### Question 46 and 47

For the purposes of this question, *professional judges* are those who have been trained and who are paid as such. The information should be given for permanent posts that are actually filled (not the theoretical number included in the budget) and in full-time equivalent. *Full-time equivalent* indicates the number of persons working the standard number of hours (whereas the *gross figure* of posts includes the total number of persons working independently of their working hours). The indication of the full-time equivalent implies that the number of part-time working persons has to be converted: for instance, one half-time worker should count for 0.5 of a full-time equivalent, two people that work half the standard number of hours count for one "full-time equivalent".

The data concerns all general jurisdiction and specialised courts.

In order to better understand gender issues in the judiciary, please specify the number of women and men who practice in the different court levels and specify the number of women and men who practice as court presidents.

#### Question 48

This question concerns *occasional professional judges* who do not perform their duty on a permanent basis but who are fully paid for their function as a judge.

At first, in order to measure to what extent part-time judges participate in the judicial system, the *gross data* could be indicated. Secondly, in order to compare the situation between member states, the same indication could be given, if possible, in *full-time equivalent* (see note on question 49).

#### Question 49

For the purposes of this question, *non-professional judges* are those who sit in courts (as defined in question 46) and whose decisions are binding but who do not belong to the categories mentioned in questions 46 and 48 above. This category includes namely lay judges and the (French) "*juges consulaires*". Neither the arbitrators, nor the persons who have been sitting in a jury (see question 50) are subject to this question.

See note on question 46 for the notion of *gross figure*.

#### Question 50

This category concerns for instance the citizens who have been drawn to take part in a jury entrusted with the task of judging serious criminal offences.

#### Question 52

The whole non-judge staff, working in all courts, must be counted here in full-time equivalent for permanent posts. In order to better understand gender issues in the judiciary, please specify the total number of female staff working in courts as well as the number of female staff for each category. Please make sure that the figures presented exclude staff working for the public prosecution services (otherwise mention the situation in the comment).

1. *The Rechtspfleger* is defined as an independent judicial authority according to the tasks that were delegated to him/her by law. Such tasks can be connected to: family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, criminal law cases, enforcement of sentences, reduced sentencing by way of community service, prosecution in district courts, decisions concerning legal aid, etc. The *Rechtspfleger* has a quasi judicial function.

2. *Non-judge (judicial) staff* directly assist a judge with judicial support (assistance during hearings, (judicial) preparation of a case, court recording, judicial assistance in the drafting of the decision of the judge, legal counselling - for example court registrars). If data has been given under the previous category (*Rechtspfleger*), please do not add this figure again under the present category.

3. *Administrative staff* are not directly involved in the judicial assistance of a judge, but are responsible for administrative tasks (such as the registration of cases in a computer system, the supervision of the payment of court fees, administrative preparation of case files, archiving) and/or the management of the court (for example a head of the court secretary, head of the computer department of the court, financial director of a court, human resources manager, etc.).

4. *Technical staff* are staff in charge of execution tasks or any technical and other maintenance related duties such as cleaning staff, security staff, staff working at the courts' computer departments or electricians.

5. *Other non-judge staff* include all non-judge staff that aren't included under the categories 1-4.

**The total number indicated in the first column must absolutely correspond to the total of categories 1 to 5.**

#### **Question 53**

For the definition of *Rechtspfleger* see question 52 above.

#### **Question 54**

The aim of this question is to know if courts delegate certain services to private providers and comparing this issue with the number of court staff.

#### **Questions 55 and 56**

For the definition of the *public prosecutor* see question 13.

The information should be given in full-time equivalent for permanent posts that are actually filled (not the theoretic number which appears in the budget) (see note on questions 46 and 47).

In order to better understand gender issues in the judiciary, please specify the number of female and male staff working at different levels of jurisdiction as well as the number of female and male staff who are heads of public prosecution offices.

#### **Question 57 and 59**

In some countries, there are *persons who are specifically entrusted with duties similar to those exercised by public prosecutors*, for instance police officers that are able to bring a case before court or to negotiate sentences. This excludes lawyers that bring charges to a criminal hearing and victims who can go directly to the judge without having the public prosecution services intervene.

Please specify whether these persons are included in the data concerning the number of public prosecutors (question 55) and give information on these categories (status, number, duties).

For the notion of full-time equivalent, please see the note on question 46.

#### **Question 59-1**

In this question please indicate the training (initial or continuous professional development) available to address certain crimes relating to domestic violence and sexual violence in order to evaluate how different judicial systems take these issues into account.

#### **Question 60**

For the purposes of this question, please number the non-prosecutor staff working for the prosecution system, even when this staff appears in the budget of the court. This figure should not include the number of staff working for judges. The information should be given in full time equivalent for posts which are actually filled (not the theoretic number included in the budget). (see note on question 46).

#### **Question 61**

Contrary to question 14 which concerns the elaboration of the budget before it is actually allocated between the courts, this question concerns those persons within the courts who enjoy specific powers as regards the budget. Multiple answers are possible. If available, please give a description of the responsibilities of the various actors regarding the individual court budget.

#### **Questions 62 to 65-4**

These questions aim to evaluate the quality of the computerised support of the courts. Please tick the boxes according to the rate of courts which are equipped with the computer facilities indicated in the table. For instance, if it is not possible in your country to file a claim by electronic form, tick the case "0% of courts" in the row "electronic form".

New additional questions about different forms of e-justice systems and in particular about the use of videoconferencing are asked. The aim is to receive accurate information about the use of new IT in courts and to share it within the member states of the Council of Europe.

#### **Question 66-1 and 67**

These questions aim to establish if the final statistics and annual reports of court activities are available to the public via the internet and to give an idea of the degree of transparency of each court.

#### **Questions 68 to 81**

Various court activities (including judges and administrative court staff) are nowadays subject, in numerous countries, to monitoring and evaluation systems.

The *monitoring system* aims to assess the day-to-day activity of the courts, and namely what the courts produce, thanks in particular to data collections and statistical analysis (see questions 68, 80 and 81).

The *evaluation system* refers to the performance of the court systems with prospective concerns, using indicators and targets. This evaluation can have a more qualitative nature.

#### **Questions 72 and 73**

The questions address here quantitative targets to measure the individual work of each judge, participating in the work of the whole court, e.g. a defined number of cases to be handled per month or per year. They do not cover a possible more general assessment of the judge, which may include elements such as qualitative indicators and / or behaviour (addressed in Chapter 5, question 114).

#### **Questions 78 and 79**

A recent trend in Europe concerns the introduction of quality systems in courts, for example in the Netherlands (*rechtspraakQ*) and in Finland (Court of appeal of Rovaniemi). It is important to identify these countries and to see if specialised staff working in the courts are also responsible for the quality policy. See also the reference material on the CEPEJ website concerning court quality.

#### **Question 80**

*Backlogs* are composed of filed cases which have not yet been decided. Please give details concerning your system to measure backlogs.

#### **Question 81**

*Waiting time* means time during which nothing happens in a procedure (for instance because the judge is waiting for an expert's report). It is not the general length of the procedure.

#### **Question 82**

This question does not specifically concern the evaluation of performance indicators, but the overall evaluation of the (smooth) functioning of the court. The supervision of the courts may be done here thanks to inspection visits. These visits might be organised by making use of programmed inspection rounds, where

courts or groups of courts in a certain region are regularly visited, annually, bi-annually or at any other frequency, this plan of visits being known in advance.

#### 4 Fair trial

##### Question 84

This question refers to situations in which a judgment is given with not effective defence. This may occur – in some judicial systems – when a suspect has absconded or does not show up for trial and is not represented by lawyer during the court session. The aim of this question is to find out if the right to an adversarial trial is respected, in particular in criminal cases at first instance.

The right to an adversarial trial means the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced by the other party (see amongst others Ruiz-Mateos vs. Spain, judgment of the European Court of Human Rights of 23 June 1993, Series A no. 262, p.25, para. 63).

##### Question 85

This question aims to provide information on procedures which allow to guarantee for the court users that the principle of judges' impartiality is respected, in accordance with Article 6 of the European Convention on Human Rights. If possible, please indicate the number of cases successfully challenged within the year of reference.

##### Question 86

This table concerns the number of cases regarding (the violation) of Article 6 of the European Convention on Human Rights for the year of reference, specifying civil (including commercial and administrative law cases) and criminal cases. The main focus of this question is on cases related to the duration of court proceedings and (for civil cases) the non-execution of decisions.

#### *European Convention on Human Rights - Article 6 – Right to a fair trial*

*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

##### Question 87

Such a *procedure for urgent cases* (accelerated) can be used in order for the judge to take a provisional decision (e.g. decision on the right to control and care for a child) or when it is necessary to preserve evidence or when there is a risk of imminent or hardly repairable damage (for instance emergency interim proceedings).

##### Questions 88 and 88-1

Such a *simplified procedure* can be used in civil matters for instance when it concerns the enforcement of a simple obligation (e.g. payment order).

For criminal matters, the question aims to know whether petty offences (for instance minor traffic offences or shoplifting) can be processed through administrative or simplified procedures. These offences are considered as subject to sanctions of criminal nature by the European Court of Human Rights and shall therefore be processed in respect of the subsequent procedural rights.

Question 88-1 aims to establish how the requirement to reason judgements ( see article 6-1 European Convention of Human Rights) is put into practise when a simplified procedure is used.

##### Question 89

This question refers to agreements between lawyers and the courts which can be entered into in order to facilitate the dialogue between the main actors of the proceeding and, in particular, to improve lengths of proceedings.

### Questions 91 to 109

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and lengths of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only when answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling thus a useful comparison between the systems.

The member states are asked to provide information on the **caseload of the courts** (from first instance courts to the highest instance courts).

*Pending cases* are cases which have not been completed within a given period. Please provide both the number of pending cases within the previous year (pending cases on 1 January) and within the reference year (pending cases on 31 December).

*Resolved cases* include all the procedures which have come to an end at the level considered (first instance or appeal) during the year, either through a judgment or through any other decision which ended the procedure (provisional decisions or decisions regarding the proceeding should not be counted here).

Please check that your figures are *horizontally consistent*. This means that the outcome of the sum "(pending cases per 1 January 2012 + incoming cases) – resolved cases" should result in the total number of pending cases on 31 December 2012. If this is not the case, please adjust your figures or explain the difference in the comments.

#### Two examples regarding horizontal consistency:

1. **Non litigious enforcement cases:** Pending cases on 31 December 2012 = (pending cases per 1 January 2012 + incoming cases) – resolved cases = (100 + 30) – 70 = 60
2. **Non litigious land register and business register cases:** you have no figures about pending cases on 1 January 2012, but you have figures on incoming and resolved cases in 2012. The correct answers for pending cases on 1 January 2012 and on 31 December 2012 are therefore NA (= "not available").

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
<b>Non litigious enforcement cases</b>	100 +	30 -	70 =	60
<b>Non litigious land registry cases</b>	NA	150	200	NA
<b>Non litigious business register cases</b>	NA	500	600	NA

#### Other than criminal law cases

1. *Litigious civil (and commercial) cases* are for instance litigious divorce cases or disputes regarding contracts. In some countries *commercial cases* are addressed by special commercial courts, whilst in other countries these cases are handled by ordinary (civil) courts. Bankruptcy proceedings must be understood as litigious proceedings. Despite the organisational differences between countries in this respect, all the information concerning civil and commercial cases should be included in the same figures. If appropriate, litigious civil (and commercial) cases do not include administrative law cases (see category 6).

2. *General non-litigious civil (and commercial) cases* concern for example uncontested payment orders, request for a change of name, divorce cases with mutual consent (for some legal systems), etc. **If courts deal with such cases, please indicate the different case categories included.**

3.-5. In certain member states, *registration tasks (business registers and land registers) and enforcement cases* are dealt with by special units or entities of the courts. These are non-litigious civil cases. Activities related to business registers could be the registration of new businesses or companies in the business register of the court or the modification of the legal status of a company. Changes in the ownership of immovable goods (like land or houses) may be a part of court activities which are related to the land register. Cases relating to enforcement are such as issuance of a writ of execution or, for states with a system of public bailiffs, an order given by a judge to a public enforcement officer. Litigious cases relating to an enforcement procedure (e.g. judicial complaint against the action of a bailiff) should not be counted here: they fall into category 1.

6. *Administrative law cases* (litigious or non-litigious) concern disputes between citizens and (local, regional or national) authorities, for instance: asylum refusals or refusals of construction permit applications. Administrative law cases are in some countries addressed by special administrative courts or tribunals, whilst in other countries they are handled by the ordinary civil courts. **If countries have special administrative courts/tribunals or separate administrative law procedures or are anyway able to distinguish between administrative law cases and civil law cases, these figures should be indicated separately under “administrative law cases”.** If the data is not available, please indicate **NA** (see 2<sup>nd</sup> example below). Other countries should answer **NAP** (not applicable; see 1<sup>st</sup> example below).

7. The category “*other*” can be related for example to the management of insolvency registers (or bankruptcy registers). If these registration tasks are part of the court activities, please mention the number of cases concerned.

Please check that your figures are *vertically consistent*. This means that the total of the civil cases includes all civil cases as described under categories 1 to 7.

For countries where the courts do not deal with civil law cases enumerated under categories 2-7, the correct answer is **NAP** (= not applicable). The answer is **NA** (= not available) if the courts deal with a civil law case enumerated under categories 2 to 7 but the data is not available. **If appropriate, please don’t forget to comment on the specific situation in your country (including answers NA and the calculation of the total of “other than criminal law cases”).**

**Two examples of the vertical consistency:**

1. In your country, 1<sup>st</sup> instance courts are responsible for civil (and commercial) litigious cases, civil (and commercial) non-litigious cases and enforcement cases. They aren’t responsible for any activities related to business register or land register cases. Administrative cases are handled by the courts of general jurisdiction and do not have a separate procedure. Courts do not deal with “other” cases. The correct answers for 4.-7. are **NAP**. The total of *other than criminal law* cases is calculated out of categories 1 to 3.

	Pending cases on 1 Jan. '12	Incoming cases	Resolved cases	Pending cases on 31 Dec. '12
Total of other than criminal law cases (total 1+2+3+4+5+6+7)	1300	3700	2850	2150
1. Civil (and commercial) litigious cases	250	600	700	150
2. General civil (and commercial) non-litigious cases	1000	3000	2000	2000
3. Non litigious enforcement cases	50	100	150	0
4. Non litigious land registry cases	NAP	NAP	NAP	NAP
5. Non litigious business register	NAP	NAP	NAP	NAP

cases				
6. Administrative law cases	NAP	NAP	NAP	NAP
7. Other cases (e.g. insolvency register cases)	NAP	NAP	NAP	NAP

2. In your country, 1<sup>st</sup> instance courts are responsible for civil (and commercial) litigious cases, general civil (and commercial) non-litigious cases and non litigious enforcement cases; the data on non litigious enforcement cases are not available. The courts don't deal with non litigious business register and land register cases. Courts of general jurisdiction deal with administrative cases, for which a separate procedure exists. However the figures can not be distinguished from the civil (and commercial) litigious cases, the initial figures include both. Courts do not deal with "other" cases. The correct answers for 3 and 6 are **NA** (not available) and to 4, 5 and 7 **NAP**. The total of *other than criminal law* cases can not be calculated and is **NA** as figures for enforcement cases are not available (the figures for administrative cases are included in the 1<sup>st</sup> category). **Please comment this situation.**

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
Total of other than criminal law cases (total 1+2+3+4+5+6+7)	NA	NA	NA	NA
1. Civil (and commercial) litigious cases	250	600	700	150
2. General civil (and commercial) non-litigious cases	1000	3000	2000	2000
3. Non litigious enforcement cases	NA	NA	NA	NA
4. Non litigious land registry cases	NAP	NAP	NAP	NAP
5. Non litigious business register cases	NAP	NAP	NAP	NAP
6. Administrative law cases	NA	NA	NA	NA
7. Other cases (e.g. insolvency register cases)	NAP	NAP	NAP	NAP

### Criminal law cases

Are considered here as **criminal cases**, all cases for which a sanction may be imposed by a judge, even if this sanction is foreseen, in some national systems, in an administrative code (e.g. fines or community service). These can include, for example, some anti-social behaviour, nuisance or some traffic offenses. Warning: if these cases are included in the responses to questions 94, 98 and 100, then they should not be counted a second time as "administrative cases" in the responses to questions 91, 97 and 99. The offenses sanctioned directly by the police or by an administrative authority, and not by a judge, should not be counted (e.g. penalty for parking in a closed area not contested before a judge, or failure to comply with an administrative formality not contested before a judge).

To differentiate between *misdemeanour / minor offenses* and *serious offenses* and ensure the consistency of the responses between different systems, the CEPEJ invites you now to classify as *misdemeanour / minor all offenses for which it is not possible to pronounce a sentence of privation of liberty*. Conversely, should be classified as *severe offenses all offenses punishable by a deprivation of liberty (arrest and detention,*

*imprisonment*). If you cannot make such a distinction, please indicate the categories of cases reported in the category "serious offenses" and cases reported in the category "minor offenses".

Please check that your figures are *horizontally* and *vertically* consistent (the total of the criminal cases includes the cases of categories 1 and 2). **If appropriate, please don't forget to comment on the specific situation in your country (including answers NA and the calculation of the total of criminal law cases).**

**Example of vertical consistency:** Your country is unfortunately not able to distinguish figures for severe criminal offences and misdemeanour and/or minor offences cases. The correct answers for these two categories are therefore **NA**.

	Pending cases on 1 Jan.'12	Incoming cases	Resolved cases	Pending cases on 31 Dec.'12
Total of criminal cases (8+9)	10	40	45	5
8. Severe criminal cases	NA	NA	NA	NA
9. Misdemeanour and / or minor criminal cases	NA	NA	NA	NA

#### Question 99-1

A manifestly inadmissible case is an affaire where the facts have not yet been examined and which is refused immediately following a simplified procedure, generally presided by a single judge, because the claimant has not respected a mandatory rule of procedure and therefore loses their right to bring an action before the judge (for example if they have not paid a fee or if they have not provided all the documents necessary in due time).

#### Questions 101 and 102

**Please refer to the CEPEJ Guidelines on judicial statistics – GOJUST (CEPEJ(2008)11) and the SATURN Guidelines on judicial time management (CEPEJ(2008)8) and to their shared appendix: EUGMONT**, which invite all the member states to be able, through the organisation of their statistic system, to give detailed data on the timeframes of judicial proceedings for four specific case categories.

The five case categories, which are (mostly) common in Europe, can be defined as follows:

6. *Litigious divorce cases*: i.e. the dissolution of a marriage contract between two persons, following a judgment of a competent court. The data should not include: divorce ruled by an agreement between the parties concerning the separation of the spouses and all its consequences (procedure of mutual consent, even if they are processed by the competent court) or ruled through an administrative procedure. If your country has a totally non-judicial procedure as regards divorce or if you can not isolate data concerning adversarial divorces, please specify it and give the subsequent explanations. Furthermore, as regards divorce, if there are in your country compulsory mediation procedures or fixed timeframes for reflection or if the conciliation phase is excluded from the judicial proceeding, please specify it and give the subsequent explanations.
7. *Employment dismissal cases*: cases concerning the termination of (an) employment (contract) at the initiative of the employer (working in the private sector). It does not include dismissals of public officials, following a disciplinary procedure for instance.
8. *Bankruptcy*: Legal status of a person or an organisation that cannot repay the debts owed to creditors. Data should encompass bankruptcy declaration by a court, as well as all procedures connected with bankruptcy (recovery of credits, liquidation of assets, payment of creditors, etc.).

9. *Robbery* concerns stealing from a person with force or threat of force. If possible these figures should *include* muggings (bag-snatching, armed theft, etc) and *exclude* pick pocketing, extortion and blackmail (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts. The case should be counted here when the robbery is either the only offence concerned or the main offence concerned in the case.
10. *Intentional homicide* is defined as the intentional killing of a person. Where possible the figures should *include* assaults leading to death, euthanasia, infanticide and *exclude* suicide assistance (according to the definition of the European Sourcebook of Crime and Criminal Justice). The data should not include attempts. The case should be counted here when the intentional homicide is either the only offence concerned or the main offence concerned in the case.

If the *average length of proceedings* is not calculated from the lodging of court proceedings, please specify the starting point for the calculation. The average length of proceedings has to be presented in days. If you only have information on the length of proceedings in months (or years), please recalculate the length of proceedings in days.

#### **Question 103**

The information requested will enable to explain and to take into account the differences between the member states as regards divorce procedures, and in particular the mandatory timeframes prescribed by the legislation of some countries.

#### **Question 104**

An explanation can be given on how the lengths of court proceedings are measured and which methods are used.

#### **Question 106**

In civil matters, the public prosecutor can, in some member states, be entrusted for instance with the responsibility of safeguarding the interest of children or persons under guardianship. In administrative matters, he/she can, for instance, represent the interests of children against the state or one of its bodies.

This issue is addressed by the Consultative Council of European Prosecutors (CCPE) in its Opinion N° 3 (2008) on the "Role of prosecution services outside the Criminal Law Field" ([www.coe.int/ccpe](http://www.coe.int/ccpe)).

#### **Question 106-1**

For example the public prosecutor can give their opinion regarding a proposal to buy a business that has been declared bankrupt, as well as the guaranties given to the buyer and even oversee the procedure to ensure that the law is respected, to avoid any conflict of interest and to prevent any abuse of power.

#### **Questions 107, 108 and 109**

*Discontinued criminal cases* are cases received by the public prosecutor, which have not been brought before the court and for which no sanction or any other measure has been taken. Please indicate the number of cases discontinued because the case could not be processed, either (i) where no alleged offender was identified or (ii) due to the lack or absence of an established offence or a specific legal situation (e.g. amnesty) or (iii) for discretionary reasons, where the legal system allows it.

Traffic cases represent a large volume of cases, please specify whether the data indicated includes or not such cases. Relevant analyses based on a comparison of states or entities can be done only by considering clusters of states or entities which have or have not included traffic offences.

The column 'Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor' should contain information regarding proceedings which have not been brought before a judge (for example all transactions not approved by a judge).

The procedures (including guilty pleas, see question 107-1) in which the judge takes the final decision (including if the decision is simply an approval of a previous agreement concluded between the prosecutor and the accused) must appear in column 4.

### Questions 110 to 112 and 116 to 118

If judges and public prosecutors are recruited and/or promoted according to the same procedure and/or by the same authorities, please indicate it in the **comment** at the end of this chapter.

In order to better understand the question of gender issues in the judiciary, new more specific questions are asked as regards the rules put in place to favour sexual equality in judicial and prosecutorial recruitment and promotion procedures.

### Questions 114 and 120

Contrary to question 72, individual assessments of the professional activities of judges and public prosecutors may involve qualitative aspects. They might have an influence on judges' and public prosecutors' careers and may have an impact on disciplinary issues. The answer to this question is interesting to make a relevant analysis of the answers to questions 144 and 145.

Such an evaluation does not seem to be in accordance with systems where judges or prosecutors are elected.

This is not a recommendation by the CEPEJ. The aim of the question here is only to assess the current situation in the member states.

### Question 115

This question aims at getting information on the status of public prosecutors, which may vary fundamentally from one member state to another. In several member states, there is a debate to determine where prosecution services stand, sometimes between the executive and the judicial powers; public prosecutors can be subject to instructions of general nature, to specific instructions on given cases or are not subject to any instructions (exempted, or not, from instructions from a higher authority within the prosecution services).

### Questions 121 and 124

A *mandate for an undetermined period* means that judges and public prosecutors are appointed for 'life' (until their official age of retirement) and cannot be removed from office (unless severe disciplinary proceedings/sanctions against a judge or a public prosecutor are ordered, knowing that the highest sanction is a dismissal). It is possible for judges/public prosecutors to be appointed for life after a probation period.

### Question 121-1

This question aims to better understand the status of judges in different member states by identifying the reasons for transferring a judge without their consent as well as the procedural guarantees in place.

### Questions 131 and 131-1

This question only concerns member states that have public bodies specifically entrusted with the training of judges and/or prosecutors (schools, academies). The latter can be trained together (in a single institution) or separately. Training can be only initial, only continuous or both initial and continuous. Several institutions can therefore co-exist.

The budgets to be indicated should only correspond to the single budget of those bodies, and not to the total public budget for the training of judges and prosecutors (in particular if part of the training is provided by a University or private institutes). The total budget for training must be indicated under question 6.

If your country does not have public schools or institutions specifically responsible for training judges and prosecutors and consequently you haven't completed the table in question 131, please complete question 131-1.

### Question 132

Two different indicators are analysed: the salary at the beginning of the career (at a first instance court for a judge/public prosecutor; starting salary at his/her salary scale) and the salary at the end of the career (at the Supreme Court or the Highest Appellate Court). They represent the salary at full-time equivalent. If a bonus given to judges significantly increases their income, please specify it and, if possible, indicate the annual amount of such bonus or the proportion that the bonus takes in the judge's income. This bonus does not include the bonus mentioned under question 129.

The *gross* salary is calculated before any welfare costs and taxes have been paid (see question 4).

The *net* salary is calculated *after* the deduction of welfare costs (such as pension schemes) and taxes (for those countries where they are deducted beforehand and automatically from the sources of income; when this is not the case, please indicate that the judge has to pay further income taxes on this "net" salary, so that it can be taken into account in the comparison).

If it is not possible to indicate a determined amount, please indicate the minimum and maximum annual gross and net salary.

### Questions 135 and 137

*Teaching* includes for instance practising as a University professor, participating in conferences, participating in educational activities in schools, etc.

*Research and publication* includes for instance publishing articles in newspapers, participating in drafting legal norms, etc.

*Cultural function* includes for instance performing in concerts and theatre plays, selling his/her own paintings, etc.

### Questions 140 and 141

The power to "initiate a complaint" against a judge or a prosecutor must be understood in a wide sense, as the purpose of the question is to identify who can be at the origin of a disciplinary proceeding, and not the body formally responsible for opening the disciplinary file.

### Questions 144 and 145

This question, which appears as a table, specifies the number of disciplinary proceedings against judges or public prosecutors and the sanctions actually decided against judges or public prosecutors. If a significant difference between those two figures exists in your country and if you are aware of the reasons, please specify.

*Breach of professional ethics* (e.g. rude behaviours against a lawyer or another judge), *professional inadequacy* (e.g. systematic slowness in delivering decisions), *criminal offence* (offence committed in the private or professional framework and open to sanction) refer to some mistakes made by judges or public prosecutors which might justify disciplinary proceedings against them. Please complete the list where appropriate. The same applies to the type of possible sanctions (e.g. *reprimand, suspension, dismissal, fine, withdrawal of a case, transfer of the file to another court or department, temporary reduction of salary*).

**If the disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.**

Specific comments could in particular be developed, where appropriate, as regards the procedures initiated and the sanctions pronounced in the case of corruption of judges and public prosecutors, namely by taking into account the reports by the Group of States against Corruption (GRECO) and possibly by *Transparency International*.

11. <i>Lawyers</i>
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For the purposes of this chapter, <i>lawyers</i> refer to the definition of the Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer, as follows: a person qualified and authorised according to national law to plead and act on behalf of his or her
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clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters.

### Questions 147 and 148

*Legal advisors* (for instance some solicitors) are legal professionals who give legal advice and prepare legal documents but have no competence to represent users in courts.

### Question 149

This question aims to measure the scope of the "monopoly of lawyers" and/or to get information concerning other persons entitled, according to the type of cases, to represent clients before courts. In some countries a legal representation by a lawyer is mandatory for criminal cases, whilst in other countries this might not be the case (a representation, by for example, a family member is possible). A similar principle can be found in civil law cases. In certain countries for civil cases with a small financial value there may not be the obligation to hire a lawyer to defend such cases before the court.

The answer to this question might vary whether first or second instances are considered. If appropriate, please specify it.

### Question 153

*Specialisation in some legal fields* refers to the possibility for a lawyer to use officially and publicly this specificity, such as "lawyer specialised in real estate law".

### Questions 157 and 158

Similar to courts or other lawyers might use quality standards, as developed by (national, regional or local) bar associations. If this is the case, please specify which quality standards and criteria are used.

### Question 159

*A complaint about the performance of lawyers*: it might be introduced by clients who are not satisfied with the performance of the lawyer responsible for their case. The complaint can concern for instance delays in the proceeding, the omission of a deadline, the violation of professional secrecy. Where appropriate, please specify.

Please specify also, where appropriate, which body is entrusted with receiving and addressing the complaint.

### Questions 160 to 162

The question refers to *disciplinary proceedings* which are generally introduced by other lawyers or judges. Disciplinary proceedings can be within the competence of bar associations, a special chamber at a court, the ministry of justice or a combination of some of them.

The terms: *breach of ethical standards, professional inadequacy and criminal offence* refer to acts susceptible to lead to disciplinary proceedings being brought against the lawyer. Please complete the list if appropriate. Idem regarding the different types of sanction possible (for example *reprimand, suspension, removal, fine*).

If the disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.

Where appropriate, please complete the list of reasons for disciplinary proceedings and the type of sanctions mentioned in the second column.

If there is a significant difference between the number of disciplinary proceedings and the number of sanctions, please specify its reasons.

## 12. Alternative Disputes Resolutions

### Question 163

*Mediation*: this is a voluntary, non-binding private dispute resolution process in which a neutral and independent person assists the parties in facilitating the discussion between the parties in order to help them resolve their difficulties and reach an agreement. It exists in civil, administrative and criminal matters.

*Judicial mediation*: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).

*Conciliation*: the conciliator's main goal is to conciliate, most of the time by seeking concessions. She/he can suggest to the parties proposals for the settlement of a dispute. Compared to a mediator, a conciliator has more power and is more proactive.

*Arbitration*: parties select an impartial third party, known as an arbitrator, whose (final) decision is binding. Parties can present evidence and testimonies before the arbitrators. Sometimes there are several arbitrators selected who work as a court. Arbitration is most commonly used for the resolution of commercial disputes as it offers higher confidentiality.

#### **Question 163.1**

For certain types of disputes or certain legal areas, it is possible that the procedure codes require that a mandatory mediation is conducted beforehand in order to be able to go to court. Furthermore, certain procedures give the possibility to the judge to whom a case is addressed to order a mediation procedure at the beginning of judicial proceeding or during this proceeding. If this is the case, please specify in which situations apply such rules.

#### **Question 164**

*Court annexed mediation*: this is a particular kind of mediation, based on the American model of mediation and which takes place in a court-annexed place. The mediation may be conducted by private mediators or by judges and court employees specially trained and accredited.

*Private mediators*: for example lawyers who are accredited mediators or psychologists with a mediation specialisation.

For the purposes of this specific question, "*civil cases*" exclude family cases and employment dismissal cases, to be addressed in the specific rows below in the table.

#### **Question 166**

Please indicate the number of accredited or registered mediators, either by the court or by another national authority or a NGO. The aim of this request is to have an objective basis for counting the number of mediators.

#### **Question 167**

The interest of this question is to understand in which field judicial mediation is more used and considered as a successful procedure.

For the purposes of this specific question, "*civil cases*" exclude family and employment dismissal cases, to be addressed specifically below.

13. *Enforcement of court decisions*

#### **Question 169**

In accordance with the definition contained in Recommendation Rec(2003)17 of the Committee of Ministers of the Council of Europe on enforcement of court decisions: the *enforcement agent* is a person authorised by

the state to carry out the enforcement process irrespective of whether that person is employed by the state or not.

Please note that questions 169 to 183 only concern the enforcement of decisions in *civil matters* (which include commercial matters or family law issues for the purpose of this Scheme).

### **Questions 174 and 175**

These questions aim to provide information on the way enforcement fees are determined and on the possibility for users to have easy access to prior information on the foreseeable amount of fees requested by an enforcement agent to execute the judicial decision.

### **Questions 177, 178 and 179**

Enforcement agents are entrusted with public duties. It is therefore important to know who supervises them, even if their status can be very different. In addition it is important to know if specific quality criteria are used in the profession of the enforcement agents and which criteria are defined.

### **Question 182**

Taking into account the amount of cases brought before the European Court of Human Rights regarding, in particular, the non-execution of court decisions rendered against public (national, regional or local) authorities, it might be interesting, in order to better assess the situation in the member states, to comment specifically on this situation, if you consider it as a major issue in your country.

### **Question 183**

The previous evaluation rounds have proven that all the countries that answered provided in their legislation for complaints which can be filed by users against enforcement agents. The answers should provide more information on the reasons of such complaints and if a quality policy has been defined for the enforcement agents.

### **Question 184**

Please indicate, where appropriate, which are the items that your country wishes to improve on, which are the foreseen or the adopted measures undertaken to improve the situation and, where appropriate, which are the difficulties in this field. In other words, please evaluate the situation in the country concerning the enforcement procedures.

### **Question 185**

This question refers to the implementation of a statistical system enabling to indicate, in number of days for example, the length of the enforcement procedure as such, from the time the parties receive the decision. One of the reasons for the difficulty to keep a statistical data base in this field can be that, in civil matters, the execution of the decision depends on the wish of the winning party.

### **Question 186**

The aim of this question is to compare the situation between countries concerning the notification of the judicial decision enabling the enforcement procedure to begin.

### **Question 187**

The terms: *breach of ethical standards, professional inadequacy and criminal offence* refer to acts susceptible to lead to disciplinary proceedings being brought against the lawyer. Please complete the list if appropriate. Idem regarding the different types of sanction possible (for example *reprimand, suspension, removal, fine*).

14. Notaries

### **Question 193**

In addition to the differentiation between the public and the private status of the notaries, this question aims to differentiate those countries where the notary practices a fully private function, with no public nature (first choice), those where, while exercising an independent profession, the notary is entrusted with a public power (second choice), under the supervision of a public authority (for instance the public prosecutor or the judge) and countries where notaries execute their duties as public agents paid by the public authority (third choice). Please indicate only one possibility.

#### 15. *Court interpreters*

##### **Questions 197 to 201**

Court interpreters play a major role in guaranteeing access to the judge for the court users who do not have the ability to understand and/or speak the official language of the court. For some countries, quality criteria were defined and interpreters are certified.

To get a better understanding of the role of court interpreters in court proceedings four general questions have been asked. Some questions are derived from the report Hertog e. and van Gucht J. (2008), *Status Quaestionis: questionnaire on the provision of legal interpreting and translation in the EU*, Intersentia (Antwerp, Oxford, Portland).

##### **Question 197**

"Protected title" means that a person cannot claim the title of interpreter of his/her own, without the benefit of an agreement or another form of official recognition, which may be given by the court or by an administrative body, for example on the basis of diploma or tests, and sometimes of an oath.

##### **Question 199**

Please indicate the number of accredited or registered interpreters, either by the court or by another authority. The objective of this request is to have an objective basis for counting the number of interpreters.

##### **Question 201**

The interpreters can be recruited and/or appointed by the court, either for a long term of office (for instance, they can be registered on a list on which the judge can choose the interpreter for given proceedings) or on a case by case basis, according to the specific needs in a given proceeding.

#### 16. *Judicial experts*

##### **Question 202**

The role and function of experts are very different depending on their position within the procedure, which varies especially between continental and common law systems.

There is a need to differentiate several types of experts:

- the "expert witnesses", mainly used in adversarial systems (in particular in common law countries), who are requested by the parties to bring their expertise to support the parties' argumentation,
- the "technical experts" who put at the judge's disposal their scientific and technical knowledge on issues of fact (for instance in forensic medicine, psychiatry, criminal sciences, biology, architecture, arts)
- the "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision).

##### **Question 203**

"Protected title" means that a person cannot claim the title of expert of his/her own, without the benefit of an agreement or another form of official recognition, which may be given by the court or by an administrative body, for example on the basis of diploma or tests, and sometimes of an oath.

##### **Question 205**

Please indicate the number of accredited or registered experts, either by the court or by another authority. The objective of this request is to have an objective basis for counting the number of judicial experts.

**Question 207**

The judicial experts can be recruited and/or appointed by the court, either for a long term of office (for instance, they can be registered on a list on which the judge can choose the experts for given proceedings) or on a case by case basis, according to the specific needs in a given proceeding.

17. <i>Foreseen reforms</i>
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**Question 208**

As a general conclusion, this question offers the possibility to indicate general or more specific remarks concerning the situation in the countries which replied to the scheme and the necessary reforms to be undertaken to improve the quality and the efficiency of justice.

Though it is not compulsory to reply to this question, concrete suggestions from national experts would be very useful for the future work of the CEPEJ.