

IN-DEPTH ASSESSMENT REPORT OF THE JUDICIAL SYSTEM

January 2018

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Strengthening the Quality and Efficiency of Justice in Kosovo* (KoSEJ Action)

IN-DEPTH ASSESSMENT REPORT OF THE JUDICIAL SYSTEM IN KOSOVO

January 2018

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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PART I: GENERAL INFORMATION

Chapter 1: Presentation of the applied CEPEJ methodology

1.1 The European Commission for the Efficiency of Justice

This report principally addresses the issue of the efficiency of the judicial system in Kosovo and focuses on elements such as the resources allocated to the judicial sector, the organisation of the judicial system and the workload of courts - incoming and resolved cases by the courts. The European Commission for Efficiency of Justice (CEPEJ) is the Council of Europe body, which strives to improve the efficiency and functioning of justice in the member States, and to develop and implement the practical instruments adopted by the Council of Europe to this end.

The CEPEJ philosophy for efficiency and the effectiveness of the justice system includes:

- first the courts or the prosecution offices have to improve their functioning (even in the absence of more resources);
- when functioning is optimised, other measures can be taken on a higher level (generally without more resources for the courts or the prosecution offices), such as changing the distribution of the current resources, introducing new ICT tools, modifying the judicial organisation or the procedural laws, improving the training, etc.,
- finally, if both categories of measures are not sufficient to solve the problems, it might be necessary to increase the resources (number of magistrates, auxiliary staff and court employees, infrastructures, etc.).

The CEPEJ is today a unique body with the mandate to assess the efficiency of the judicial systems and propose practical tools and measures for working towards an increasingly efficient service for the public.

According to its status, 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 of 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 regarding 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*".

This status 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 encompasses the quality and the effectiveness of justice.

1.2 The evaluation process of the CEPEJ

To fulfil its core mandate of improving the efficiency and the quality of the judicial systems in Europe by comparing them and exchanging knowledge on how they function, the CEPEJ has been undertaking every two years, since 2004, a process for evaluating the judicial systems of the Council of Europe member States according to the **Evaluation Scheme** for understanding a judicial systems of its members and evaluating their functioning.¹ The CEPEJ Evaluation Scheme has been progressively refined over the years and is accompanied by a detailed **explanatory note**, aimed at facilitating a common understanding of the questions and thereby at promoting and guaranteeing uniformity of data for comparative purposes.² **The**

¹ The CEPEJ evaluation scheme is available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2015\)1&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2015)1&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

² The CEPEJ explanatory note is available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2015\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2015)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

latest assessment report of the CEPEJ was issued in October 2016.³ It analyses the data of 2014. For the first time, the results of the most recent 2016-evaluation cycle (data from 2014) can be accessed from a **dynamic database** with a data processing system, opened to the public on the Internet, which allows general as well as ad-hoc tailored analysis of a comprehensive volume of data.⁴

1.3 Data collection and analysis for Kosovo and scope of the study

Within the framework of the KoSEJ Action, one of the first priority objectives was to provide, for the first time to all relevant stakeholders, a general but thorough understanding of the functioning of the judicial system in **Kosovo** through an **ad hoc assessment exercise** based on the above-mentioned evaluation process of the CEPEJ. The ultimate aim of this exercise was to develop recommendations and set up concrete tools to improve the quality and efficiency of the judicial system. The quantitative and qualitative information regarding **Kosovo** that is reported and analysed in this study mainly refers to **the year 2014**, in order to match the most recent full set of available data in the CEPEJ database and to allow useful comparisons with other countries/entities.

Methodologically, for this first assessment exercise, the KoSEJ team in Pristina assisted **Kosovo** authorities in the data collection process, ensuring that the information provided on the different fields covered by the questionnaire was accurate and in line with CEPEJ definitions. Extensive work and frequent exchanges with key **Kosovo** interlocutors were carried out by the KoSEJ team and the CEPEJ experts to verify the quality of the data and to clarify the information submitted.

In the future, however, to evaluate on a regular basis the judicial system in **Kosovo** and to assess possible evolutions and trends, it will be necessary to implement a sustainable process of data collection based on local human resources in **Kosovo**. This will require the designation of a unique coordinator, trained on the CEPEJ methodology and definitions, in charge of data collection and the preliminary validation of its accuracy.

As explained above, the assessment exercise is based on 2014 data. The meetings with local stakeholders underlined that several legal and institutional reforms have taken place in 2015. However, it was recognized that creating a dataset for 2014 would provide a very useful baseline to be used as a reference year for measuring trends, evolutions and structural issues in the coming years.

The first exercise of data collection has been carried out using the CEPEJ evaluation scheme. This was adapted to **Kosovo** and therefore shortened, focusing on 74 out of 208 questions and comments, mainly addressing topics on which **Kosovo** authorities had already available or easily obtainable data and information.⁵ The adapted scheme and explanatory note were transmitted to key interlocutors including representatives from the Kosovo Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Office of Free Legal Aid, and the Bar Association at the very beginning of December 2016 in order to receive the relevant information. A CEPEJ data collection mission took place in Pristina on 12-14 December 2016.

The CEPEJ Secretariat produced tables and graphics based on the data collected. During this process, the quality of the data submitted by the **Kosovo** authorities was verified. Frequent contacts have been established with the representatives from the Kosovo Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Office of Free Legal Aid, and the Bar Association as well as with the KoSEJ team to clarify, explain, or amend the figures. Data that did not appear sufficiently accurate to merit publishing was excluded.

A second mission took place on 22-24 May 2017 to consolidate and fine-tune the data collection and

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³ The report ("CEPEJ 2016 report") is available at:

<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%2023%20report%20EN%20web.pdf>

⁴ The online database CEPEJ-STAT can be accessed from:

<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/02.asp>

⁵ A mission took place from 22 to 24 November 2016, where members of the CEPEJ Secretariat and the KoSEJ team met with local stakeholders to pre-assess the quality and the methodology employed to collect judicial statistics. As a result of this mission, the CEPEJ evaluation scheme was adapted and shortened.

analysis. These missions were essential steps in presenting the usefulness of CEPEJ indicators used in the scheme, in collecting and analysing qualitative information, and in eliciting this information in a cooperative manner with stakeholders. These meetings were extremely helpful to gaining a full understanding and the correct interpretation of the figures provided with the close collaboration of all the interlocutors involved in **Kosovo**.

1.4 The cluster

To make a meaningful comparison with other European states/entities it is very important to build a relevant cluster of a number of states/entities according to several criteria such as geography (i.e., countries/entities from major parts of Europe), legal tradition, economy (i.e. richness as GDP per inhabitant), population, etc.

The cluster for this study was defined on the basis of four criteria:

- organization of the judicial system;
- population;
- amount of the Gross Domestic Product (GDP); and
- the interest expressed by **Kosovo** interlocutors during the different meetings.

Fourteen countries were identified: they comprise seven neighbouring countries (**Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia,**⁶ “the former Yugoslav Republic of Macedonia” and **Slovenia**), some well-functioning countries/entities such as **Austria, Norway, the Netherlands** and **Switzerland**, and the Baltic countries (**Estonia, Latvia** and **Lithuania**) as countries whose size is similar to that of **Kosovo**.⁷

The cluster comprises examples of countries/entities with geographical, economic and judicial characteristics that allow meaningful comparisons with **Kosovo**. It includes countries/entities within and outside the Euro zone; well-functioning systems and countries/entities where improvements have been progressively made; and countries/entities with a GDP, population and/or average gross annual salary similar to that of **Kosovo**. To be consistent, the same cluster of countries has been used for comparisons with **Kosovo’s** judicial system during the entire study.

In addition, as a reference for reading the results within the cluster, tables in this study also contain a section presenting the average and median figures of all Council of Europe members (without the detail of the single countries/entities). These figures are drawn from the 2016 CEPEJ study (2014 data) and do not include the data on **Kosovo**.⁸

The study should be considered as a tool for constructive comparisons and development and not for performance rankings. It also does not want to give the impression that there exist different expectations with regard to countries/entities with not so well developed judicial systems compared to the more advanced countries/entities in Europe. Neither should the degree of richness - measured through the GDP – be used as a main indicator of what to expect. Every person is entitled to the same level of human rights protection when accessing a court. Only when it comes to rights exceeding the minimum human rights standards, states are free to prioritize according to their level of wealth.

Considering the above, there are some main points that warrant attention and that should be taken into account as the general setting for the findings and recommendations in this report (see below).

⁶ Data do not include the data of Kosovo.

⁷ Other countries that would have been appropriate to being considered for comparisons - in accordance with the criteria explained above - were eventually excluded, either because of the partial availability of data in the CEPEJ database (e.g. **Armenia, Belgium, Georgia** and **Germany**) or because the sample already included examples of countries/entities with similar characteristics (e.g. **Moldova** and **Azerbaijan** as low GDP countries). Still, the CEPEJ experts are of the view that the sample fulfils to a certain extent the characteristics discussed above and contains a variety of countries/entities along criteria such as *geography, legal tradition; wealth; population size, EU membership etc.*

⁸ Single country figures are also available on the CEPEJ-STAT dynamic database:

<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/default.asp>

Comparing data and concepts

1. Despite efforts to identify a suitable cluster for comparing **Kosovo** with other countries/entities, comparing quantitative figures from different states or entities with different geographical, economic or judicial background is a difficult task and needs to be addressed cautiously. When comparing, it is thus particularly important to highlight the specificities that explain variations from one country/entity to the other, such as level of wealth, different judicial structures, methodology of data collection etc.
2. Data cannot be read as it is, but must be interpreted in the light of the methodological notes and comments. Accordingly, careful attention has been paid to the terms, definitions, and concepts used, which were clarified with the national interlocutors in **Kosovo**. Comments and clarifications on the concepts and definitions used in the other countries/entities covered in this study were already available in the CEPEJ database.
3. Monetary values throughout this study and more generally in the CEPEJ database are reported in Euros. While this is the same currency used in **Kosovo**, for the countries outside the Eurozone considered in this study, the application of a different exchange rate may at times influence the accuracy of some of the figures, especially for states experiencing high inflation rates. Exchange rate aspects should be taken into account in the analysis regarding the budget of the judicial systems, however, as a first assessment of the **Kosovo** judicial system, fluctuations are less relevant in this report as it does not analyse data from different evaluations over time and/or trends.
4. The report provides an overview of the situation of the judicial system in **Kosovo** both on its own and compared to a cluster of relevant countries/entities. The purpose is not ranking the different judicial systems but providing a useful tool for the actors involved in the drafting and reform of public policy in the field of justice in **Kosovo**.
5. The report offers a snapshot of the functioning of the judicial system in **Kosovo** in 2014 that could be used as a reference in forthcoming assessments. Indeed, the effect of some of the extensive reforms of the organization of judicial institutions, which took place in 2013 and 2015, are expected to materialise in the coming years. These should be monitored closely and the present study would offer a useful interpretative tool for delving into the reasons behind trends and evolutions.
6. Statistics are just one way of diagnosing strengths and weaknesses of the **Kosovo** judicial system and usually use only rough indicators. For reform issues, an analysis that combines information obtained using different methodological tools is recommended. Court coaching, including individual assessments of time management and quality issues in the single courts will also be used as part of the KoSEJ project, and findings from the different outputs should be evaluated in relation to each other.

1.5 Presenting the data

Building on the CEPEJ evaluation methodology, data is presented in tables, graphics or maps. Some indicators are frequently used and are key to reading the figures: these are preliminarily explained here. Others more specifically relevant in a particular sector will be explained in the relevant chapters.

Average: (i.e. arithmetic average) is the outcome of dividing the sum of the data supplied by the total number of countries which were able to provide an information (NA or NAP values are not included). The average is sensitive to extreme values (too high or too low)

Median: represents the middle point of a set of ordered figures. 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 a better indicator compared to the average, as it neutralizes the effect of extreme values.

Standard deviation: quantifies the amount of variation or dispersion of data. A low standard deviation indicates that the data points tend to be close to the average (also called the expected value) of the set, while a high standard deviation indicates that the data points are spread out over a wider range of values.

In addition to the average and the median, the minimum and maximum were 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.

NA and **NAP**: When answering questions, it may not always be possible to give a number or to choose between Yes or No. The questionnaire and the tables use the abbreviation “NA” if the information is not available and “NAP” if it is not applicable. The answers NA or NAP are very different from each other.

The tables in the report generally contain three types of information.

(i) Tables present data for each country/entity within the cluster. Countries/entities are listed in alphabetical order. **Kosovo** appears at the end of the list, highlighted in red, to facilitate the reading of the data.

(ii) Tables include average, median, standard deviation, minimum and maximum values within the cluster (data regarding **Kosovo** is included).

(iii) Tables include average, median, standard deviation, minimum and maximum values of all Council of Europe members that provided the relevant figures (data regarding **Kosovo** is not included). These figures correspond to those analysed in the main CEPEJ 2016 report with data from 2014.

In maps and graphics, codes instead of names of countries/entities have been used. They are official FIFA (*Fédération Internationale de Football Association*) codes.⁹ The code for **Kosovo** is K VX.

Each chapter contains tables and graphics on the relevant topic being addressed, a description of the figures reported and a short analysis of the main findings, common patterns and trends, outlining where relevant directions for future action and/or improvements.

⁹ As in the CEPEJ 2016 report, p. 13.

Chapter 2: Economic and demographic data

CEPEJ definition

Economic and demographic data is important to establish the general context in which the study was conducted. In particular, it makes it possible to place the other figures in context, in particular budgetary figures and figures relating to court activities.

According to the CEPEJ above mentioned explanatory note, data on the population should indicate the number of inhabitants as of 1 January 2015. The average salary figure should report the gross salary on an annual basis. It should indicate the gross amount before any social expenses and taxes have been deducted, i.e. the amount that the employer actually has to pay per employee.

2.1 General overview

Table 2.1 enables the reader to standardise the information analysed by taking into account demographic, wealth and living standards diversity.

Table 2.1: General data: economic and demographic data in 2014 (Q1, Q3, Q4)

States / Entities	Number of inhabitants	GDP per inhabitant (in €)	Average gross annual salary (in €)
Albania	2 893 005	3 439 €	4 536 €
Austria	8 584 926	38 540 €	30 655 €
Bosnia and Herzegovina	3 827 343	3 642 €	7 909 €
Croatia	4 225 316	10 162 €	12 508 €
Estonia	1 313 271	15 186 €	12 060 €
Latvia	2 001 468	12 065 €	9 180 €
Lithuania	2 921 262	12 381 €	8 129 €
Montenegro	620 029	5 635 €	8 640 €
Netherlands	16 902 146	39 313 €	56 900 €
Norway	5 165 802	66 797 €	56 087 €
Serbia	7 114 393	4 672 €	6 284 €
Slovenia	2 061 085	18 065 €	18 483 €
Switzerland	8 237 666	64 813 €	65 180 €
"The former Yugoslav Republic of Macedonia"	2 069 172	4 130 €	6 112 €
Kosovo*	1 852 341	3 054 €	3 657 €
States / Entities listed in the table			
Average	4 652 615	20 126 €	20 421 €
Median	2 921 262	12 065 €	9 180 €
Standard deviation		21 846 €	21 310 €
Minimum	620 029	3 054 €	3 657 €
Maximum	16 902 146	66 797 €	65 180 €
CoE States / Entities			
Average (CoE)	17 607 274	23 147 €	22 872 €
Median (CoE)	5 471 753	16 637 €	17 363 €
Standard deviation (CoE)		19 863 €	17 163 €
Minimum (CoE)	37 800	1 687 €	2 147 €
Maximum (CoE)	146 267 288	88 500 €	65 180 €

Serbia: Data do not include the data of Kosovo.

In 2014, **Kosovo** had a population of about 1 852 000 inhabitants.¹⁰ The population spectrum within the cluster ranges from around one third of the population of **Kosovo** (i.e. **Montenegro** with about 620 000 inhabitants) to approximately 9 times higher (**the Netherlands** with almost 17 million inhabitants).¹¹ Many of the tables, graphics and maps in this study examine the figures per inhabitants/capita (also called 'standardisation') which makes data from different States/entities comparable, despite differences in the population.

In the reference year 2014, the GDP per inhabitants in **Kosovo** was 3 054 €¹² and the average gross annual salary 3 657 €. ¹³ These are the lowest figures within the cluster of countries/entities selected for the purposes of this study, although not the lowermost when the full range of Council of Europe States/entities is considered.¹⁴ Wealth and living standards are key to the interpretation of the data analysed in this report, such as the data on budgetary resources or professionals. Data on the annual gross salary is relevant and provides important context when analysing the salaries of judges and prosecutors across the sample (see Part III), as well as within each country/entity, compared to the average living standard.

¹⁰ World Bank report- Kosovo Overview and Kosovo Agency for Statistics, 2015 report.

¹¹ It was commented that the information regarding **Montenegro** may be slightly different in practice, because the reported figure is based on the results of the population census of 2011.

¹² Trading Economics – Article on GDP 2000-2016 data and UNDP Kosovo 2014 Overview.

¹³ Trading economic Kosovo Average monthly wages 2005 – 2016.

¹⁴ Two general considerations can be made to place the figures in context. First, as it was already pointed out, the influence of the monetary exchange rate between the national currency and the Euro should be taken into consideration, especially as concerns some of the neighbouring countries whose levels of GDP and average gross annual salary are very close to those of **Kosovo** – e.g. **Albania** and **Serbia**. Second, the figures on the annual gross salary may in some cases be higher than the ones reported, because one or more income components, such as the social contributions paid by the employer may have not been included (e.g. figures reported by **Austria** and **Bosnia and Herzegovina**).

PART II: BUDGETARY RESOURCES

Chapter 3: Budget of the judicial system

When considering justice as a public service, adequate resources are key, although not sufficient, to a functioning judicial system. Insufficient financial and human resource allocations to justice institutions create shortcomings in the effective functioning of the judicial system and seriously affect access to justice and its independence.

MAIN FINDINGS

1. The amount per capita allocated to the judicial system in **Kosovo** is one of the lowest within the cluster. However, compared to other countries/entities within the cluster, **Kosovo**, alongside other neighbour countries such as **Bosnia and Herzegovina**, **Montenegro** and “**the former Yugoslav Republic of Macedonia**”, seems to make a bigger budgetary effort for its judicial system (or invests more) considering its wealth (p. 20). **Kosovo** also benefits from additional financial support from the European Union and other organisations, aimed at promoting and strengthening the rule of law, but this is not included in the figures reported (p. 16).
2. In **Kosovo**, the process of the adoption of the budget for courts and prosecutorial services foreseen by the law involves an active and direct role by the KJC (in consultation with courts) and the KPC. Since 2015, the budget proposed by the KJC and by the KPC is forwarded directly to the Assembly for adoption. This amendment was intended to increase the independence of the judiciary. In practice, however, the KJC and the KPC seem to face difficulties in exercising effectively their budgetary independence as the government (through the Ministry of Finance) still plays a key role in determining the resources allocated to the judiciary (p. 24, p. 33).
3. The share deployed on computerisation in **Kosovo** in 2014 represented 0,9% of the court budget (international funds excluded). The level of information technologies (IT) in **Kosovo** courts was very limited. The use of IT was introduced only in one area, the area of the administration of the courts and cases management, with the launching of the joint KJC/KPC project introducing an ICT-based Case Management Information System (CMIS) for **Kosovo** courts and prosecution services (p. 29).
4. There is no single budget for legal aid in **Kosovo**. The budget for legal aid is obtained by adding up resources assigned to legal aid in the KJC and KPC budgets as well as resources assigned to the Free Legal Aid Agency. The Free Legal Aid Agency is not involved in the process of the adoption of its resources (p. 41).
5. The approved budget for legal aid in **Kosovo** per inhabitant appears low in comparison with the median figure for the cluster. It is likely that this budget is even lower in practice because the resources assigned to lawyers (providing legal aid), experts, and lay judges are included in the same budgetary line (p. 42).
6. There were important differences between the approved and implemented budget for free legal aid (+15,7%) in 2014 in **Kosovo**. Financial resources do not seem sufficient to meet the demand for free legal aid services (p. 45).
7. The law in **Kosovo** imposes no economic threshold (or financial criterion) for the assignment of a legal counsel at public expense in criminal cases of non-mandatory defence (p. 40).

CEPEJ definitions

In the CEPEJ evaluation scheme, the budget of the judicial system consists of three components and covers, respectively, the budgets allocated to:

- the courts;
- the public prosecution; and

- legal aid.

This distinction is based on long-standing CEPEJ definitions shared across the Council of Europe membership and is validated by CEPEJ experience.¹⁵

Furthermore, during the latest evaluation cycle (2016 cycle with 2014 data) the new approach adopted by CEPEJ was to collect data concerning both **approved** (i.e. figures approved by the Parliament or other competent public authority) and **implemented** budgets (i.e. the actual expenditure incurred in the reference year).¹⁶ This provides a better grasp of the concrete budgetary efforts made in the different countries/entities. The same was done for the **Kosovo** assessment exercise and two types of figures were collected (for the approved and implemented budgets), where possible.

3.1 Overall budget of the judicial system

The three judicial budget categories comprised in the definition reported above will be analysed in turn in the next chapters, but, as a preliminary note, the countries/entities considered in this study, including **Kosovo**, dedicate more than two thirds of their judicial budget to courts; the rest is shared between prosecution services and legal aid (see median figure in Table 3.1). In particular, **Kosovo** commits 71.7% of the judicial budget to courts, 24.86% to prosecution services and 3.43% to legal aid.

Table 3.1 (below) shows the approved budgets of the judicial system of the countries/entities in the cluster in absolute values (in €) but also presents standardised figures because a meaningful comparative analysis of the data is only possible when putting budgetary absolute values into perspective by wealth (as % of the GDP) and population (judicial system per inhabitants in €), and when considering the internal organisation of the judicial system of the different countries/entities, as done below.

Of note, some judicial systems - e.g. **Bosnia and Herzegovina** and **Slovenia** - have benefitted in recent years from significant assistance, from the European Union and other international organizations, aimed at improving the rule of law. The meetings and interviews in Pristina, with representatives of the key institutions, highlighted that **Kosovo** also receives significant assistance from the European Union and other international organisations. However, these external resources are not part of the official budgets and do not figure in the statistics below. A more precise enquiry into the total amount of external funding – whether it is supplied as general foreign aid or as ad hoc funding to a specific institution – would fine-tune the analysis of the real budgetary effort of **Kosovo** for its judicial system and its sustainability.

¹⁵ Additional resources that are allocated to the whole justice system, such as the budgets for the functioning of the Ministry of Justice, the prison system, the probation service or the Constitutional Court, where applicable, may vary considerably from one country/entity to the other. Accordingly, the whole “justice budget” is less suitable to be used for international comparisons and in agreement with the Kosovar authorities it was not included within the scope of the assessment exercise for **Kosovo**.

¹⁶ CEPEJ 2016 report, p. 18.

Table 3.1: Budget of the judicial systems in 2014 (Q6, Q12, Q13)

States / Entities	Judicial system (per capita)	Judicial System (as % of GDP)	Judicial system	Courts (per capita)	Courts (as % of GDP)	Courts	Prosecution service (per capita)	Prosecution service (as % of GDP)	Prosecution service	Legal aid (per capita)	Legal aid (as % of GDP)	Legal aid
Albania	9,3 €	0,27%	26 764 295 €	5,1 €	0,15%	14 821 816 €	4,1 €	0,12%	11 880 336 €	0,02 €	0,001%	62 143 €
Austria	95,9 €	0,25%	823 053 000 €	NA	NA	NA	NA	NA	NA	2,2 €	0,006%	19 000 000 €
Bosnia and Herzegovina	29,9 €	0,82%	114 496 991 €	21,9 €	0,60%	83 657 645 €	6,2 €	0,17%	23 721 425 €	NA	NA	NA
Croatia	51,0 €	0,50%	215 587 165 €	38,6 €	0,38%	163 302 114 €	9,7 €	0,10%	40 820 393 €	2,7 €	0,027%	11 464 658 €
Estonia	40,4 €	0,27%	53 052 326 €	29,4 €	0,19%	38 589 501 €	8,1 €	0,05%	10 627 825 €	2,9 €	0,019%	3 835 000 €
Latvia	37,3 €	0,31%	74 726 905 €	25,6 €	0,21%	51 305 248 €	10,9 €	0,09%	21 771 366 €	0,8 €	0,007%	1 650 291 €
Lithuania	33,4 €	0,27%	97 433 726 €	21,6 €	0,17%	62 969 474 €	9,8 €	0,08%	28 563 485 €	2,0 €	0,016%	5 900 767 €
Montenegro	42,4 €	0,75%	26 300 915 €	32,1 €	0,57%	19 908 315 €	9,7 €	0,17%	6 016 657 €	0,6 €	0,011%	375 943 €
Netherlands	122,3 €	0,31%	2 067 208 000 €	63,2 €	0,16%	1 068 474 000 €	33,6 €	0,09%	568 734 000 €	25,4 €	0,065%	430 000 000 €
Norway	78,0 €	0,12%	402 901 906 €	39,7 €	0,06%	205 000 000 €	4,0 €	0,01%	20 818 906 €	34,3 €	0,051%	177 083 000 €
Serbia	NA	NA	NA	21,9 €	0,47%	155 788 380 €	5,0 €	0,11%	35 550 816 €	NA	NA	NA
Slovenia	89,8 €	0,50%	184 995 996 €	80,0 €	0,44%	164 850 383 €	8,1 €	0,04%	16 730 967 €	1,7 €	0,009%	3 414 646 €
Switzerland	218,9 €	0,34%	1 803 386 843 €	134,9 €	0,21%	1 111 423 623 €	65,5 €	0,10%	539 206 343 €	18,5 €	0,029%	152 756 877 €
"The former Yugoslav Republic of Macedonia"	18,2 €	0,44%	37 558 709 €	14,9 €	0,36%	30 833 675 €	3,1 €	0,08%	6 502 821 €	0,1 €	0,003%	222 213 €
Kosovo*	14,6 €	0,48%	27 099 055 €	10,5 €	0,34%	19 431 805 €	3,6 €	0,12%	6 736 947 €	0,5 €	0,016%	930 303 €
States / Entities listed in the table												
Average	63,0 €	0,40%	425 326 131 €	38,5 €	0,31%	227 882 570 €	13,0 €	0,09%	95 548 735 €	7,1 €	0,020%	62 053 526 €
Median	41,4 €	0,32%	105 965 359 €	27,5 €	0,28%	73 313 560 €	8,1 €	0,09%	21 295 136 €	2,0 €	0,016%	3 835 000 €
Standard deviation	56,0 €	0,20%	676 411 501 €	34,2 €	0,17%	370 762 246 €	16,9 €	0,04%	194 592 681 €	11,4 €	0,019%	125 861 080 €
Minimum	9,3 €	0,12%	26 300 915 €	5,1 €	0,06%	14 821 816 €	3,1 €	0,01%	6 016 657 €	0,0 €	0,001%	62 143 €
Maximum	218,9 €	0,82%	2 067 208 000 €	134,9 €	0,60%	1 111 423 623 €	65,5 €	0,17%	568 734 000 €	34,3 €	0,065%	430 000 000 €
CoE States / Entities												
Average (CoE)	59,7 €	0,35%	1 011 518 752 €	35,6 €	0,24%	588 897 502 €	11,9 €	0,09%	198 811 719 €	9,0 €	0,030%	145 868 963 €
Median (CoE)	46,4 €	0,31%	403 348 102 €	30,5 €	0,21%	155 788 380 €	9,2 €	0,09%	46 223 000 €	2,2 €	0,015%	11 464 658 €
Standard deviation (CoE)	44,1 €	0,16%	1 464 865 357 €	25,3 €	0,13%	966 833 655 €	11,2 €	0,05%	345 051 948 €	15,1 €	0,055%	387 897 248 €
Minimum (CoE)	8,0 €	0,12%	15 085 766 €	5,1 €	0,06%	6 231 437 €	2,3 €	0,01%	669 347 €	0,0 €	0,001%	62 143 €
Maximum (CoE)	218,9 €	0,82%	5 257 469 184 €	134,9 €	0,60%	3 184 300 240 €	65,5 €	0,22%	1 460 367 057 €	73,5 €	0,319%	2 275 552 132 €

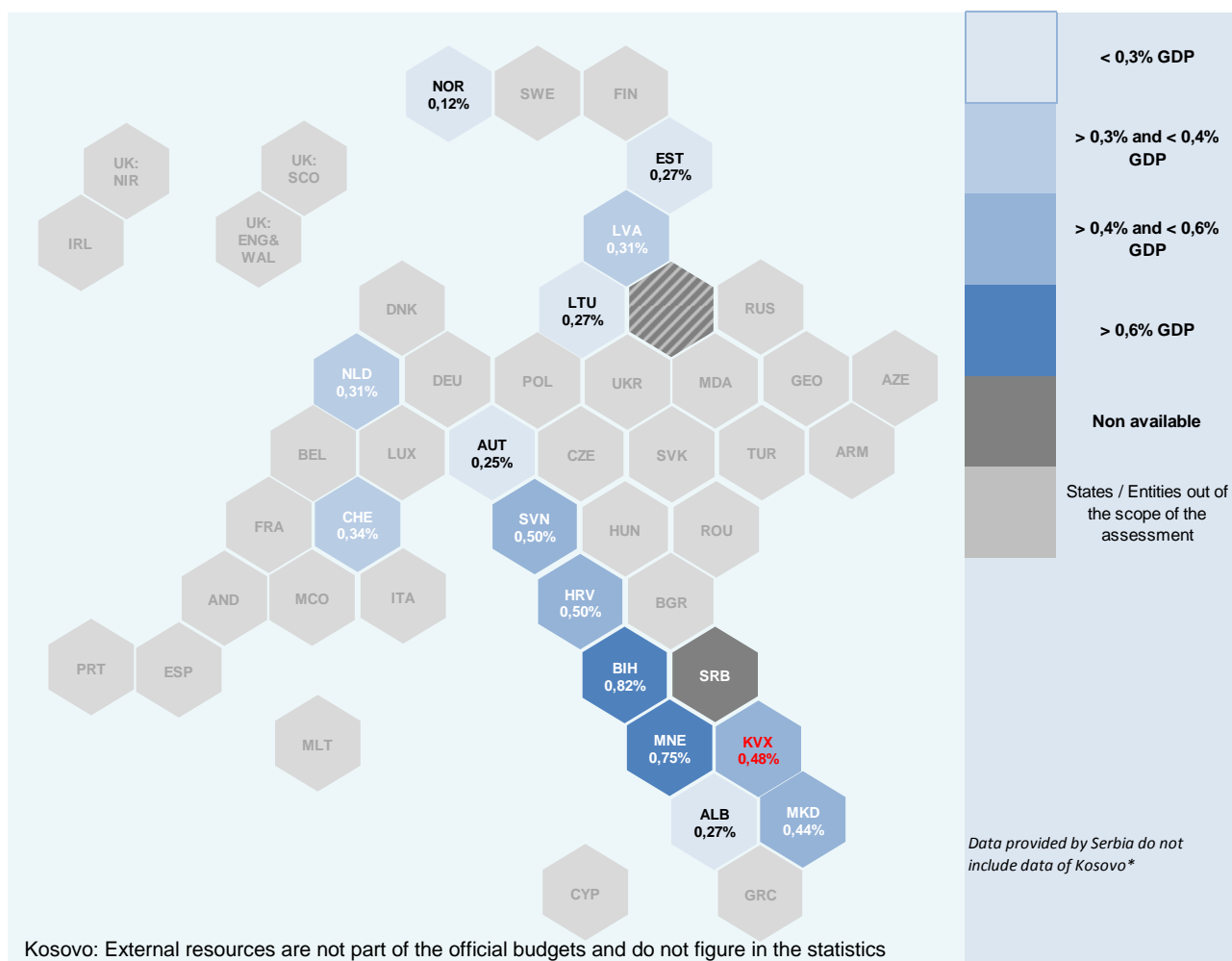
Kosovo: External resources are not part of the official budgets and do not figure in the statistics

In 2014, the approved budget of the judicial system of **Kosovo** was slightly more than 27 million € (absolute value). In line with the CEPEJ definition, this budget is the sum of the approved budget allocated to the courts (approx. 19,4 million €), to the public prosecution services (approx. 6,7 million €) and to legal aid (930 303 €).

Within the cluster of selected member States/entities, judicial system budgets range from 26,7 million € in **Albania** and 26,3 million € in **Montenegro**, to about 2 067 million € in **the Netherlands**. The budget of the **Kosovo** judicial system (in absolute values) is one of the lowest within the cluster (but not the lowest when considering the Council of Europe state/entities). However, as explained above, it is important to also look at the standardised figures (judicial system per inhabitants, and as % of the GDP).

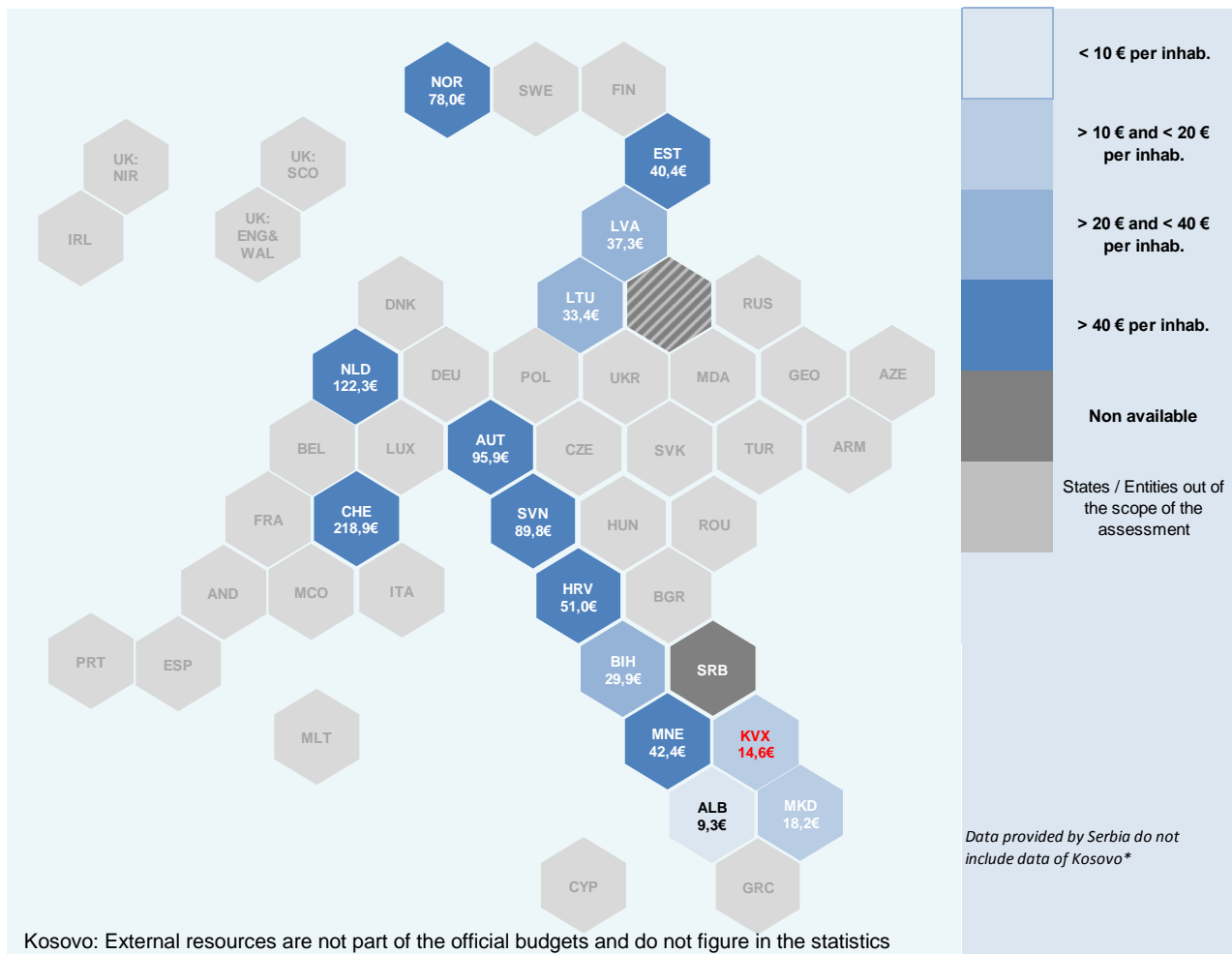
Map 3.2 below examines the budget allocated to the judicial system as % of the GDP. It groups the member States/entities in the cluster into four categories that dedicate different GDP shares to their judicial system: less than 0,3%, between 0,3% and 0,4%, between 0,4% and 0,5%, and more than 0,6%. In 2014, the budget of the judicial system in **Kosovo** represented 0,48% of its GDP. **Croatia, Slovenia** and “**the former Yugoslav Republic of Macedonia**” also allocated to the judicial system between 0,4 and 0,6 % of their respective GDPs.

Map 3.2: Budget allocated to the judicial system as % of GDP (Q1, Q6, Q12, Q13)



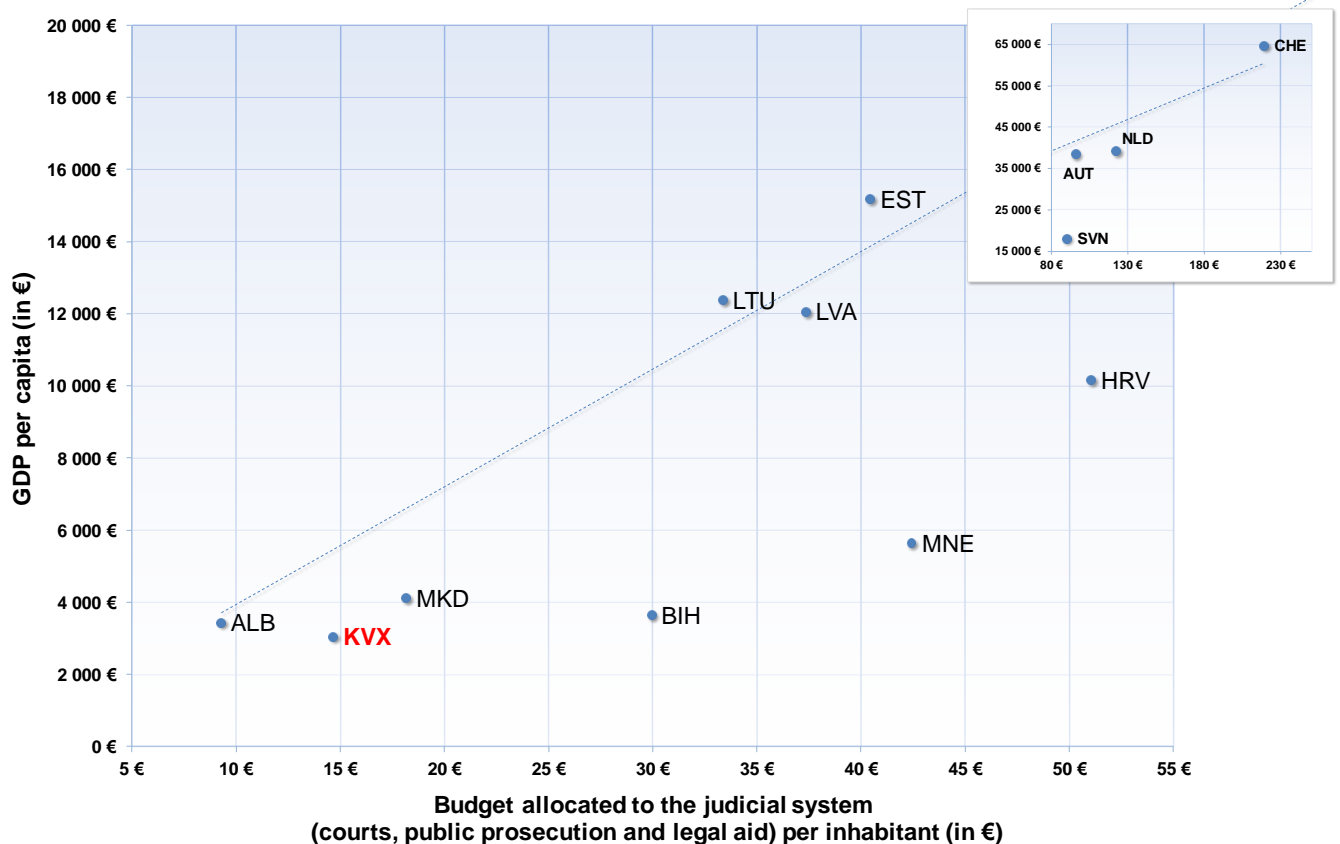
Map 3.3 below looks now at the budget allocated to the judicial system per inhabitant. It shows that, within the cluster, there are significant differences between the budgetary resources allocated to the judicial system per population. In 2014, **Albania** deployed less than 10 € per inhabitant; **Kosovo** and “**the former Yugoslav Republic of Macedonia**” allocated analogous sums (respectively 14,6 € and 18,2 €). These are the three lowest figures in the cluster. **Bosnia and Herzegovina, Latvia and Lithuania** employed between 20 € and 40 €; and the rest of the countries/entities considered assigned between 40,4 € (**Estonia**) and 218,9 € (**Switzerland**) per capita. The median of the cluster and the median among the Council of Europe member States/entities (which is less sensitive to extreme values) are very close (41 € and 46 € respectively). **Kosovo's** judicial budget per inhabitant was about three times lower than these figures.

Map 3.3: Budget allocated to the judicial system per inhabitant (Q1, Q6, Q12, Q13)



Looking at the budget allocated to the judicial system by population size is not sufficient to make a meaningful analysis of the data presented. For instance, two member States/entities with similar budgets per inhabitants can have different wealth levels; consequently, the same budget per inhabitants does not represent the same budgetary effort as the latter will depend on whether a country/entity is relatively poor or rich. Therefore, the budget allocated to the judicial system should be put into perspective by comparing it to a measure of the country/entity's wealth, namely: the GDP per inhabitants (see Table 2.1 above, which shows the GDP per inhabitant). Graphic 3.4 below shows that there is a positive correlation between the level of wealth of the countries/entities and the resources allocated to the judicial systems. This positive correlation is represented by a trend line, i.e. the diagonal line.

Graphic 3.4: Relation between the GDP and the budget of the judicial systems in 2014 (Q1, Q3, Q6, Q12, Q13)



Kosovo: External resources are not part of the official budgets and do not figure in the statistics

This figure helps understanding if the budget allocated to the judicial system in a country/entity is proportional to its level of wealth.

For the member States/entities situated close to the line, the budget allocated to the judicial system is proportional to the level of wealth (e.g., **Albania**, **Lithuania**, **Austria**, and **Switzerland**). In **Austria** and **Switzerland**, where the GDP per inhabitants is high, the budget allocated to the judicial system (per inhabitant) is also high, whereas in **Albania**, where the GDP is rather low, the budget allocated to the judicial system is also low.

In contrast, some countries/entities such as **Kosovo**, “the former Yugoslav Republic of Macedonia”, **Bosnia and Herzegovina**, **Montenegro**, **Croatia** and **Slovenia** are remote from the line, which means that the budgets allocated to the judicial system per inhabitant in these member States/entities are no longer proportional to their level of wealth. In other words, these member States/entities make a greater budgetary effort (or invest more) for their judicial systems, considering their wealth (as explained above under Table 2.1, in 2014, the GDP per inhabitants in **Kosovo** was 3 054 €, which was one of the lowest figures within the cluster). There are, however, differences between the budgetary efforts of these member States/entities: for instance, the budgetary efforts in 2014 in **Montenegro** were more significant than in **Kosovo**.¹⁷

Kosovo authorities are encouraged to establish short-term to long-term strategies to strengthen the management of available resources which should explicitly take into account external resources allocated for the improvement of the functioning of the justice system. These strategies should seek to avoid the need to deploy additional means. They should be well-defined and should come together with a monitoring process of results. As explained above, the CEPEJ philosophy for efficiency and the effectiveness of the justice includes, first and foremost, that the courts and the prosecution offices improve their functioning even in the absence of more resources.

¹⁷ See also CEPEJ 2016 report, p. 26.

More specific considerations can be made when analysing separately each of the three components of the budget of the judicial system.

3.2 Recommendations

Recommendation 1: To establish short-term to long-term strategies to strengthen the management of available resources which should explicitly take into account external resources allocated for the improvement of the functioning of the justice system. These strategies should seek to avoid the need to deploy additional means by firstly using existing ones. They should be well-defined and should come together with a monitoring process of results.

We found that, compared to other countries/entities in the cluster, **Kosovo** make a greater budgetary effort (or invest more) for its judicial system considering its wealth (as explained above under Table 2.1, in 2014, the GDP per inhabitant in **Kosovo** was one of the lowest figures within the cluster).

We recommend that **Kosovo** authorities establish short-term to long-term strategies to strengthen the management of available resources which should explicitly take into account external resources allocated for the improvement of the functioning of the justice system. These strategies should seek to avoid the need to deploy additional means by firstly using existing ones. They should be well-defined and should come together with a monitoring process of results.

Chapter 4: Budget for courts

CEPEJ definitions

The CEPEJ explanatory note clarifies that the budget allocated to courts covers the resources devoted to the functioning of the courts (without the public prosecution services and without legal aid), whatever the source of this budget is. Within the total budget, seven main components are identified, and where possible specific figures for each of them is collected.

1. **(Gross) salaries** include those of all judicial and non-judicial staff working within courts. The staff working for the prosecution services should not be included if possible. The amounts reported should include the total salary costs for the employer, including if possible insurances, pensions or other contributions.
2. **Computerisation** comprises 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.
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 to investments in new court buildings.
6. The Annual public budget allocated to **training** should not include the budget of public training institutions for judges and / or prosecutors.
7. The category '**other**' includes all figures that cannot be subsumed under the categories specifically mentioned.

The budget allocated to all courts should not include the budget for the operation of other institutions such as the budget of the Constitutional Court or the budget of the High Council for the Judiciary (or similar body). The figures reported for **Kosovo**, however, include the budget of the KJC by reason of the central role that this institution plays in the preparation, and management of the courts' budgets.

4.1 The budgetary process and the institutions involved

In context: the Kosovo system

The process of the adoption of the budget allocated to courts in **Kosovo** presents some peculiarities, which are related to the central role played by the KJC as an independent oversight body.

The competencies and responsibilities of the KJC include “preparing, submitting and overseeing the budget of the judiciary to ensure efficient court functioning and accounting for the use of fiscal resources” (art. 4, Law on the KJC). In the preparation phase, the KJC will design the overall budget (KJC and Courts) in consultation with the Courts’ Presidents. Therefore, according to the law, the KJC and the Courts have a key role in defining and estimating the resources needed by the judiciary.

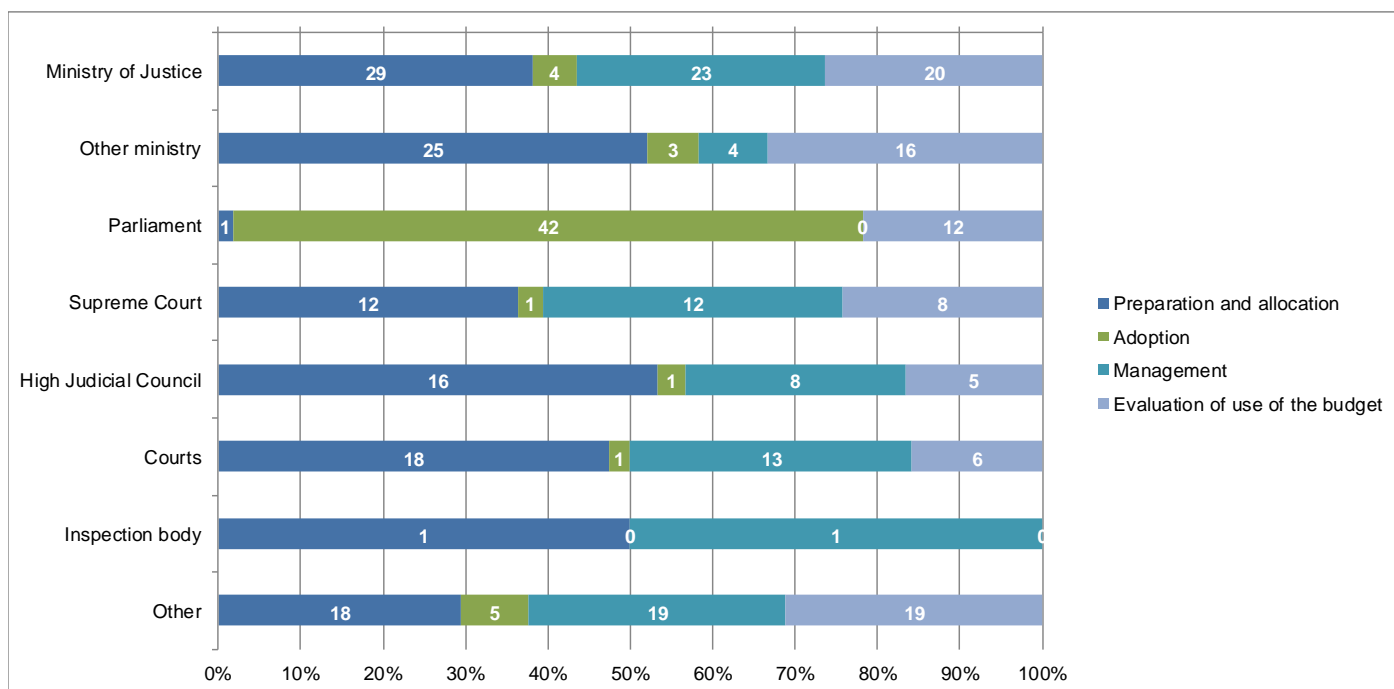
Before 2015, the proposed budget was submitted to the Government (Ministry of Finance) and to the **Kosovo** Assembly for approval (art. 15, Law on the KJC). This provision was changed with the 2015 amendments to the Law on the KJC. The law now stipulates that the budget proposed by the KJC is forwarded directly to the Assembly for adoption. This amendment was intended to increase the independence of the judiciary.¹⁸ However, it seems that the KJC faces difficulties in exercising effectively its budgetary independence in practice; the Ministry of Finance and Economy still plays a key role in determining the resources allocated to the judiciary.

Once the budget is approved, the KJC manages it independently and is responsible for overseeing expenditures, allocating funds, maintaining accurate accounts, and conducting financial audits. The 2015 reform of the Law on KJC, which involved the transfer of some competences (including budgetary ones) to the Courts, – the so-called decentralization process – is expected to produce gains from the assessment of needs closer to the bodies that use the resources. However, it also creates challenges to the transparency and efficiency of the overall system, which should be closely monitored.

Table 4.1 gives an overview for the year 2014 of the bodies involved in the different phases of the process of quantifying and allocating the court budget in the Council of Europe member States, whereas Table 4.2 offers a narrower picture of the countries/entities in the cluster.

¹⁸ US AID report United States Agency for International Development (USAID), Stocktaking Report Kosovo Judicial Council and Courts, Justice System Strengthening Project in Kosovo, January 2016, p. 19.

Table 4.1: Authorities formally responsible for the budgets allocated to courts in Council of Europe Countries in 2014 (Q14)



The study of the budgetary process in judicial systems and the institutions involved reveals the distribution of competencies between executive power, parliament and judiciary. It is especially meaningful as it shows the level of autonomy of the judicial system in the preparation and the management of means. Where adoption of the budget is mostly assigned to Parliament, budget evaluation is performed by external bodies and the judiciary is entrusted with the preparation and management of the budget, independence is ensured, on the one hand, and accountability of court managers is promoted, on the other. This balanced distribution of competences is a common objective shared among most of the member States of the Council of Europe.¹⁹

¹⁹ Consultative Council of European Judges (CCJE) No. 18 (2015): "The position of the judiciary and its relation with the other powers of state in a modern democracy".

Table 4.2: Authorities formally responsible for the budgets allocated to courts in 2014 (Q14)

States	Preparation and allocation								Adoption								Management								Evaluation of use of the budget							
	Ministry of Justice	Other ministry	Parliament	Supreme Court	High Judicial Council	Courts	Inspection body	Other	Ministry of Justice	Other ministry	Parliament	Supreme Court	High Judicial Council	Courts	Inspection body	Other	Ministry of Justice	Other ministry	Parliament	Supreme Court	High Judicial Council	Courts	Inspection body	Other	Ministry of Justice	Other ministry	Parliament	Supreme Court	High Judicial Council	Courts	Inspection body	Other
Albania																																
Austria																																
Bosnia and Herzegovina																																
Croatia																																
Estonia																																
Latvia																																
Lithuania																																
Montenegro																																
Netherlands																																
Norway																																
Serbia																																
Slovenia																																
Switzerland																																
"The former Yugoslav Republic of Macedonia"																																
Kosovo*																																
Nb of Yes	8	8	1	4	7	10	0	7	2	2	15	1	1	0	0	1	5	1	0	5	5	3	0	7	5	4	4	5	3	2	0	8
Nb of No or NAP	7	7	14	11	8	5	15	8	13	13	0	14	14	15	15	14	10	14	15	10	10	12	15	8	10	11	11	10	12	13	0	7
CoE States / Entities																																
Nb of Yes	29	25	1	12	16	18	1	18	4	3	42	1	1	1	0	5	23	4	0	12	8	13	1	19	20	16	12	8	5	6	0	19
Nb of No or NAP	17	21	45	34	30	28	45	28	42	43	4	45	45	45	46	41	23	42	46	34	38	33	45	27	26	30	34	38	41	40	0	27

Table 4.2 shows that there was, in 2014, a variety of institutions involved in the preparation and allocation of the budget among the 15 member States/entities in the cluster. Most frequently involved were the Ministry of Justice or other ministries (e.g. the Ministry of Finance), on the one hand, and either courts or an oversight judicial institution, on the other. Other bodies or institutions may also play a crucial role: examples include the Office of Administration of the Judicial Budget in **Albania**, which is the authority formally responsible for preparing the budget allocated to courts, the **Norwegian** Courts Administration (NCA), or the Budget Council of Courts in “**the former Yugoslav Republic of Macedonia**”. In **Kosovo**, as explained above, despite the amendments made to the Law on the KJC in 2015, the Ministry of Finance and Economy seems to continue to play a key role in determining the resources allocated to the judiciary. As a result, the KJC faces difficulties in exercising effectively its budgetary independence in practice.

In all the countries/entities in Table 4.2, the Parliament was responsible for adopting the overall budget of the courts. This is in line with the practice among Council of Europe member States/entities (Table 4.1) which, however, was not unanimous. Among the 15 countries in the cluster, Ministries (Justice or Finance), the Supreme Court (**Estonia**) or the High Council of Justice (**Lithuania**) were also involved in the budget adoption process.

Budget management/distribution and the evaluation of the use of the assigned resources are ensured by a variety of institutions, including the executive, the Supreme Court and the Council for the Judiciary. Other bodies with auditing and inspection powers frequently take part in the evaluation stage.

4.2 Budgetary resources

In 2014, the budget allocated to courts in **Kosovo** was approximately 19,4 million € - that is, 71.7% of its judicial budget. This corresponds to 0,34% of its GDP and to a cost of 10,5 € per inhabitant (below, excerpt of Table 4.3).

From the total budget, almost 13,8 million € was devolved to salaries and 178 612 € was allocated to IT equipment (167 500 € on hardware and 11 112 € on software).

The sums effectively spent (i.e. implemented budget) on the whole court system were lower than the approved budget (approx. of 1,14 million €, i.e., about 6% less than the approved budget), concerning mainly goods, services and maintenance. Also as regards the IT budget, the amount effectively spent was slightly lower (i.e., 172 382 €, of which 163 494 € on hardware and 8 888 € on software).

The budgets allocated to courts (absolute values) in **Kosovo**, **Albania** and **Montenegro** were the lowest (less than 20 million €) among the member States/entities considered in this report in 2014. The median figure within the cluster was about 73 million €, and the median among all Council of Europe members was about 156 million €. However, as is the case with the budget of the entire judicial system, these absolute figures need to be put in context and standardised by population and wealth.

Exception made for **Albania** (5,1 €), the amount per population allocated to courts in **Kosovo** (10,5 €) is the lowest within the cluster. It is half the amount of **Bosnia and Herzegovina** (21,9 €), **Lithuania** (21,6 €), and **Serbia** (21,9 €), and about two thirds of the amount allocated by “**the former Yugoslav Republic of Macedonia**” (14,9 €).

When comparing the court budget per inhabitants to the wealth of the countries/entities in 2014 (court budgets as a percentage of the GDP), data confirms the finding reported in relation to the judicial budget in general, namely that south-eastern countries (with the exception of **Albania**, 0,15%) make a greater budgetary effort for their courts, considering their level of wealth (between 0,34% in **Kosovo** and 0,60% in **Bosnia and Herzegovina**), compared to northern countries and the Baltic States (between 0,06% in **Norway** and 0,21% in **Latvia** and **Switzerland**).²⁰

²⁰ See also CEPEJ 2016 report, p. 36, Figure 2.13.

Table 4.3: Budget allocated to courts in 2014 (Q6, Q12, Q13)

States / Entities	Courts (per capita)	Courts (as % of GDP)	Courts
Albania	5,1 €	0,15%	14 821 816 €
Austria	NA	NA	NA
Bosnia and Herzegovina	21,9 €	0,60%	83 657 645 €
Croatia	38,6 €	0,38%	163 302 114 €
Estonia	29,4 €	0,19%	38 589 501 €
Latvia	25,6 €	0,21%	51 305 248 €
Lithuania	21,6 €	0,17%	62 969 474 €
Montenegro	32,1 €	0,57%	19 908 315 €
Netherlands	63,2 €	0,16%	1 068 474 000 €
Norway	39,7 €	0,06%	205 000 000 €
Serbia	21,9 €	0,47%	155 788 380 €
Slovenia	80,0 €	0,44%	164 850 383 €
Switzerland	134,9 €	0,21%	1 111 423 623 €
"The former Yugoslav Republic of Macedonia"	14,9 €	0,36%	30 833 675 €
Kosovo*	10,5 €	0,34%	19 431 805 €
States / Entities listed in the table			
Average	38,5 €	0,31%	227 882 570 €
Median	27,5 €	0,28%	73 313 560 €
Standard deviation	34,2 €	0,17%	370 762 246 €
Minimum	5,1 €	0,06%	14 821 816 €
Maximum	134,9 €	0,60%	1 111 423 623 €
CoE States / Entities			
Average (CoE)	35,6 €	0,24%	588 897 502 €
Median (CoE)	30,5 €	0,21%	155 788 380 €
Standard deviation (CoE)	25,3 €	0,13%	966 833 655 €
Minimum (CoE)	5,1 €	0,06%	6 231 437 €
Maximum (CoE)	134,9 €	0,60%	3 184 300 240 €

The relevance of these figures should be further interpreted in light of the comments and clarifications submitted by national correspondents. Despite efforts to align the figures to the CEPEJ methodology and definitions, this is not always possible. For instance, the figure provided by **Latvia** does not include the expenses for new court buildings, while in **Slovenia's** budget, the amounts deployed for computerisation projects that are funded through EU sources, are not included.

Moreover, as earlier mentioned, the CEPEJ has started and will continue collecting figures of both the approved budget and the amounts effectively spent. **Austria** reported a higher figure of the implemented budget compared to the approved budget, which was mainly the result of an increase in costs for interpretation, drug rehabilitation and medical care for prisoners on probation. As regards **the Netherlands**, it was reported that the relevant figures may incorporate some incongruity, when compared to the budget of other countries, due to the lengthy process for the approval of the budget.

Table 4.4 below examines how the court budget is distributed in the countries/entities in the cluster.

Table 4.4: Distribution of means in the budget of the courts in 2014 (Q6)

States / Entities	Components of the total annual approved public budget allocated to all courts						
	Gross salaries	Computerisation (equipment, investments, maintenance)	Justice expenses	Court buildings (maintenance, operation cost)	New court buildings	Training and education	Other
Albania	73,4%	2,3%	1,7%	1,9%	2,1%	0,1%	18,4%
Austria	NA	NA	NA	NA	NA	NA	NA
Bosnia and Herzegovina	84,3%	1,6%	0,3%	9,7%	0,5%	0,1%	4,3%
Croatia	80,9%	3,6%	3,4%	4,7%	0%	0,4%	7,0%
Estonia	78,4%	0,2%	2,5%	15,1%	0,1%	0,7%	3,0%
Latvia	70,1%	4,2%	5,2%	18,3%	NA	0,6%	1,6%
Lithuania	88,4%	1,3%	0,8%	2,7%	2,3%	0,3%	4,3%
Montenegro	72,5%	0,3%	12,9%	0,3%	0%	0,5%	13,5%
Netherlands	73,9%	7,1%	0,3%	11,6%	NA	2,3%	4,7%
Norway	65,6%	6,3%	NA	21,8%	NA	1,3%	5,0%
Serbia	80,8%	0,8%	12,0%	4,4%	NA	0,001%	6,5%
Slovenia	70,9%	1,1%	20,4%	7,3%	0%	0,3%	NA
Switzerland	69,3%	3,1%	9,3%	5,0%	NA	0,4%	12,8%
"The former Yugoslav Republic of Macedonia"	81,7%	1,7%	3,7%	6,2%	0%	1,8%	4,9%
Kosovo*	71,0%	0,9%	NA	NA	NA	NA	NA
States / Entities listed in the table							
Average	75,8%	2,5%	6,1%	8,4%	0,6%	0,7%	7,2%
Median	73,7%	1,6%	3,5%	6,2%	0,0%	0,4%	5,0%
Standard deviation	6,6%	2,2%	6,3%	6,6%	1,0%	0,7%	5,0%
Minimum	65,6%	0,2%	0,3%	0,3%	0,0%	0,001%	1,6%
Maximum	88,4%	7,1%	20,4%	21,8%	2,3%	2,3%	18,4%
CoE States / Entities							
Average	69,5%	2,9%	6,4%	8,6%	3,7%	0,7%	11,4%
Median	72,0%	1,7%	4,6%	6,8%	0,1%	0,4%	7,9%
Standard deviation	14,0%	2,8%	6,5%	6,3%	8,5%	1,0%	10,7%
Minimum	37,2%	0,2%	0,0%	0,1%	0,0%	0,001%	0,0%
Maximum	93,0%	11,7%	28,4%	24,7%	42,4%	3,6%	49,2%

Among the different components of the court budget, it is interesting to examine more closely the shares devoted to salaries and computerisation.

Despite some differences between the countries/entities considered in this study, the remuneration of judicial and non-judicial staff working within courts is the most important item. On average, countries/entities within the cluster allocate 75,8% of the court budget to the gross remuneration of staff, with **Norway** deploying the minimum share (65,6%) and **Lithuania** allocating the maximum, (88,4%). **Kosovo** devolves 71% of the court budget to salaries, similar to **Montenegro** (72,5%) and **Slovenia** (70,9%).

The average share in the cluster of the courts' budget deployed on equipment in the field of information technology (IT) in 2014 is 2,5%, whereas the average share of the Council of Europe States/entities is 2,9%. The approved figure for **Kosovo** represented 0,9% of the court budget only (international funds do not appear in the data regarding court budget). Of note, in 2014, the level of IT in the **Kosovo** courts was very limited, as shown in Graphic 4.5 below.

The methodology used for the preparation of this graphic is the same used in the CEPEJ Thematic report: Use of information technology in European courts, issued in 2016. The questions on IT use were divided into three fields:

1. Development of IT equipment (for direct assistance to judges, prosecutors and court clerks, administration of the courts and case management, communication between courts, professional and/or court users),
2. Legal framework
3. Other aspects related to organisation and governance of court information systems (management of IT projects, governance and strategy policies to use IT, system security and personal data protection).

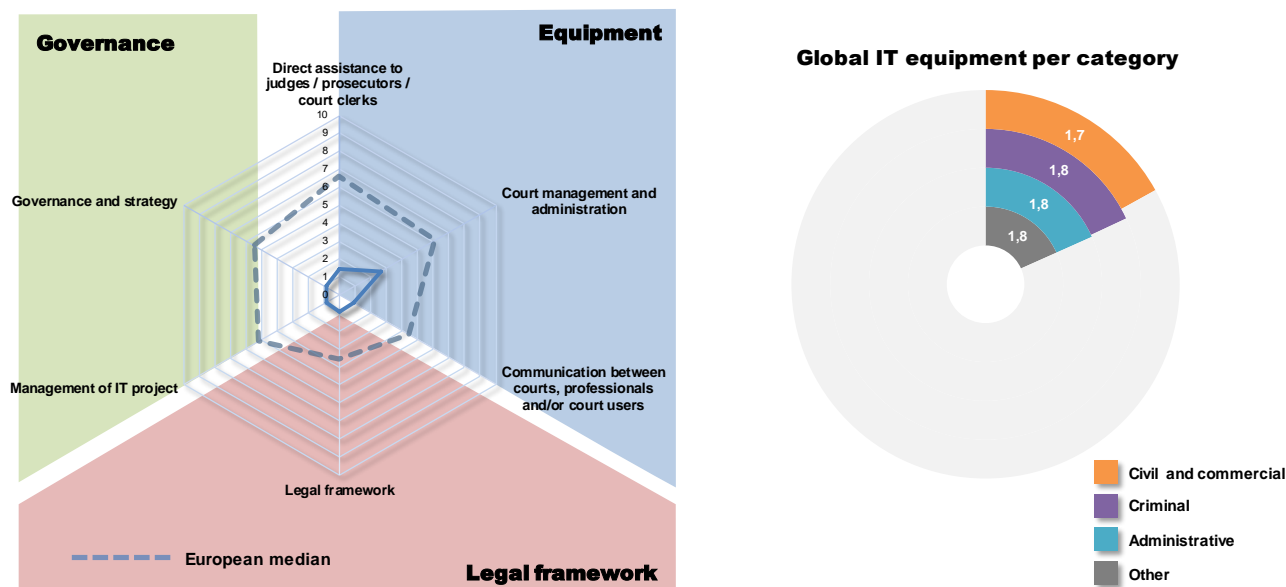
The questions allowed breaking down information for various categories of cases (civil and commercial, criminal, administrative and other cases) to assess if one sector has been singled out among the others.

Graphic 4.5 shows that, in 2014, the use of IT equipment to directly assist judges, prosecutors and court clerks in their everyday work was very limited (there were no case-law databases for instance). IT technologies were also used in a limited manner to facilitate the communication between courts, professionals (such as lawyers) and/or court users. The legal framework also allowed for a limited use of IT technologies in courts.

The use of IT was introduced only in one area: the area of the administration of the courts and cases

management. In January 2014, a joint project of the KJC and the KPC with the aim of introducing a ICT-based Case Management Information System (CMIS) for **Kosovo** courts and prosecution services started, with the financial support of the Ministry of Foreign Affairs of **Norway**.

Graphic 4.5: Use of information technology in courts in Kosovo in 2014 (Q62 to Q65)



Many States/entities, in the last years, have considered computerisation a budgetary priority or have embarked on specific programmes of court modernisation, sometimes partly financed by European or international funds (among others: **Latvia**, **Lithuania**, “**the former Yugoslav Republic of Macedonia**”, and **Slovenia**).

Investments in budgets allocated to computerisation are usually made in the framework of programmes with several phases. This data must therefore be analysed over the medium term.²¹ In **Kosovo**, the budgetary item “computerisation” should be closely monitored in the course of future assessments. It is important for **Kosovo** authorities to allocate adequate means to this item, to guarantee the sustainability of the ICT/CMIS project even after its completion. However, financial means alone are not sufficient. As explained in the CEPEJ Thematic report on the use of information technology in European courts and in the CEPEJ Cyberjustice Guidelines²², the deployment of information technologies have to be linked to a policy or strategy for change involving all stakeholders in order to improve the efficiency and quality of the judicial system. IT should not be an end in itself but a means available to policy makers, professionals and parties to proceedings for improving the way the justice system operates.²³

Furthermore, changes in the field of Cyberjustice should be court-driven, not technology-driven.²⁴ This implies that organisations must be able to set modernisation objectives free from any concerns related to the information technology itself. This is an essential condition for the success of any project, without which there is a risk that it will fail to serve the interests either of those who use the courts or of those who work in them and will, if anything, ultimately undermine confidence in the judiciary as an institution. As pointed out by the rapporteur in the Council of Europe’s Parliamentary Assembly Resolution on “access to justice and the Internet”, “technology developers should strive to better understand the justice system and collaborate with judges and court staff to ensure that ICT architecture meets the needs of both the courts and the public”²⁵. No doubt, justice officials can play a significant part in ensuring that this dialogue takes place.

²¹ CEPEJ 2016 report, p.39-40.

²² CEPEJ(2016)13 – Guidelines on how to drive change towards Cyberjustice, para. 3 and 71.

²³ Ibid, p. 66, Summary of the findings. Of note, some member States/entities seem to have invested quite significantly in the conception and deployment of electronic case management systems, without proven results on efficiency, see p. 55 for civil and commercial litigious cases.

²⁴ CEPEJ Studies No 24, Thematic report: Use of information technology in European courts.

²⁵ Resolution 2081 (2015), mentioned above. Report, doc. 13918, 10 November 2015, §69.

4.3 Recommendations

See Recommendations under Chapter 5 below. The same set of recommendations is made for both the budget allocated to courts and to prosecution offices.

Chapter 5: Budget for public prosecution services

CEPEJ definitions

The definition of Public Prosecutor includes: "(...) 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".²⁶ If part of the public prosecution's budget is allocated to the police budget, or to any other budget, it should be indicated.

The following analysis must consider differences between States or entities as regards the scope of the powers granted to public prosecutors in criminal proceedings, as well as possible powers outside the criminal field in a number of States or entities (see Part III on Professionals).

5.1 Budgetary resources

In context: the Kosovo system

The process of the adoption of the budget for public prosecution services in **Kosovo** is almost identical to the one for courts. It hinges on the KPC, which is responsible for "preparing, submitting and overseeing the budget of the prosecution system to ensure efficient and effective functioning of prosecution offices and accounting for the use of fiscal resources" (art. 4, Law on the KPC). The KPC prepares its budget and that of the Prosecution Offices in consultation with the Office of the Chief State Prosecutor and Chief Prosecutors.

Before 2015, the proposed budget was submitted to the Government (Ministry of Finance) and to the **Kosovo** Assembly for approval. This provision was changed with the 2015 amendments to the Law on the KPC. The new provision stipulates that the budget proposed by the KPC is submitted directly to the Assembly for adoption. However, analogously to what was reported above (in relation to the budget for courts), the effective exercise of budgetary independence by the KPC seems to encounter obstacles in practice.

The 2014 approved budget for public prosecution services in **Kosovo** was organised in 4 categories: payments, goods and services, communal services (i.e. bills) and capital payments. The figure reported in Table 5.1 (ca. 6,7 million €) is the amount obtained once the resources dedicated to legal aid were deducted (theses resources are calculated as part of the budget for legal aid described below).

A minor part of the budget for public prosecution services was left unspent at the end of the year (i.e. implemented budget: ca. 5,9 million €). It concerned mainly unfilled positions among the staff of the prosecution service and items from the category of goods and services.

²⁶ This definition is 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.

Table 5.1: Budget allocated to prosecution services in 2014 (Q6, Q12, Q13)

States / Entities	Prosecution service (per capita)	Prosecution service (as % of GDP)	Prosecution service
Albania	4,1 €	0,12%	11 880 336 €
Austria	NA	NA	NA
Bosnia and Herzegovina	6,2 €	0,17%	23 721 425 €
Croatia	9,7 €	0,10%	40 820 393 €
Estonia	8,1 €	0,05%	10 627 825 €
Latvia	10,9 €	0,09%	21 771 366 €
Lithuania	9,8 €	0,08%	28 563 485 €
Montenegro	9,7 €	0,17%	6 016 657 €
Netherlands	33,6 €	0,09%	568 734 000 €
Norway	4,0 €	0,01%	20 818 906 €
Serbia	5,0 €	0,11%	35 550 816 €
Slovenia	8,1 €	0,04%	16 730 967 €
Switzerland	65,5 €	0,10%	539 206 343 €
"The former Yugoslav Republic of Macedonia"	3,1 €	0,08%	6 502 821 €
Kosovo*	3,6 €	0,12%	6 736 947 €
States / Entities listed in the table			
Average	13,0 €	0,09%	95 548 735 €
Median	8,1 €	0,09%	21 295 136 €
Standard deviation	16,9 €	0,04%	194 592 681 €
Minimum	3,1 €	0,01%	6 016 657 €
Maximum	65,5 €	0,17%	568 734 000 €
CoE States / Entities			
Average (CoE)	11,9 €	0,09%	198 811 719 €
Median (CoE)	9,2 €	0,09%	46 223 000 €
Standard deviation (CoE)	11,2 €	0,05%	345 051 948 €
Minimum (CoE)	2,3 €	0,01%	669 347 €
Maximum (CoE)	65,5 €	0,22%	1 460 367 057 €

The budget for public prosecution services in 2014 in **Kosovo**, “the former Yugoslav Republic of Macedonia” and **Montenegro** were the lowest (ca. 6 million €) in the cluster. However, these absolute figures need to be put in context and standardised by population and wealth, as done below.

It is also interesting to note that, in 2014, **Kosovo** allocated to prosecution services 24,8% of its judicial budget (about 6,7 million € out of 27 million €). This share is higher than the average and median figures within the cluster (respectively 22,5% and 20%).²⁷

In 2014, **Kosovo** deployed 3,6 € per inhabitants/capita on prosecution services. This figure is one of the lowest within the cluster (together with **Albania**: 4,1 €, “the former Yugoslav Republic of Macedonia”: 3,1 €, and **Norway**: 4 €). The remaining countries/entities allocated between 5 € (**Serbia**) and 65,5 € (**Switzerland**).

However, when considering prosecution budgets as a percentage of the GDP, **Kosovo** (0,12%), **Albania** (0,12%), **Bosnia and Herzegovina** (0,17%) and **Montenegro** (0,17%) realized the most significant budgetary effort in favour of public prosecution services within the cluster, compared to their wealth. It is

²⁷ Within the cluster, **Albania** dedicated to public prosecution services 44% of the budget of the judicial system, while other countries within the sample conferred less than 10% (e.g. **Norway** 5% or **Slovenia** 9%) - data regarding **Austria** was not available.

worth reminding that **Kosovo** also benefitted from additional financial support from the EU or other organizations, aimed at promoting and strengthening the rule of law, but this is not included in the figures reported.

5.2 Recommendations

Recommendation 2: To collect and report accurate data on approved and implemented budgets (for courts and public prosecution offices), not only official data but also external funding.

We found that the judicial system in **Kosovo**, as in other neighbouring countries/entities, benefits from additional external resources that are not part of the official budgets and do not figure in the statistics. Their progressive exhaustion in the medium/long term should be taken into account by **Kosovo** authorities to guarantee the sustainability of reforms, especially those aiming at introducing ICT tools in the judiciary.

We recommend that the KJC, the KPC and other relevant institutions involved collect and report precise data on approved and implemented budgets during the reference year for courts and prosecution offices. Data accuracy is crucial to efficient planning and identification of sustainable solutions. Data on external contributions should also be collected and adequately taken into consideration in the context of policy planning in this area.

Recommendation 3: To analyse existing challenges to the effective implementation of the 2015 laws on the KJC and KPC which reinforce their budgetary independence. This analysis should include possible means to overcome these challenges and should lead to the implementation of concrete measures in this respect which include an evaluation of the results.

We found that, in practice, the KJC and KPC face difficulties in exercising effectively their budgetary independence as the government (through the Ministry of Finance) still plays a key role in determining the resources allocated to the judiciary.

In this regard, we recommend a focussed analysis of existing challenges to the effective implementation of the 2015 laws on the KJC and KPC which reinforce their budgetary independence. This analysis should include possible means to overcome these challenges and should lead to the implementation of concrete measures in this respect which include an evaluation of the results.

Recommendation 4: To review the budgetary item on computerisation strategically, so as to ensure that the deployment of information technologies is linked to a policy or strategy for change involving all stakeholders and, in particular, to guarantee the sustainability the ICT/CMIS project even after its completion.

We found that the share deployed on computerisation in **Kosovo** in 2014 represented 0,9% of the court budget only (international funds do not appear in the data regarding court budget) and that the level of IT in the **Kosovo** courts was very limited. The use of IT was introduced only in one area: the area of the administration of the courts and cases management. In January 2014, a joint project of the KJC and the KPC with the aim of introducing a ICT-based Case Management Information System (CMIS) for **Kosovo** courts and prosecution services started, with the financial support of the Ministry of Foreign Affairs of **Norway**.

We recommend that **Kosovo** authorities review the budgetary item on computerisation strategically, to ensure that the deployment of information technologies is linked to a policy or strategy for change involving all stakeholders and, in particular, to guarantee the sustainability the ICT/CMIS project even after its completion.

Chapter 6: Budget for legal aid

CEPEJ definitions

According to the CEPEJ evaluation scheme, legal aid is understood as assistance provided by the state to persons who do not have sufficient financial means to bring forward a case or to defend themselves before a court. A distinction is made between legal aid in “criminal cases” - which is explicitly guaranteed in article 6 of the European Convention of Human Rights (ECHR) – and legal aid granted in “other than criminal cases” (see further definitions of categories of cases in Chapter 11).

Since article 6(1) ECHR also covers access to a court in relation to civil proceedings, states/entities are obliged to provide legal aid, when deemed necessary, for making access effective. Budgetary constraints cannot be used as a justification to avoid the obligation. Well-established case law of the ECtHR contains the main principles in these regards.²⁸

For the purposes of this study (and in line with the CEPEJ definition) legal aid broadly covers jurisdictional aid (allowing litigants to finance fully or in part their court fees), legal advice, assistance and representation for initiating and/or being represented during court proceedings, and legal advice and access to legal information outside the courts, to prevent litigation. Where possible, the amounts allocated to cases brought to court and to cases not brought to court have been reported separately. This distinction is extremely relevant to provide a clear distinction between “primary legal assistance” (i.e. cases not brought to court, such as, legal aid for access to legal consultation, to arbitration, conciliation, mediation, or other systems to prevent court action) and “secondary legal assistance” (i.e. cases brought to court to provide assistance with a court action, including legal representation).

6.1 The scope of legal aid

In context: the Kosovo system

The provision of free legal aid in **Kosovo** is regulated by the Law on Free Legal Aid but also by the Criminal Procedure Code (CPC).

The Law on Free Legal Aid

The Law on Free Legal Aid regulates, among others, the types of legal aid, the eligibility criteria, the providers, and the financing of free legal aid.²⁹ The law is aimed at ensuring effective access to justice for individuals that do not have sufficient financial means. Free legal aid is provided in civil, administrative, minor offence and criminal cases. It covers: information and legal advice relating to legal procedures; drafting of the paper-work and other technical assistance that is related to the completion of the case; and representation in civil, administrative, minor offence and criminal procedures. This law establishes the Agency of the Free Legal Aid (FLA), which is responsible for organizing and providing free legal aid.

Article 36 of the Law on the Free Legal Aid stipulates that the Agency is financed from the **Kosovo** budget, prepared by the Ministry of Finance. In contrast to the KJC and the KPC, the FLA does not enjoy, by law, budgetary independence. The law, however, provides that the Agency may accept donations from local and international donors.

Ex officio representation under the Criminal Procedure Code

In addition to what falls within the scope of application of the Law on Free Legal Aid, the CPC requires that a lawyer free of charge be appointed *ex officio* by the court to assist the defendant in cases of **mandatory defence** if he/she remains without a defence counsel or fails to obtain one. The CPC also requires that a lawyer free of charge be appointed *ex officio* by the court in cases of **non-mandatory defence** if certain requirements are met. The lawyer appointed by the court *ex officio*, is drawn from the list of authorized

²⁸ *Airy v Ireland* of 1979 (Application No. 6289/73) was the major precedent.

²⁹ Law on Free Legal Aid.

lawyers from the Kosovo Bar Association.

Table 6.1 offers a snapshot of the type and scope of legal aid provided by the member States/entities within the cluster.

Table 6.1: Scope of legal aid (Q16, Q17, Q21, Q22, Q165)

States	Types of legal aid				Includes coverage or exemption of court fees	In criminal cases, free of charge lawyer			Legal aid for judicial mediation
	Representation in court		Legal advice			Accused individuals	Victims	Possibility to choose the lawyer	
	Criminal	Other than criminal	Criminal	Other than criminal					
Albania									
Austria									
Bosnia and Herzegovina									
Croatia									
Estonia									
Latvia									
Lithuania									
Montenegro									
Netherlands									
Norway									
Serbia									
Slovenia									
Switzerland									
"The former Yugoslav Republic of Macedonia"									
Kosovo*									
Nb of Yes	15	15	15	15	13	15	15	8	10
Nb of No or NAP	0	0	0	0	2	0	0	7	4
Nb of NA	0	0	0	0	0	0	0	0	1
CoE States / Entities									
Nb of Yes	46	42	46	41	39	47	39		30
Nb of No or NAP	1	5	1	6	8	0	8		16
Nb of NA	0	0	0	0	0	0	0		1

All member States/entities make available legal aid in criminal as well as in other than criminal matters. In all of them legal aid comprises both representation in court and legal advice and assistance outside the courts. Still, legal aid coverage, regarding types of legal problems and/or economic thresholds, varies significantly. In addition to legal advice and assistance, strictly speaking, legal aid in some countries may also cover the fees of experts or technical advisors or interpretation and translation fees (e.g. in **Austria**, **Croatia**, **Montenegro**, **Norway**, and **Serbia**). In **Latvia** and **Slovenia**, the legal aid regime does include automatic coverage of, or exemption from the payment of court fees; however, in both instances such exemptions may be authorized by the judge during the civil or criminal proceedings, on a case by case basis. These are interesting and commendable facts, considering that legal aid is essential to ensuring effective access to justice. The latter is both an individual right and a core condition for the realisation of a range of other civil, cultural, economic, political and social rights.

In criminal matters, looking more closely at the type of legal aid provided from the perspective of the subjects that benefit from it, all member States/entities within the cluster guarantee the right to a lawyer, free of charge, for both the accused and the victims of crime. This is in line with Article 6 of the ECHR which requires that an indicted person lacking sufficient financial means must benefit from free legal representation, financed by a public budget. However, practice varies as regards the possibility for the accused or the victims to choose their free of charge lawyer and this may have an effect on the quality of the legal assistance and representation provided. As shown in Table 6.1 above, in seven of the 15 countries/entities within the cluster, including **Kosovo**, the free of charge lawyer is appointed directly by the court.

The CEPEJ also collects information about the extent to which legal aid is granted outside the courts, such as in the framework of arbitration and mediation.³⁰ In **Kosovo**, legal aid in the context of Alternative Dispute

³⁰ CEPEJ 2016 report, p.68.

Resolution (ADR) procedures is specifically comprised within the scope of legal aid, but the interviews carried out with local interlocutors indicated that these procedures are not often used in practice. Only **Albania, Latvia, Serbia, and Switzerland** do not apply the regime of legal aid to mediation procedures. In practice, this may discourage the parties to recurring to such procedures, especially where their use serves as an instrument to release court workload.

6.2 Authorities involved and eligibility

Courts (i.e. the competent judge) are by definition involved in granting or refusing legal aid in criminal cases, while in 'other than criminal cases' the responsible authorities may include the court, an authority external to the court, or a mixed authority (court and external bodies). As shown in Table 6.2 below, concerning other than criminal cases, in a few member States/entities, such as **Bosnia and Herzegovina, Norway, and "the former Yugoslav Republic of Macedonia"**, both courts and/or external authorities are involved in decisions about legal aid. In **Kosovo**, an external authority, the Agency for Free Legal Aid, is involved.

Table 6.2: Authorities responsible for granting legal aid in other than criminal cases and existence of private system for legal insurance in 2014 (Q24, Q25 and Q26)

States/entities	Refusal possible for lack of merit of the case	Authorities responsible for granting or refusing Legal Aid			Private system of legal expenses insurance
		Court	External authority	Court and external authority	
Albania					
Austria					
Bosnia and Herzegovina					
Croatia					
Estonia					
Latvia					
Lithuania					
Montenegro					
Netherlands					
Norway					
Serbia					
Slovenia					
Switzerland					
"The former Yugoslav Republic of Macedonia"					
Kosovo*					
Nb of Yes	14	9	9	0	10
Nb of No	1	6	6	15	4
CoE States / Entities					
Nb of Yes	36	20	27	8	36
Nb of No	10	26	19	38	10

In context: The Kosovo system

As explained above, the provision of free legal aid is regulated by the Law on Free Legal Aid and by the Criminal Procedure Code (CPC). Two schemes for the provision of free legal aid are in place: one involves legal aid that is provided by a lawyer (from the Kosovo Bar Association) appointed *ex officio* by the court – mainly in criminal cases; the other consists of legal aid that is provided by the FLA – mainly in ‘other than criminal’ cases but in a few criminal cases as well.

Legal aid, within the scope of the Law on Free Legal Aid, is managed by an independent institution, the Agency for Free Legal Aid. The Agency is the operative body responsible for organizing and providing free legal aid. It carries out its mandate along the directives of the Free Legal Aid Council, the oversight institution responsible for monitoring the work of the Agency and for drafting policy priorities in this field, compatibly with the financial means available. The Agency had five operating legal aid offices in 2014 providing a range of services especially to poor and/or illiterate people. During the interviews, and based on official documents collected, it was reported that (in 2014) 90% of the cases managed by the FLA were not brought to court and only 5% of the cases managed by the FLA were criminal cases.

Free Legal Aid provided by the FLA

The Law on Free Legal Aid sets forth three eligibility criteria that apply simultaneously. The first criterion involves verification of the personal qualifications of the applicant, such as citizenship or residency (the *qualification criterion*). The *financial criterion* distinguishes between primary and secondary free legal aid. Primary legal aid is provided to all persons that acquire the right from social aid, or are in a similar situation, while secondary legal aid is provided to all persons whose gross family income is lower than the average family income. Secondary legal aid, however, covers a more limited range of services, namely only the drafting of paper-work and other technical aid related to the completion of the case, and representation in civil, administrative and minor offence procedures (but not criminal procedures). Finally, the *legal criterion* is related to the merits of the case and assesses whether this is suitable or not for free legal aid. The elements taken into consideration include the real value of the request, the evidence provided by the applicant and the probability for success.

Free Legal Aid (or *ex officio* representation) provided by the Court

Mandatory defence applies when very important rights and guarantees of the accused are at stake. These can be related to the vulnerability of certain individuals (e.g. when the defendant is mute, deaf or displays signs of mental disorder or disability); or to the specific stage of the criminal procedure (e.g. at the arrest stage; at hearings on detention or remand; when an indictment has been brought for a criminal offence punishable by imprisonment of at least ten years; or when the defendant seeks to enter an agreement to plead guilty for a crime that is punished by one year or more of imprisonment).³¹

It should be noted that no criterion related to the merits of the case applies during criminal proceedings in mandatory defence cases, when the judge appoints a defence counsel at public expense.

As explained above, a judge shall also appoint a lawyer at public expense in some cases of non-mandatory defence if several requirements are met.³² The judge has some margin of discretion in determining whether it is “in the interest of justice” to appoint a free defence counsel upon the request of a defendant who lacks the financial means to pay the costs. Of note, the law does not specify a *financial criterion* to determine whether a defendant lacks the financial means to pay the cost of his/her defence. The only requirement is that, before the appointment of the defence counsel, the accused should complete an affidavit listing of the assets owned and declare that he/she cannot afford legal counsel.

The guarantees provided by the law in **Kosovo** appear comprehensive and comply with international and European fair trial standards. However, effective access to legal aid and the delivery of quality services encounter several obstacles in practice.

³¹ CPC, art. 57, art 166.

³² CPC, art. 58.

Some deficiencies have been observed in both the provision of legal aid by the FLA in civil cases and the *ex officio* system of representation in criminal cases. As emphasised by different interlocutors in Pristina, one of the main difficulties with regard to the provision of legal aid by the FLA is related to the fact that the available financial resources allocated to this institution are often not sufficient to match the demand for legal aid. Alongside the five FLA offices financed through government resources, other eight clinics had been operating throughout the country since 2010, supported by UNDP funds. When the UNDP project terminated in May 2014, the clinics closed and consequently cases dropped by 50%.

Deficiencies have also been identified in the *ex officio* system of representation in criminal cases. A very high number of defendants are not represented by defence counsel. This is because the appointment of defence counsel at public expense is rarely made, unless the defendant's case is within the list of cases prescribed by the CPC as being one in which such appointment is mandatory.³³ The KJC and the KPC also face difficulties in obtaining additional resources on some budgetary items, including legal aid (as explained above). The budget for legal aid is further discussed below.

6.3 The budget for legal aid

In context: the Kosovo system

Approved budget

There is no single budget for legal aid in **Kosovo**, because, as explained above, both courts and the FLA are involved in granting free legal aid. Moreover, when a lawyer is appointed free of charge during the pre-trial stage of criminal proceedings, the costs are covered by the budget of the KPC. The total figure of approved budget reported for the purpose of this study was therefore obtained by adding up different resources, namely: (i) resources assigned to legal aid in the KJC and KPC budgets (employed exclusively in criminal cases), and (ii) resources assigned to the FLA (mainly used in other than criminal cases).

It is also important to note that the budgetary lines in the KJC and the KPC budgets, which were used for the calculations in this report, cover the budget for legal aid (i.e. the payment of lawyers), but also the budget of experts and lay judges.³⁴ Therefore, as pointed out by the contact points during meetings, the figures are an overestimate of the resources effectively dedicated to legal aid.

In 2014, the total approved budget allocated to legal aid was 930,303 €. The KJC contributed 64% of this budget, the KPC approx. 15%, and the FLA 21%.

Implemented budget

Similarly, the total figure of implemented budget reported for the purpose of this study was obtained by adding up the resources actually spent on legal aid by the KJC, the KPC and the FLA. In 2014, the total implemented budget was 1,076,321 €. The KJC contributed 56% to this budget, the KPC 25%, and the FLA approx. 19%.

³³ Review of the Implementation of the New Criminal Procedure Code of Kosovo, June 2016, Organization for Security and Co-operation in Europe (OSCE), Mission in Kosovo. The report was prepared based on data collected from court monitoring between 2013 and 2015.

³⁴ It was reported that the KPC budget also includes an amount for the Victim's advocates but the exact figure was not available and thus it is not comprised in the figures regarding Kosovo.

Table 6.3 shows the amounts of approved legal aid (per inhabitant and as a percentage of the GDP) in the countries/entities within the cluster.

Table 6.3: Distribution of the legal aid budget (Approved budget - Q12)

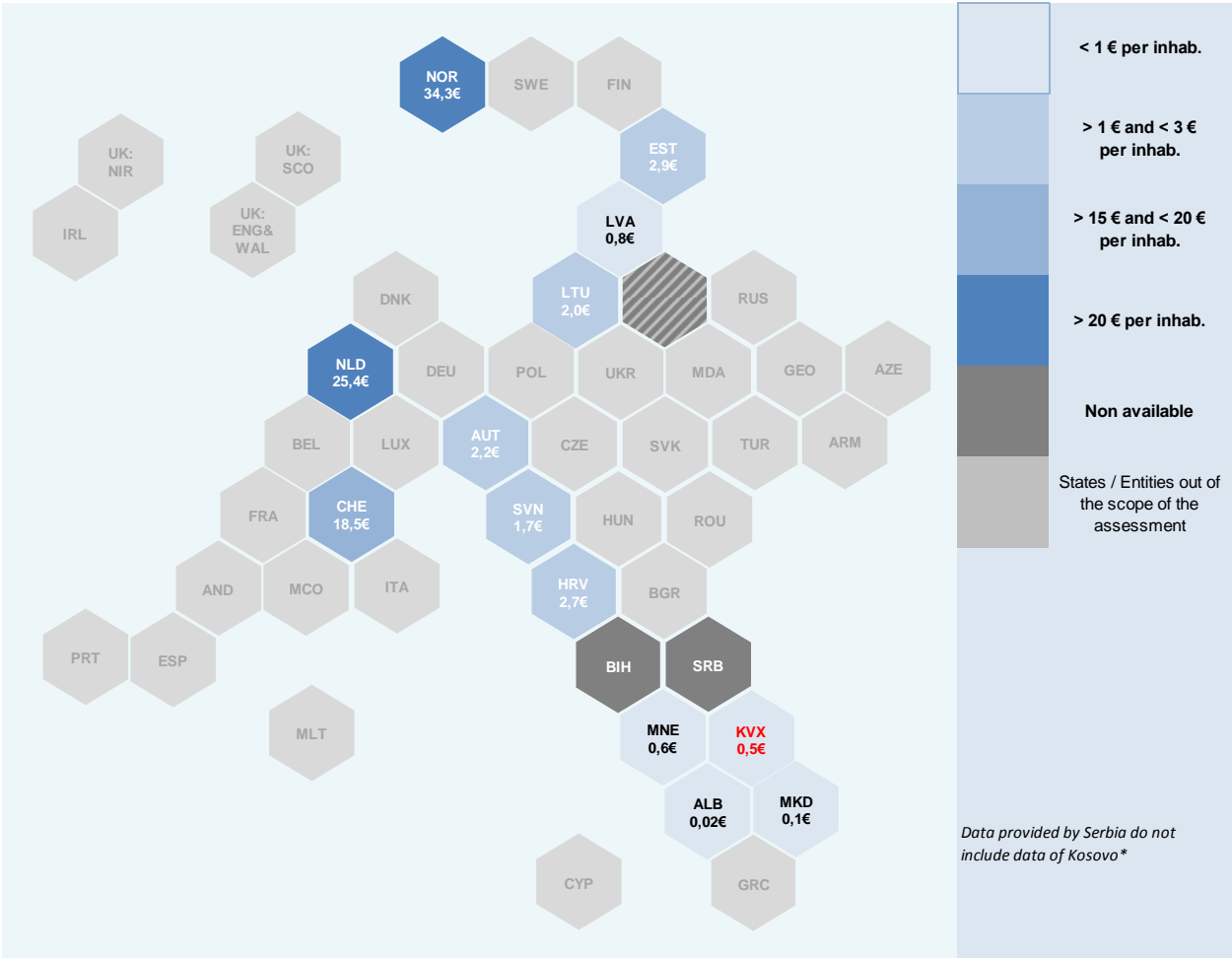
Total			
States / Entities	Legal aid (per capita)	Legal aid (as % of GDP)	Legal aid
Albania	0,02 €	0,001%	62 143 €
Austria	2,2 €	0,01%	19 000 000 €
Bosnia and Herzegovina	NA	NA	NA
Croatia	2,7 €	0,03%	11 464 658 €
Estonia	2,9 €	0,02%	3 835 000 €
Latvia	0,8 €	0,01%	1 650 291 €
Lithuania	2,0 €	0,02%	5 900 767 €
Montenegro	0,6 €	0,01%	375 943 €
Netherlands	25,4 €	0,06%	430 000 000 €
Norway	34,3 €	0,05%	177 083 000 €
Serbia	NA	NA	NA
Slovenia	1,7 €	0,01%	3 414 646 €
Switzerland	18,5 €	0,03%	152 756 877 €
"The former Yugoslav Republic of Macedonia"	0,1 €	0,00%	222 213 €
Kosovo*	0,5 €	0,02%	930 303 €
States / Entities listed in the table			
Average	7,1 €	0,02%	62 053 526 €
Median	2,0 €	0,02%	3 835 000 €
Standard deviation	11,4 €	0,02%	125 861 080 €
Minimum	0,02 €	0,00%	62 143 €
Maximum	34,3 €	0,06%	430 000 000 €
CoE States / Entities			
Average (CoE)	8,4 €	0,03%	136 865 354 €
Median (CoE)	2,0 €	0,02%	9 511 348 €
Standard deviation (CoE)	14,9 €	0,06%	374 751 956 €
Minimum (CoE)	0,01 €	0,0004%	35 714 €
Maximum (CoE)	73,5 €	0,32%	2 189 363 139 €

Table 6.3 also shows that, in 2014, the approved budget for legal aid in **Kosovo** was 0,5 € per capita, similar to the amounts allocated by **Montenegro** (0.6 €) and **Latvia** (0,8 €). This amount appears low in comparison with the median figure for the cluster (2,0 €, legal aid per inhabitant). Besides, as earlier noted, the figure regarding **Kosovo** is likely to be lower in practice because the resources assigned to lawyers (providing legal aid), experts, and lay judges are included in the same budgetary line.³⁵ Map 6.4 presents the same data on legal aid per capita, by grouping the countries/entities within the cluster into four categories.

³⁵ **The Netherlands** and **Norway** are rather singular, as they devote large sums per capita (25-35 € per capita) but these figures should be read in the light of the traditional approach to legal aid in these systems; those figures are not very relevant, as such, for comparative purposes.

Kosovo, Albania, Montenegro, Latvia, and “The Former Yugoslav Republic of Macedonia” allocate less than 1 € per inhabitant on legal aid.

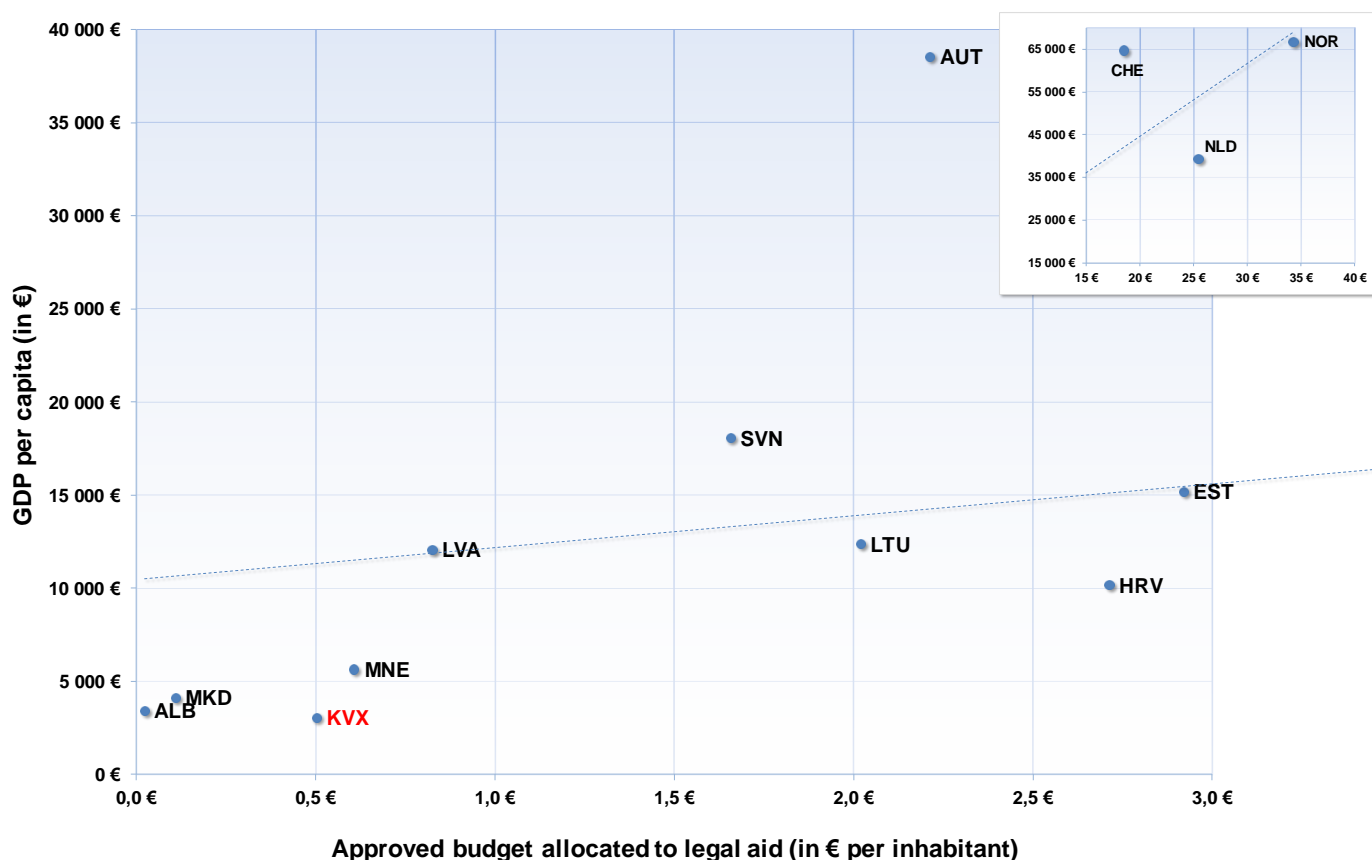
Map 6.4: Budget allocated to legal aid per inhabitant (Q1, Q12)



When considering legal aid budget as a percentage of the GDP, the member States/entities within the cluster are placed more closely to each other. **Kosovo** allocates 0,02% of its GDP, which corresponds to the median and average value within the cluster.

Graphic 6.5 correlates wealth (GDP per inhabitants) and amounts of legal aid per capita (approved figures) in the countries/entities within the cluster, to examine how balanced is the budgetary effort in the different member States/entities.

Graphic 6.5: Relation between the GDP and the budget allocated to legal aid in 2014 (Q1,Q3, Q12)



Graphic 6.5 shows that **Kosovo** and **Montenegro** make a bigger budgetary effort on legal aid than **Albania** and “**the former Yugoslav Republic of Macedonia**”, considering their respective levels of wealth.

As earlier explained, since 2014, the CEPEJ has begun collecting data on both approved and implemented budgets. Possible differences between the approved and implemented budget (Table 6.6) are especially relevant in the case of legal aid, as it is the implemented budget figure that provides an insight into the extent to which users may have effective access to free legal aid in practice.

Table 6.6: Difference between approved and implemented legal aid budget (Q12, Q12-1)

Total			
States / Entities	Approved	Implemented	Difference
Albania	62 143 €	35 714 €	-42,5%
Austria	19 000 000 €	21 070 101 €	+10,9%
Bosnia and Herzegovina	NA	7 636 209 €	NA
Croatia	11 464 658 €	10 939 335 €	-4,6%
Estonia	3 835 000 €	3 989 764 €	+4,0%
Latvia	1 650 291 €	1 159 625 €	-29,7%
Lithuania	5 900 767 €	5 883 027 €	-0,3%
Montenegro	375 943 €	88 577 €	-76,4%
Netherlands	430 000 000 €	455 000 000 €	+5,8%
Norway	177 083 000 €	NA	NA
Serbia	NA	NA	NA
Slovenia	3 414 646 €	3 492 487 €	+2,3%
Switzerland	152 756 877 €	149 445 510 €	-2,2%
"The former Yugoslav Republic of Macedonia"	222 213 €	156 322 €	-29,7%
Kosovo*	930 303 €	1 076 321 €	+15,7%
States / Entities listed in the table			
Average	62 053 526 €	50 767 153 €	-12,2%
Median	3 835 000 €	3 989 764 €	-1,2%
Standard deviation	125 861 080 €	127 978 254 €	
Minimum	62 143 €	35 714 €	-76,4%
Maximum	430 000 000 €	455 000 000 €	15,7%
CoE States / Entities			
Average (CoE)	145 868 963 €	136 865 354 €	-6,2%
Median (CoE)	11 464 658 €	9 511 348 €	-17,0%
Standard deviation (CoE)	387 897 248 €	374 751 956 €	
Minimum (CoE)	62 143 €	35 714 €	-42,5%
Maximum (CoE)	2 275 552 132 €	2 189 363 139 €	-3,8%

The comparative assessment of the member States/entities within the cluster reveals that the difference between approved and implemented legal aid budgets varied significantly in 2014. Some member States/entities seem to have overestimated their needs: **Albania** (-42,5%), **Montenegro** (-76,4%) and **"the former Yugoslav Republic of Macedonia"** (-29,7%), whereas some others spent in practice more than the approved budget: **Kosovo** (+15,7%), **Austria** (+10,9%), **Estonia** (+4%), **the Netherlands** (+5,8%), and **Slovenia** (+2,3%). **Kosovo** overspent the maximum share within the cluster; this was mainly due to a large overspent by the KPC³⁶ and a small overspent by the FLA.

³⁶ During the meetings it was explained that, in 2014, an administrative instruction was passed to increase the fees of lawyers appointed *ex officio* by the court. As a result, the following year, the overspending from the KJC and KPC became even more significant (see Administrative Instruction No.09/2014 on the Procedure for Compensation of Defence Counsels at Public Expense).

Note that significant differences have also been observed between the approved budgets and the implemented budgets of legal aid in the Council of Europe member States/entities.³⁷

As Table 6.6 suggests, the budget for legal aid in **Kosovo** does not seem sufficient to cover real needs. Those needs should be assessed and regularly monitored. As explained above, however, **Kosovo** in 2014 already made a rather significant budgetary effort for its judicial system. Therefore, solutions to improve access to legal aid without increasing financial resources should also be explored.

A strategy could consist in expanding the range of those who can provide legal assistance and advice, for instance, by promoting and sponsoring pro-bono schemes, university legal aid clinics, public defenders, and paralegals, among others. Similar initiatives are (slowly) being implemented in **Kosovo**.

Another approach, that is increasingly being employed in Europe following models from overseas, could be the use of low-cost contractual schemes³⁸ and private insurance systems for legal expenses. As shown in Table 6.2 above, private insurance systems that cover legal expenses are available in ten countries within the cluster (**Albania, Austria, Bosnia and Herzegovina, Estonia, Latvia Lithuania, the Netherlands, Norway, Slovenia and Switzerland**); information on **Kosovo** was not available. Some national rapporteurs, however, have reported that this instrument is not broadly used in practice (e.g. **Bosnia and Herzegovina, Croatia, and Lithuania**).

Finally, the legal aid systems in countries/entities in Europe could be examined to find possible solutions. As part of such an assessment, the eligibility criteria for legal aid could be reviewed. For instance, it was pointed out in the previous sub-section that no criterion related to the merits of the case applies during criminal proceedings in mandatory defence cases, and the law does not specify a financial criterion to determine whether a defendant lacks the financial means to pay the cost of his/her defence in cases of non-mandatory defence. Improving eligibility criteria would result in a more efficient allocation of the available resources, while guaranteeing effective and equal access to legal aid.

6.4 Recommendations

Recommendation 5: To collect and report accurate data on approved and implemented budget for legal aid, including by implementing a more specific itemization of the budgetary lines concerned.

We found that there is no single budget for legal aid in Kosovo, because both courts and the FLA are authorized to grant free legal aid. Moreover, when a lawyer is appointed free of charge during the pre-trial state of criminal proceedings, the costs are covered by the budget of the KPC. It was also pointed out that the legal aid data reported by KJC and the KPC may be an overestimate of the real figures, given that the relevant budgetary line – ‘services’ – covers the payment of lawyers (i.e. the budget for legal aid) as well as the fees for experts and lay judges. Finally, we found that there were important differences between the approved budget and the resources effectively spent (implemented budget) on free legal aid in 2014, which was mainly due to an overspent by the KPC and by the FLA.

Accordingly, we recommend that the KJC, the KPC, the FLA and other relevant institutions involved collect and report precise data on the approved resources dedicated to legal aid and the effective budgetary expenditure (implemented budget) incurred during the reference year. Furthermore, it would be useful to use a budgetary line for legal aid that is separate from other budgetary lines for experts and lay judges so as to allow a clear identification of the resources that are allocated to and effectively implemented on legal aid services per year.

Recommendation 6: To assess the needs of citizens as regularly as possible for legal aid services and to explore possible solutions to improve access to legal aid without increasing financial resources by looking at legal aid systems in countries/entities in Europe and reviewing the eligibility criteria for legal aid.

We found that the budget for legal aid in **Kosovo** does not seem sufficient to cover the real needs of the citizens for legal aid services. However, obtaining additional resources may not be reasonable (see Chapter 3 above).

³⁷ CEPEJ 2016 report, p. 18-19.

³⁸ Beqiraj, McNamara, 2015. p. 29.

We recommend to regularly assess the real needs of citizens for legal aid services. Proposals to increase the budget for legal aid should be based on the results from this assessment. We also recommend to explore possible solutions to improve access to legal aid without increasing financial resources by looking at legal aid systems in countries/entities in Europe and by reviewing the eligibility criteria. In particular, a clear financial criterion should be set for the assignment of legal counsel at public expense in criminal cases of non-mandatory defence.

PART III: PROFESSIONALS

This Chapter analyses data related to staff involved in judicial activities, including judges, prosecutors, lawyers, as well as other staff - such as clerks and assistants - supporting them in delivering their tasks. It includes an assessment and analysis of their number, the rules guaranteeing their independence, gender representation, and their salaries.

MAIN FINDINGS

1. In 2014, the number of judges per 100 000 inhabitants in **Kosovo** was lower than the median of the cluster but was similar to the median of Council of Europe membership. Also, compared to neighbouring countries/entities (with the exception of **Albania**), **Kosovo** employed a lower number of professional judges. However, these figures should be interpreted with great caution. The discrepancies are explained by the diversity of judicial organisations. Besides, from one country/entity to another, professional judges deal with very different volumes of proceedings (p. 52).
2. Compared to other countries/entities within the cluster, **Kosovo** allocates a lower percentage of judges and prosecutors at second instance (p. 55).
3. The percentage of female judges and court presidents in **Kosovo** is the lowest of the countries/entities in the cluster. Furthermore, within the cluster, only **Kosovo** and **Albania** had less than forty percent female prosecutors (p. 57-58).
4. There is a high number of administrative and technical staff per judge in **Kosovo**, and a low number of staff directly assisting judges (p. 62).
5. The number of public prosecutors per 100 000 inhabitants in **Kosovo** in 2014 appears low when looking at the median figures within the cluster and among Council of Europe member States. However, there are significant discrepancies between the Council of Europe member States/entities and within the cluster. These figures should be interpreted in light of the scope of the tasks entrusted to public prosecutors and the number of proceedings they are dealing with (p. 71).
6. In 2014 **Kosovo** also had a low number of lawyers in proportion to the population, compared to the other countries/entities in the cluster (p. 82).

Chapter 7: Judges and non-judge staff

CEPEJ definitions

According to the definition adopted in the 2016 CEPEJ report, a judge is a person entrusted with giving or taking part in a judicial decision involving opposing parties.³⁹ This should be interpreted in line with the specification made in the case law of the ECtHR, namely that "the judge decides, according to the law and following an organized proceeding, on any issue within his/her jurisdiction".⁴⁰

To take into account and accommodate the diversity in the status and functions of judges across countries/entities, the explanatory note that accompanies the CEPEJ evaluation scheme identifies and distinguishes between three types of judges:

1. **Professional judges** "are those who have been trained and who are paid as such"; their full time or part-time employment is irrelevant for the purpose of their status. Where a judge is employed part-time, his/her work should be converted into full time equivalent (FTE) and will be computed as such in the total figure (e.g. 0,5 FTE for a judge that works half day).
2. **Occasional professional judges** are trained judges (as in point 1) "who do not perform their duty on a permanent basis but who are fully paid for their function as a judge".
3. **Non-professional judges** are those who do not fall within the (above) general definition of judge - i.e. they sit in courts and adopt binding decisions - but are not trained professional judges. They may operate on a voluntary basis and are compensated for their expenses. This category comprises mainly the group of lay judges.

The reported figures should indicate, where possible, the number of posts that were actually filled (on 31 December 2014) and not the theoretical budgetary posts.

7.1 Type and number of judges

In context: the Kosovo system

The **Kosovo** Law on Courts sets out minimum qualifications, rights and duties of judges.⁴¹ More specific qualifications are established by the KJC through its regulations and procedures. Judges serving in specific courts/departments (e.g. in the Serious Crimes Department and in the Administrative Matters or Commercial Matters Departments of the Basic Court, in the Court of Appeals and in the Supreme Court) are required to have additional qualifications, consisting mainly of longer work experience or specialised experience in some legal fields.

The law also establishes minimum qualifications, rights and duties of lay judges. Lay judges serve only where required by law – for instance in juvenile criminal cases⁴² and in some civil cases⁴³ – and must have successfully completed training required by law to serve in such capacity. They are compensated for their services according to a schedule established by the KJC. In practice, lay judges serve in a very small number of cases on **Kosovo** but data was not available (NA value).

The category of "professional judges sitting on an occasional basis" does not apply in **Kosovo** (NAP value). This information is important to consider for any comparison with other member States/entities.

It was not possible to convert the number of judges employed in **Kosovo** into FTE. This means that the reported numbers are higher than the FTE figure (required by the CEPEJ methodology), as they do not take into account the part-time contribution of some of the judges. Moreover, occasionally, judges may hold other temporary positions. During such periods, their judicial functions are suspended but their position remains

³⁹ CEPEJ 2016 report, p. 81.

⁴⁰ Ibid.

⁴¹ Law on Courts, art. 26-28

⁴² Juvenile justice Code, Art. 51 (composition of juvenile panel).

⁴³ Family law of 2004, see Art. 73 (marital dispute procedures); Art. 324 (disputes on alimony); or Art. 338 (verification or challenge of paternity or maternity).

active, for administrative purposes, which inflates the figure about the number of judges in **Kosovo**.

Number of judges per 100 000 inhabitants

Table 7.1 presents a breakdown by category of the number of judges (absolute number, and by 100 000 inhabitants) in each of the countries within the cluster, as well as the average and median values among Council of Europe member States/entities resulting from the most recent CEPEJ evaluation. The first block shows the number of judges in full time equivalent (FTE), while the rest report gross figures.

Table 7.1: Type and number of judges in 2014 (Q1, Q46, Q48, Q49, Q50)

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	363	12,5	NAP	NAP	NAP	NAP
Austria	1 620	18,9	NAP	NAP	NA	NA
Bosnia and Herzegovina	993	25,9	101	2,6	254	6,6
Croatia	1 875	44,4	NAP	NAP	NA	NA
Estonia	231	17,6	NAP	NAP	802	61,1
Latvia	488	24,4	NAP	NAP	NAP	NAP
Lithuania	754	25,8	NAP	NAP	NAP	NAP
Montenegro	254	41,0	13	2,1	NAP	NAP
Netherlands	2 359	14,0	1 185	7,0	NAP	NAP
Norway	559	10,8	47	0,9	43 000	832,4
Serbia	2 700	38,0	NAP	NAP	2 564	36,0
Slovenia	924	44,8	NAP	NAP	3 445	167,1
Switzerland	1 290	15,7	1 900	23,1	1 635	19,8
"The former Yugoslav Republic of Macedonia"	629	30,4	NAP	NAP	1 376	66,5
Kosovo*	317	17,1	NAP	NAP	NA	NA
States / Entities listed in the table						
Average	1 024	25,4	649	7,1	7 582	169,9
Median	754	24,4	101	2,6	1 635	61,1
Standard deviation	786	11,8	854	9,2	15 654	296,8
Minimum	231	10,8	13	0,9	254	6,6
Maximum	2 700	44,8	1 900	23,1	43 000	832,4
CoE States / Entities						
Average	2 379	20,7	812	8,6	12 192	108,5
Median	993	18,1	99	2,6	4 026	37,6
Standard deviation	3 619	16,1	1 743	12,7	22 090	186,7
Minimum	24	3,3	2	0,1	139	5,0
Maximum	19 323	95,2	7 000	42,3	97 306	832,4

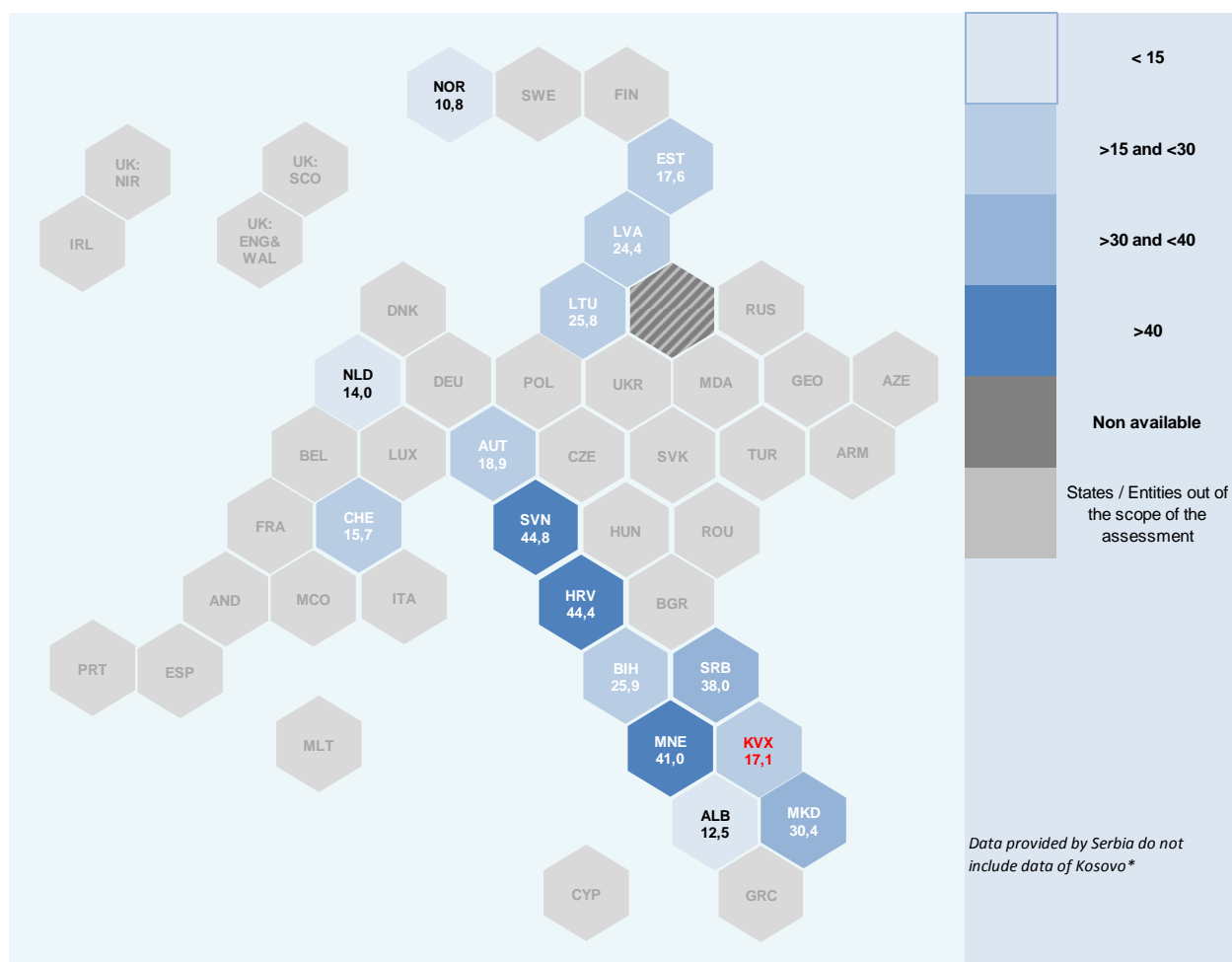
In 2014, 317 FTE professional judges (227 male judges and 90 female judges) served in **Kosovo** courts, which corresponds to 17,1 judges per 100 000 inhabitants. As earlier noted, these are nominal values (i.e. number of positions); the corresponding FTE figures are probably lower. This is an essential element that should be taken into account in the comparative analysis that follows.

Table 7.1 shows that the number of judges in **Kosovo** in 2014 was lower than the median of the cluster (24.4) but was similar to the median of Council of Europe membership (18.1). Also, compared to neighbouring countries/entities (with the exception of **Albania**), **Kosovo** employed a lower number of professional judges.⁴⁴ However, as explained below, these figures should be interpreted with great caution.

To facilitate comparisons among the countries/entities in the cluster, Map 7.2 groups countries/entities in four categories with increasing numbers of professional judges (per 100 000 inhabitants).

⁴⁴ As reported in the CEPEJ 2016 report, "the judicial apparatus of the states of Central and especially Eastern Europe continue to operate with a ratio of judges per capita substantially higher than that of the states of Western Europe." CEPEJ 2016 report, p. 97.

Map 7.2: Number of professional judges per 100 000 inhabitants in 2014 (Q1, Q46)



Map 7.2 shows that the number of judges varies significantly between the countries/entities within the cluster. In 2014, **Albania, the Netherlands and Norway** employed less than 15 professional judges per 100 000 inhabitants. **Kosovo, Austria, Bosnia and Herzegovina, Estonia, Latvia, Lithuania and Switzerland** deployed 15-30 professional judges; **Serbia** and “**the former Yugoslav Republic of Macedonia**” between 30 and 40 judges; and **Croatia, Slovenia and Montenegro** more than 40 judges per 100 000 inhabitants.

Significant discrepancies have also been observed between the Council of Europe member States/entities, including between countries/entities of similar size and income level. Therefore, these figures should be interpreted with great caution. The discrepancies are explained by the diversity of judicial organisations. Indeed, from one country/entity to another, professional judges deal with very different volumes of proceedings, in particular because non-professional judges may be responsible for significant litigations. In **Norway**, for instance, the number of professional judges per 100 000 inhabitants was low in 2014, but there were also 43 000 non-professional judges as well as professional judges sitting in courts on an occasional basis (0.9 per 100 000 inhabitants, see Table 4.1). **Kosovo**'s neighbouring countries/entities within the cluster (except for **Albania** and **Montenegro**) also make a relevant use of non-professional judges. In contrast, some countries/entities entrust all their disputes to professional judges and do not use non-professional judges.⁴⁵ In **Kosovo**, it was reported that the use of non-professional judges is limited (the exact figures on the use of lay judges in **Kosovo** were not provided).⁴⁶

⁴⁵ CEPEJ 2016 report, p. 90-91. The report notes that “around 15 states, some of which are young democracies, entrust all their disputes to professional judges.” See also p. 92-93: “it appears that between countries of the same economic level, having equivalent judicial organisations, the number of professional judges per 100 000 inhabitants may be very different, and this is likely to reflect the level of resources allocated to justice, as well as the scope of the judge’s missions.”

⁴⁶ Data on the use of non-professional judges in **Croatia** was not available either.

Chapter 11 on court efficiency examines more in detail the volume of proceedings that judges in **Kosovo** have to handle. It is interesting to note that in 2014 the number of incoming civil/commercial litigious cases and the number of incoming administrative cases (in first and second instance levels) was lower in **Kosovo** than in most of the neighbouring countries/entities (and was lower than the median figures for these categories of cases). Similarly, the number of pending incoming civil/commercial litigious cases and the number of pending administrative cases was lower in **Kosovo** than in the neighbouring countries/entities. In contrast, the number of incoming criminal cases as well as the number of pending criminal cases was very high but, as highlighted in Chapter 11, 94% of these cases were misdemeanour/minor criminal cases.

To assess whether **Kosovo** employs a sufficient number of professional judges to deal with the volume of proceedings, a thorough assessment would be necessary. To begin with, it is essential to obtain information that allows calculating the FTE figure of the judges employed in **Kosovo**. It would also be important to look at the caseload of judges in each department and in each court in **Kosovo**, in addition to the scope of the judge's missions and the level of resources allocated to justice.⁴⁷

Distribution of judges by instance

Table 7.3 below shows the distribution of professional judges by instance. Table 7.3 provides a general picture of the allocation of judges across the three instances showing the percentage of professional judges assigned at each instance as part of the total number of judges in each State/entity. The considerations made above about the impossibility to calculate an FTE figure also apply here.

⁴⁷ CEPEJ 2016 report, p. 92-93.

Table 7.3: Distribution in % of professional judges by instances in 2014 (Q46)

States/entities	Total of professional judges (FTE)	1st instance professional judges	2nd instance professional judges	Supreme court professional judges
Albania	363	72%	24%	5%
Austria	1 620	76%	20%	4%
Bosnia and Herzegovina	993	67%	22%	11%
Croatia	1 875	72%	26%	2%
Estonia	231	73%	19%	8%
Latvia	488	63%	27%	10%
Lithuania	754	89%	6%	5%
Montenegro	254	72%	21%	7%
Netherlands	2 359	78%	22%	NA
Norway	559	66%	30%	4%
Serbia	2 700	86%	12%	1%
Slovenia	924	78%	19%	3%
Switzerland	1 290	68%	29%	3%
"The former Yugoslav Republic of Macedonia"	629	79%	18%	3%
Kosovo*	317	85%	10%	4%

States / Entities listed in the table				
Average	1 024	75%	20%	5%
Median	754	73%	21%	4%
Standard deviation	786	8%	7%	3%
Minimum	231	63%	6%	1%
Maximum	2 700	89%	30%	11%

CoE States / Entities				
Average	2 379	74%	22%	6%
Median	993	73%	21%	5%
Standard deviation	3 619	11%	10%	7%
Minimum	24	42%	4%	1%
Maximum	19 323	94%	52%	44%

When looking at the distribution of professional judges by instance, in 2014, **Kosovo** employed 85% of the total of professional judges in the courts of first instance (i.e. 271, of which, 196 males and 75 females), 10% in second instance (i.e. 32, of which, 22 males and 10 females) and 4% in the Supreme Court (i.e. 14, of which, 9 males and 5 females).

The general approach not only among countries/entities in the cluster but for all Council of Europe member States was to employ a lower percentage of professional judges in the first instance courts, and a higher one in 2nd instance courts compared to **Kosovo**.⁴⁸ The average and median figures regarding all Council of Europe states/entities also reflected similar shares, respectively 74% and 73% at first instance and 22% and 21% at second instance.

The high share of professional judges employed in the courts of first instance in **Kosovo** and the low shares of professional judges employed in the second and third instance may possibly signal a less than optimal distribution of judges at the different instance levels in **Kosovo**. In order to confirm this preliminary finding, a thorough assessment would be necessary, one that brings into the picture the number of cases pending, received and solved by judges/courts at each instance in the different sectors (i.e. civil, administrative, criminal). The assessment should also take into account the composition of the judicial institutions involved at each instance (i.e. single judge or collegial body). For instance, the 2013 Criminal Procedure Code

⁴⁸ For the cluster: average 75%, median 73% (professional judges in the first instance courts and tribunals); average 20% and median 21% (2nd instance courts). For all Council of Europe members: average 74%, median 73% (first instance courts); 22% and 21% (2nd instance courts).

establishes that cases at the trial phase in the Serious Crimes Department of the Basic Courts are heard by a panel of three professional judges, whereas cases in the General Department of the Basic Courts are heard by a single judge.⁴⁹

Distribution of judges by gender

Gender equality in the public sector is crucial for the good functioning of democratic institutions, effective access to justice and the protection of human rights.⁵⁰ Table 7.4 reports the gender composition in the judiciary in the countries and entities in the cluster as well as the median and average values regarding all Council of Europe members.

⁴⁹ Criminal Procedure Code of Kosovo, Art. 23 and Art. 25.

⁵⁰ OECD, Why a push for gender equality makes sound economic sense, available at: <http://www.oecd.org/gender/push-gender-equality-economic-sense.htm>

Table 7.4: Distribution in % of professional judges by instances and by gender in 2014 (Q46)

States / Entities	Total of professional judges		1st instance		2nd instance		Supreme court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	56%	44%	53%	47%	60%	40%	76%	24%
Austria	49%	51%	45%	55%	58%	42%	65%	35%
Bosnia and Herzegovina	37%	63%	36%	64%	35%	65%	42%	58%
Croatia	31%	69%	28%	72%	37%	63%	60%	40%
Estonia	37%	63%	30%	70%	45%	55%	83%	17%
Latvia	23%	77%	20%	80%	23%	77%	38%	62%
Lithuania	39%	61%	37%	63%	55%	45%	71%	29%
Montenegro	43%	57%	44%	56%	41%	59%	44%	56%
Netherlands	44%	56%	40%	60%	55%	45%	NA	NA
Norway	60%	40%	58%	42%	64%	36%	65%	35%
Serbia	NA	NA	NA	NA	NA	NA	NA	NA
Slovenia	22%	78%	19%	81%	26%	74%	62%	38%
Switzerland	60%	40%	58%	42%	65%	35%	71%	29%
"The former Yugoslav Republic of Macedonia"	41%	59%	40%	60%	44%	56%	55%	45%
Kosovo*	72%	28%	72%	28%	69%	31%	64%	36%
States / Entities listed in the table								
Average	44%	56%	42%	58%	48%	52%	61%	39%
Median	42%	58%	40%	60%	50%	50%	64%	36%
Standard deviation	14%	14%	15%	15%	15%	15%	13%	13%
Minimum	22%	28%	19%	28%	23%	31%	38%	17%
Maximum	72%	78%	72%	81%	69%	77%	83%	62%
CoE States / Entities								
Average	49%	51%	44%	56%	53%	47%	65%	35%
Median	48%	52%	41%	59%	49%	51%	68%	32%
Standard deviation	16%	16%	15%	15%	18%	18%	18%	18%
Minimum	22%	11%	19%	22%	23%	0%	16%	0%
Maximum	90%	78%	78%	81%	100%	77%	100%	84%

In **Kosovo**, 72% of the professional judges serving in 2014 were men and 28% women. **Kosovo** reported the lowest figure of female judges of the cluster. Instead, in **Croatia**, **Latvia** and **Slovenia**, female judges represented about and over 70% of the total number of professional judges.

While acknowledging that there may be large disparities between countries/entities, the CEPEJ 2016 report noted that there has been a general trend of feminisation of professional judges in Europe in recent years, but also that there is a progressive decrease in the percentage of women judges as one moves up in the judicial hierarchy.⁵¹

⁵¹ CEPEJ 2016 report, p. 102.

Table 7.5: Distribution in % of court presidents by instances and by gender in 2014 (Q47)

States / Entities	Total of court presidents		1st instance		2nd instance		Supreme court	
	Male	Female	Male	Female	Male	Female	Male	Female
Albania	82%	18%	83%	17%	75%	25%	100%	0%
Austria	59%	41%	58%	42%	59%	41%	100%	0%
Bosnia and Herzegovina	58%	42%	58%	42%	53%	47%	67%	33%
Croatia	43%	57%	37%	63%	76%	24%	100%	0%
Estonia	56%	44%	50%	50%	50%	50%	100%	0%
Latvia	31%	69%	29%	71%	33%	67%	100%	..
Lithuania	48%	53%	43%	57%	100%	0%	100%	0%
Montenegro	73%	27%	72%	28%	100%	0%	0%	100%
Netherlands	78%	22%	64%	36%	100%	0%	100%	0%
Norway	67%	33%	65%	35%	83%	17%	100%	0%
Serbia	NA	NA	NA	NA	NA	NA	100%	..
Slovakia	52%	48%	52%	48%	63%	38%	0%	100%
Slovenia	34%	66%	31%	69%	60%	40%	100%	0%
Switzerland	NA	NA	61%	39%	NA	NA	100%	0%
"The former Yugoslav Republic of Macedonia"	62%	38%	68%	32%	40%	60%	0%	100%
Kosovo*	80%	20%	75%	25%	100%	0%	100%	0%
States / Entities listed in the table								
Average	59%	41%	56%	44%	71%	29%	79%	24%
Median	59%	41%	58%	42%	69%	31%	100%	0%
Standard deviation	16%	16%	16%	16%	23%	23%	40%	42%
Minimum	31%	18%	29%	17%	33%	0%	0%	0%
Maximum	82%	69%	83%	71%	100%	67%	100%	100%
CoE States / Entities								
Average	67%	33%	64%	36%	75%	25%	82%	22%
Median	66%	34%	65%	35%	80%	20%	100%	0%
Standard deviation	20%	20%	20%	20%	25%	25%	34%	36%
Minimum	30%	0%	25%	0%	0%	0%	0%	0%
Maximum	100%	70%	100%	75%	100%	100%	100%	100%

Also the percentage of female court presidents (20%) in **Kosovo** is the lowest in the cluster.

In some countries/entities, all presidents of second instance courts are men (i.e. **Kosovo**, **Lithuania**, **Montenegro** and **the Netherlands**). Where there is one single court at second instance (e.g. in **Kosovo**) and especially at third instance (usually a single Supreme Court or similar) the internal analysis of the percentages in each country/entity is not very meaningful from a statistical perspective.⁵² However, from a comparative viewpoint, it can be noted that women serve as presidents of the Supreme Court in 24% of the countries/entities that provided such information within the cluster.

The statistics about gender composition or court staff, including in positions of higher responsibility should continue to be monitored in **Kosovo** in the context of future assessments.

7.2 Salaries of judges

CEPEJ definitions

The Council of Europe's Committee of Ministers recommends that the remuneration of judges 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 For the purpose of comparisons between countries with regard to the salaries of professional judges, the CEPEJ uses different indicators.

⁵² Bosnia and Herzegovina with its tripartite federal structure is an exception.

⁵³ Council of Europe Committee of Ministers, Judges: independence, efficiency and responsibilities, Recommendation CM/Rec(2010)12, §§ 53 and 54.

Firstly, according to the CEPEJ approach, the salary of a judge at the beginning of his/her career should be examined to distinguish countries/entities where recruited judges graduated from the national school of magistracy or equivalent (e.g. **Kosovo** and **Albania**) from countries that recruit judges from a pool of experienced professionals (e.g. **Norway** and **Switzerland**). Secondly, it is also important to address the salary of judges of the court of last instance compared to the salary at the beginning of the profession to understand the judicial career path within each country/entity. Thirdly, the ratio between the salary of judges and the national average gross salary (AGS) need to be established to understand the social status of judges at the domestic level.

7.2.1 Data analysis

In context: the Kosovo system

The **Kosovo** Law on Courts sets out guidelines on judge salaries and judicial compensation.⁵⁴ It establishes a number of equivalence criteria between the salaries of judges and the salaries of chief governmental officials or other public administration institutions.

The President of the Supreme Court, for instance, shall receive a salary equivalent to that of the Prime Minister of **Kosovo**; the salary of all other judges of the Supreme Court shall be equivalent to that of a Minister of the Government; the judges of the Court of Appeals shall have a salary equivalent to 90% of the compensation of the President Judge of the Court of Appeals, etc. The KJC may provide for additional compensation for judges serving in specific court divisions, such as in the Serious Crimes, Commercial Matters or Administrative Conflicts Departments. The stability of judge salaries is guaranteed by law; the salary of a judge cannot be reduced during the term of office, except as a disciplinary sanction imposed by the KJC.

⁵⁴ Law on Courts, art. 29.

Table 7.6: Average gross salary of judge, absolute values and in relation with average gross salary (AGS) in the country/entity in 2014 (Q4, Q132)

States/Entities	Gross salary of judges		In relation to the average gross salary	
	At the beginning of career	At Supreme Court	At the beginning of career	At Supreme Court
Albania	8 976 €	14 964 €	2,0	3,3
Austria	50 403 €	121 651 €	1,6	4,0
Bosnia and Herzegovina	23 884 €	41 369 €	3,0	5,2
Croatia	22 740 €	50 073 €	1,8	4,0
Estonia	40 560 €	53 040 €	3,4	4,4
Latvia	19 764 €	39 076 €	2,2	4,3
Lithuania	23 976 €	35 676 €	2,9	4,4
Montenegro	20 310 €	25 298 €	2,4	2,9
Netherlands	74 000 €	NA	1,3	NA
Norway	113 581 €	185 025 €	2,0	3,3
Serbia	16 757 €	39 154 €	2,7	6,2
Slovenia	31 887 €	60 942 €	1,7	3,3
Switzerland	143 694 €	295 754 €	2,2	4,5
"The former Yugoslav Republic of Macedonia"	17 252 €	21 454 €	2,8	3,5
Kosovo*	10 992 €	15 252 €	3,0	4,2

States / Entities listed in the table				
Average	41 252 €	71 338 €	2,3	4,1
Median	23 884 €	40 262 €	2,2	4,1
Standard deviation	39 593 €	79 369 €	0,6	0,9
Minimum	8 976 €	14 964 €	1,3	2,9
Maximum	143 694 €	295 754 €	3,4	6,2

CoE States / Entities				
Average	52 022 €	95 856 €	2,5	4,5
Median	38 130 €	67 549 €	2,3	4,2
Standard deviation	41 390 €	77 076 €	1,0	1,6
Minimum	6 758 €	10 884 €	1,0	1,6
Maximum	168 057 €	295 754 €	4,8	8,5

Norway and Switzerland: The specific modalities of recruitment of judges (which are selected from experienced lawyers) have to be taken into consideration for any comparison.

In **Kosovo**, the gross annual salary of a first instance professional judge at the beginning of his/her career (typically a judge employed in the minor offences department) in 2014 was 10 992 €; the salary of a judge of the Supreme Court was 15 252 €.

These absolute values are low when compared to the average and median salaries of judges in the other countries within the cluster and in the Council of Europe. However, from a domestic viewpoint, they are between three and four times the AGS in **Kosovo**. At the beginning of their career, judges in **Kosovo** earn 3 times the AGS, whereas in countries/entities of the cluster, judges earn 2,2 times the AGS (median figure). At the Supreme court level, judges in **Kosovo** earn 4,2 times the AGS, whereas the median in the cluster is 4,1. Among Council of Europe member States, the median value at the beginning of the career was 2.3 times and at the Supreme Court level 4.2 times. Even where the salaries of the judges are very high at the beginning of the career (absolute value), such as in **Norway** and **Switzerland**, the ratio between judge salaries and the national average salary is lower than in **Kosovo**. In **Austria** and **the Netherlands**, judges at the beginning at the career earn respectively only 1,6 and 1,3 times the AGS.

Analysing the career path, the difference between salaries at the beginning and end of the career was most relevant in **Austria** (+141,4%), **Serbia** (+133,7%) and **Switzerland** (+105,8%) and least significant in **Montenegro** (+24,6%), and "the former Yugoslav Republic of Macedonia" (+24,4%). In **Kosovo**, the salary increase during the career of a judge (from first instance to the Supreme Court level) was 38,8%.

7.3 Non-judge staff

CEPEJ definitions

The efficient functioning of the judicial system needs competent staff that will assist and support judges at different stages of their work. The evaluation scheme distinguishes between five types of non-judge staff, and as earlier, the figures report the number of staff in FTE:

1. **Rechtspfleger** (or similar bodies). This position, which is present in the Austrian and German systems, is defined as an independent judicial authority performing the tasks that were delegated to him/her by law (such as tasks connected to family and guardianship law, law of succession, law on land register, commercial registers, decisions about granting a nationality, criminal law cases, decisions concerning legal aid, etc.). The *Rechtspfleger* has a quasi-judicial function; rather than assisting the judge, the *Rechtspfleger* works alongside judges and may take judicial decisions independently.
2. **Non-judge staff whose task is to assist judges directly**. The category includes staff who provides direct judicial support to judges (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), such as judicial advisors and registrars.
3. **Staff in charge of administrative tasks**. Administrative staff are not directly involved in judicial assistance to judges, 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**. Staff that are in charge of technical and maintenance related duties, including cleaning staff, security staff, computer department technicians or electricians.
5. **Other non-judge staff**.

7.3.1 Data analysis

In context: the Kosovo system

The category of *Rechtspfleger* does not apply in **Kosovo**.

In the category of *non-judge staff* directly assisting judges, the following employees have been counted: the legal secretaries, legal officers, professional collaborators and professional advisers. In the category of *administrative staff* were mostly included employees working in the Case Management Offices in the courts, and in the category of *technical staff* the employees working in the Common Services Offices and Security Offices in the courts.

Kosovo reported that there were 1366 non-judge staff working in courts in 2014. There were 391 registrars and other similar assistants, 544 employees in charge of administrative tasks and 431 members of the technical staff. It was not possible to obtain information regarding the number of male and female staff. As in the case of judge-staff, the figures reported have not been converted into FTE. Accordingly, the considerations made above and the concerns raised also apply here.

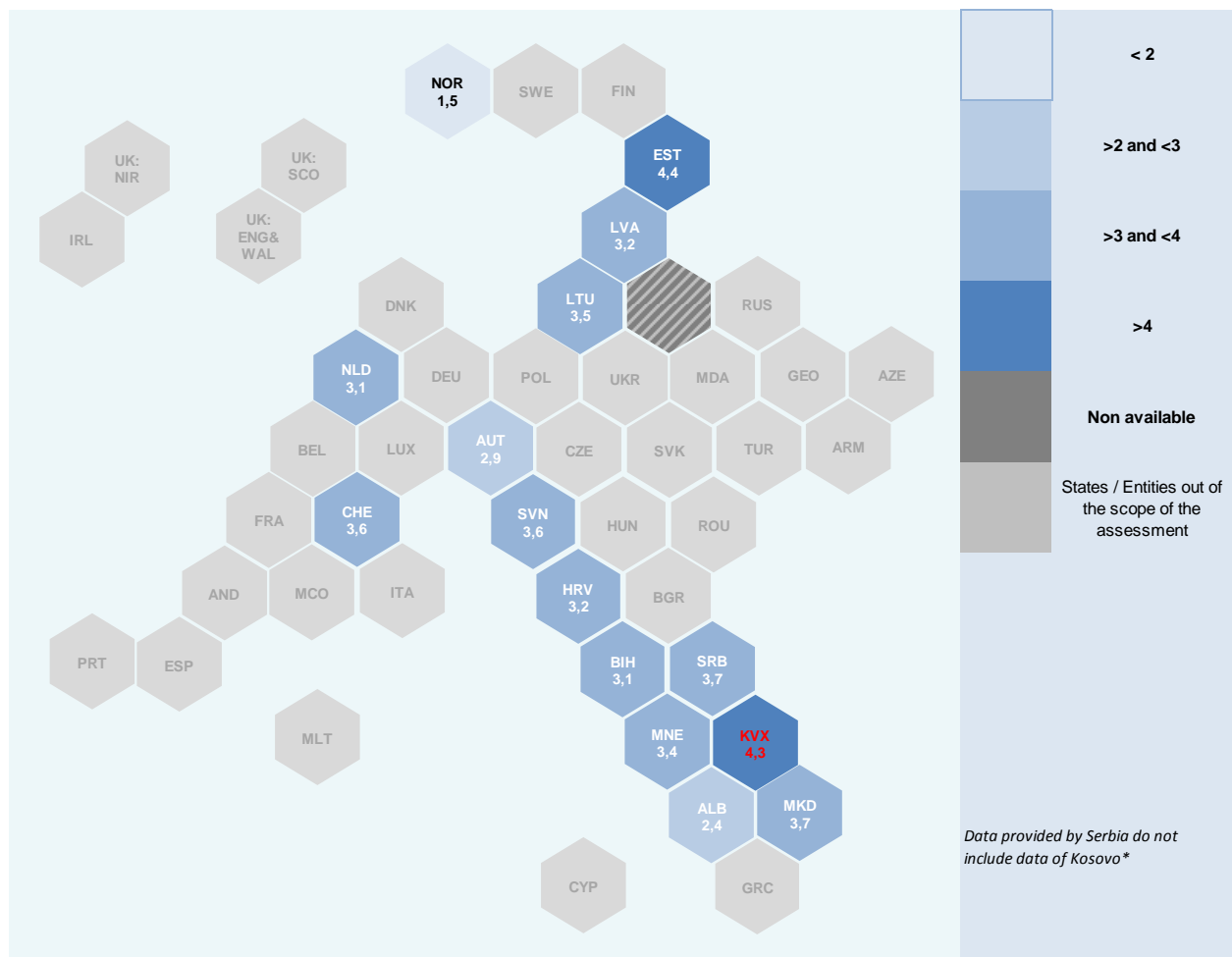
To get a closer insight into how judges are assisted in the different countries/entities, Table 4.15 below reports the ratio between non-judge staff and professional judges, in general, as well as by category of non-judge staff.

Table 7.7: Number of non-judge staff per professional judges in 2014 (Q46, Q52)

States/entities	Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)	1. Rechtspfleger (or similar bodies)	2. Non-judge staff whose task is to assist the judges	3. Staff in charge of different administrative tasks and of the management of the courts	4. Technical staff	5. Other non-judge staff
Albania	2,4	NAP	1,1	0,3	0,7	0,3
Austria	2,9	0,5	0,0	0,3	0,0	2,1
Bosnia and Herzegovina	3,1	0,1	1,2	1,5	0,4	NAP
Croatia	3,2	0,2	2,3	0,3	0,4	NAP
Estonia	4,4	0,2	3,0	0,3	0,7	0,2
Latvia	3,2	NAP	2,2	0,7	0,3	0,0
Lithuania	3,5	NAP	1,8	1,1	0,5	0,1
Montenegro	3,4	NAP	2,2	0,2	NA	1,0
Netherlands	3,1	NAP	NA	NA	NA	NA
Norway	1,5	NAP	0,0	NA	NA	NA
Serbia	3,7	NAP	1,6	1,3	0,8	NAP
Slovenia	3,6	0,5	1,2	1,8	0,1	NAP
Switzerland	3,6	0,01	1,6	1,7	0,1	0,2
"The former Yugoslav Republic of Macedonia"	3,7	NAP	0,9	2,3	0,3	0,3
Kosovo*	4,3	NAP	1,2	1,7	1,4	NAP
States / Entities listed in the table						
Average	3,3	0,3	1,5	1,0	0,5	0,5
Median	3,4	0,2	1,4	1,1	0,4	0,3
Standard deviation	0,7	0,2	0,8	0,7	0,4	0,7
Minimum	1,5	0,0	0,0	0,2	0,0	0,0
Maximum	4,4	0,5	3,0	2,3	1,4	2,1
CoE States / Entities						
Average	3,9	0,4	2,0	0,9	0,4	0,8
Median	3,4	0,4	1,8	0,7	0,3	0,3
Standard deviation	2,0	0,4	1,4	0,7	0,5	1,7
Minimum	0,9	0,0	0,0	0,0	0,0	0,0
Maximum	9,5	1,7	7,1	3,2	2,5	8,4

In 2014, each professional judge in **Kosovo** was assisted by 4,3 members of the non-judge personnel. **Kosovo** and **Estonia** have reported the highest figures compared to other countries within the cluster. The breakdown of non-judge staff by category in **Kosovo** shows that there was a high number of administrative staff (1,7, whereas the median in the cluster for this category of cases was 1,1) and technical staff (1,4, whereas the median in the cluster was 0,4). In contrast, the number of staff directly assisting judges is lower in **Kosovo** (1,2) compared to the median and the average in the cluster (1,4 and 1,5). It should however be recalled that calculations regarding **Kosovo** were based on nominal values (not FTE) for both judge and non-judge staff.

Map 7.8: Number of non-judge staff per professional judges in 2014 (Q46, Q52)



Map 7.8 sets countries within four categories, where judges benefit from increasing support by non-judge staff. In ten of the 15 countries/entities within the cluster, professional judges are assisted by 3-4 non-judge staff (**Bosnia and Herzegovina, Croatia, Latvia, Lithuania, Montenegro, the Netherlands, Serbia, Slovenia, Switzerland** and “**the former Yugoslav Republic of Macedonia**”). At the lower end of the range, **Norway** employs 1,5 non-judge staff per professional judge. **Albania** (2,4) and **Austria** (2,9) employ between 2-3 non-judge staff per judge. At the upper end of the spectrum, in **Estonia** (4,4) and **Kosovo** (4,3) judges were assisted by more than 4 other-staff members.

The high number of non-judge staff per judge in **Kosovo** might indicate that working methods ought to be modified and/or further modernized. A comprehensive IT project is under development. However, other reforms might also be considered. The figures commented here should also be taken into consideration in the analysis of court efficiency and caseload per judge.

7.4 Recommendations

Recommendation 7: To conduct further research to assess the resources needed (number of professional judges) in the various courts in light of the caseload, and to optimise the repartition of the resources between the Basic Courts and the Court of Appeals

We found that the number of judges in **Kosovo** in 2014 was lower than the median of the cluster. Also, compared to neighbouring countries/entities (with the exception of **Albania**), **Kosovo** employed a lower number of professional judges. These findings are even more plausible when considering that the figures reported are nominal values (i.e. number of positions) and that the corresponding FTE figures would be lower. However, with regard the number of professional judges employed in the various countries/entities, there are significant discrepancies between the Council of Europe member States/entities and within the cluster. The discrepancies are explained by the diversity of judicial organisations. We also found that, compared to other countries/entities within the cluster, **Kosovo** allocates a lower percentage of judges and prosecutors at second instance.

We recommend that further research should be conducted to assess the resources needed (number of professional judges) in the various courts in light of the caseload, and to optimise the repartition of the resources between the Basic Courts and the Court of Appeals. A precondition thereof is the collection of specific information that will enable the calculation of the FTE figure of the judges employed at each instance. The assessment of the human resources needed should take into account, among other matters, the scope of the judge's missions, the use of non-professional judges, the level of financial resources allocated to justice, the caseload of judges in each department and in each court, the number of cases older than two years, as well as the CEPEJ indicators such as the Clearance Rate, Disposition Time, and Case per Judge (see Chapter 11 on Efficiency below).

Recommendation 8: To conduct further research on whether the costs of non-judge staff should be reduced, develop recommendations on how to proceed (e.g. by outsourcing services) and envisage ways to increase the number of staff directly assisting the judges (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.).

We found that there was a high number of administrative and technical staff per judge in Kosovo in 2014, but a low number of staff directly assisting judges. Technical staff comprises those in charge of technical and maintenance related duties, such as cleaning staff, security staff, computer department technicians or electricians. The finding however may be affected by the fact that calculations were based on nominal values rather than on FTE, for both judges and non-judge staff.

We recommend the KJC and other relevant institutions to conduct further research on whether the costs of non-judge staff should be reduced, to develop recommendations on how to proceed (e.g. by outsourcing services) and to envisage ways to increase the number of staff directly assisting the judges (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.). As a priority, specific information should be collected to be able to calculate FTE figures for both categories.

Recommendation 9: To introduce policies and adopt measures aimed at increasing representation of women among judges and among court presidents.

We found that the percentage of female judges and court presidents in **Kosovo** is the lowest among the countries/entities in the cluster. In addition, within the cluster, only **Kosovo** and **Albania** had less than forty percent female prosecutors in 2014. By contrast, the median values of representation of women among judges and public prosecutors are above 50%, both within the cluster and in the Council of Europe member States.

We recommend that the KJC, the KPC and other relevant institutions enquire into the reasons for the low representation of women among judicial and prosecutorial professional staff, at different levels, and adopt adequate measures to address the situation. Carrying out such an enquiry and further research in these regards would possibly suggest whether the most appropriate measures should be, for instance, statutory rather than regulatory, permanent rather than temporary, etc.

Chapter 8: Public prosecutors and non-prosecutor staff

CEPEJ definitions

For the purposes of the CEPEJ Scheme, the definition of Public Prosecutor is drawn from the Recommendation Rec(2000)19 of the Council of Europe Committee of Ministers: "(...) 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".⁵⁵ The status and functions of public prosecutors, however, vary considerably among States and/or entities, e.g. between countries where authorized police officers have prerogatives during the preparatory phases before trial and countries where these powers are held exclusively by public prosecutors, or between countries/entities where the power to initiate prosecution is legally mandatory rather than discretionary. These elements should be taken into consideration when analysing the data relating to the number, the functions and status of public prosecutors in the different countries.

8.1 Status, role and number of public prosecutors

In context: the Kosovo system

The **Kosovo** law on the public prosecution sets out minimum qualifications, rights and duties of public prosecutors.⁵⁶ The public prosecution is defined therein as "the independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law (...)".

The public prosecution includes.⁵⁷

- 7 Basic Prosecution Offices with jurisdiction over first instance cases, comprising a general department (which has jurisdiction also on commercial and administrative matters), a department for minors, and the serious crimes prosecution department;
- the Special Prosecution Office, competent for first instance criminal cases of a particular gravity, such as organized crime, corruption, trafficking of persons, war crimes, employment of prohibited methods or warfare etc.;
- the Appellate Prosecution Office headed by a Chief Prosecutor, comprising a general department and a serious crimes prosecution department;
- and the Office of the Chief Prosecutor, that exercises exclusive jurisdiction over third instance cases before the Supreme Court, and has other competencies of a judicial, administrative or regulatory nature. The Chief Prosecutor may also submit a request to the KPC to establish other prosecution offices when necessary.

The independence and impartiality of the public prosecution in **Kosovo** is guaranteed by law.⁵⁸ As the oversight body of prosecutors, the KPC is responsible for recruitment, proposals for appointment, transfers, promotions, disciplinary measures and dismissals. Candidates for appointment as a prosecutor should, among others, possess a valid university degree in law and have passed the bar examination as well as the preparatory examination for prosecutors and judges. Additional qualifications are required for prosecutors employed in specific Departments or Offices (e.g. in the Serious Crimes Department, in the Appellate Prosecution Office etc.).

⁵⁵ Committee of Ministers of the Council of Europe, the Role of Public Prosecution in the Criminal Justice System, Rec(2000)19, 6 October 2000.

⁵⁶ Law on the public prosecution, No.03/L-225, 29 October 2010, art. 3-10.

⁵⁷ Ibid, art. 14-18.

⁵⁸ Ibid, art. 3; CPC, art. 47.

Table 8.1: Status of public prosecutors in 2014 (Q115 and Q115.1)

States/entities	Status of public prosecutors			Regulation to prevent specific instructions to prosecute or not, addressed to a prosecutor in a court?
	Statutorily independent	Under the Ministry of Justice or another central authority	Other	
Albania				
Austria				
Bosnia and Herzegovina				
Croatia				
Estonia				
Latvia				
Lithuania				
Montenegro				
Netherlands				
Norway				
Serbia				
Slovenia				
Switzerland				
"The former Yugoslav Republic of Macedonia"				
Kosovo*				
States / Entities listed in the table				
Yes	11	3	3	12
No or NAP	4	12	12	3
CoE States / Entities				
Yes	32	13	8	25
No or NAP	14	33	38	21

Within a spectrum that ranges between the executive and the judiciary (in the criminal law area and beyond), the status of public prosecutors may vary considerably from one country to the other. Table 8.1 reflects such model diversity. In 11 countries within the cluster (**Kosovo, Albania, Bosnia and Herzegovina, Croatia, Estonia, Latvia, Lithuania, Montenegro, Norway, Slovenia and Switzerland**) the office of the public prosecutor is statutorily independent. Because of its federal structure, **Switzerland** is a peculiar case: some of the cantons described their prosecution services as independent, others under the authority of the cantonal Minister of Justice and others under the authority of the Supreme Court or a specific monitoring body. This explains why all the available options in Table 8.1 apply to **Switzerland**. In **Austria and the Netherlands**, public prosecutors are under the authority of the Ministry of Justice. "**The former Yugoslav Republic of Macedonia**" and **Serbia** where prosecutors enjoy functional independence but may be bound by general criminal policy instructions are included under the category "other". In the case of **Serbia**, it was reported that prosecutors are independent (external independence) but must comply with mandatory instructions for case management from higher ranked prosecutors.

A test for assessing functional independence is whether prosecutors are (or not) subject to specific instructions regarding the cases they are managing. The last column in Table 8.1 reports the responses to a question on the existence of legal provisions preventing specific instructions to prosecute or not, addressed to a prosecutor in court. With the exception of **Lithuania, the Netherlands and Switzerland**, all the countries within the cluster have in place a similar law or regulation. However, as indicated in the comments submitted by the national rapporteurs of those three states, there is a clear distinction between general and specific instructions, which arises from the functional independence of the prosecution service or is firmly established in practice. As regards **Kosovo**, art. 3 of the Law on the public prosecution sets out that it shall be unlawful for any natural or legal person to interfere with, obstruct, influence or attempt to interfere with, obstruct or influence prosecutors in the performance of their prosecution functions related to any individual investigation, proceeding, or case. Additionally, article 47 of the CPC on the independence of prosecutors states that "Public entities shall not formally or informally influence or direct the actions of the state prosecutor when dealing with individual criminal cases or investigations."

Table 8.2: Role of public prosecutors in 2014 (P105)

States/entities	Role of public prosecutor										
	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 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	to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision	other significant powers
Albania											
Austria											
Bosnia and Herzegovina											
Croatia											
Estonia											
Latvia											
Lithuania											
Montenegro											
Netherlands											
Norway											
Serbia											
Slovenia											
Switzerland											
"The former Yugoslav Republic of Macedonia"											
Kosovo*											
States / Entities listed in the table											
Yes	14	14	13	15	15	13	15	6	15	11	9
No or NAP	1	1	2	0	0	2	0	9	0	4	6
CoE States / Entities											
Yes	39	35	37	43	46	38	45	23	42	24	28
No or NAP	7	11	9	3	0	8	1	23	4	22	18

Besides status, the scope of the substantial mandate (i.e. roles) of public prosecutors can also vary across countries/entities. Table 8.2 summarizes the responses from each country regarding the areas of responsibility within the competence of public prosecutors. Some roles are typically assigned to public prosecutors, e.g. conducting or supervising investigation (including police investigation), discontinuing a case without the involvement of a judge, requesting investigation measures from the judge, charging the accused of criminal offences, proposing a sentence to the judge, presenting cases in courts and appealing court decisions. Instead, State practice varies as regards the competence to supervise the enforcement procedure (only 6 of 15 countries) and the authority to end a case by imposing or negotiating a penalty without the involvement of a judge (11 of 15 countries).

In **Kosovo**, all the above-mentioned roles fall within the competence of public prosecutors. Article 353 of the **Kosovo** Criminal Procedural Code, however, clarifies that prosecutors can justify, in the light of relevant facts, the applicable provisions of the Criminal Code, and can suggest the mitigating and aggravating circumstances to be taken into consideration in considering the punishment, as well as the kind of punishment (i.e. judicial admonition or alternative punishment), but “may not propose the amount of the punishment”.

Other significant powers are assigned to public prosecutors in some countries, including participation in drawing up and implementing national and international crime prevention programmes (**Lithuania**), issuance of decisions on the detention of suspects (**Montenegro**), submission of a request for the protection of legality against a final court decision if there was a violation of a provision of law or of basic human rights (**Kosovo**⁵⁹ and **Croatia**).

Table 8.3 below examines the number of prosecutors (per 100 000 inhabitants) and the scope of their powers and roles.

In context: the Kosovo system

In **Kosovo**, in 2014, there were 139 public prosecutors exercising their functions, of which 128 served at first instance. As in the case of judges, these are nominal values (i.e. number of positions) and the corresponding FTE figures are probably lower. This is an essential consideration that should be taken into account in the analysis that follows.

⁵⁹ CPC, art. 432-433.

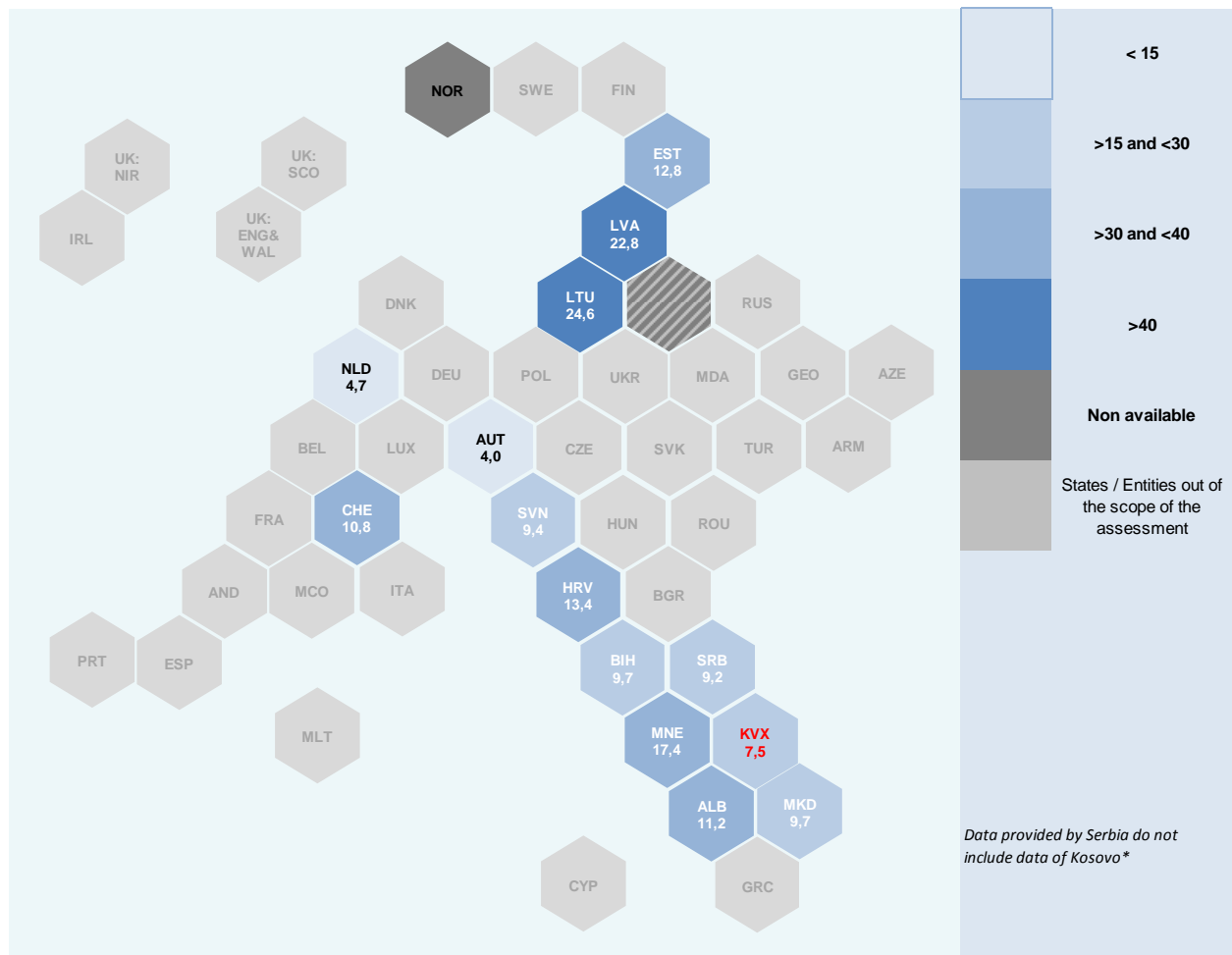
Table 8.3: Number of public prosecutors per 100 000 inhabitants and number of roles in 2014 (Q1, Q55 and Q105)

States/Entities	Number of prosecutors per 100 000 inhabitants	Number of roles of the public prosecutor
Albania	11,2	10
Austria	4,0	9
Bosnia and Herzegovina	9,7	10
Croatia	13,4	10
Estonia	12,8	10
Latvia	22,8	11
Lithuania	24,6	10
Montenegro	17,4	10
Netherlands	4,7	10
Norway	NA	7
Serbia	9,2	8
Slovenia	9,4	9
Switzerland	10,8	10
"The former Yugoslav Republic of Macedonia"	9,7	7
Kosovo*	7,5	9
States / Entities listed in the table		
Average	12,0	9
Median	10,3	10
Standard deviation	6,0	1
Minimum	4,0	7
Maximum	24,6	11
CoE States / Entities		
Average	11,3	9
Median	10,4	9
Standard deviation	6,4	2
Minimum	1,9	5
Maximum	30,6	11

Table 8.3 highlights significant disparities between the countries considered in the cluster. Therefore, the figures should be interpreted with great caution.

There were 7,5 public prosecutors per 100 000 inhabitants in **Kosovo** in 2014, covering 10 of the 11 areas of responsibility suggested in the questionnaire. This number appears low when looking at the median figures within the cluster and among Council of Europe member States (around 10-11 public prosecutors per 100 000 inhabitants). Map 8.4 below groups the countries/entities in the cluster in 4 categories with increasing numbers of public prosecutors by population (i.e. per 100 000 inhabitants).

Map 8.4: Number of public prosecutors per 100 000 inhabitants in 2014 (Q1, Q55)



In 2014, **Austria** and **the Netherlands** employed less than 5 prosecutors per 100 000 inhabitants; **Bosnia and Herzegovina**, **Serbia**, **Slovenia**, “**the former Yugoslav Republic of Macedonia**” and **Kosovo** between 5 and 10 prosecutors; **Croatia**, **Estonia**, **Montenegro** and **Switzerland** between 10 and 20 prosecutors; and **Latvia** and **Lithuania** more than 20 prosecutors. Data regarding **Norway** was not available.

As explained above, these figures should be interpreted carefully. It is essential to analyse these figures in light of the scope of the missions entrusted to public prosecutors and the number of proceedings they are dealing with (see Chapter 11 on efficiency).⁶⁰

Distribution of prosecutors by instance

⁶⁰ CEPEJ 2016 report, p. 123 (which speaks about two factors that may explain the disparity in the numbers: the scope of the missions entrusted to public prosecutors and the number of proceedings they are dealing with).

Table 8.5: Distribution in % of public prosecutors by instance in 2014 (Q55)

States/entities	Total number of public prosecutors (FTE)	1st instance	2nd instance	Highest instance
Albania	325	85%	8%	7%
Austria	345	90%	6%	4%
Bosnia and Herzegovina	372	81%	NAP	19%
Croatia	565	72%	24%	4%
Estonia	168	NAP	NAP	NAP
Latvia	457	65%	18%	17%
Lithuania	720	90%	NAP	10%
Montenegro	108	69%	17%	14%
Netherlands	796	89%	11%	NAP
Norway	NA	NA
Serbia	657	90%	9%	2%
Slovenia	194	74%	19%	7%
Switzerland	893	NAP	NAP	NAP
"The former Yugoslav Republic of Macedonia"	200	80%	16%	5%
Kosovo*	139	92%	5%	3%

States / Entities listed in the table				
Average	424	81%	13%	8%
Median	359	83%	14%	7%
Standard deviation	262	9%	6%	6%
Minimum	108	65%	5%	2%
Maximum	893	92%	24%	19%

CoE States / Entities				
Average	2107	78%	18%	8%
Median	690	77%	19%	5%
Standard deviation	5400	13%	10%	7%
Minimum	4	45%	0%	1%
Maximum	34294	100%	34%	28%

Looking at the allocation of public prosecutors by instance, in 2014, 92% of the 139 prosecutors in **Kosovo** was assigned at the first instance level (i.e. 128, of which, 89 males and 50 females), 5% in second instance (i.e. 7, of which, 6 males and 1 female) and 3% at the Supreme Court level (i.e. 4, of which, 3 males and 1 female). Within the cluster, **Kosovo** deploys the highest percentage of public prosecutors at first instance (the median rate is 83% in the cluster, and 77% among Council of Europe member States) and the lowest at second instance (the median rate is 14% in the cluster and 19% among Council of Europe member States). As it was commented in relation to the distribution of judges by instance, the interpretation of this data should also take into account the number of cases prosecutors handle at each level.

Distribution of prosecutors by gender

The tables below show the distribution of the heads of prosecution offices across the three instances and the gender balance at each level. As earlier explained, the distribution of heads of prosecution offices in **Kosovo** replicates that of courts: heads of prosecution offices are therefore established at each of the 7 basic courts of **Kosovo**, at the Court of appeal and at the Supreme Court. The Special Prosecution Office has specialised competence on criminal cases of a particular gravity and operates within the Office of the State Prosecutor of **Kosovo**.⁶¹

Accordingly, of the 10 heads of prosecution offices, 80% operate at the first instance level, 10% at the appeals level and 10% at the Supreme Court level. On average, such distribution corresponds to 13,9 public prosecutors per head of prosecution office. As regards gender composition of prosecution staff, in 2014, in **Kosovo**, 64% of the total number of public prosecutors was men and 36% women. These figures reveal a higher percentage of women among the overall prosecution staff in **Kosovo**, compared to the courts' staff. In respect of heads of prosecution offices, instead, men remain largely predominant as in the case of court

⁶¹ Law on the Special Prosecution Office, No. 2008/03-L052.

presidents (in both cases, 80% men and 20% women).

Table 8.6: Distribution in % of heads of prosecution offices in first instance courts, second instance courts and Supreme Court in 2014 (Q55, Q56)

States/Entities	Total number of heads of prosecution offices	1st instance	2nd instance	Supreme court	Number of prosecutors per one head of prosecution office
Albania	35	66%	20%	14%	9,3
Austria	27	74%	22%	4%	12,8
Bosnia and Herzegovina	20	85%	NAP	15%	18,6
Croatia	39	64%	33%	3%	14,5
Estonia	5	NAP	NAP	NAP	33,6
Latvia	61	67%	16%	16%	7,5
Lithuania	89	87%	NAP	13%	8,1
Montenegro	17	76%	18%	6%	6,4
Netherlands	NA	NA	NA	NA	..
Norway	13	0%	92%	8%	..
Serbia	90	94%	4%	1%	7,3
Slovenia	13	92%	NAP	8%	14,9
Switzerland	115	NAP	NAP	NAP	7,8
"The former Yugoslav Republic of Macedonia"	28	82%	14%	4%	7,1
Kosovo*	10	80%	10%	10%	13,9
States / Entities listed in the table					
Average	40	72%	26%	8%	12,4
Median	28	78%	18%	8%	9,3
Standard deviation	35	25%	26%	5%	7,4
Minimum	5	0%	4%	1%	6,4
Maximum	115	94%	92%	16%	33,6
CoE States / Entities					
Average	167	79%	24%	6%	21,1
Median	39	83%	18%	3%	12,3
Standard deviation	466	19%	25%	7%	27,4
Minimum	1	0%	3%	0%	3,1
Maximum	2909	100%	100%	33%	161,0

Table 8.7: Distribution in % of public prosecutors and heads of prosecution by gender in 2014 (Q55, Q56)

States/Entities	Total number of prosecutors		Total of heads of public prosecution	
	Male	Female	Male	Female
Albania	72%	28%	86%	14%
Austria	50%	50%	63%	37%
Bosnia and Herzegovina	52%	48%	65%	35%
Croatia	34%	66%	33%	67%
Estonia	32%	68%	40%	60%
Latvia	39%	61%	59%	41%
Lithuania	51%	49%	75%	25%
Montenegro	41%	59%	59%	41%
Netherlands	42%	58%	NA	NA
Norway	NA	NA	92%	8%
Serbia	44%	56%	64%	36%
Slovenia	31%	69%	62%	38%
Switzerland	NA	NA	NA	NA
"The former Yugoslav Republic of Macedonia"	47%	54%	79%	21%
Kosovo*	64%	36%	80%	20%

States / Entities listed in the table				
Average	46%	54%	66%	34%
Median	44%	56%	64%	36%
Standard deviation	12%	12%	17%	17%
Minimum	31%	28%	33%	8%
Maximum	72%	69%	92%	67%

CoE States / Entities				
Average	50%	50%	69%	31%
Median	47%	53%	66%	34%
Standard deviation	18%	18%	23%	23%
Minimum	19%	4%	0%	0%
Maximum	96%	81%	100%	100%

Within the cluster, only **Kosovo** and **Albania** had less than forty percent female prosecutors. The situation is inverted as regards heads of prosecution offices: women were less than forty percent in the majority of countries/entities within the cluster (except for **Croatia** (67%), **Estonia** (60%), **Latvia** (41%) and **Montenegro** (41%)).

8.2 Salaries of public prosecutors

Table 8.8 shows the salary increase during of the career of a public prosecutor, as well as the ratio between the salary of public prosecutors and the AGS, at the beginning and at the end of the career (as it was assessed earlier in relation to the salaries of judges). Salary levels are inevitably affected by the country's wealth as well as by the diversity of status and roles of public prosecutors across countries, therefore meaningful considerations can be more safely made within each country/entity.

Table 8.8: Average gross salary of a prosecutor absolute values and in relation with average gross salary in the country in 2014 (Q4, Q132)

States/Entities	Gross salary of a public prosecutor		In relation to the average gross salary	
	At the beginning of career	The level at the highest instance	At the beginning of career	The level at the highest instance
Albania	8 988 €	14 976 €	2,0	3,3
Austria	53 486 €	121 651 €	1,7	4,0
Bosnia and Herzegovina	23 884 €	41 369 €	3,0	5,2
Croatia	22 740 €	50 073 €	1,8	4,0
Estonia	22 440 €	41 520 €	1,9	3,4
Latvia	19 369 €	25 800 €	2,1	2,8
Lithuania	16 195 €	31 625 €	2,0	3,9
Montenegro	18 453 €	24 587 €	2,1	2,8
Netherlands	81 162 €	158 657 €	1,4	2,8
Norway	NA	111 000 €	NA	2,0
Serbia	17 728 €	37 204 €	2,8	5,9
Slovenia	31 368 €	52 224 €	1,7	2,8
Switzerland	116 230 €	155 150 €	1,8	2,4
"The former Yugoslav Republic of Macedonia"	17 719 €	20 299 €	2,9	3,3
Kosovo*	12 612 €	15 576 €	3,4	4,3

States / Entities listed in the table				
Average	33 027 €	60 114 €	2,2	3,5
Median	20 905 €	41 369 €	2,0	3,3
Standard deviation	30 518 €	50 257 €	0,6	1,1
Minimum	8 988 €	14 976 €	1,4	2,0
Maximum	116 230 €	158 657 €	3,4	5,9

CoE States / Entities				
Average	35 220 €	69 974 €	1,9	3,9
Median	30 159 €	51 149 €	1,8	3,4
Standard deviation	23 855 €	45 929 €	0,7	2,0
Minimum	3 217 €	3 301 €	0,8	1,3
Maximum	116 230 €	186 637 €	3,8	12,6

In context: the Kosovo system

The **Kosovo** law on the public prosecution establishes equivalence criteria on the compensation of state prosecutors – generally referring to the salary of members of the judiciary.⁶² Accordingly, the Chief Prosecutor shall receive a salary equivalent to that of the President of the Supreme Court; the Chief Prosecutor of the Special Prosecution Office shall have a salary equivalent to 95% of the Chief Prosecutor; the prosecutors permanently appointed to the Office of the Chief Prosecutor shall receive a salary equivalent to 90% of the salary of the Chief Prosecutor and so forth. Additional compensation can be conceded by the KPC recognising the unique responsibilities of prosecutors appearing before the Serious Crimes Department of the Basic Courts. As in the case of judges, salary stability is guaranteed by law and cannot be reduced during the term of service of a public prosecutor, unless it is imposed as a disciplinary sanction.

In **Kosovo**, the gross annual salary of a first instance public prosecutor at the beginning of his/her career, in 2014, was 12 612 €; the salary of the Chief of State Prosecutor was 15 576 € (like that of the president of the

⁶² Law on the public prosecution, No.03/L-225, 29 October 2010, art. 21.

Supreme Court). As in case of judge salaries, these absolute values correspond respectively to 3,4 and 4,3 times the national AGS. In this latter regard, the median values both within the cluster and among Council of Europe members are lower, i.e. less than twice the AGS at the beginning of the career of a public prosecutor and 3,3/3,4 times the AGS at the highest instance level.

The salary increase by the end of the prosecutorial career in **Kosovo** was 23,5%. The difference between salaries at the beginning and at the end of the career was more significant in **Austria** (+127,4%), **Croatia** (+120,1%) and **Serbia** (+109,86%) and less relevant in **Latvia** (+33,2%), **Montenegro** (+33,2%), **Switzerland** (+ 33,5%) and “the former Yugoslav Republic of Macedonia” (+14,6%).

8.3 Non-prosecutor staff

Table 8.9: Number of non-prosecutor staff per public prosecutor in 2014 (Q55, Q60)

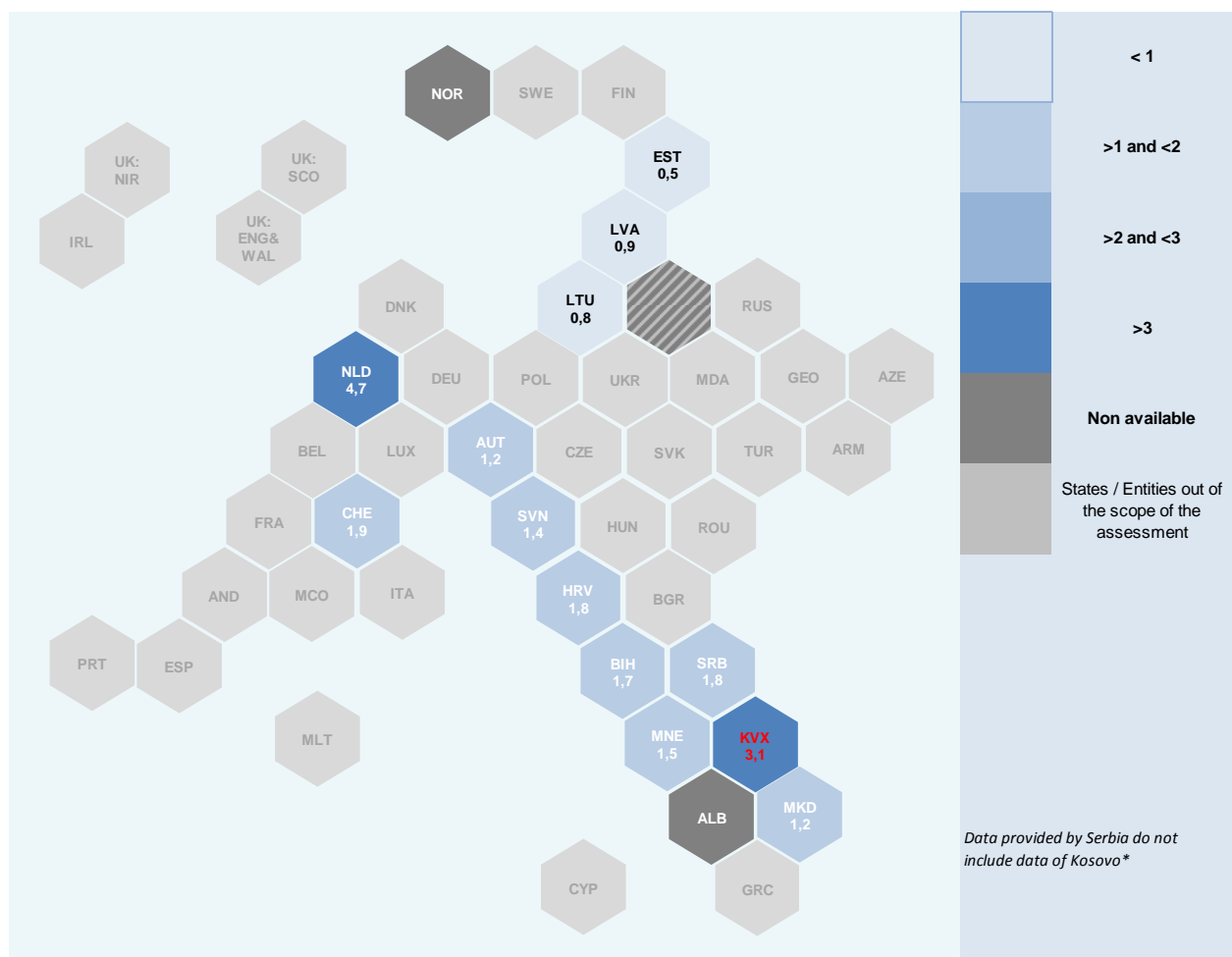
States/entities	Non-prosecutor staff
Albania	NA
Austria	1,2
Bosnia and Herzegovina	1,7
Croatia	1,8
Estonia	0,5
Latvia	0,9
Lithuania	0,8
Montenegro	1,5
Netherlands	4,7
Norway	NA
Serbia	1,8
Slovenia	1,4
Switzerland	1,9
"The former Yugoslav Republic of Macedonia"	1,2
Kosovo*	3,1
States / Entities listed in the table	
Average	1,7
Median	1,5
Standard deviation	1,1
Minimum	0,5
Maximum	4,7
CoE States / Entities	
Average	1,5
Median	1,2
Standard deviation	0,9
Minimum	0,4
Maximum	4,7

Kosovo reported that there were 433 non-prosecutor staff attached to the public prosecution service in 2014, of which 179 men and 244 women. When considering these figures in relation to the number of prosecutors, **Kosovo** appears to have a rather high number of non-prosecutor staff (i.e. 3,1) per public prosecutor, compared to the average and the median both within the cluster (respectively 1,7 and 1,5) and among Council of Europe member States (respectively 1,5 and 1,2). This matches the finding on non-judge personnel in **Kosovo**, which was also high compared to other countries/entities. However, as earlier noted, these figures are calculated with reference to nominal values (i.e. number of positions), but the corresponding FTE figures would be lower. The data regarding **Albania** and **Norway** was not available.

Map 8.10 below groups countries/entities in categories with increasing numbers of non-prosecutor staff per

public prosecutor.

Map 8.10: Number of non-prosecutor staff per public prosecutor in 2014 (Q55, Q60)



Map 8.10 shows that the Baltic countries (**Estonia**, **Latvia** and **Lithuania**) deploy less than one person per public prosecutor; **Kosovo** and **the Netherlands** attach on average more than 3 persons per public prosecutor; while the rest of the countries/entities within the sample (for which data was available) employ between 1-2 persons.

8.4 Recommendations

Recommendation 10: To conduct further research to assess whether **Kosovo** employs a sufficient number of prosecutors to deal with the volume of proceedings and whether the allocation of prosecutors in the various instances is appropriate.

We found that the number of public prosecutors per 100 000 inhabitants in **Kosovo** in 2014 appeared low when looking at the median figures within the cluster and among Council of Europe members. These findings are even more compelling when considering that the figures reported are nominal values (i.e. number of positions) and that the corresponding FTE figures would be lower. However, with regard the number of prosecutors employed in the various countries/entities, there are significant discrepancies between the Council of Europe member States/entities and within the cluster. We also found that, within the cluster, **Kosovo** deploys the highest percentage of public prosecutors at first instance and the lowest at second instance.

We recommend further research to assess whether **Kosovo** employs a sufficient number of prosecutors to deal with the volume of proceedings and whether the allocation of prosecutors in the various instances is appropriate. A precondition thereof is the collection of specific information that will enable the calculation of FTE figures of public prosecutors serving at each instance. It is also essential to analyse the number of prosecutors in light of the scope of the missions entrusted to them and the number of proceedings they are dealing with. The interpretation of this data should also take into account the number of cases prosecutors

handle at each level.

Recommendation 11: To conduct further research on whether the costs of non-prosecutor staff should be reduced, to develop recommendations on how to proceed (e.g. by outsourcing services) and to envisage ways to increase the number of staff directly assisting the prosecutors (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.).

We found that, in 2014, **Kosovo** appeared to have a rather high number of non-prosecutor staff per public prosecutor, compared to the average and the median both within the cluster and among Council of Europe member States. However, this may be affected by the fact that calculations were made using nominal values rather than FTE, for both prosecutors and non-prosecutor staff.

We recommend to the KJC, the KPC and other authorities to conduct further research on whether the costs of non-professional staff should be reduced, to develop recommendations on how to proceed (e.g. by outsourcing services) and to envisage ways to increase the number of staff directly assisting prosecutors (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.). As a priority, specific information should be collected to calculate FTE figures for prosecutors and non-prosecutor staff.

Recommendation 12: To introduce policies and adopt measures aimed at increasing representation of women among prosecutors and heads of prosecution.

We found that, within the cluster, only **Kosovo** and **Albania** had less than forty percent female prosecutors; by contrast, the situation is inverted as regards heads of prosecution offices: women were less than forty percent in the majority of countries/entities within the cluster (except for **Croatia** (67%), **Estonia** (60%), **Latvia** (41%) and **Montenegro** (41%)).

We recommend that the KJC, the KPC and other relevant institutions enquire into the reasons for the low representation of women among prosecutors and heads of prosecution, and adopt adequate measures to address the situation.

Chapter 9: Lawyers

CEPEJ definitions

Recommendation Rec(2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer provides the following definition: “a person qualified and authorised according to 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”. As earlier noted, in the context of free legal aid, a lawyer can represent clients before a court or more broadly provide advice, assistance and representation in legal matters outside the courts. Some common law countries/entities distinguish between categories of lawyers depending on whether they are entitled to represent clients in courts or not (e.g. solicitors and barristers in the **UK-England and Wales**).

9.1 Number of lawyers, organisation and training

In context: the Kosovo system

The Law on the Bar, of 2013, regulates conditions to practice bar, rights and obligations of lawyers and the organization of the **Kosovo** Bar Association (KBA).⁶³ The KBA is an independent professional organisation. It decides on the acquisition and suspension of the right to practice bar and establishes the fees for remuneration and compensation of lawyers' expenses. The KBA also decides on the requests for recognition of a specialization. The KBA has regional branches at each of the seven locations of Basic Courts in **Kosovo**.

According to the law, the right to practice bar is granted following registration in the KBA Registry. A lawyer loses the right to practice bar, among others, when he/she does not practice the profession for more than 6 months without any justifiable reason and if he/she has another occupation, in addition to working in a law office or law firm. Professors and associate professors of law in **Kosovo** are authorized by law to provide paid legal advice and opinions, but not other forms of legal aid. Lawyers from other countries may also practice bar in **Kosovo** under reciprocity condition.

Lawyers registered with the KBA are entitled to provide legal aid, which includes provision of legal advice and opinions, preparation of lawsuits, pleadings and other submissions, drafting of contracts and agreements, representing and defending clients in front of courts, as well as representing them in relation to legal tasks more broadly.

In addition to the lawyers' registry, the KBA also keeps record of the law interns (Register of law interns) training at a lawyer's office. The duration of the legal internship is one year.

The Ministry of Justice monitors the work of the Bar and supervises the lawfulness of the acts of the KBA, compatibly with the administrative autonomy of the KBA.

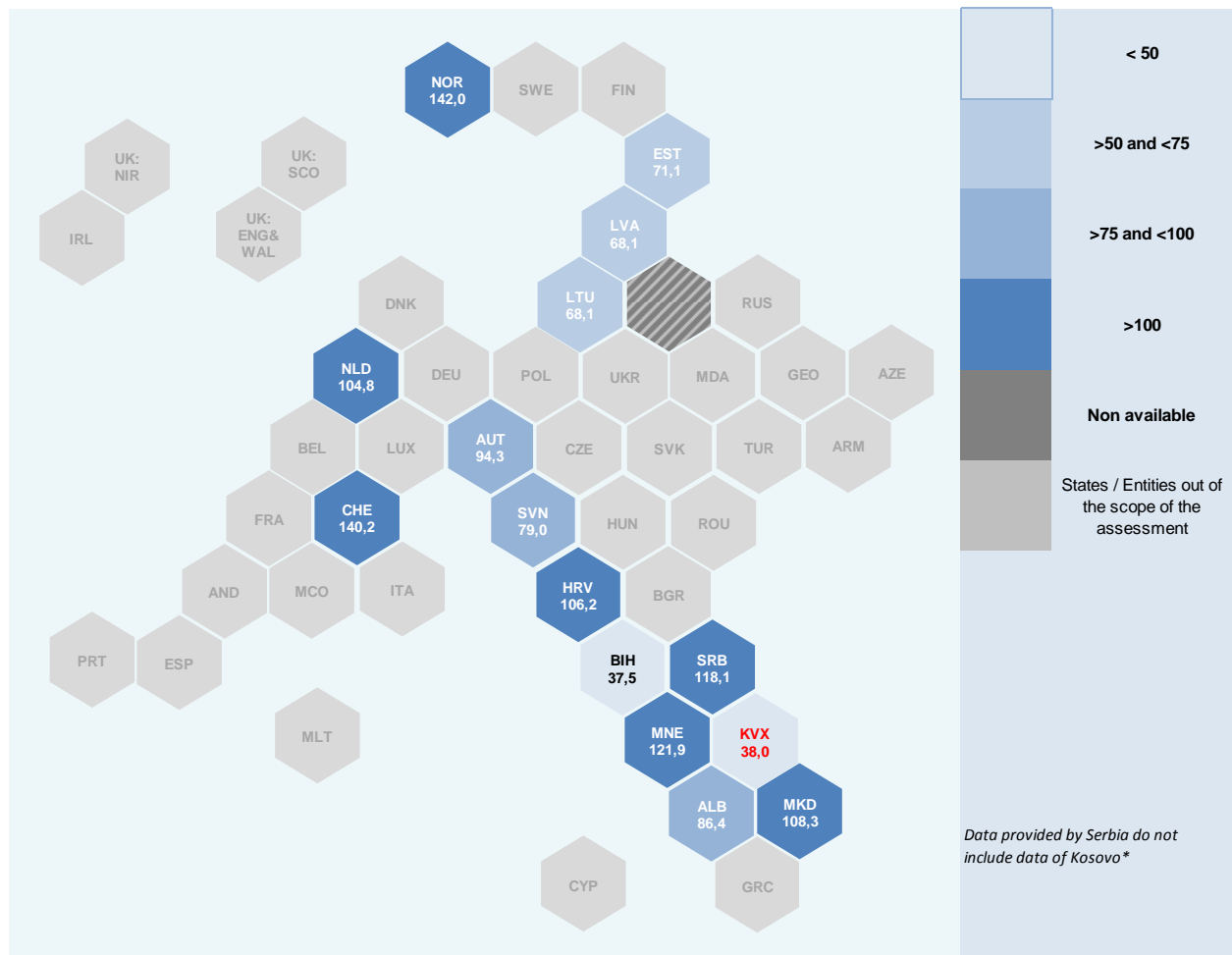
There were 703 advocates registered with the **Kosovo** Bar Association in 2014, or 38 lawyers per 100,000 inhabitants.

⁶³ Law on the bar, No.04/L-193, 31 May 2013.

Table 9.1: Number of lawyers per 100 000 inhabitants (Q1,Q146)

States/entities	Lawyers
Albania	86,4
Austria	94,3
Bosnia and Herzegovina	37,5
Croatia	106,2
Estonia	71,1
Latvia	68,1
Lithuania	68,1
Montenegro	121,9
Netherlands	104,8
Norway	142,0
Serbia	118,1
Slovenia	79,0
Switzerland	140,2
"The former Yugoslav Republic of Macedonia"	108,3
Kosovo*	38,0
States / Entities listed in the table	
Average	92,7
Median	94,3
Standard deviation	32,4
Minimum	37,5
Maximum	142,0
CoE States / Entities	
Average	146,9
Median	108,4
Standard deviation	105,3
Minimum	9,8
Maximum	387,7

Map 9.2: Number of lawyers per 100 000 inhabitants in 2014 (Q1, Q146)



Compared to the other countries/entities within the cluster, the number of lawyers in 2014 in **Kosovo** was very low. Within the cluster, only **Kosovo** and **Bosnia and Herzegovina** reported less than 50 lawyers per 100 000 inhabitants. The figure is low also when the whole Council of Europe membership is considered, as only three countries/entities (**Azerbaijan, Bosnia and Herzegovina** and **Finland**) reported to have less than 40 lawyers per 100 000 inhabitants in 2014.⁶⁴ The Baltic countries (**Estonia, Latvia** and **Lithuania**) deploy between 50-75 lawyers (around 70 lawyers); **Albania, Austria**, and **Slovenia** between 75-100 lawyers and the remaining countries/entities more than 100 lawyers per 100 000 inhabitants (up to 142 in **Norway**).

The differences between the figures reported by the countries/entities within the cluster can be explained by a series of factors, including the university system and number of graduates, the organisation of the category of lawyers (e.g. the presence and role of a bar association), the lawyers' monopoly of legal representation, the conditions for practicing as a lawyer, the demand for business lawyering or the extent of affordability of lawyers' fees for users.

In the specific case of **Kosovo**, the figures should be read together with the number and type of proceedings they are dealing with. Additional research could also explore the extent to which the offer of legal services in **Kosovo** matches the demand for such services from the users.

⁶⁴ CEPEJ study, 2016, Table 3.48, p. 160. Finland has no advocates' monopoly on commercial lawyering. A significant number of legal helpers without a lawyer's license also practice.

Table 9.3: Organisation and training of the lawyer profession in 2014 (Q150 and Q151)

States/entities	Organisation of the lawyer profession			Specific legal training for the profession of lawyer
	A bar for the whole territory	A bar at court level	A bar at branch level	
Albania				
Austria				
Bosnia and Herzegovina				
Croatia				
Estonia				
Latvia				
Lithuania				
Montenegro				
Netherlands				
Norway				
Serbia				
Slovenia				
Switzerland				
"The former Yugoslav Republic of Macedonia"				
Kosovo*				
States / Entities listed in the table				
Yes	14	6	3	15
No or NAP	1	9	12	0
CoE States / Entities				
Yes	41	14	14	44
No or NAP	5	32	32	2

In almost all the countries/entities within the cluster (except for **Bosnia and Herzegovina**) there are bar associations at the national level. Some countries have additional bars at court level (e.g. **Albania, Austria, Bosnia and Herzegovina, Serbia** and **Switzerland**) and at the level of court branches (**Bosnia and Herzegovina, the Netherlands** and **Serbia**).

In all countries/entities, access to the profession of lawyer is made conditional on specific initial training and/or exam. This information, which shows a rather homogeneous situation in the countries within the cluster, does not provide any explanation of the diverse number of lawyers exercising the profession in the different countries. As concerns **Kosovo**, a number of factors may explain or contribute to the low number of lawyers (compared to the population), including the requirement of mandatory defence counsel in only a limited number of criminal cases and the restrictive criteria for exercising the profession, such as the requirement of exclusive occupation and continuous exercise of the profession.⁶⁵ A more complete picture of the situation in **Kosovo** re the number and role of the legal profession could be obtained by cross-referencing this data with statistics on law faculty graduates and their career paths.

9.2 Recommendations

Recommendation 13: To conduct further comparative research with countries/entities in Europe on the number of lawyers per specific function, for the purpose of assessing whether the number of lawyers is sufficient in **Kosovo** to deal with the volume of proceedings and to meet the needs of citizens for legal services.

We found that, in 2014, compared to the other countries/entities within the cluster, the number of lawyers in **Kosovo** was very low. Within the cluster, only **Kosovo** and **Bosnia and Herzegovina** reported less than 50 lawyers per 100 000 inhabitants.

We recommend that further comparative research with countries/entities in Europe on the number of lawyers per specific function should be carried out for the purpose of assessing whether the number of lawyers is sufficient in **Kosovo** to deal with the volume of proceedings and to meet the needs of citizens for legal services.

⁶⁵ Law on the bar, No.04/L-193, 31 May 2013, art. 39.

PART IV: EFFICIENCY OF THE ACTIVITY OF COURTS AND PUBLIC PROSECUTORS

Chapter 10: Court Organisation

CEPEJ definitions

For the purposes of the CEPEJ evaluation scheme, a court is defined as “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.”

According to the explanatory note that accompanies the scheme, a court can be considered either as a **legal entity** or a **geographical location**. Therefore, it is required to report the number the courts according to both concepts. From the first perspective, the number of legal entities (administrative structures) is relevant, and the possible different divisions of a court should not be counted individually. Instead, “courts considered as geographical locations” include the different premises where judicial hearings take place. Information with regard to both conceptualizations allows exploring in a more comprehensive way the extent to which Courts are accessible to citizens.

The scheme additionally distinguishes between courts of general jurisdiction and specialised courts. The former are courts that deal with all the issues that are not attributed to specialised courts owing to the nature of the case. However, chambers or divisions responsible for “family cases” or “administrative law cases” that are under the authority of the same court of general jurisdiction should not be counted as specialised courts.

MAIN FINDINGS

1. **Kosovo’s** court model consists of few basic courts with several branch courts distributed across the territory, to guarantee effective access to justice for citizens. Instead, a concentrated approach has been adopted with regard to commercial and administrative matters, which are under the exclusive competence of two departments in the Basic Court of Pristina (p. 87).
2. Specialized courts (according to the CEPEJ definition) are not often employed in **Kosovo**. Rather, specialized departments and divisions operate in each court (p. 88).
3. In the civil/commercial sector in 2014 the situation was concerning. Courts, that year, managed to solve more cases than those received (Clearance Rate 112%) but it should be stressed that the number of incoming civil/commercial litigious cases is low in **Kosovo**. However, the stock of pending cases was high and the Disposition Time for this category of cases at first and second instance levels was the highest of the cluster (p. 96 and 98).
4. The situation in the administrative sector in 2014 was also very problematic at first and second instance levels despite the low number of incoming cases. Since 2013, the BC of Pristina has exclusive competence at the first instance level for these cases, for the whole **Kosovo**. The very low Clearance Rate and high Disposition Time show that the court faces important difficulties in coping with incoming cases (p. 102 and 104).
5. In 2014 court’s performance in the criminal sector was more positive compared to the other sectors (civil/commercial litigious disputes and administrative cases). There was a very high number of incoming criminal cases at first instance but 94% of these were minor offence cases (p. 110).
6. The number of cases charged before the courts by prosecutors in **Kosovo** in 2014 was much higher than in other states/entities within the cluster (except for **Lithuania** and **Norway**). However, the number of cases discontinued was low in comparison with other countries/entities (p. 108).

Court organisation and distribution

In context: the Kosovo system

As anticipated in section 1.2, the new structure of the Court system in **Kosovo**, introduced with the Law on Courts of 2013, consists of 7 Basic Courts, a Court of Appeals and a Supreme Court. Each Basic Court has between 2 and 4 Branch Courts, defined as geographical subdivisions thereof. In addition, the “Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters” functions as both first and appellate instance in relation to disputes on privatisation matters.⁶⁶

Within the Basis Courts, departments are established for the purpose of allocating cases according to the subject matter. These include a Department for Commercial Matters and a Department for Administrative Cases operating in the Basic Court of Pristina for the entire territory of **Kosovo**; a Department for Serious Crimes operating at the principal seat of each Basic Court; a General Department operating in each Basic Court and in each branch of the Basic Court; and a Department for Minors, operating within the Basic Courts.⁶⁷ Similarly, the Court of Appeals comprises a General Department; a Serious Crimes Department; a Commercial Matters Department; an Administrative Matters Department; and a Department for Minors.

Accordingly, in terms of legal entities, there were 7 first instance courts of general jurisdiction in 2014 in **Kosovo** and 1 first instance specialised court (the “Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters”). In terms of geographic locations, there were 31 courts, comprising the 7 Basic Courts and the Branch Courts, the Special Chamber of the Supreme Court, the Court of Appeals and the Supreme Court.⁶⁸

First instance courts as legal entities and as geographic locations

⁶⁶ Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, No. 04/L-33, 22 September 2011, art. 3.

⁶⁷ Law on Courts, No.03/L-199, Art. 12.

⁶⁸ According to Article 2(1.3) of the Law on Courts, a Branch is a geographical subdivision of a Basic Court.

Table 10.1: Number of courts in 2014 (Q1, Q42)

States/entities	All courts (geographic location)	Number of all courts (geographic location) per 100 000 inhabitants	Total number of 1st instance courts	Total number of 1st instance courts per 100 000 inhabitants	First instance courts of general jurisdiction	Number of first instance courts of general jurisdiction per 100 000 inhabitants	First instance specialised courts	% of specialised courts of 1st instance
Albania	38	1,3	29	1,0	22	1,0	7	24,1%
Austria	103	1,2	147	1,7	129	1,7	18	12,2%
Bosnia and Herzegovina	98	2,6	72	1,9	67	1,9	5	6,9%
Croatia	203	4,8	139	3,3	65	3,3	74	53,2%
Estonia	22	1,7	6	0,5	4	0,5	2	33,3%
Latvia	48	2,4	35	1,7	34	1,7	1	2,9%
Lithuania	62	2,1	59	2,0	54	2,0	5	8,5%
Montenegro	22	3,5	18	2,9	15	2,9	3	16,7%
Netherlands	40	0,2	12	0,1	11	0,1	1	8,3%
Norway	73	1,4	66	1,3	64	1,3	2	3,0%
Serbia	162	2,3	155	2,2	93	2,2	62	40,0%
Slovenia	77	3,7	60	2,9	55	2,9	5	8,3%
Switzerland	301	3,7	276	3,4	167	3,4	109	39,5%
"The former Yugoslav Republic of Macedonia"	34	1,6	28	1,4	25	1,4	3	10,7%
Kosovo*	31	1,7	8	0,4	7	0,4	1	12,5%
States / Entities listed in the table								
Average	88	2	74	2	54	2	20	0
Median	62	2	59	2	54	2	5	0
Standard deviation	79	1	75	1	47	1	34	0
Minimum	22	0	6	0	4	0	1	0
Maximum	301	5	276	3	167	3	109	1
CoE States / Entities								
Average*	242	1,8	206	2,0	342	2,0	63	25,1%
Median*	77	1,5	69	1,4	55	1,4	7	16,7%
Standard deviation	554	1,0	352	2,1	1 405	2,1	182	24,5%
Minimum	1	0,2	4	0,1	1	0,1	1	0,6%
Maximum	3 455	4,8	1 880	13,2	9 460	13,2	1 094	94,5%

*Spain and Turkey are not included in the Average and the Median for 1st instance courts due to their specific methodology of counting the number of courts

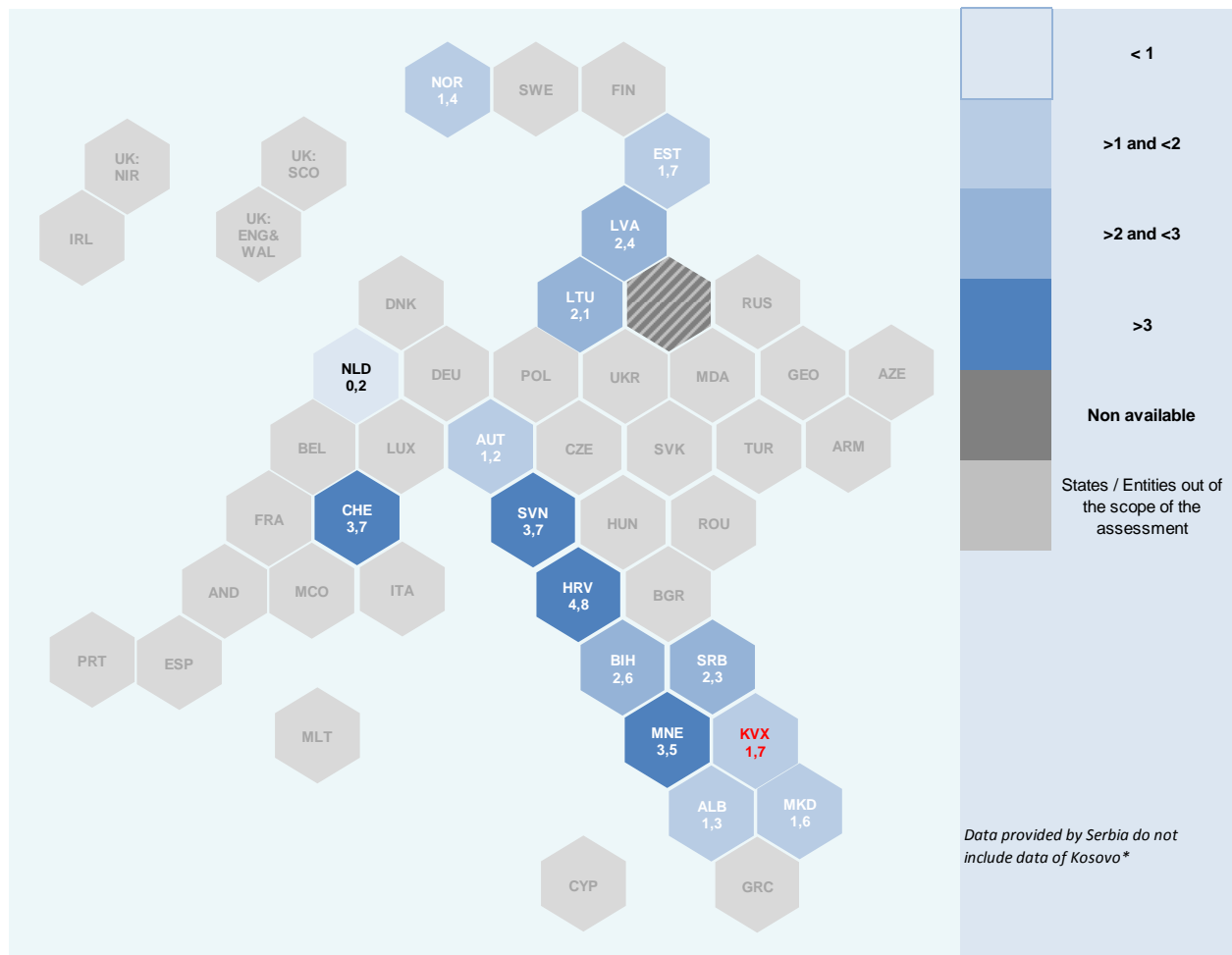
Insufficient and unequal geographical distribution of justice institutions affects physical access to justice. Therefore it is worth examining how the court system is organised on the territory of the country/entity. As highlighted in the 2016 CEPEJ report, court organisation on the territory varies significantly among the Council of Europe member States/entities. While some countries deploy a concentrated model with a low number of large courts, others have opted for a dissemination of smaller courts throughout the territory.⁶⁹

Table 10.1 examines the number of courts in 2014 in the countries/entities of the cluster. It makes a distinction between courts as "legal entities" and courts as "geographic locations" (see CEPEJ definitions above). According to this table, all the countries/entities in the cluster deploy at least one first instance court, as legal entity, per 100 000 inhabitants, with the exception of **Kosovo**, **Estonia** and the **Netherlands** (less than one court per 100 000 inhabitants). However, the number of all courts as geographic locations in **Kosovo** coincides with the median and average of the cluster (**Kosovo**: 1.7 courts per 100 000 inhabitants; median and average: 2 courts per 100 000 inhabitants). This is because there are several Branch Courts within each one of the Basic Courts in **Kosovo**. Therefore, **Kosovo**'s court model consists of few basic courts with several branch courts distributed across the territory to guarantee effective access to justice to citizens. On the other hand, a concentrated approach has been adopted with regard to commercial and administrative matters, which are under the exclusive competence of the department for Commercial Matters and the Department for Administrative Cases in the Basic Court of Pristina.

Map 10.2 below, groups the states/entities of the cluster into 4 categories with increasing number of courts, as geographic locations, per 100 000 inhabitants.

⁶⁹ CEPEJ report 2016, p. 171.

Map 10.2: Number of courts (geographical locations) per 100 000 inhabitants in 2014 (Q1, Q42)



Map 10.2 shows that there is less than 1 court per 100 000 residents in **the Netherlands** (0,2); there are between 1 and 2 court geographical locations in **Kosovo**, **Albania**, **Austria**, **Estonia**, **Norway** and “**the former Yugoslav Republic of Macedonia**”; between 2 and 3 courts in **Bosnia and Herzegovina**, **Latvia**, **Lithuania** and **Serbia**; and more than 3 courts in **Croatia**, **Montenegro**, **Slovenia** and **Switzerland**.

Specialised courts

Table 10.3 below examines the number of 1st instance specialised courts. There is a diversity of models between the countries/entities in the cluster also with regard to the presence of specialised courts. This table shows that the number of specialised courts of first instance ranges from 1 in **Kosovo** (the “Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters”), in **Latvia** and in **the Netherlands**, to 109 in **Switzerland**. Therefore, specialised courts (according to the CEPEJ definition) are not often employed in **Kosovo**. Rather, specialised departments (such as the Department for Commercial Matters and the Department for Administrative Cases operating in the Basic Court of Pristina) and divisions operate in each court.

Table 10.3: Number of 1st instance specialised courts (Q43) and foreseen change in organisation of courts (Q44)

States	Number of 1st instance specialised courts (legal entities)													
	Total	Commercial courts	Insolvency courts	Labour courts	Family courts	Rent and tenancies courts	Enforcement of criminal sanctions courts	Fight against terrorism, organised crime and corruption	Internet related disputes	Administrative courts	Insurance and/or social welfare courts	Military courts	Other	Foreseen change in court organisation
Albania	7	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	6	NAP	NAP	NAP	
Austria	19	2	NAP	1	NAP	NAP	2	NAP	NAP	11	1	NAP	2	
Bosnia and Herzegovina	5	5	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Croatia	74	7	NAP	1	NAP	NAP	NAP	NAP	NAP	4	NAP	NAP	62	
Estonia	2	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	2	NAP	NAP	NAP	
Latvia	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NA	NAP	
Lithuania	5	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	5	NAP	NAP	NAP	
Montenegro	3	2	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	NAP	
Netherlands	1	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	
Norway	2	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	2	
Serbia	62	16	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	45	
Slovenia	5	NAP	NAP	4	NAP	NAP	NAP	NAP	NAP	1	1	NAP	NAP	
Switzerland	109	5	29	40	17	40	6	2	2	23	12	8	28	
"The former Yugoslav Republic of Macedonia"	3	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	NAP	NAP	2	
Kosovo*	1	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	NAP	1	
States / Entities listed in the table														
Exist	15	7	1	4	1	1	2	2	1	11	3	1	7	11
Does not exist	0	8	14	11	14	14	13	13	14	4	12	13	8	4
NA	0	0	0	0	0	0	0	0	0	0	0	1	0	
CoE States / Entities														
Exist	40	21	2	17	8	7	7	5	1	27	7	9	22	28
Does not exist	5	23	41	29	36	38	37	39	43	15	37	32	23	19
NA	1	1	2	0	1	1	1	1	1	2	1	4	1	

It is important to note that the European trend “goes towards a decrease in the number of courts and a consequent increase in the size of the courts, including more judges, as well as a specialization of the judicial system”.⁷⁰ Table 10.4 below examines the number of judges per first instance courts, which would provide an insight into the court models adopted in the different countries/entities. It makes a distinction between courts as “legal entities” and as “geographic locations” (see CEPEJ definitions above).

Number of judges per first instance court

⁷⁰ CEPEJ Report, 2016, p. 177.

Table 10.4: Number of professional judges per court in 2014 (Q1, Q42, Q46)

States/entities	All courts (geographic location)	Number of professional judges per court (geographic location)	Total number of 1st instance courts	Number of professional judges per total number of 1st instance courts
Albania	38	9,6	29	8,97
Austria	103	15,7	147	8,33
Bosnia and Herzegovina	98	10,1	72	9,29
Croatia	203	9,2	139	9,66
Estonia	22	10,5	6	28,17
Latvia	48	10,2	35	8,77
Lithuania	62	12,2	59	11,37
Montenegro	22	11,5	18	10,11
Netherlands	40	59,0	12	152,42
Norway	73	7,7	66	5,62
Serbia	162	16,7	155	15,05
Slovenia	77	12,0	60	12,07
Switzerland	301	4,3	276	3,20
"The former Yugoslav Republic of Macedonia"	34	18,5	28	17,71
Kosovo*	31	10,2	8	33,88
States / Entities listed in the table				
Average	88	14,49	74	22,3
Median	62	10,50	59	10,1
Standard deviation	79	12,81	75	36,9
Minimum	22	4,29	6	3,2
Maximum	301	58,98	276	152,4
CoE States / Entities				
Average*	242	13,37	206	15,0
Median*	77	10,76	69	9,3
Standard deviation	554	10,38	352	24,5
Minimum	1	1,70	4	2,1
Maximum	3 455	58,98	1 880	152,4

*Spain and Turkey are not included in the Average and the Median for 1st instance courts due to their specific methodology of counting the number of courts

Table 10.4 shows that the number of professional judges per court varies when looking at courts as “legal entities” or as “geographic locations”. **Kosovo**, **Estonia** and **the Netherlands** have reported the lowest figures of first instance courts as legal entities (**Kosovo**: 8; **Estonia**: 6; **the Netherlands**: 12). They are the countries/entities within the cluster that employ the highest number of judges in such courts: 33,88 professional judges per court in **Kosovo**; 28,17 in **Estonia**, and 152,42 in **the Netherlands** (whereas the median is 10,1 and the average 22,3).

However, in **Kosovo**, there are additional 20 Branch Courts distributed across the territory, which are reported under the category “geographic location” (**Kosovo**: 31). The number of judges per courts as geographic locations in **Kosovo** is close to the median of the cluster (**Kosovo**: 10,2; median: 10,5).

Moreover, in **Kosovo**, there are differences between the different Basic Courts. The Basic Court of Pristina, where the Department for Commercial Matters and the Department for Administrative Cases operate for the entire territory of **Kosovo**, employs more judges than other Basic Courts and the respective Branch Courts.

Chapter 11: Efficiency

The Council of Europe and its European Court of Human Rights pay specific attention to the “reasonable time” of judicial proceedings (*H. v. France*, No. 10073/82, of October 1989). The Court, in particular, has established criteria for assessing the reasonableness of the length of proceedings and rules for calculating the length of proceedings. In addition to and as a specification of these, the CEPEJ has developed two performance indicators to assess court efficiency at the European level. These indicators are described below.⁷¹

CEPEJ definitions

The CEPEJ employs two key performance indicators to assess court efficiency.⁷² The first indicator, the Clearance Rate, measures how effectively courts within a State or entity are keeping up with the incoming caseload. The second indicator, the calculated Disposition Time, measures the estimated number of days that are needed to bring a case to an end.

Clearance Rate (CR)

The Clearance Rate is a simple ratio, obtained by dividing the number of resolved cases by the number of incoming cases, expressed in a percentage.

$$\text{Clearance Rate (\%)} = \frac{\text{Resolved cases in a period}}{\text{Incoming cases in a period}} \times 100$$

A Clearance Rate above 100% indicates the ability of the system to resolve more cases than those received, thus reducing any existing backlog (pending cases). The Clearance Rate shows how the court or judicial system is coping with the in-flow of cases. It allows comparisons even when the parameters of the cases concerned in different countries are not identical in every respect.

Disposition Time (DT)

The calculated Disposition Time provides further insight into how long it would take for a type of case in a specific jurisdiction to be solved. The indicator divides the total number of pending cases at the end of the observed period by the number of resolved cases during the same period and converts this ratio into days. This indicator measures the theoretical time necessary for a pending case to be solved in court given the current pace of work of the courts in that country and the volume of pending cases.

$$\text{Calculated Disposition Time} = \frac{\text{Number of pending cases at the end of a period}}{\text{Number of resolved cases in a period}} \times 365$$

The DT allows comparisons within the same jurisdiction over time and, with some prudence, between judicial systems in different countries. It is also relevant for assessing and making predictions about court efficiency in this regard in the light of established standards for the length of proceedings. It has however been pointed out that this indicator is not the average time needed to process a case but, rather, a theoretical average of duration of a case within a specific system. As such, the indicator fails to show the mix, concentration, or merit of the cases.

The two indicators can be studied together to achieve an initial general picture of the efficiency of courts in a certain country/entity; analysis of their evolution over time allows a better understanding of the efforts of the judiciary to maintain or improve efficiency.⁷³

For the purpose of measuring the two performance indicators, **incoming cases** are all cases submitted to court (first instance, second instance or Supreme Court) for the first time within the reference year. **Pending cases** are cases which have not been completed within a given period. Two measurements are provided by each jurisdiction: pending cases from the previous year (pending cases on 1 January) and at the end of 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

⁷¹ CEPEJ 2016 report, p. 184.

⁷² The GOJUST Guidelines invite the Council of Europe member States to organise their data collection system so as to be able to provide the relevant information for calculating such indicators. CEPEJ(2008)11.

⁷³ CEPEJ report, p. 185.

or through any other decision which ended the procedure. The reported figure should not include provisional decisions or decisions regarding the proceeding.

Types of cases

The CEPEJ assesses court performance in the different sectors of justice, and collects data on two main categories: 'other than criminal cases' and 'criminal cases' – as well as on a number of sub-categories within each of them.

The category of '**other than criminal**' cases comprises: civil (and commercial) litigious cases; non-litigious cases (which include general civil and commercial non-litigious cases and registry cases); administrative cases; and 'other' cases. Litigious cases are cases for which the judge decides on the case, whereas non-litigious cases are cases for which a registration is made by an individual. Administrative cases (litigious or non-litigious) concern disputes between citizens and public authorities (local, regional or national), for instance, refusals of construction permit applications. In some countries, administrative cases are dealt with by special administrative courts or tribunals, while in others these are handled by civil courts. Member States/entities, might also practice complaint systems within the public administration that allow a dissatisfied (private) party to have a decision reviewed by a superior administrative authority. Utilization of such administrative complaints might be an obligatory pre-condition for access to court and thus offer public administration a tool for correcting inappropriate first instance administrative decisions without involving the courts. One expected result is the reduction of the administrative caseload before the courts.

As explained below, the tables and maps in this chapter analyse data regarding civil (and commercial) litigious cases and administrative cases only.

As regards the category of '**criminal cases**', a main distinction is made in data collection between 'severe' and 'minor' (or misdemeanour) offences. The CEPEJ explanatory note to the questionnaire considers as criminal cases, all cases for which a sanction may be imposed by a judge, even if this sanction is foreseen (as it occurs in some jurisdictions), in an administrative code (e.g. fines or community service in relation to some anti-social behaviour, nuisance or traffic offenses). Therefore, offenses sanctioned directly by the police or by an administrative authority, and not by a judge, should not be counted as 'criminal cases' (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). As to the difference between minor offenses and serious offenses, to ensure consistency of the responses between different systems, the states/entities participating in the assessment should classify and report as 'minor' all offenses for which it is not possible to pronounce a sentence of deprivation of liberty. Conversely, severe offenses are all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment).

In these regards, the CEPEJ relies on the European Sourcebook of Crimes and Criminal Justice of the Council of Europe, as a common reference guide regarding the categories of criminal cases in a majority of jurisdictions. Nevertheless, the information gathered from States and entities highlights important differences in the way specific groups of cases are computed within the categories of the CEPEJ questionnaire. Differences are also reported within the same jurisdiction over time. These make comparisons less reliable. As a consequence, analysis of the data and comparisons should be made in close connection with the comments provided by the national correspondents on the specificities of each jurisdiction.

Note that **data accuracy and statistical reliability** are essential to assessment studies, such as the present one. An issue that emerges in **Kosovo** and in some countries/entities concerns the numbering of cases that are split or reunited during the process. Whether these are considered as the same case or as different cases has an impact on the reported statistics on incoming, resolved, and pending cases, and consequently on the calculated indicators of CR and DT. Similarly, the assignment of a new number to a case that is redirected at first instance from the Court of Appeals or the Supreme Court affects the soundness of the figures reported and has an impact on the accuracy of the calculation of the average length of proceedings for specific categories. This approach inflates artificially the number of incoming cases, and does not allow to calculate the real length of proceedings. It is therefore recommended to further improve the methodology for compiling reliable statistics, in accordance with the CEPEJ Guidelines on Judicial Statistics (GOJUST), and to continue gathering accurate data. The role of an electronic case management system is key in that respect: the features embedded have to allow a proper statistic follow-up (including key performance indicators to manage the court). It should be reiterated that the calculated Disposition Time offers valuable information on the estimated maximum length of proceedings. However, data of actual duration of cases

(from a functional IT system) is needed to make a full analysis.⁷⁴

Finally, it is important to note that the ability of courts to cope with the caseload is closely related to the number of judges operating in the court system. Therefore, it is interesting to calculate and compare the number of incoming and resolved cases per judge (**Case per Judge, CpJ indicator**) to obtain additional insight into the functioning of the judicial system. Such analysis should take into account the peculiarities of each system and examine in detail the data on all personnel performing judicial tasks.⁷⁵ However, as explained in Chapter 1 of this report, the CEPEJ philosophy for efficiency of justice recommends increasing resources (including the number of judges and prosecutors) only as a last resort, when other measures to improve the functioning of courts and prosecution offices have been undertaken but have proven insufficient to solve the problems. In this regard, it should be reiterated that **Kosovo**, in 2014, seemed to make a bigger budgetary effort for its judicial system considering its wealth (see above Chapter 3).

11.1 Civil and commercial litigious cases

Following the approach of the latest CEPEJ report on European judicial systems, this section does not analyse data regarding non-litigious cases. One of the reasons for this is that there are considerable differences across European countries regarding the definition and computing of non-litigious cases, which affect the scientific significance of the conclusions that can be drawn from the analysis of the data. It is therefore preferable to focus the analysis on civil and commercial litigious cases.⁷⁶

In context: the Kosovo system

The cases referred to, in **Kosovo**, as “civil litigious cases” and “economic or commercial cases” are included in this category (“inheritance cases” and “non-contested cases” are not included).

As noted in the section on Courts, a General Department with a division for civil cases operates at the level of each Basic Court and in each branch of the Basic Courts. Additionally, the Basic Court of Pristina includes a Department for Commercial Matters that has exclusive jurisdiction for the entire **Kosovo** on these matters.⁷⁷ Second instance civil litigious cases are handled by the civil division of the General Department within the Court of Appeals, and second instance commercial cases are handled by the Commercial Matters Department within the Court of Appeals.

First-instance and second-instance cases from the Special Chamber of the Supreme Court are not included in the figures reported below as they address very specific topics.

⁷⁴ CEPEJ report, p. 185.

⁷⁵ CEPEJ report, p. 187-188.

⁷⁶ European Judicial Systems, Efficiency and Quality of Justice, CEPEJ Studies No. 23, Edition 2016 (2014 data), p. 188.

⁷⁷ Kosovo Law on Courts, No.03/L-199, Art. 12.

11.1.1 Caseload and Performance indicators

First instance

Table 11.1: First instance - Litigious civil and commercial cases in 2014 (Q1, Q91)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,26	0,55	0,55	0,26	100%	171	-0,9%
Austria	0,44	1,11	1,14	0,41	103%	130	-7,4%
Bosnia and Herzegovina	8,40	4,13	4,72	7,80	114%	603	-7,1%
Croatia	5,16	3,92	4,45	4,63	113%	380	-10,2%
Estonia	0,52	1,28	1,33	0,46	104%	125	-11,9%
Latvia	1,52	2,25	2,22	1,55	98%	255	+2,3%
Lithuania	0,93	3,97	3,87	1,03	97%	97	+10,9%
Montenegro	2,31	4,42	3,70	3,02	84%	298	+31,1%
Netherlands	NA	0,99	0,99	0,36	99%	132	NA
Norway	0,16	0,38	0,36	0,18	97%	176	+7,1%
Serbia	2,61	3,18	2,92	2,87	92%	359	+10,0%
Slovenia	2,61	2,91	3,17	2,35	109%	270	-10,1%
Switzerland	0,97	2,97	2,99	0,95	101%	116	-2,2%
"The former Yugoslav Republic of Macedonia"	1,58	2,67	3,12	1,13	117%	132	-28,3%
Kosovo*	2,48	0,90	1,01	2,38	112%	862	-4,2%
States / Entities listed in the table							
Average	2,14	2,38	2,44	1,96	103%	274	-1,5%
Median	1,55	2,67	2,92	1,13	101%	176	-3,2%
Standard deviation	2,24	1,41	1,45	2,06	9%	213	+13,8%
Minimum	0,16	0,38	0,36	0,18	84%	97	-28,3%
Maximum	8,40	4,42	4,72	7,80	117%	862	+31,1%
CoE States / Entities							
Average	1,97	2,68	2,69	1,86	100%	238	-0,2%
Median	1,49	2,26	2,28	1,13	100%	177	-2,1%
Standard deviation	2,17	1,84	1,90	2,05	11%	150	+12,3%
Minimum	0,16	0,20	0,20	0,16	56%	33	-28,3%
Maximum	9,59	7,27	7,45	9,39	119%	603	+35,9%

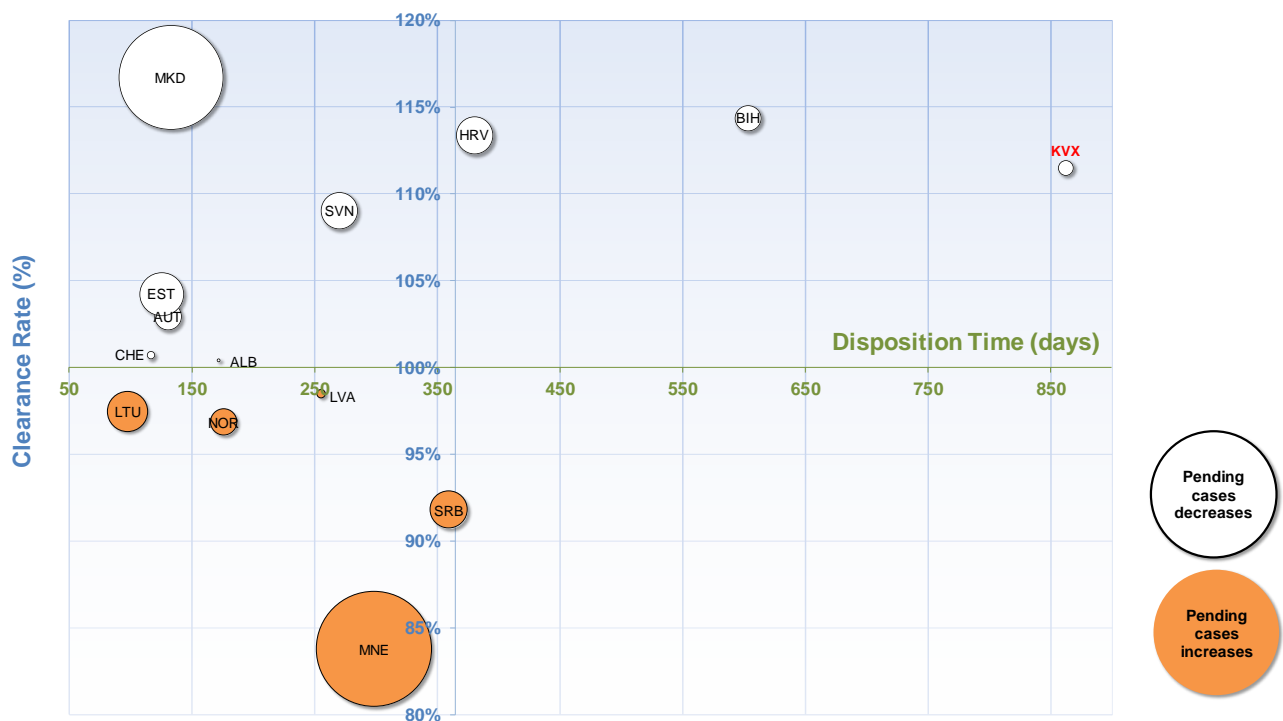
Table 11.1 shows that, in 2014, the courts of first instance in the countries/entities within the cluster received on average 2,38 civil and commercial litigious cases per 100 inhabitants and managed to resolve a slightly higher amount of cases (2,44) during the year (CR of 103%).

However, key differences can be highlighted in the different countries/entities. Courts in 4 countries/entities (**Kosovo**, **Albania**, **the Netherlands** and **Norway**) received less than one civil and commercial litigious case per 100 inhabitants, while in **Bosnia and Herzegovina** and **Montenegro** courts received more than 4 cases per 100 inhabitants.

The comments submitted by the national rapporteurs explain to some extent these differences. In some countries/entities, alternative mechanisms for dispute resolution produce a filter effect on the number of cases handled by courts (e.g. **Norway**). In **Kosovo**, it would be interesting to understand the reasons behind the low number of incoming civil and commercial litigious cases in 2014 (0,9 per 100 inhabitants). For instance, it may be attributable to a lack of confidence from citizens in the judiciary or to insufficient legal aid being provided. It would also be important to examine the evolution of this number since 2014.

The same figures and performance indicators are examined in Graphic 11.2 below.

Graphic 11.2: First instance - Litigious civil and commercial cases in 2014 - Clearance Rate vs Disposition Time and variation of pending cases (Q91)



In Graphic 11.2, the Clearance Rate, the Disposition Time and the variation of pending cases are put together to show the general efficiency of first instance courts in the countries/entities in the cluster in this sector. Countries/entities marked by a white circle performed well and were able to decrease the number of pending cases, whereas in the countries/entities marked by an orange circle, the number of pending cases increased at the end of the year. The size of the circle indicates how much the volume of pending cases increased/decreased during the year: the bigger the circle, the more important the variation (increase or decrease).

For the countries/entities in the upper left part of the graphic, court productivity can be considered as satisfactory because the CR is above 100% and the DT is rather short (**“the Former Yugoslav Republic of Macedonia”, Estonia, Slovenia**). The situation is more critical in those countries/entities which have a particularly low CR, a very high DT, or both (**Montenegro** and **Serbia** have a low CR; **Bosnia and Herzegovina** has a high DT).

Kosovo (in the upper right of the graphic) had a positive CR (112%) in 2014 and managed to reduce pending cases by 4,2%. However, the DT (862 days) was considerably higher than the average and median within the cluster (respectively 274 and 176 days), as well as among Council of Europe member States (respectively 238 and 177 days). In other words, courts in **Kosovo** in 2014 were able to cope with the flow of incoming civil and commercial litigious cases (which was rather low), but the number of pending civil and commercial litigious cases at the end of 2014 remained high (2,38 per 100 inhabitants).

It is strongly recommended to examine whether the number of pending civil and commercial litigious cases has decreased since 2014. A Backlog Reduction Strategy to address the number of pending cases has been operating in **Kosovo** since 2013.⁷⁸ The Kosovo Judicial Council also adopted the Kosovo Judiciary Strategic Plan in April 2014. It will be effective until June 2019. One of the strategic objectives is to eliminate the backlog of cases and to put in place processes to avoid future backlogs.⁷⁹ It is important to monitor the impact of these documents on the ground and to assess whether some of the various goals and objectives

⁷⁸ Backlog Reduction Strategy: <http://www.gjyqesori-rks.org/sq/kjc/page/index/9>, available in Albanian only.

⁷⁹ Strategic Objective 2.4.1 of the Kosovo Judiciary Strategic Plan (<http://www.gjyqesori-rks.org/sq/kjc/page/index/9>, available in Albanian only).

listed therein have been reached. Further reforms to decrease the number of pending cases in this sector may be necessary. Courts, in general, should focus their efforts on decreasing, as a priority, the number of old cases in application of the FIFO ("first in, first out") principle, while also taking into consideration the priority cases mentioned in the jurisprudence of the European Court of Human Rights.⁸⁰ Courts are invited to use the CEPEJ methodology of the implementation guide "Towards European Timeframes for Judicial Proceedings."⁸¹

It is also important to note that, while the CR for **Kosovo** in 2014 was generally positive, the performance of the various Basic Courts may have varied. Indeed, the number of incoming, resolved and pending cases varies from court to court. The Basic Court of Pristina, in particular, has a heavier caseload than other Basic Courts (since litigious commercial cases are handled by the Basic Court of Pristina only).⁸² Accordingly, additional research assessing the performance of each Basic Court in **Kosovo** is needed. The research should highlight the reasons behind the low Clearance Rate levels in some Basic Courts and behind the negative trends over the long term. This would give a more precise depiction of how the system functions.

Second Instance

Table 11.3: Second instance - Litigious civil and commercial cases in 2014 (Q1, Q97)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	NA	NA	NA	NA	NC	NC	NA
Austria	NA	NA	NA	NA	NC	NC	NA
Bosnia and Herzegovina	0,89	1,11	0,96	1,03	87%	392	+16,0%
Croatia	1,41	1,24	1,19	1,46	96%	448	+3,6%
Estonia	0,06	0,15	0,16	0,04	107%	100	-19,4%
Latvia	0,12	0,26	0,26	0,11	101%	160	-2,8%
Lithuania	0,15	0,50	0,51	0,14	102%	97	-7,2%
Montenegro	0,34	1,51	1,44	0,41	95%	105	+22,8%
Netherlands	NA	NA	NA	NA	NC	NC	NA
Norway	NA	NA	NA	NA	NC	NC	NA
Serbia	0,61	1,31	1,34	0,58	102%	158	-4,3%
Slovenia	0,19	0,63	0,66	0,15	106%	84	-20,0%
Switzerland	0,06	0,21	0,21	0,06	100%	100	-0,9%
"The former Yugoslav Republic of Macedonia"	0,21	1,09	1,03	0,28	94%	98	+29,4%
Kosovo*	0,32	0,28	0,23	0,38	81%	604	+16,6%
States / Entities listed in the table							
Average	0,39	0,75	0,73	0,42	97%	213	+3,1%
Median	0,21	0,63	0,66	0,28	100%	105	-0,9%
Standard deviation	0,42	0,51	0,48	0,45	8%	181	+16,4%
Minimum	0,06	0,15	0,16	0,04	81%	84	-20,0%
Maximum	1,41	1,51	1,44	1,46	107%	604	+29,4%
CoE States / Entities							
Average	0,26	0,44	0,44	0,28	98%	249	+8,3%
Median	0,14	0,26	0,27	0,14	100%	120	+0,2%
Standard deviation	0,31	0,40	0,39	0,33	11%	259	+33,5%
Minimum	0,01	0,03	0,03	0,01	67%	27	-24,6%
Maximum	1,41	1,51	1,44	1,46	119%	1 010	+158,6%

In 2014, the courts of second instance in the countries/entities within the cluster received on average 0,75 civil and commercial litigious cases per 100 inhabitants and managed to resolve a slightly lower number of cases (0,73) during the year (average CR was 97% but median CR was 100%).

⁸⁰ See CEPEJ-Study "Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights (31 July 2012, recte 2011)", 2nd edition, by Ms Françoise Calvez, updated by Mr Nicolas Régis, p. 25 and followings, lit. D "WHAT IS AT STAKE FOR THE APPLICANT".

⁸¹ Doc. CEPEJ(2016)5 :

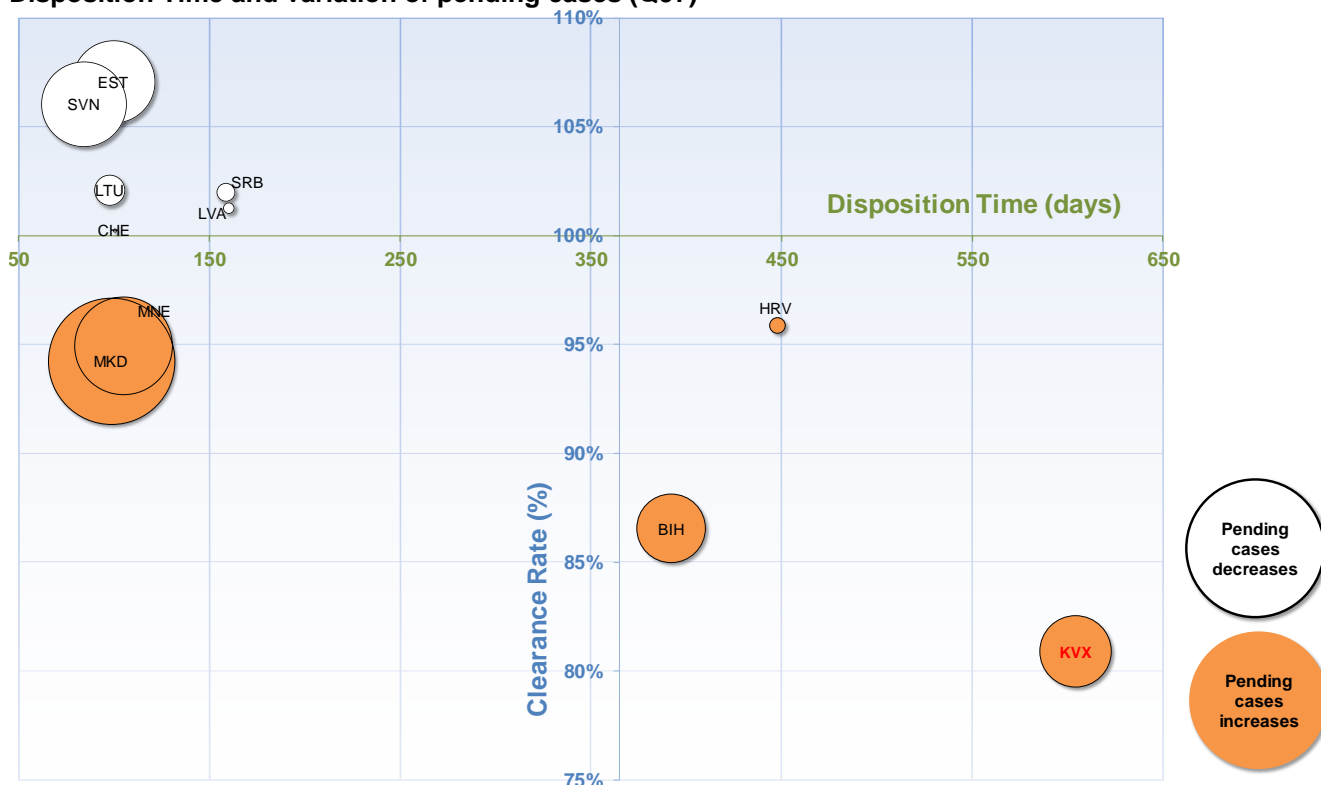
[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2016\)5&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2016)5&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

⁸² For instance, in 2014, the Basic Court of Pristina (seat only) received 3 361 incoming litigious civil cases, whereas the Basic Court of Prizren (seat only), which received the second biggest number of such cases, received only 1 178 cases. KJC Annual report for 2014.

Important differences can be noted between countries/entities in the cluster. In 2014, the **Kosovo** Court of Appeals received a low number of second instance civil and commercial litigious cases by population (0,28 per 100 000 inhabitants). At the opposite end of the spectrum, second instance courts in **Croatia** (1,24), **Montenegro** (1,51) and **Serbia** (1,31) received the highest amount of civil and commercial litigious cases per number of inhabitants.

The low CR for **Kosovo** (81%) shows that the Court of Appeals was unable to cope with the number of incoming civil and commercial litigious cases, despite this being low. It solved only 0,23 cases per 100 inhabitants. The CR for **Kosovo** is the lowest of the countries/entities in the cluster. As a result, the number of pending civil and commercial litigious cases increased at the end of the year (+16,6%). The DT is also the most problematic within the cluster: 604 days. The same figures are examined in Graphic 11.4 below.

Graphic 11.4: Second instance - Litigious civil and commercial cases in 2014 - Clearance Rate vs Disposition Time and variation of pending cases (Q97)



As explained above (Graphic 11.2), the Clearance Rate, the Disposition Time and the variation of pending cases are analysed together in the graphic to show the general efficiency of second instance courts in the countries/entities in the cluster in this sector. For the countries/entities in the upper left part of the graphic, court productivity can be considered as satisfactory because the CR is above 100% and the DT is rather short.

Kosovo, however, is situated in the lower right part of Graphic 11.4. In 2014, the CR was particularly low (80%) and the DT very high (604 days). The average and median DT values were, respectively, 213 and 120 days for the countries/entities within the cluster, and 249 and 120 days for Council of Europe member States/entities. As reported above, the negative CR resulted in an increase of the number of pending cases by 16% during 2014.

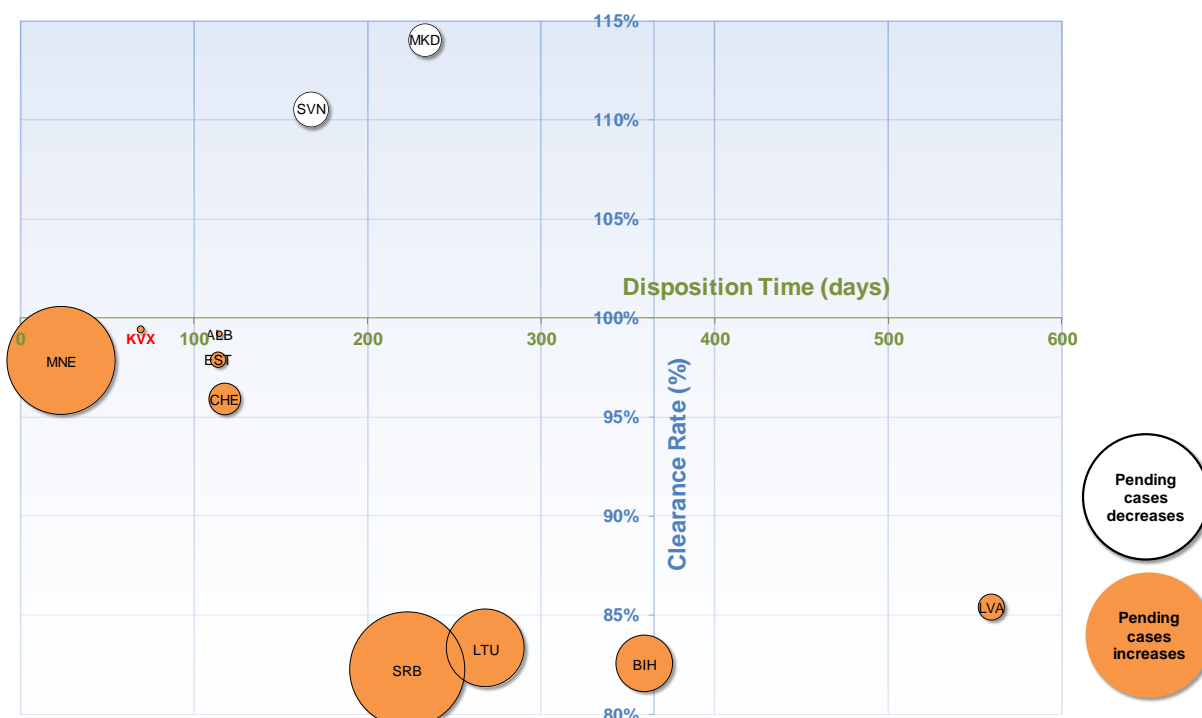
As noted above in the analysis of the performance of first instance courts in this sector, it is strongly recommended to examine whether the situation has improved since 2014 and to understand the actual reasons behind the low Clearance Rate. The situation should be closely monitored and measures should be undertaken aimed at improving court efficiency.

Third instance

Table 11.5: Supreme courts - Litigious civil and commercial cases in 2014 (Q1, Q99)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,37	1,21	1,20	0,38	99%	114	+2,7%
Austria	NA	NA	NA	NA	NC	NC	NA
Bosnia and Herzegovina	0,13	0,20	0,16	0,16	83%	359	+27,3%
Croatia	NA	NA	NA	NA	NC	NC	NA
Estonia	0,0041	0,01	0,01	0,0044	98%	114	+7,4%
Latvia	0,09	0,08	0,07	0,10	85%	559	+12,6%
Lithuania	0,010	0,023	0,019	0,014	83%	268	+37,5%
Montenegro	0,01	0,35	0,34	0,02	98%	24	+52,2%
Netherlands	NA	NA	NA	NA	NC	NC	NA
Norway	NA	NA	NA	NA	NC	NC	NA
Serbia	0,02	0,06	0,05	0,03	82%	223	+55,5%
Slovenia	0,05	0,09	0,10	0,04	111%	167	-17,2%
Switzerland	0,01	0,02	0,02	0,01	96%	118	+15,3%
"The former Yugoslav Republic of Macedonia"	0,07	0,08	0,09	0,06	114%	233	-16,2%
Kosovo*	0,0049	0,03	0,03	0,0051	99%	69	+3,3%
States / Entities listed in the table							
Average	0,07	0,20	0,19	0,08	95%	204	+16,4%
Median	0,02	0,08	0,07	0,03	98%	167	+12,6%
Standard deviation	0,11	0,35	0,35	0,11	11%	152	+24,6%
Minimum	0,00	0,01	0,01	0,00	82%	24	-17,2%
Maximum	0,37	1,21	1,20	0,38	114%	559	+55,5%
CoE States / Entities							
Average	0,06	0,11	0,11	0,05	100%	260	+13,1%
Median	0,01	0,04	0,03	0,02	96%	194	+8,0%
Standard deviation	0,11	0,23	0,24	0,09	20%	251	+36,5%
Minimum	0,00	0,00	0,00	0,00	77%	24	-50,3%
Maximum	0,46	1,21	1,20	0,38	166%	1 316	+143,8%

Graphic 11.6: Supreme courts - Litigious civil and commercial cases in 2014 - Clearance Rate vs Disposition Time and variation of pending cases (Q99)



As regards the performance of the Supreme Court, the data reported on **Kosovo** shows that, the inflow of cases is rather low, compared to some of the other States/entities within the cluster (e.g. **Albania, Bosnia and Herzegovina** and **Montenegro**).⁸³ The Disposition Time is very short (69 days) compared to the average and median within the cluster (respectively 204 and 167 days) and among all Council of Europe members (260 and 194 days). The Clearance Rate in 2014 was 99%, which produced a slight increase of the number of pending cases at the end of the year, but the overall situation at this instance seems manageable. It is within the 95-105% range of normal variations within a court system capable of managing the caseload.

11.2 Administrative cases

In context: the Kosovo system

As noted in the section on Courts, since January 2013, the Basic Court of Pristina includes a Department for Administrative Matters, which has exclusive jurisdiction in the whole territory of **Kosovo** to deal with cases where one of the parties of the dispute is a public authority. Accordingly, the Basic Court of Pristina handles the entire volume of incoming cases in this sector. Second instance administrative cases are handled by the Administrative Matters Department within the Court of Appeal.

The cases referred to, in **Kosovo**, as 'Administrative Cases' (all instances) are included in this category. First and second instance cases from the Special Chamber of the Supreme Court on privatization matters were not included in the figures below as they address very specific topics.

⁸³ As regards **Bosnia and Herzegovina**, the national rapporteur commented that the high number of incoming civil and commercial litigious cases is a consequence of the intensified implementation of backlog reduction programs in the preceding years in the first and second instance courts. To address the situation, it was reported that the High Judicial Council was considering appointing additional judges at the Supreme Courts and the civil procedure legislation was amended to prevent litigants from filing small value claims with the Supreme Courts.

11.2.1 Caseload and Performance indicators

First instance

Table 11.7: First instance - Administrative cases in 2014 (Q1, Q91)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,04	0,74	0,65	0,13	88%	74	+202,9%
Austria	NA	NA	NA	NA	NC	NC	NA
Bosnia and Herzegovina	0,23	0,27	0,25	0,26	90%	379	+11,4%
Croatia	0,28	0,33	0,28	0,33	86%	426	+16,4%
Estonia	0,08	0,29	0,26	0,10	90%	141	+29,7%
Latvia	0,13	0,12	0,17	0,07	144%	155	-41,8%
Lithuania	0,32	0,49	0,44	0,37	89%	310	+16,2%
Montenegro	0,24	0,58	0,53	0,29	91%	202	+22,9%
Netherlands	0,29	0,65	0,64	0,30	99%	171	+2,4%
Norway	NAP	NAP	NAP	NAP	NC	NC	NAP
Serbia	0,35	0,27	0,28	0,34	104%	440	-2,9%
Slovenia	0,09	0,26	0,27	0,08	103%	112	-8,6%
Switzerland	0,16	0,26	0,26	0,16	100%	225	+0,4%
"The former Yugoslav Republic of Macedonia"	0,46	0,39	0,44	0,41	113%	347	-10,7%
Kosovo*	0,14	0,14	0,06	0,22	44%	1 305	+55,3%
States / Entities listed in the table							
Average	0,22	0,37	0,35	0,24	95%	330	+22,6%
Median	0,23	0,29	0,28	0,26	91%	225	+11,4%
Standard deviation	0,12	0,19	0,18	0,12	22%	317	+58,9%
Minimum	0,04	0,12	0,06	0,07	44%	74	-41,8%
Maximum	0,46	0,74	0,65	0,41	144%	1 305	+202,9%
CoE States / Entities							
Average	0,30	0,47	0,49	0,27	107%	341	+5,6%
Median	0,23	0,28	0,28	0,26	100%	212	+0,3%
Standard deviation	0,30	0,71	0,73	0,21	24%	368	+40,0%
Minimum	0,03	0,03	0,04	0,03	86%	7	-57,5%
Maximum	1,50	4,42	4,42	0,94	192%	1 775	+202,9%

In 2014, on average, the courts of first instance in the countries/entities within the cluster resolved less administrative cases than those received (i.e. 0,37 incoming administrative cases per 100 inhabitants, and 0,35 cases resolved during the year; average CR was 95% and the median 91%).⁸⁴

There are important differences between the countries/entities that submitted data on administrative cases. **Kosovo** (0,14) and **Latvia** (0,12) reported a rather low number of incoming cases per 100 inhabitants, whereas other countries/entities recorded high figures, for instance **Albania** (0,74), **Lithuania** (0,49), **Montenegro** (0,58), or **the Netherlands** (0,65). In **Lithuania**, an important part of the stock of incoming administrative cases comprised cases on remuneration of public servants that were filed following a decision of the Constitutional Court, which declared the laws on the reduction of the remuneration of State servants and judges as unconstitutional. In **Kosovo**, it would be interesting to understand the reasons behind the low number of incoming administrative cases.

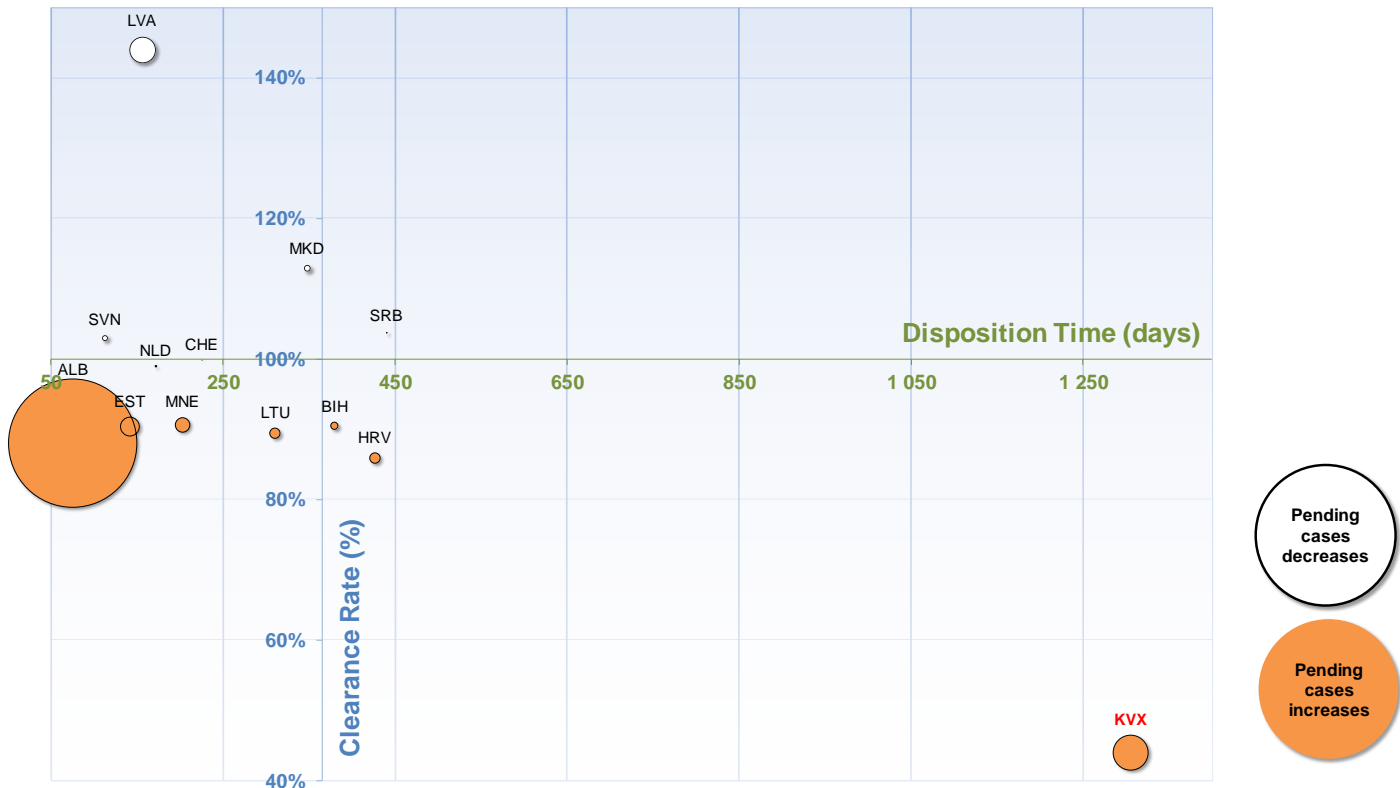
Interestingly, even though **Kosovo** and **Latvia** reported a similar (and rather low) number of incoming cases per 100 inhabitants in 2014,⁸⁵ the respective courts performed very differently: **Kosovo** courts were able to manage less than half of the incoming cases during the year, whereas courts in **Latvia** solved more cases than those received. In fact, the Clearance Rate for **Kosovo** was the lowest of the countries/entities in the cluster in this area (44%) and the very high Disposition Time (1305 days, i.e. 3,57 years) was particularly alarming.

The same figures are examined in Graphic 11.8 below.

⁸⁴ In **Austria**, there is no overall distinction between litigious and non-litigious proceedings in the statistics, therefore a NA value was reported, and **Norway** indicated NAP value with regard to administrative cases.

⁸⁵ Moreover, the two countries have a similar population size (Table 2.1) and employ an analogous number of FTE judges at first instance (Tables 7.1 and 7.3). However, the available data do not allow to further break down this number by area of law (i.e. civil, criminal, or administrative law).

Graphic 11.8: First instance - Administrative cases in 2014 - Clearance Rate vs. Disposition Time and variation of pending cases (Q91)



As explained above (see Graphic 11.2), in this graphic the Clearance Rate, the Disposition Time and the variation of pending cases are put together to show the general efficiency of first instance courts in the countries/entities in the cluster in this sector. For the countries/entities in the upper left part of the graphic court productivity can be considered as satisfactory because the Clearance Rate is above 100% and the Disposition Time is rather short.

The situation in **Kosovo**, in the far lower right of the graphic, was alarming in 2014 (CR: 44% and DT: 1305 days). It is recommended to assess whether the situation in this sector has improved since 2014, and examine the actual reasons behind the low Clearance Rate. It should be recalled that the Basic Court of Pristina has exclusive jurisdiction to adjudicate administrative claims and therefore handles the entire caseload in this sector. It should be examined how the Clearance Rate and the Disposition Time for this court have evolved since 2014 and why this court cannot cope with the number of incoming administrative cases per 100 inhabitants, which appears rather low.

Second Instance

Table 11.9: Second instance - Administrative cases in 2014 (Q1, Q97)

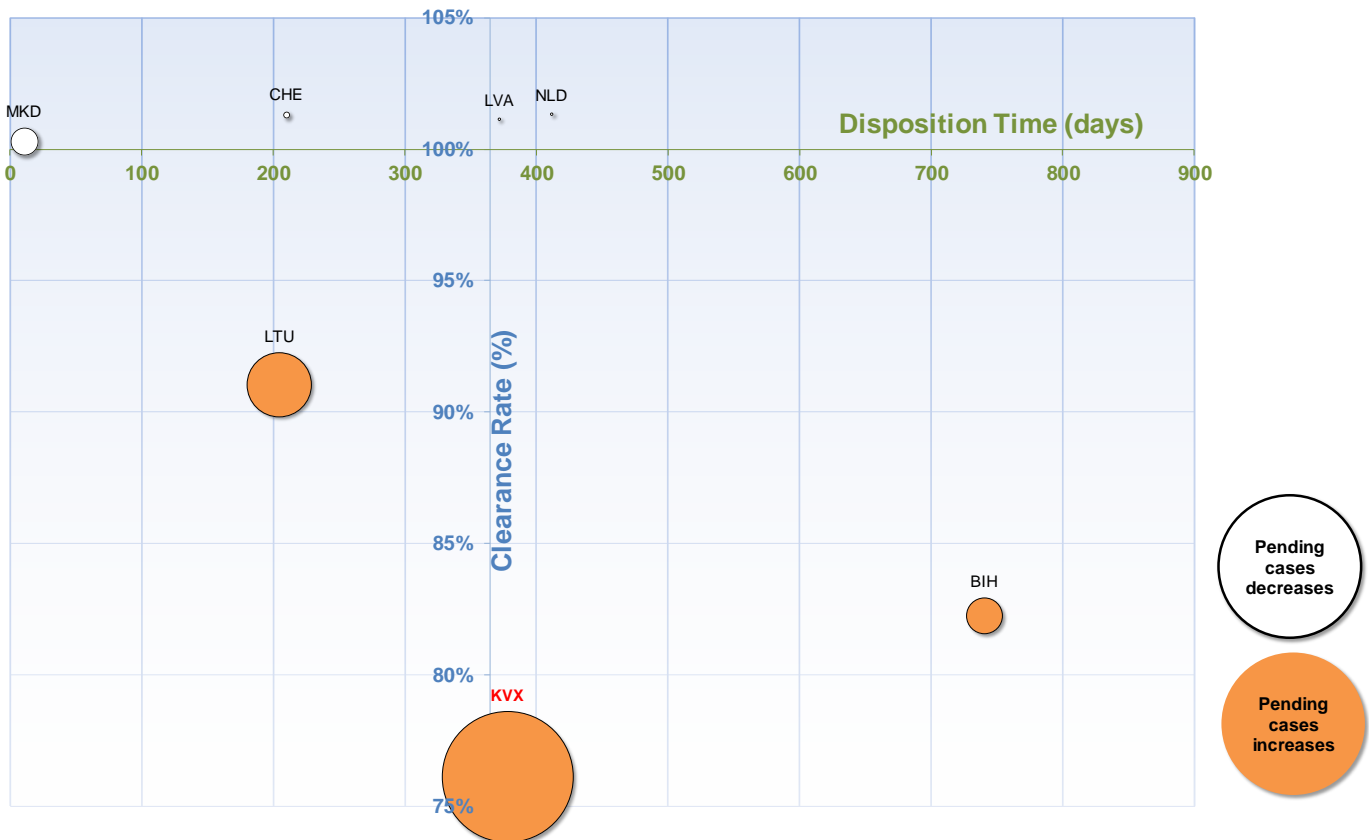
States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	NA	NA	NA	NA	NC	NC	NA
Austria	NA	NA	NA	NA	NC	NC	NA
Bosnia and Herzegovina	0,16	0,10	0,09	0,17	82%	740	+11,9%
Croatia	0,19	0,04	0,20	0,04	454%	68	-80,7%
Estonia	0,05	0,13	0,13	0,05	100%	143	+0,0%
Latvia	0,10	0,10	0,10	0,10	101%	371	-1,1%
Lithuania	0,06	0,14	0,12	0,07	91%	204	+21,4%
Montenegro	NAP	NAP	NAP	NAP	NC	NC	NAP
Netherlands	0,08	0,07	0,07	0,08	101%	411	-1,2%
Norway	NAP	NAP	NAP	NAP	NC	NC	NAP
Serbia	NAP	NAP	NAP	NAP	NC	NC	NAP
Slovenia	NAP	NAP	NAP	NAP	NC	NC	NAP
Switzerland	0,14	0,24	0,24	0,14	101%	210	-2,2%
"The former Yugoslav Republic of Macedonia"	0,0031	0,10	0,10	0,0029	100%	10	-9,2%
Kosovo*	0,015	0,03	0,02	0,021	76%	378	+43,5%
States / Entities listed in the table							
Average	0,09	0,10	0,12	0,07	134%	282	-2,0%
Median	0,08	0,10	0,10	0,07	100%	210	-1,1%
Standard deviation	0,06	0,06	0,07	0,06	120%	222	+33,7%
Minimum	0,00	0,03	0,02	0,00	76%	10	-80,7%
Maximum	0,19	0,24	0,24	0,17	454%	740	+43,5%
CoE States / Entities							
Average	0,07	0,10	0,12	0,05	115%	310	+5,6%
Median	0,05	0,09	0,09	0,04	100%	143	0%
Standard deviation	0,10	0,08	0,14	0,04	77%	565	+39,6%
Minimum	0,00	0,00	0,00	0,00	61%	10	-87,3%
Maximum	0,47	0,29	0,69	0,17	454%	2 890	+112,5%

In 2014, the courts of second instance in the countries/entities within the cluster for which data was made available managed to resolve a higher number of administrative cases than that received (0.1 incoming cases per 100 inhabitants and 0,12 cases resolved; average CR: 134% and median 100%).

Looking more specifically at single countries/entities, there are important differences. **Switzerland** reported the highest volume of administrative cases per number of inhabitants (0,24 cases). Instead, the **Kosovo** Court of Appeals received the lowest amount of cases (0,03 cases per 100 inhabitants) and was able to solve only part of the incoming caseload (0,02 cases per 100 inhabitants). Notably, the CR for **Kosovo** was the lowest of the countries/entities in the cluster: 76%.

The same figures are examined in Graphic 11.10 below.

Graphic 11.10: Second instance - Administrative cases in 2014 - Clearance Rate vs. Disposition Time and variation of pending cases (Q97)



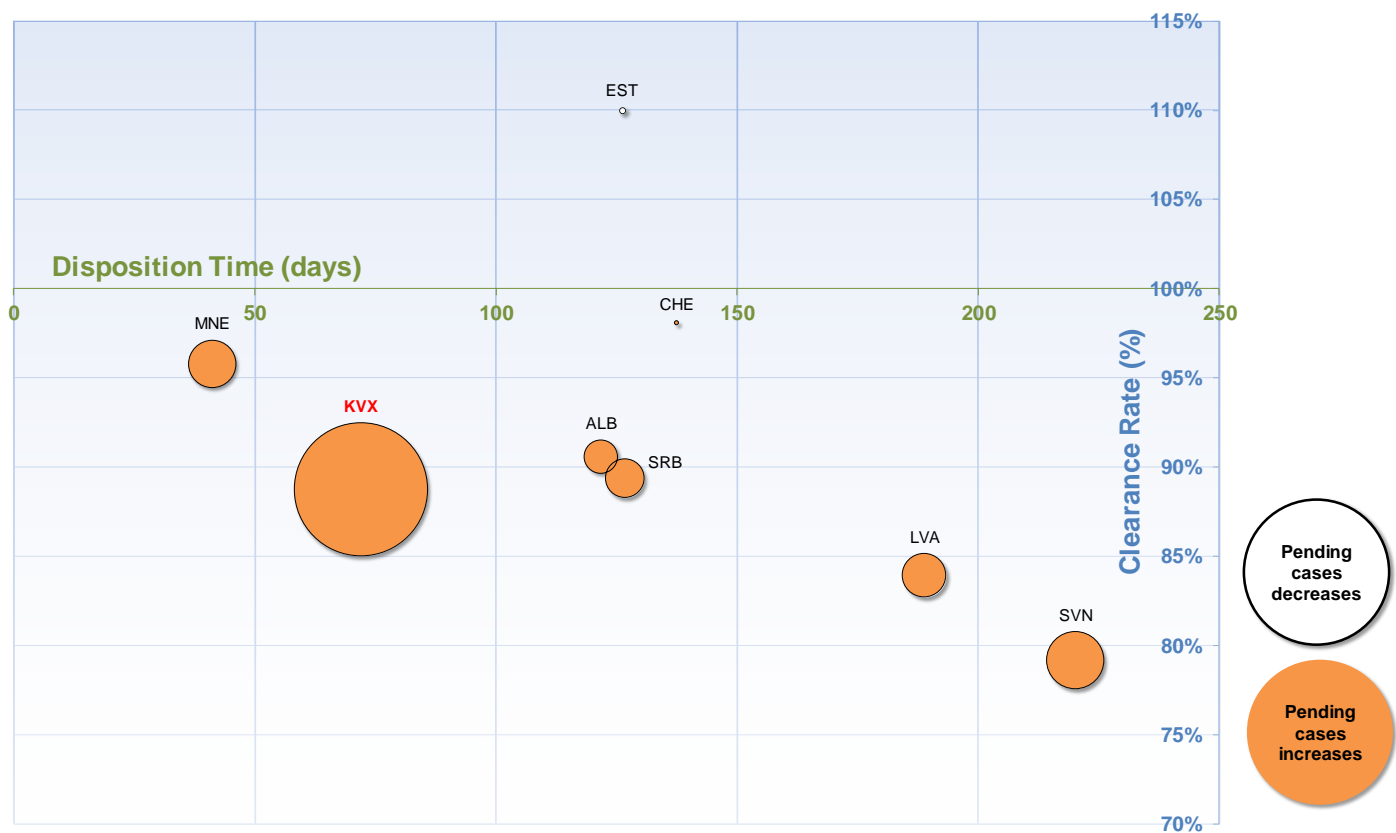
The fact that **Kosovo** is located in the lowest part of the graphic indicates that the ability of the **Kosovo** Court of Appeals to deal with incoming cases in the administrative sector was problematic in 2014 (as earlier noted also with regard to civil and commercial cases). The Clearance Rate was particularly low (76%). As a result, the number of pending cases increased by 43,5% during 2014 – it should be noted however while there has been an impact on the backlog, due to the low number of cases, the real impact may not be as significant as it appears from the figures. The Disposition Time indicator was also high (378 days, i.e. slightly more than one year). The 2014 Disposition Time both within the cluster (average 282 days and median 210 days) and among Council of Europe member States (average 310 days and median 143 days) was lower. As concluded with regard to civil and commercial cases, it is recommended to examine whether the situation on appeal in this sector has improved since 2014 and to understand the actual reasons behind the low Clearance Rate.

Third instance

Table 11.11: Supreme Courts - Administrative cases in 2014 (Q1, Q99)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,15807	0,75848	0,68724	0,22931	91%	122	+45,1%
Austria	NA	NA	NA	NA	NC	NC	NA
Bosnia and Herzegovina	NAP	NAP	NAP	NAP	NC	NC	NAP
Croatia	NA	NA	NA	NA	NC	NC	NA
Estonia	0,00320	0,00761	0,00838	0,00289	110%	126	-9,5%
Latvia	0,01589	0,05811	0,04876	0,02523	84%	189	+58,8%
Lithuania	NA	NA	NA	NA	NC	NC	NA
Montenegro	0,00403	0,06129	0,05871	0,00661	96%	41	+64,0%
Netherlands	NA	0,00604	0,00592	NA	98%	NC	NA
Norway	NAP	NAP	NAP	NAP	NC	NC	NAP
Serbia	0,00162	0,00793	0,00708	0,00246	89%	127	+52,2%
Slovenia	0,01242	0,04614	0,03653	0,02203	79%	220	+77,3%
Switzerland	0,01786	0,05100	0,05001	0,01884	98%	137	+5,5%
"The former Yugoslav Republic of Macedonia"	0,00000	0,00087	0,00068	0,00019	78%	104	+0,0%
Kosovo*	0,00027	0,00432	0,00383	0,00076	89%	72	+180,0%
States / Entities listed in the table							
Average	0,02371	0,10018	0,09071	0,03426	91%	126	+52,6%
Median	0,00403	0,02703	0,02246	0,00661	90%	126	+52,2%
Standard deviation	0,05085	0,23261	0,21078	0,07379	10%	54	+56,9%
Minimum	0,00000	0,00087	0,00068	0,00019	78%	41	-9,5%
Maximum	0,15807	0,75848	0,68724	0,22931	110%	220	+180,0%
CoE States / Entities							
Average	0,05925	0,10621	0,11170	0,05404	100%	260	+13,1%
Median	0,01357	0,03503	0,03030	0,01668	96%	194	+8,0%
Standard deviation	0,10843	0,22774	0,23771	0,08596	20%	251	+36,5%
Minimum	0,00022	0,00276	0,00244	0,00055	77%	24	-50,3%
Maximum	0,45644	1,21275	1,20290	0,37722	166%	1 316	+143,8%

Graphic 11.12: Supreme courts - Administrative cases in 2014 - Clearance Rate vs. Disposition Time and variation of pending cases (Q99)



As regards the performance of the Supreme Court, the data reported on **Kosovo** shows that the inflow of cases is relatively low, compared to some of the other countries within the cluster (e.g. **Albania**, **Montenegro** and **Switzerland**).⁸⁶ The Disposition Time is rather short (72 days), compared to the average and median within the cluster (126 days) and among all Council of Europe member States (respectively 260 and 196 days). The Clearance Rate in 2014 was 89%, which, as expected, produced an increase of the number of pending cases at the end of the year. However, on a general note, as noted earlier, due to the very low number of cases in some countries/entities, the interpretation of variations must be carried out carefully, as the real impact on the backlog may not be as significant as it appears from the figures.

⁸⁶ As regards **Bosnia and Herzegovina**, the national correspondent commented that the high number of incoming civil and commercial litigious cases is a consequence of the intensified implementation of backlog reduction programs in the preceding years in the first and second instance courts. To address the situation, it was reported that the High Judicial Council was considering appointing additional judges at the Supreme Courts and the civil procedure legislation was amended to prevent litigants from filing small value claims with the Supreme Courts.

11.3 Criminal cases

On a general note, the data presented in this section needs to be interpreted with care. As earlier mentioned, to ensure the consistency of the responses between different systems, the CEPEJ questionnaire employs specific definitions of ‘criminal cases’ and of the subcategories that it comprises. However, due to distinctions between legal categories and the different statistical methodologies in use, quite often countries are not able to report figures that match the CEPEJ definitions.

11.3.1 Cases handled by public prosecutors

CEPEJ definitions

The CEPEJ assessment tool requires States/entities to report on the number of cases received by public prosecutors, and to further distinguish between three groups of cases among these:

1. ‘Cases discontinued by the public prosecutor’ are criminal 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. Within this category, States /entities may also specify the reasons why the case was discontinued, i.e. (i) no alleged offender was identified; (ii) 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.
2. ‘Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor’ are related to proceedings which have not been brought before a judge (for example all transactions not approved by a judge).
3. ‘Cases charged by the public prosecutor before the Courts’ include all cases brought to court. Procedures (including guilty pleas) 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) should be reported under this category.

In context: the Kosovo system

As earlier noted (Chapter 8) the KPC keeps track of the number of criminal reports received by the Prosecution Office as well as the number of persons suspected of having participated in the reported criminal offence. The figures on **Kosovo** (in line with the CEPEJ questionnaire) refer to the number of cases not to the number of persons involved. This allows a better comparison with court statistics, which is also based on the number of cases.⁸⁷

In 2014, the Prosecution Office received 27 556 criminal reports against 35 441 suspected (adult) persons. The reported figures on cases handled by prosecutors in this Section include, in addition, cases involving juveniles and cases involving unknown perpetrators. In total, prosecutors received 37 395 cases.

The number of discontinued cases includes cases for which the criminal reports were dismissed or the investigation was terminated (see articles 82 and 158 of the Criminal Procedure Code of Kosovo). In total, 5 152 cases were discontinued.

The number of cases charged by the prosecutor before the courts includes cases with a direct indictment, indictments with a punitive order and indictments after investigation (see articles 101, 240 and 493 of the CPC).

The data on ‘cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor’ was not available in 2014. Therefore, it was not possible to calculate the CR of cases handled by public prosecutors in **Kosovo**; the table with the CR of the different countries in the cluster is included below. According to the interlocutors, the relevant data should be available in the context of future assessments.

⁸⁷ A distinction between statistics on cases and statistics on individuals was also reported by Slovenia. CEPEJ 216 report, p. 221.

Table 11.13 below examines the number of cases handled by public prosecutors per 100 inhabitants and per prosecutor in 2014.

Table 11.13: Number of cases handled by the public prosecutor per 100 inhabitants and per prosecutor in 2014 (Q107)

States/entities	Cases per 100 inhabitants				Cases per prosecutor			
	Received by the public prosecutor	Discontinued by the public prosecutor	Concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts	Received by the public prosecutor	Discontinued by the public prosecutor	Concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Albania	1,5	1,1	NAP	0,5	134,0	99,8	NAP	41,8
Austria	6,1	5,3	0,2	0,8	1 528,3	1 324,1	60,5	198,4
Azerbaijan	NA	NA	NAP	NA	NA	NA	NAP	NA
Bosnia and Herzegovina	1,7	0,3	0,4	0,4	178,4	31,6	40,4	41,9
Croatia	1,5	0,7	0,0	0,5	114,0	51,1	0,4	34,1
Estonia	2,4	1,8	0,2	0,5	190,5	139,0	16,4	41,4
Latvia	0,7	0,1	0,1	0,5	29,0	2,6	3,3	19,9
Lithuania	3,5	1,2	NAP	1,8	143,8	48,6	NAP	72,9
Montenegro	1,6	0,5	0,1	0,7	92,9	29,4	6,9	39,9
Netherlands	1,2	0,3	0,4	0,7	262,6	53,1	77,3	141,8
Norway	7,4	3,4	1,3	1,4	NA	NA	NA	NA
Slovenia	4,2	0,8	0,1	0,6	446,4	89,1	8,3	66,1
Switzerland	6,6	1,0	4,6	0,1	612,8	91,1	427,2	13,6
"The former Yugoslav Republic of Macedonia"	1,9	1,6	0,0	0,8	196,5	162,1	1,5	79,3
Kosovo*	2,0	0,3	NA	1,2	292,1	40,3	NA	166,5
States/Entities listed in the table								
Average	3,0	1,3	0,7	0,7	324,6	166,3	64,2	73,7
Median	2,0	0,9	0,2	0,6	190,5	53,1	12,4	41,9
Standard deviation	2,2	1,4	1,4	0,4	394,0	350,8	130,3	58,6
Minimum	0,7	0,1	0,0	0,1	29,0	2,6	0,4	13,6
Maximum	7,4	5,3	4,6	1,8	1 528,3	1 324,1	427,2	198,4
CoE States/Entities								
Average	3,4	1,5	0,5	0,9	452,2	228,0	54,5	109,1
Median	2,7	1,0	0,2	0,7	247,5	85,0	19,0	70,7
Standard deviation	2,5	1,6	0,9	0,6	539,9	377,6	96,5	93,3
Minimum	0,0	0,0	0,0	0,0	1,4	0,0	0,4	0,7
Maximum	10,8	5,3	4,6	2,4	2 621,8	1 695,4	427,2	317,3

In 2014, public prosecutors in the countries/entities within the cluster received on average 2.8 cases per 100 inhabitants and the median figure was 1.9 cases per 100 inhabitants, which coincides with the number of cases received by prosecutors per 100 inhabitants in **Kosovo**. The highest figures were reported by **Norway** (7.4 cases), **Switzerland** (6.6 cases) and **Austria** (6.1 cases) and the lowest by **Latvia** (0.7 cases), **the Netherlands** (1.2 cases), **Albania** (1.5 cases) and **Croatia** (1.5 cases).

A major part of the cases received by prosecutors in **Kosovo** were charged before the courts (1.2 cases). This number is much higher than in other states/entities within the cluster (except for **Lithuania** and **Norway**). On the other hand, the number of cases discontinued by the public prosecutor in **Kosovo** was low in comparison with other countries/entities (Kosovo: 0.3; median: 0.8).

The data on 'cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor' was not available in 2014. Therefore, it was not possible to calculate the Clearance Rate of cases handled by public prosecutors in **Kosovo**.

Table 11.13 shows the caseload for each prosecutor. In 2014 in **Kosovo** prosecutors at first instance received on average 292.1 cases during the year. Within the cluster, the number of cases per prosecutor received in 2014 ranged from 1 528.3 in **Austria** to 29.0 in **Latvia**. The workload of prosecutors should be measured taking also into account the diversity of their functions.

11.3.2 Court performance indicators

In context: the Kosovo system

As described in Chapter 10 on Courts, Basic Courts in **Kosovo** comprise a Department for Serious Crimes and a Department for Minors operating at the principal seat of each Basic Court as well as a General Department operating in each Basic Court and in each branch of the Basic Courts. The General Departments include a criminal division and a specific minor offences division, depending on the amount of minor offences.⁸⁸ Similarly, the Court of Appeals comprises, among others, a General Department with a criminal division and a minor offences division; a Serious Crimes Department; and a Department for Minors.

For the purposes of the CEPEJ assessment, to ensure the consistency of the responses between different systems, countries should classify and report as 'minor' all offenses for which it is not possible to impose a sentence of deprivation of liberty, and as 'severe' all offenses punishable by a deprivation of liberty (arrest and detention, imprisonment etc.). In **Kosovo**, criminal cases handled by the Serious Crimes Departments can be obviously reported under the category of 'severe offences'. For some categories of criminal cases handled by the minor offences divisions at the General Departments, the law foresees a sentence of deprivation of liberty, but it was not possible to retrieve the precise number of such cases (as this would have to be done manually). Moreover, the misdemeanour offences for which a deprivation of liberty is foreseen raise important issues of unconstitutionality, because misdemeanours as a legal notion are not mentioned in the Constitution as a basis for the deprivation of liberty.

Accordingly, the figures included in the tables below are calculated as follows:

- 'Severe offences' include all criminal cases handled by the Serious Crimes Departments and the criminal division of the General Departments.
- 'Misdemeanor/minor offences' include the cases handled by the minor offences division at the General Departments and by the Departments for Minors (as there is usually no risk of deprivation of liberty for these cases, except in very rare cases).

⁸⁸ Law on Courts, No.03/L-199, Art. 12.

First instance

Table 11.14: First instance - Criminal cases in 2014 (Q1, Q91)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,10	0,13	0,01	0,49	4%	34 417	+380,6%
Austria	0,20	0,64	0,65	0,18	103%	102	-9,1%
Bosnia and Herzegovina	4,12	4,55	4,58	4,09	101%	326	-0,7%
Croatia	4,02	4,92	6,41	2,53	130%	144	-37,1%
Estonia	0,18	1,41	1,37	0,19	97%	49	+4,8%
Latvia	0,32	0,84	0,86	0,31	102%	133	-3,8%
Lithuania	0,16	0,72	0,74	0,14	102%	67	-11,6%
Montenegro	0,46	0,78	0,82	0,42	105%	189	-8,8%
Netherlands	0,75	2,57	2,59	0,83	101%	117	+10,5%
Norway	0,10	0,51	0,51	0,09	101%	65	-5,2%
Serbia	6,76	10,60	10,22	7,14	96%	255	+5,5%
Slovenia	1,56	4,29	4,38	1,47	102%	123	-5,5%
Switzerland	0,11	0,38	0,38	0,12	99%	113	+3,5%
"The former Yugoslav Republic of Macedonia"	2,72	6,47	6,45	2,74	100%	155	+0,6%
Kosovo*	13,88	17,47	18,80	12,55	108%	244	-9,6%
States / Entities listed in the table							
Average	2,36	3,75	3,92	2,22	97%	2 433	+20,9%
Median	0,46	1,41	1,37	0,49	101%	133	-3,8%
Standard deviation	3,77	4,80	5,08	3,47	27%	8 848	+100,1%
Minimum	0,10	0,13	0,01	0,09	4%	49	-37,1%
Maximum	13,88	17,47	18,80	12,55	130%	34 417	+380,6%
CoE States / Entities							
Average	1,24	2,61	2,59	1,19	107%	341	+10,4%
Median	0,37	1,52	1,69	0,40	100%	212	-0,0%
Standard deviation	2,04	2,77	2,75	1,88	24%	368	+63,2%
Minimum	0,02	0,11	0,01	0,02	86%	7	-37,1%
Maximum	9,92	11,29	12,66	8,55	192%	1 775	+380,6%

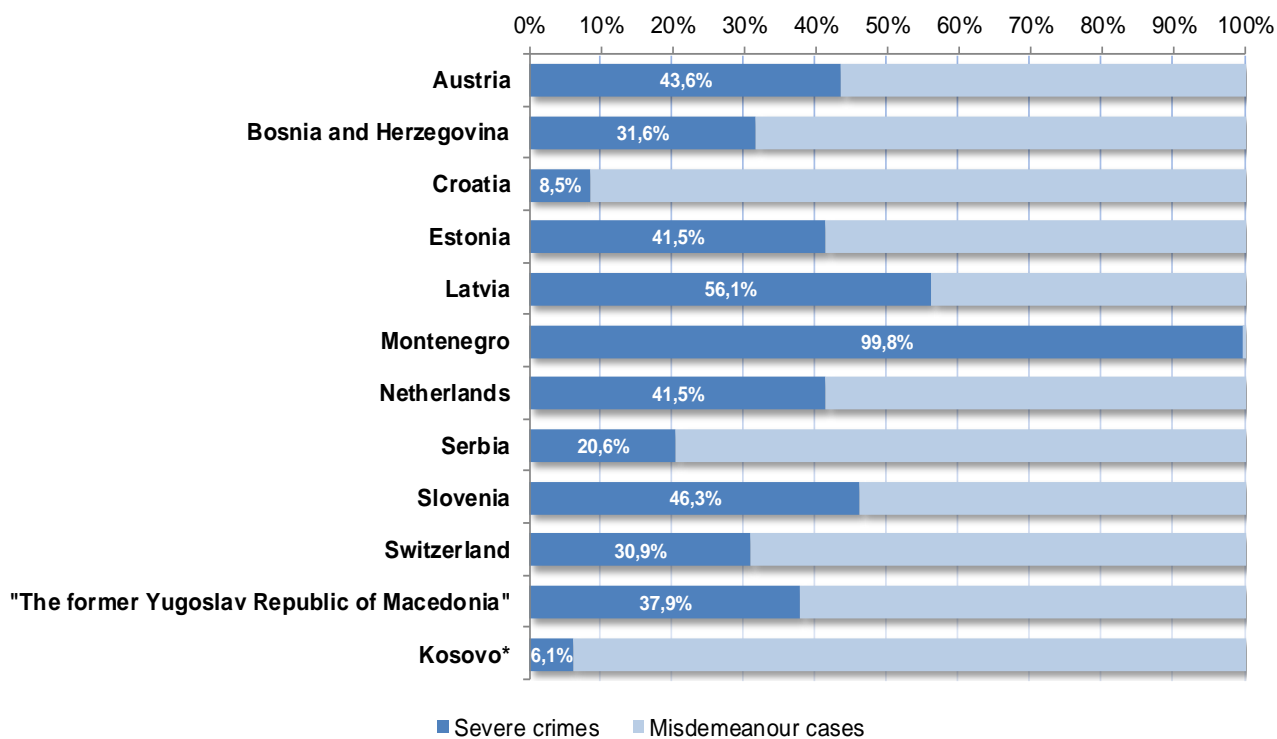
Within the cluster of countries/entities assessed, **Kosovo** reported the highest number of incoming criminal cases per 100 inhabitants in 2014 (17,47 cases). This figure was also higher than the maximum figure reported among all Council of Europe member States (11,29 cases). However, it is noteworthy that 94% of incoming criminal cases in **Kosovo** in 2014 were misdemeanour and/or minor criminal cases (304 404 out of the 323 565 incoming criminal cases).

Serbia also reported a particularly high number of incoming criminal cases per 100 inhabitants in 2014 (10,6 cases). The remaining court systems within the cluster received between 0,13 (**Albania**) and 6,47 cases per 100 inhabitants ("**The Former Yugoslav republic of Macedonia**").

Chart 11.15 examines the composition of incoming cases (in terms of the share between minor and severe criminal cases) in the various countries/entities in the cluster.⁸⁹ **Albania**, **Lithuania** and **Norway** are not included because the data was not available or was partial. The data presented needs to be interpreted with care. Criminal law cases may be classified differently in the different countries/entities because of the distinctions between legal categories and statistical systems. The ratio for the number of minor misdemeanour and/or minor criminal cases in **Kosovo** is one of the highest.

⁸⁹ See CEPEJ 2016 report, p. 218.

Chart 11.15: Ratio between severe and misdemeanour criminal incoming cases at 1st instance in 2014 (Q94)



The figures and performance indicators presented in Table 11.14 above are examined in Graphic 11.16 below.

Graphic 11.16: First instance - Criminal cases in 2014 - Clearance Rate vs. Disposition Time and variation of pending cases (Q94)



As explained above (see Graphic 11.2), this type of graphic puts together the Clearance Rate, the Disposition Time and the variation of pending cases to show the general efficiency of first instance courts in the countries/entities in the cluster in this sector. For the countries/entities in the upper left part of the graphic, court productivity can be considered satisfactory because the Clearance Rate is above 100% and the Disposition Time is rather short.

With a positive Clearance Rate (108%), **Kosovo** managed to reduce the number of pending criminal cases by 9,6% during 2014. The Disposition Time is below one year (244 days). Although court efficiency in 2014 does not seem to be a major concern in the criminal law field in **Kosovo**, the situation should continue to be monitored closely, especially by sub-categories of cases (severe offences and misdemeanour/minor offences) and within single courts. Examining the statistics and performance indicators of the Basic Court of Pristina, which is the busiest court, is a priority. It should be examined whether the number of pending criminal cases decreased since 2014 (by sub-categories of cases and within single courts).

Second Instance

Table 11.17: Second instance - Criminal cases in 2014 (Q1, Q98)

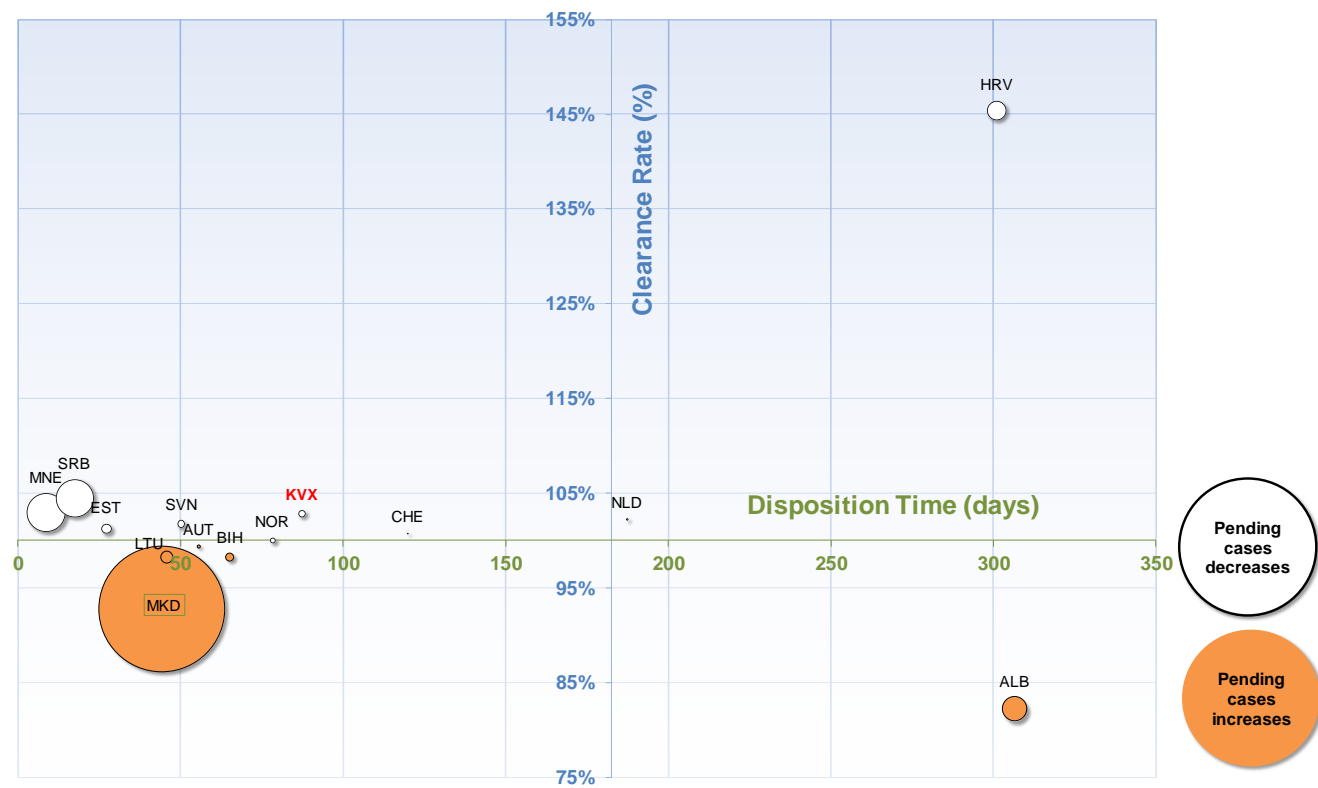
States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,09	0,17	0,14	0,12	82%	306	+34,9%
Austria	0,02	0,14	0,13	0,02	99%	55	+4,5%
Bosnia and Herzegovina	0,06	0,40	0,40	0,07	98%	65	+11,5%
Croatia	1,55	0,94	1,37	1,13	145%	301	-27,5%
Estonia	0,005	0,054	0,055	0,004	101%	27	-14,5%
Latvia	0,04	0,17	0,16	0,04	97%	99	+0,0%
Lithuania	0,04	0,36	0,35	0,04	98%	46	+17,1%
Montenegro	0,02	0,40	0,41	0,01	103%	8	-55,3%
Netherlands	0,12	0,22	0,23	0,12	102%	187	-4,1%
Norway	0,01	0,06	0,06	0,01	100%	78	-7,7%
Serbia	0,11	0,99	1,04	0,05	105%	17	-54,6%
Slovenia	0,05	0,32	0,33	0,05	102%	50	-11,1%
Switzerland	0,04	0,11	0,11	0,04	101%	120	-2,3%
"The former Yugoslav Republic of Macedonia"	0,03	0,67	0,63	0,08	93%	44	+180,4%
Kosovo*	0,05	0,20	0,20	0,05	103%	87	-10,3%
States / Entities listed in the table							
Average	0,15	0,35	0,37	0,12	102%	99	+4,1%
Median	0,04	0,22	0,23	0,05	101%	65	-4,1%
Standard deviation	0,39	0,30	0,37	0,28	13%	94	+54,3%
Minimum	0,00	0,05	0,05	0,00	82%	8	-55,3%
Maximum	1,55	0,99	1,37	1,13	145%	306	+180,4%
CoE States / Entities							
Average	0,09	0,21	0,23	0,08	99%	155	+8,2%
Median	0,03	0,13	0,13	0,04	99%	76	+1,9%
Standard deviation	0,25	0,22	0,26	0,19	13%	218	+41,5%
Minimum	0,00	0,02	0,02	0,00	63%	8	-55,3%
Maximum	1,55	0,99	1,37	1,13	145%	912	+180,4%

Table 11.17 shows that the number of incoming criminal cases per inhabitant in **Kosovo** in 2014 was rather low (0,20). It was lower than the average (0,35) and the median (0,22) within the cluster; at the Council of Europe level the average was 0,21 and the median 0,13 incoming cases per 100 inhabitants. It would be interesting to assess through additional research whether the low number of incoming criminal cases on appeal is the result of a high level of trust and confidence in the judiciary or rather the result of obstacles to an effective access to justice, such as for instance high costs of justice (both court fees and legal assistance and representation).⁹⁰

The same figures are examined in Graphic 11.18 below.

⁹⁰ CEPEJ 2016 report, p. 205

Graphic 11.18: Second instance - Criminal cases in 2014 - Clearance Rate vs. Disposition Time and variation of pending cases (Q98)



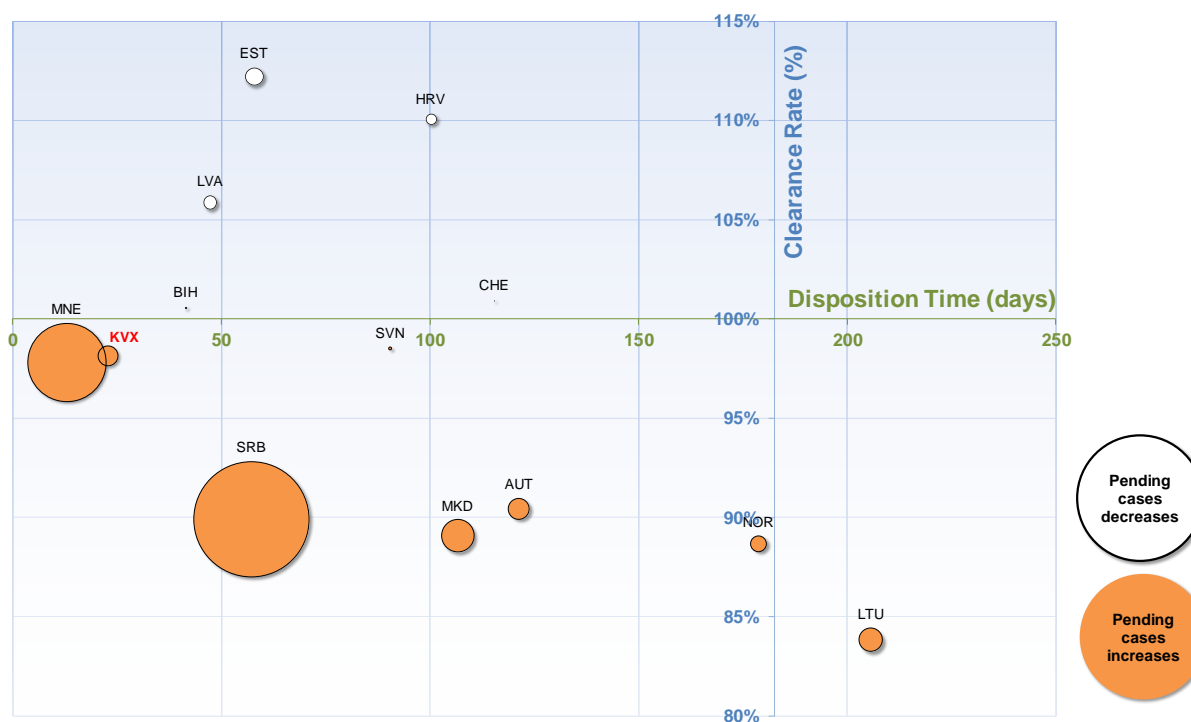
In 2014, the Court of Appeals in **Kosovo** resolved more cases than those received (CR 103%) and reduced the number of pending cases by 10,3%. The Disposition Time of 87 days is rather short.

Third instance

Table 11.19: Supreme Courts - Criminal cases in 2014 (Q1, Q100)

States/entities	Pending cases per 100 inhabitants on 1.1.2014	Incoming cases per 100 inhabitants	Resolved cases per 100 inhabitants	Pending cases per 100 inhabitants on 31.12.2014	Clearance Rate (%)	Disposition Time (Days)	Variation of the pending cases in the year (%)
Albania	0,1022	0,0307	0,0688	0,0642	224%	341	-37,2%
Austria	0,0022	0,0107	0,0097	0,0032	90%	121	+46,8%
Bosnia and Herzegovina	0,0132	0,1104	0,1111	0,0126	101%	41	-4,7%
Croatia	0,0210	0,0522	0,0575	0,0158	110%	100	-25,0%
Estonia	0,0021	0,0069	0,0077	0,0012	112%	58	-40,7%
Latvia	0,0076	0,0391	0,0414	0,0053	106%	47	-30,1%
Lithuania	0,0069	0,0224	0,0188	0,0106	84%	205	+52,2%
Montenegro	0,0006	0,0516	0,0505	0,0018	98%	13	+175,0%
Netherlands	NA	0,0252	0,0265	NA	105%	NC	NA
Norway	0,0003	0,0010	0,0009	0,0004	89%	179	+35,3%
Serbia	0,0009	0,0229	0,0205	0,0032	90%	57	+257,8%
Slovenia	0,0088	0,0386	0,0380	0,0094	98%	90	+6,6%
Switzerland	0,0068	0,0208	0,0210	0,0066	101%	115	-2,8%
"The former Yugoslav Republic of Macedonia"	0,0058	0,0389	0,0346	0,0101	89%	107	+72,7%
Kosovo*	0,0010	0,0230	0,0226	0,0014	98%	23	+44,4%
States / Entities listed in the table							
Average	0,0128	0,0330	0,0353	0,0104	106%	107	+39,3%
Median	0,0063	0,0252	0,0265	0,0060	98%	95	+20,9%
Standard deviation	0,0264	0,0261	0,0282	0,0162	34%	87	+84,8%
Minimum	0,0003	0,0010	0,0009	0,0004	84%	13	-40,7%
Maximum	0,1022	0,1104	0,1111	0,0642	224%	341	+257,8%
CoE States / Entities							
Average	0,0247	0,0423	0,0426	0,0236	116%	114	+14,8%
Median	0,0058	0,0203	0,0208	0,0055	100%	90	+1,1%
Standard deviation	0,0778	0,0837	0,0780	0,0837	68%	90	+68,5%
Minimum	0,0003	0,0000	0,0000	0,0004	71%	13	-76,1%
Maximum	0,4564	0,5061	0,4647	0,4978	400%	391	+257,8%

Graphic 11.20: Supreme courts - Criminal cases in 2014 - Clearance Rate vs Disposition Time and variation of pending cases (Q100)



With the exception of **Bosnia and Herzegovina** (0,1104), the amount of criminal cases received by the countries/entities assessed in 2014 ranged between 0,001 cases per 100 inhabitants in **Norway** and 0,0522 cases in **Croatia**. In **Bosnia and Herzegovina**, the Supreme Courts received increasing numbers of severe criminal cases in 2013 and 2014 as a consequence of the intensified implementation of backlog reduction plans in the courts of first instance. In **Croatia**, the number of incoming criminal cases decreased as a result

of legislative reforms and the suspension of the possibility to request for extraordinary mitigation of penalty.

In 2014, the Disposition Time of criminal cases at the level of the Supreme Court in **Kosovo** was very short (23 days), both in absolute terms and compared to the cluster (average 107 days; median 95 days) and to Council of Europe members (average 114 days; median 90 days). The Clearance Rate was 98%; this resulted in an increase of the number of pending cases at the end of the year.

11.4 Recommendations

Recommendation 14: To further improve the methodology for compiling reliable statistics, in accordance with the CEPEJ Guidelines on Judicial Statistics (GOJUST) and SATURN Guidelines for judicial time management, and to continue gathering accurate data, which will enable both a realistic diagnosis of the judicial system and the formulation of effective and efficient solutions for improving court efficiency and the quality of the justice services provided.

We found that an issue that emerges in **Kosovo** and in some countries/entities concerns the numbering of cases that are split or reunited during the process. Whether these are considered as the same case or as different cases has an impact on the reported statistics on incoming, resolved, and pending cases, and consequently on the calculated indicators of CR and DT. Similarly, the assignment of a new number to a case that is redirected at first instance from the Court of Appeals or the Supreme Court affects the soundness of the figures reported and has an impact on the accuracy of the calculation of the average length of proceedings for specific categories. This approach inflates artificially the number of incoming cases, and does not allow to calculate the real length of proceedings.

We recommend to further improve the methodology for compiling reliable statistics, in accordance with the CEPEJ Guidelines on Judicial Statistics (GOJUST) and SATURN Guidelines for judicial time management, and to continue gathering accurate data. In particular, we recommend the introduction of rules and mechanisms allowing for the correction of some of the shortcomings highlighted above, in particular, the use a unique identifier code for each proceeding from the beginning of the procedure to the final binding decision on the case, to allow for the calculation of the total length of proceedings. Data of actual duration of cases (from a functional IT system) should be monitored to make a full analysis.

Recommendation 15: To conduct further research and explore the reasons why the number of incoming civil and commercial litigious cases and the number of incoming administrative cases are low in first instance courts and on appeal.

We found that Kosovo received a low number of incoming civil and commercial litigious cases and a low number of incoming administrative cases in first instance courts and on appeal. It may be attributable to a lack of confidence from citizens in the judiciary or insufficient legal aid being provided for instance.

We recommend further research into the reasons behind these low figures. It would also be important to examine the evolution of this number since 2014.

Recommendation 16: To conduct further research and explore the reasons why courts of first instance in **Kosovo** face serious efficiency problems in the administrative and civil/commercial sectors. The purpose of this research should seek in particular to find alternative improvement measures than increasing resources which should be done as a last resort.

We found that Kosovo's court model consists of few basic courts with several branch courts distributed across the territory, to guarantee effective access to justice for citizens. Instead, a concentrated approach is adopted with regard to commercial and administrative matters, which are under the exclusive competence of two special departments in the Basic Court of Pristina. We also found that at first instance, the situation in the administrative sector is very problematic despite the low number of incoming cases. The very low Clearance Rate and high Disposition Time show that the Basic Court of Pristina faces important difficulties in coping with these cases. In the civil/commercial sector, the situation was also concerning in 2014. The Disposition Time for this category of cases at first instance level was the highest of the cluster.

We recommend further research into the reasons why first instance courts in Kosovo (in particular the Basic Court of Pristina) have serious efficiency problems in the administrative and civil/commercial sectors. It would be interesting to calculate and compare the number of incoming and resolved cases per judge to obtain additional insight into the functioning of the judicial system in Kosovo. Such an analysis should take

into account the peculiarities of the different systems and examine in detail the data on all personnel performing judicial tasks. However, as explained in Chapter 1 of this report, the CEPEJ philosophy for efficiency of justice recommends increasing resources (including the number of judges and prosecutors, etc) only as a last resort, when other measures to improve the functioning of courts and prosecution offices were undertaken but were not sufficient to solve the problems.

Recommendation 17: To conduct further research and explore the reasons behind the efficiency difficulties faced by the Kosovo Court of Appeals in handling administrative and civil/commercial litigious cases.

We found that the situation of the Court of Appeals in **Kosovo** is critical with regard to civil and commercial litigious cases (CR 80% and DT 604 days) and administrative cases (CR 76% and DT 378 days), despite the low number of incoming cases.

We recommend further research into the reasons behind the poor efficiency indicators of the Kosovo Court of Appeals in relation to administrative and civil and commercial litigious matters.

Recommendation 18: To assess whether the goals and objectives listed in the 2013 Backlog Reduction Strategy and in KJC 2014 Judiciary Strategic Plan to address the number of pending cases have been reached, to assess whether further reforms to decrease the number of pending cases are necessary, and more generally, to focus on decreasing as a priority the number of old cases in application of the FIFO ("first in, first out") principle.

We found that the number of pending civil and commercial litigious cases as well as the number of pending administrative cases and pending criminal cases was high in 2014.

We recommend to assess whether the goals and objectives listed in the 2013 Backlog Reduction Strategy and in KJC 2014 Judiciary Strategic Plan to address the number of pending cases have been reached, and to assess whether further reforms to decrease the number of pending cases are necessary. More generally, we recommend that courts should focus their efforts on decreasing, as a priority, the number of old cases in application of the FIFO ("first in, first out") principle, while also taking into consideration the priority cases mentioned in the jurisprudence of the European Court of Human Rights.⁹¹ Courts are invited to use the CEPEJ methodology of the implementation guide "Towards European Timeframes for Judicial Proceedings."⁹² It is important to reduce the number of pending cases in order not to have to enter these cases in the new case management information system that is being built.

Recommendation 19: To evaluate on a regular basis, based on the CEPEJ methodology, the judicial system in **Kosovo** to improve its quality and efficiency.

As explained in Chapter 1, this study offers a snapshot of the functioning of the judicial system in **Kosovo** in 2014 that could be used as a reference in forthcoming assessments.

We recommend to evaluate on a regular basis, based on the CEPEJ methodology, the judicial system in **Kosovo** to improve its quality and efficiency. We suggest:

- a) To place additional efforts on the collection and recording of disaggregated data, which will enable a more realistic diagnosis of the system and the identification of tailored solutions. For instance, in the criminal sector, a distinction should be made between minor and severe criminal cases to better understand the amount of the workload of judges. In 2014, 94% of the incoming criminal cases in Kosovo were minor offence cases.
- b) To implement a sustainable process of data collection informed by CEPEJ methodology and carried out by local human resources in **Kosovo**. This will require the designation of a unique coordinator, trained on the CEPEJ methodology and definitions, in charge of data collection and the preliminary validation of their

⁹¹ See CEPEJ-Study "Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights (31 July 2012, recte 2011)", 2nd edition, by Ms Françoise Calvez, updated by Mr Nicolas Régis, p. 25 and followings, lit. D "WHAT IS AT STAKE FOR THE APPLICANT".

⁹² Doc. CEPEJ(2016)5 :

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2016\)5&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2016)5&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

accuracy.

c) To carry out regular periodical assessments of the functioning of the judicial system in **Kosovo**, using the CEPEJ Evaluation Scheme and its explanatory note, with the purpose of identifying evolutions and trends and measuring the impact of justice policy reforms.

PART V: RECOMMENDATIONS

The recommendations made in the various chapters of this report are listed below.

Recommendation 1: To establish short-term to long-term strategies to strengthen the management of available resources which should explicitly take into account external resources allocated for the improvement of the functioning of the justice system. These strategies should seek to avoid the need to deploy additional means by firstly using existing ones. They should be well-defined and should come together with a monitoring process of results.

We found that, compared to other countries/entities in the cluster, **Kosovo** makes a greater budgetary effort (or invests more) for its judicial system considering its wealth (as explained above under Table 2.1, in 2014, the GDP per inhabitant in **Kosovo** was one of the lowest figures within the cluster).

We recommend that **Kosovo** authorities establish short-term to long-term strategies to strengthen the management of available resources, which should explicitly take into account external resources allocated for the improvement of the functioning of the justice system. These strategies should seek to avoid the need to deploy additional means by firstly using existing ones. They should be well-defined and should come together with a monitoring process of results.

Recommendation 2: To collect and report accurate data on approved and implemented budgets (for courts and public prosecution offices), not only official data but also external funding.

We found that the judicial system in **Kosovo**, as in other neighbouring countries/entities, benefits from additional external resources which are not part of the official budgets and do not figure in the statistics. Their progressive exhaustion in the medium/long term should be taken into account by **Kosovo** authorities to guarantee the sustainability of reforms, especially those aiming at introducing ICT tools in the judiciary.

We recommend that the KJC, the KPC and other relevant institutions involved collect and report precise data on approved and implemented budgets during the reference year for courts and prosecution offices. Data accuracy is crucial to efficient planning and identification of sustainable solutions. Data on external contributions should also be collected and adequately taken into consideration in the context of policy planning in this area.

Recommendation 3: To analyse existing challenges to the effective implementation of the 2015 laws on the KJC and KPC which reinforce their budgetary independence. This analysis should include possible means to overcome these challenges and should lead to the implementation of concrete measures in this respect, which include an evaluation of the results.

We found that, in practice, the KJC and KPC face difficulties in exercising effectively their budgetary independence as the government (through the Ministry of Finance) still plays a key role in determining the resources allocated to the judiciary.

In this regard, we recommend an analysis of existing challenges to the effective implementation of the 2015 laws on the KJC and KPC which reinforce their budgetary independence. Such analysis should include possible means to overcome the identified challenges and should lead to the implementation of concrete measures in this respect, including an evaluation of the results.

Recommendation 4: To review the budgetary item on computerisation strategically to ensure that the deployment of information technologies is linked to a policy or strategy for change involving all stakeholders and, in particular, to guarantee the sustainability the ICT/CMIS project even after its completion.

We found that the share deployed on computerisation in **Kosovo** in 2014 represented only 0,9% of the court budget (international funds do not appear in the data regarding court budget) and that the level of IT in the **Kosovo** courts was very limited. The use of IT was introduced only in one area: administration of the courts and cases management. In January 2014, a joint project of the KJC and the KPC with the aim of introducing an ICT-based Case Management Information System (CMIS) for **Kosovo** courts and prosecution services started, with the financial support of the Ministry of Foreign Affairs of **Norway**.

We recommend that **Kosovo** authorities review the budgetary item on computerisation strategically to ensure that the deployment of information technologies is linked to a policy or strategy for change involving all stakeholders and, in particular, to guarantee the sustainability the ICT/CMIS project even after its completion.

Recommendation 5: To collect and report accurate data on the approved and implemented budget for legal aid, including by implementing a more specific itemization of the budgetary lines concerned.

We found that there is no single budget for legal aid in **Kosovo**, because both courts and the FLA are authorized to grant free legal aid. Moreover, when a lawyer is appointed free of charge during the pre-trial state of criminal proceedings, the costs are covered by the budget of the KPC. It was also pointed out that the legal aid data reported by KJC and the KPC may be an overestimate of the real figures, given that the relevant budgetary line – ‘services’ – covers the payment of lawyers (i.e. the budget for legal aid) as well as the fees for experts and lay judges. Finally, we found that there were important differences between the approved budget and the resources effectively spent (implemented budget) on free legal aid in 2014, which was mainly due to an overspend by the KPC and by the FLA.

Accordingly, we recommend that the KJC, the KPC, the FLA and other relevant institutions involved collect and report precise data on the approved resources dedicated to legal aid and the effective budgetary expenditure (implemented budget) incurred during the reference year. Furthermore, it would be useful to use a budgetary line for legal aid that is separate from other budgetary lines for experts and lay judges, so as to allow a clear identification of the resources that are allocated to and effectively implemented on legal aid services per year (not only official data but also external funding).

Recommendation 6: To assess the needs of citizens as regularly as possible for legal aid services and to explore possible solutions to improve access to legal aid without increasing financial resources by looking at legal aid systems in countries/entities in Europe and reviewing the eligibility criteria for legal aid.

We found that the budget for legal aid in **Kosovo** does not seem sufficient to cover the real needs of the citizens for legal aid services. However, obtaining additional resources may not be reasonable (see Chapter 3 above).

We recommend to regularly assess the real needs of citizens for legal aid services. Proposals to increase the budget for legal aid should be based on the results from this assessment. We also recommend exploring possible solutions to improve access to legal aid without increasing financial resources by looking at legal aid systems in countries/entities in Europe and by reviewing the eligibility criteria. In particular, a clear financial criterion should be set for the assignment of legal counsel at public expense in criminal cases of non-mandatory defence.

Recommendation 7: To conduct further research to assess the resources needed (number of professional judges) in the various courts in light of the caseload, and to optimise the repartition of the resources between the Basic Courts and the Court of Appeals.

We found that the number of judges in **Kosovo** in 2014 was lower than the median of the cluster. Also, compared to neighbouring countries/entities (with the exception of **Albania**), **Kosovo** employed a lower number of professional judges. These findings are even more plausible when considering that the figures reported are nominal values (i.e. number of positions) and that the corresponding FTE figures would be lower. However, with regard the number of professional judges employed in the various countries/entities, there are significant discrepancies between the Council of Europe member States/entities and within the cluster. The discrepancies are explained by the diversity of judicial organisations. We also found that, compared to other countries/entities within the cluster, **Kosovo** allocates a lower percentage of judges and prosecutors at second instance.

We recommend conducting further research to assess the resources needed (number of professional judges) in the various courts in light of the caseload, and to optimise the repartition of the resources between the Basic Courts and the Court of Appeals. A precondition thereof is the collection of specific information that will enable the calculation of the FTE number of judges employed at each instance. The assessment should take into account, among other matters, the scope of the judge's missions, the use of non-professional judges, the level of financial resources allocated to justice, the caseload of judges in each department and in each court, the number of cases older than two years, as well as the CEPEJ indicators such as the Clearance Rate, Disposition Time, and Cases per Judge by area of specialization.

Recommendation 8: To conduct further research on whether the costs of non-judge staff should be reduced, to include recommendations on how to proceed (e.g. by outsourcing services) and to envisage ways to increase the number of staff directly assisting the judges (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.).

We found that there was a high number of administrative and technical staff per judge in **Kosovo** in 2014, but a low number of staff directly assisting judges. Technical staff comprises those in charge of technical and maintenance related duties, such as cleaning staff, security staff, computer department technicians or electricians. The finding however may be affected by the fact that calculations were made on the basis of nominal values rather than FTE, for both judges and non-judge staff.

We recommend to the KJC and other relevant institutions to conduct further research on whether the costs of non-judge staff should be reduced, to include directions on how to proceed (e.g. outsourcing services) and to envisage ways to increase the number of staff directly assisting the judges (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.). As a priority, specific information should be collected to calculate FTE figures for both categories.

Recommendation 9: To introduce policies and adopt measures aimed at increasing representation of women among judges and among court presidents.

We found that the percentage of female judges and court presidents in **Kosovo** is the lowest among the countries/entities in the cluster. Also, within the cluster, only **Kosovo** and **Albania** had less than forty percent female prosecutors in 2014. By contrast, the median values of representation of women among judges and public prosecutors are above 50%, both within the cluster and in the Council of Europe member States.

We recommend that the KJC, the KPC and other relevant institutions enquire into the reasons for the low representation of women among judicial and prosecutorial professional staff, at different levels, and adopt adequate measures to address the situation. Carrying out such an enquiry and further research in these regards would possibly suggest whether the most appropriate measures should be, for instance, statutory rather than regulatory, permanent rather than temporary, etc.

Recommendation 10: To conduct further research to assess whether **Kosovo** employs a sufficient number of prosecutors to deal with the volume of proceedings and whether the allocation of prosecutors in the various instances is appropriate.

We found that the number of public prosecutors per 100 000 inhabitants in **Kosovo** in 2014 appeared low when looking at the median figures within the cluster and among Council of Europe members. These findings are even more compelling when considering that the figures reported are nominal values (i.e. number of positions) and that the corresponding FTE figures would be lower. However, with regard the number of prosecutors employed in the various countries/entities, there are significant discrepancies between the Council of Europe member States/entities and within the cluster. We also found that, within the cluster, **Kosovo** deploys the highest percentage of public prosecutors at first instance and the lowest at second instance.

We recommend further research to assess whether **Kosovo** employs a sufficient number of prosecutors to deal with the volume of proceedings and whether the allocation of prosecutors in the various instances is appropriate. A precondition thereof is the collection of specific information that will enable the calculation of FTE figures of public prosecutors serving at each instance. It is essential to analyse the number of prosecutors in light of the scope of the missions entrusted to them and the number of proceedings they are dealing with. The interpretation of this data should also take into account the number of cases prosecutors handle at each level.

Recommendation 11: To conduct further research on whether the costs of non-prosecutor staff should be reduced, to include recommendations on how to proceed (e.g. outsourcing services) and to envisage ways to increase the number of staff directly assisting the prosecutors (e.g. filling in vacant positions, temporarily recruiting trainees, etc.).

We found that, in 2014, **Kosovo** appeared to have a rather high number of non-prosecutor staff per public prosecutor, compared to the average and the median both within the cluster and among Council of Europe member States. However, this may be affected by the fact that calculations were made using nominal values

rather than FTE, for both prosecutors and non-prosecutor staff.

We recommend to the KJC, the KPC and other authorities to conduct further research on whether the costs of non-professional staff should be reduced, to develop recommendations on how to proceed (e.g. by outsourcing services) and to envisage ways to increase the number of staff directly assisting prosecutors (e.g. by filling in vacant positions, temporarily recruiting trainees, etc.). As a priority, specific information should be collected to calculate FTE figures for prosecutors and non-prosecutor staff.

Recommendation 12: To introduce policies and adopt measures aimed at increasing representation of women among prosecutors and heads of prosecution.

We found that, within the cluster, only **Kosovo** and **Albania** had less than forty percent female prosecutors; as regards heads of prosecution offices, the majority of countries/entities within the cluster had less than forty percent women (except for **Croatia** (67%), **Estonia** (60%), **Latvia** (41%) and **Montenegro** (41%).

We recommend that the KJC, the KPC and other relevant institutions enquire into the reasons for the low representation of women among prosecutors and heads of prosecution, and adopt adequate measures to address the situation.

Recommendation 13: To conduct further comparative research with countries in Europe on the number of lawyers per specific function, for the purpose of assessing whether the number of lawyers in **Kosovo** is sufficient to deal with the volume of proceedings and to meet the needs of citizens for legal services.

We found that, compared to the other countries/entities within the cluster, the number of lawyers in **Kosovo** in 2014 was very low. Within the cluster, only **Kosovo** and **Bosnia and Herzegovina** reported less than 50 lawyers per 100 000 inhabitants.

We recommend conducting further comparative research with countries in Europe on the number of lawyers per specific function, for the purpose of assessing whether the number of lawyers in **Kosovo** is sufficient to deal with the volume of proceedings and to meet the needs of citizens for legal services.

Recommendation 14: To further improve the methodology for compiling reliable statistics, in accordance with the CEPEJ Guidelines on Judicial Statistics (GOJUST) and SATURN Guidelines for judicial time management, and to continue gathering accurate data. These measures will enable both a realistic diagnosis of the judicial system and the formulation of effective and efficient solutions for improving court efficiency and the quality of the justice services provided.

We found that an issue that emerges in **Kosovo** and in some countries/entities concerns the numbering of cases that are split or reunited during the process. Whether these are considered as the same case or as different cases has an impact on the reported statistics on incoming, resolved, and pending cases, and consequently on the calculated indicators of CR and DT. Similarly, the assignment of a new number to a case that is redirected at first instance from the Court of Appeals or the Supreme Court affects the soundness of the figures reported and has an impact on the accuracy of the calculation of the average length of proceedings for specific categories. This approach inflates artificially the number of incoming cases, and does not allow to calculate the real length of proceedings.

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Recommendation 15: To conduct further research and explore the reasons why the number of incoming civil and commercial litigious cases and the number of incoming administrative cases are low in first instance courts and on appeal.

We found that **Kosovo** received a low number of incoming civil and commercial litigious cases and a low number of incoming administrative cases in first instance courts and on appeal. This may be attributable to a lack of confidence from citizens in the judiciary or insufficient legal aid being provided for instance.

We recommend further research into the reasons behind these low figures. It would also be important to examine the evolution of such figures since 2014.

Recommendation 16: To conduct further research and explore the reasons why courts of first instance in **Kosovo** face serious efficiency problems in the administrative and civil/commercial sectors. The purpose of this research should seek in particular to find improvement measures that do not involve an increase of resources (which should be done as a last resort).

We found that **Kosovo's** court model consists of few basic courts with several branch courts distributed across the territory, to guarantee effective access to justice for citizens. Instead, a concentrated approach is adopted with regard to commercial and administrative matters, which are under the exclusive competence of two special departments in the Basic Court of Pristina. We also found that at first instance, the situation in the administrative sector is very problematic despite the low number of incoming cases. The very low Clearance Rate and the high Disposition Time show that the Basic Court of Pristina faces important difficulties in coping with these cases. The situation was also concerning in the civil/commercial sector. The Disposition Time for this category of cases at first instance level was the highest in the cluster.

We recommend further research into the reasons why first instance courts in **Kosovo** (in particular the Basic Court of Pristina) have serious efficiency problems in the administrative and civil/commercial sectors. It would be interesting to calculate and compare the number of incoming and resolved cases per judge to obtain additional insight into the functioning of the judicial system in **Kosovo**. Such an analysis should take into account the peculiarities of the different systems and examine in detail the data on all personnel performing judicial tasks. However, as explained in Chapter 1 of this report, the CEPEJ philosophy for efficiency of justice recommends increasing resources (including the number of judges and prosecutors, etc.) only as a last resort, when other measures to improve the functioning of courts and prosecution offices have been undertaken and but have proven insufficient to solve the problems.

Recommendation 17: To conduct further research and explore the reasons behind the efficiency difficulties faced by the **Kosovo** Court of Appeals in handling administrative and civil/commercial litigious cases.

We found that the situation of the Court of Appeals in **Kosovo** is critical with regard to civil and commercial litigious cases (CR 80% and DT 604 days) and administrative cases (CR 76% and DT 378 days), despite the low number of incoming cases.

We recommend further research into the reasons behind the poor efficiency indicators of the **Kosovo** Court of Appeals in relation to administrative and civil and commercial litigious matters.

Recommendation 18: To assess whether the goals and objectives listed in the 2013 Backlog Reduction Strategy and in KJC 2014 Judiciary Strategic Plan to address the number of pending cases have been reached; to assess whether further reforms to decrease the number of pending cases are necessary; and more generally, to focus on decreasing as a priority the number of old cases applying the FIFO ("first in, first out") principle.

We found that the number of pending civil and commercial litigious cases as well as the number of pending administrative cases and pending criminal cases was high in 2014.

We recommend an assessment of whether the goals and objectives listed in the 2013 Backlog Reduction Strategy and in KJC 2014 Judiciary Strategic Plan to address the number of pending cases have been reached, and of whether further reforms to decrease the number of pending cases are necessary. More generally, we recommend that courts should focus their efforts on decreasing, as a priority, the number of old cases based on the FIFO ("first in, first out") principle, while also taking into consideration the priority cases mentioned in the jurisprudence of the European Court of Human Rights.⁹³ Courts are invited to use the CEPEJ methodology of the implementation guide "Towards European Timeframes for Judicial Proceedings."⁹⁴ It is important to reduce the number of pending cases in order to avoid entering these cases in the new case management information system that is being built.

⁹³ See CEPEJ-Study "Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights (31 July 2012, recte 2011)", 2nd edition, by Ms Françoise Calvez, updated by Mr Nicolas Régis, p. 25 and followings, lit. D "WHAT IS AT STAKE FOR THE APPLICANT".

⁹⁴ Doc. CEPEJ(2016)5 :

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2016\)5&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2016)5&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

Recommendation 19: To evaluate on a regular basis, based on the CEPEJ methodology, the judicial system in **Kosovo** with the purpose of improving its quality and efficiency.

As explained in Chapter 1, this study offers a snapshot of the functioning of the judicial system in **Kosovo** in 2014 which could be used as a reference in forthcoming assessments.

We recommend evaluating on a regular basis the judicial system in **Kosovo** - following the CEPEJ methodology - to improve its quality and efficiency. We suggest:

d) To place additional efforts on the collection and recording of disaggregated data, which will enable a more realistic diagnosis of the system and the identification of tailored solutions. For instance, to better understand the amount of the workload of judges in the criminal sector it would be useful to break it down by case category (minor and severe criminal cases). In 2014, 94% of the incoming criminal cases in **Kosovo** were minor offence cases.

e) To implement a sustainable process of data collection informed by CEPEJ methodology and carried out by local human resources in **Kosovo**. This will require the designation of a unique coordinator, trained on the CEPEJ methodology and definitions, in charge of data collection and the preliminary validation of their accuracy.

f) To carry out regular periodical assessments of the functioning of the judicial system in **Kosovo**, using the CEPEJ Evaluation Scheme and its explanatory note, with the purpose of identifying evolutions and trends and measuring the impact of justice policy reforms.

